



Conference on Competition and the Digital Economy

Co-chairs' summary

On June 3, 2019, a conference on Competition and the Digital Economy was jointly hosted by the French Ministry of the Economy and Finance, the Autorité de la concurrence (the French competition authority), the OECD and the Banque de France, within the framework of the 2019 French G7 Presidency. The event featured representatives of every G7 competition authority, the private sector, the OECD and academia. This document provides a brief summary of the Conference's key conclusions.

1. Participants agreed that the benefits of digitalisation for economic wellbeing can only be fully realised if there is healthy competition in digital markets.

The Conference opened with a discussion of how digitalisation has led to the introduction of new markets, the reshaping of old ones, and a transformation in how consumers obtain information as well as make purchases. It was observed that the digital transformation holds promise not just for consumers, but broader economic well-being as well. However, several speakers expressed the view that healthy competition is essential for these benefits to be guaranteed. The well-documented benefits of market competition that were noted include lower prices, higher productivity, more innovation, easier access to markets and reduced income inequality.

Recent indicators, such as those developed by the OECD, suggesting that competitive intensity may be declining in certain digital markets, such as the growth of mark-ups charged by firms over their costs, the decline in the entry of new players and the rise of level concentration in certain markets, were discussed. Participants noted that the cause of these trends and their analysis are not yet clear: it may be linked to the natural structure and characteristics of digital markets (as a result of platform network effects, high fixed and low variable costs, the importance of intellectual property and other barriers to entry), regulatory barriers to competition, issues associated with the conduct of firms, or a combination of these factors. Participants agreed that more work and analysis on this issue is needed. Speakers stressed the relevance of competition law regarding the challenges raised by the digital economy and underlined the need for competition policy to further promote competition in digital markets.

In this context, Governments and competition authorities across the G7 have begun to assess whether existing policy frameworks must be adapted in response to digitalisation. These efforts have culminated in several initiatives discussed during the conference, including the report on “Unlocking digital competition” prepared for the UK Government, the hearings held by the US Federal Trade Commission on “Competition and Consumer Protection in the 21st Century”, the “Competition policy for the digital era” report commissioned by the European Commission, the establishment of the Competition Law Commission 4.0 in Germany, the mandate to the Canadian Competition Bureau in the context of the Government of Canada's Digital Charter, the report of the Study Group on Data and Competition Policy commissioned by the Japan Fair Trade Commission.

- 2. Technologies enabling the collection and use of data have allowed innovative business models to emerge that offer significant consumer benefits. Participants expressed the view that policymakers as well as competition, consumer protection and data protection authorities all have an important role to play in ensuring consumers are protected, and empowered to get the best possible deal.**

It was noted that the data collected in digital markets is voluminous, rapidly growing, valuable and heterogeneous. It can be used to develop and improve digital products, generate revenues through sales to third parties, develop new business models and improve the impact of online advertisements.

Participants discussed several circumstances in which data may come under consideration as part of competition enforcement. During merger reviews, competition authorities may need to consider the importance of data as a competitive asset: the merger between two competitors' datasets may give them market power that allows them to raise prices or lower quality. Abuse of dominance cases may be brought if there are concerns that a firm is using its access to data exclude competitors. Some participants emphasised the need for data to be assessed on a case-by-case basis, given that its role and characteristics can vary widely across markets.

More broadly, participants observed that data may affect market competition in ways that cannot be addressed through competition enforcement action alone, with implications for consumers and innovation more broadly. Some participants suggested that data may reduce market contestability in markets that feature "winner takes most" dynamics without misconduct by firms or mergers. Others pointed out that consumers may be unable to assess the benefits and costs of digital products that involve the collection of their data. It was noted that particular challenges can arise when products are offered at a price of zero, or when consumers are unable to meaningfully digest lengthy terms and conditions regarding the use of their data. Some participants underlined the need to promote a common policy and regulatory approach across jurisdictions when addressing policy concerns arising from data and digitalisation.

Potential ways for G7 policymakers to address both consumer protection and competition concerns were highlighted. These proposals included the promotion of good data governance (with respect to collection, sharing and data protection), changes aimed at better structuring the choices offered to consumers, and the promotion of consumer data mobility (potentially through consumer ownership of their data). Several participants emphasised that policymaking ought to be well-informed by evidence, and to ensure a balance between the need to reduce barriers to entry and improve switching on one hand, and protecting incentives to invest, namely in data gathering, on the other hand. Participants agreed that competition and data protection authorities can help advise policymakers in achieving this balance. In addition, some speakers pointed out that the private sector may also have a role to play in this respect and described, in particular, the efforts already made by some platforms to promote data portability with a view to facilitating innovation.

- 3. Speakers observed that the relationship between competition and innovation is complex. It was therefore noted that promoting pro-innovation competition will require a case-by-case approach by competition authorities. Some suggested that authorities may wish to provide further guidance on how they conduct their assessments of dynamic competition, including with respect to innovation. Further, an assessment of the role of other policies in driving innovation competition (e.g. intellectual property or tax policies) was proposed by participants.**

Participants explained how innovation is a key driver of productivity and therefore economic growth. Competition can incentivise firms to develop new or better products, and to find methods of reducing their costs. However, it was noted that the linkage between innovation and competition is not a simple one, and may depend on the specific situation in a market. In any event, speakers highlighted that markets must be contestable in order for firms both incumbents and new entrants to be incentivised to innovate.

When dealing with innovation issues, speakers observed that competition authorities grapple not only with this mixed theoretical foundation, but also uncertainties regarding R&D efforts and the future evolution of markets. Several participants emphasised that vigilance is required to ensure that mergers with potential anticompetitive impacts are scrutinised and duly assessed for their effects on dynamic competition. To provide transparency for stakeholders, it was suggested that competition authorities may wish to ensure that their guidelines clearly establish the timeframe and standards of assessment for addressing non-price effects, including innovation. In addition, some speakers described the efforts by competition authorities to address anticompetitive conduct by dominant firms to exclude competitors, which can also protect innovation in digital markets.

More broadly, some participants called for a global approach to examining whether there are opportunities for intellectual property and taxation policies to better promote competition.

- 4. Competition authorities are beginning to tailor some aspects of their approach to digital markets. Even if competition laws have proven to be fit for purpose, some participants indicated that the rapid pace of change in these markets may however require adaptations to authority procedures, such as the use of interim measures. The importance of sufficient technical expertise and resources was also emphasised. In addition, potential changes to merger frameworks to capture anticompetitive acquisitions of small firms were discussed. Finally, participants noted that the analytical tools competition authorities use may need to be adapted to digital markets.**

The Conference explored a range of challenges for competition authorities stemming from digitalisation. Participants described assessments of competition policy frameworks and tools, either recently completed or in progress, across the G7. Several of these reviews have found that broad changes in laws, or the approach used by competition authorities, do not appear to be necessary. However, several potential adjustments were described by participants. In particular:

- Some emphasised that competition authorities will require access to sufficient technical expertise and resources – particularly to address new concerns such as algorithmic collusion, as well as to process, and store large volumes of data.
- Also discussed were potential adjustments to merger notification thresholds, for example changes to ensure the acquisition of start-ups with competitive implications do not fall under the radar. However, other panellists noted that overbroad thresholds could capture a large volume of common transactions in the digital sector that may not have anticompetitive effects.

- Some suggested that, when uncertainty is involved in competition decisions, as occurs when dynamic competition issues are being assessed, competition authorities may wish to consider whether they have the right balance between over- and under-enforcement. The proposals made in some jurisdictions to shift the burden of proof regarding the impact of anticompetitive conduct were also discussed.
- Some speakers also discussed the importance of timeliness in competition assessment and enforcement processes to match the pace of change in digital markets. For instance, the speed of authorities' review processes, and the ability to impose interim measures in the context of potential abuses of dominance to exclude competitors, may require enhancements.
- Finally, possible adaptations to the analytical tools used by competition authorities to address the specific features of digital markets, including the prevalence of multi-sided markets, were discussed. In some cases, it was proposed that competition authorities may need to rely increasingly on qualitative documents, such as firms' internal documents and the observations of industry experts when quantitative analysis is not practicable.

Participants emphasised the importance of relevant international fora, including the OECD, in identifying principles and practical measures for ensuring the effectiveness of competition and other policies (such as intellectual property frameworks) in digital markets.

5. Some speakers expressed the view that competition enforcement cannot address all concerns arising in digital markets. For competition authorities, speakers noted that tools such as market studies and advocacy are essential elements of a competition policy adapted to digitalisation. Regulatory barriers to competition may need to be removed, and new measures may be needed to promote competition. Interdisciplinary co-operation between competition, consumer protection and data protection authorities, as well as sector regulators, Government policymakers and central banks, was also called for.

Some speakers noted that the challenges raised by the digital markets could not always be addressed through competition authority enforcement action. Regulatory frameworks, demand-side factors (e.g. limitations to consumer information, behavioural biases), or structural characteristics of the market may each play a role in affecting the competition level playing field in these markets. Participants noted that these factors could require regulatory change – either in removing anticompetitive regulation that may increase barriers to entry for small and medium-sized firms, or in implementing new measures to address policy concerns and promote competition level playing field. It was noted that competition authorities and other entities that implement competition policy can help shape these reforms by conducting competition assessments of regulation, or by conducting market studies – a valuable tool for understanding the functioning of different markets and sectors, gathering evidence of potential competition problems, and proposing informed solutions. The results of market studies could include recommendations for regulatory reform, consumer advocacy campaigns, or initiatives to encourage business-led solutions.

Some participants also emphasised that competition authorities could strengthen relationships and information sharing with other regulators, such as consumer protection and data protection authorities, that may be addressing overlapping issues in digital markets. Some participants recognised that some issues may be better dealt with through consumer protection and data protection policy, but could benefit from interdisciplinary co-operation to ensure the solutions do not have any unanticipated effects on competition.

Participants indicated that the G7 could play a role in developing international common understanding of these questions, and that OECD work, as well as ICN initiatives, could help in that sense.

- 6. Participants agreed that co-operation will be key as competition policymakers adapt to digitalisation. Faster and enhanced cross-border co-operation among competition authorities, and between competition authorities and policy makers, could be strengthened to encourage better co-ordination, and to match the borderless nature of many digital markets.**

Several participants underlined the need for joint international action – within the G7, the OECD, the ICN and beyond – when considering means to promote competition, such as in the area of data governance and portability, which could involve cross-border issues. It was noted that policymakers could involve competition authorities, to ensure that the options considered are evaluated with competition promotion in mind (e.g. to avoid entrenching large incumbents).

Numerous potential opportunities to enhance international cooperation efforts among competition authorities at the bilateral and multilateral level were identified, including more extensive and faster information exchange, improving investigative assistance, coordinating cartel leniency programs, and developing joint investigations – particularly in countries with similar legal systems.