



EU competition law remedies in Digital Markets

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*(The views expressed are not necessarily
those of the European Commission)*

Why intervene?

Competition for the market vs competition in the market

ECJ in TeliaSonera (para. 108) “[...] *application of [competition rules] cannot depend on whether the market concerned has already reached a certain level of maturity. Particularly in a rapidly growing market, Article 102 TFEU requires action as quickly as possible, to prevent the formation and consolidation in that market of a competitive structure distorted by the abusive strategy of an undertaking [...]*”. (C-52/09)

Characteristics of Digital Markets

Network effects

- Search

Barriers to entry

- Application barrier to entry (PCs, Smartphones ?)

Lock-in

- Legacy
- Status quo bias

Not all Digital Markets are equal

In fast-growing sectors/frequent market entry/short innovation cycles: large market shares may turn out to be ephemeral (Facebook/WhatsApp merger decision; T-79/12, Microsoft/Skype)

Multi-homing

Platform competition

No preinstallation

Remedy Design

Article 7 of Regulation 1/2003 empowers the European Commission to

" . . . impose on undertakings any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end."

Remedy Design

Cease and Desist orders most common (see eg margin squeeze cases).

BUT

93. "[...] *the Commission is required to assess in each case how serious the alleged interferences with competition are and how persistent their consequences are. [...]*

94. *If anti-competitive effects continue after the practices which caused them have ceased, the Commission thus remains competent under Articles 2, 3(g) and 86 of the Treaty to act with a view to eliminating or neutralising them.*" (C-119/97 P, Ufex)

The Microsoft case

Article 5 of the 2004 Decision:

"Microsoft ... shall, within 120 days of the date of notification of this decision, make the interoperability information available to any undertaking having an interest in developing and distributing work group server operating system products and shall, on reasonable and non-discriminatory terms, allow the use of the interoperability information by such undertakings for the purpose of developing and distributing work group server operating system products.

"95.[...] the Commission undoubtedly has the power to find that an infringement exists and to order the parties concerned to bring it to an end, it is not for the Commission to impose upon the parties its own choice from among all the various potential courses of action which are in conformity with the Treaty or with a decision imposing behavioural remedies [...]." (T-167/08, Microsoft).

Mirroring the Abuse ?



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Browser
order
presented
randomly

Conclusion

Competition law enforcement has a role to play in digital markets

Careful analysis needed as markets differ

Remedies must be mindful of incentives to innovate for all players