

# COMPETITION IN ONLINE MARKETS

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## **Competition in Online Markets**

*By Jeff Paine, Sarthak Luthra & Edika Amin*

Across the globe, regulators continue to question the extent of current competition laws and policies following the rise of digital platforms, big data, fintechs, and e-commerce which has led to different jurisdictions adopting different approaches. This paper provides a glimpse on online platforms' role in digital transformation and highlights common competition issues observed. Findings show that competition is not hindered by digital platforms but rather enhanced. It is also found that digital platforms can also play a crucial role as the world begins to recover from the COVID-19 pandemic. Lastly, the paper emphasizes the need for regulatory harmonization to avoid fragmentation and better clarity on the problems that regulations aim to tackle. These components in tandem can help create a global policy mindset and bring competition laws in line with current developments.

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## I. INTRODUCTION

Today, digital platforms have become the centerpiece and main drivers of digital transformation, through the rise of services such as marketplaces (Amazon), application stores (Apple), social networking sites (Facebook) and search engines (Google). These digital infrastructures have changed the nature of our daily transactions and created new opportunities for firms to scale up across all sectors.

It is important to note that the technology sector is not limited to a handful of big U.S. companies. There is a range of large firms from the U.S., Europe and Asia that compete globally to provide innovative services to their users. In Asia, Baidu, Alibaba and Tencent to name but a few, generate billions of dollars of revenue and can tap on a very large user base.

There is also intense competition among big tech companies across products and regions. For example, on general search, DuckDuckGo hit a record<sup>2</sup> 1 billion monthly searches in January 2019 demonstrating that a new entrant can compete in this space. And growing fast, with nearly 2.4 billion monthly searches in November, averaging 80 million daily searches. In APAC, the competition is even more intense, with very strong local players, such as Naver in Korea.

## II. KEY COMPETITION ISSUES OBSERVED

In recent years, many competition authorities and competition law scholars have focused on technological dimensions and its impact on traditional business models. Their efforts have commonly revolved around additional regulation with regard to issues related to data and digital ads. This section looks to shed light on these concerns and misconceptions that exist today.

### A. *Data and Competition*

The wide availability and ease of obtaining data are among the factors that have fueled the development of the digital economy. While many commentators stress the importance of the collection and processing of datasets by tech companies, there are two additional factors that have an even more significant contribution to digital markets: First, computational resources and in particular cloud computing, provides access to hardware and software at no or low cost and on demand basis. Second, technical expertise in the field of computer science allows firms to analyze, understand and derive insights from data.

Data is increasingly abundant. By the end of 2020, it is estimated that 1.7MB of data will be created every second for every person on earth.<sup>3</sup> Data is also non-rivalrous. Its consumption does not decrease its availability to others, unlike other raw materials or inputs required in traditional industries. A user can upload the same information (e.g. photos, contact details etc.) to different social networks and firms can process the same datasets. For in-

stance, Commoncrawl has built an open repository of web crawl data that can be accessed and analyzed by anyone.<sup>4</sup>

Many companies in different sectors have proven that you can quickly outperform incumbents just by having a better product or service but not more data. New entrants can quickly accumulate the data they need to enter the market, as the proliferation of dating apps and genealogy services show. In little more than 10 years, 23andMe has gone from a start-up to having more than 5 million customers. In 2018, it announced a cooperation agreement with GlaxoSmithKline, which also made a US\$300 million investment in the company. When Google first developed its voice assistant, it opened up a free telephone directory service to obtain enough voice samples to get its speech recognition software off the ground. This is an approach that other companies could likely replicate.

Amid such competition, data is not an entry barrier to search engines. Large amounts of data have diminishing returns for search providers, and search providers without large amounts of data compete by innovating and offering differentiated services. The basic components of a search engine, such as a web crawler, are relatively simple and in many cases are available to new entrants on a free and/or open source basis. New entrants can (and do) partner with existing search engine providers (like Bing) to complement their own web crawling and indexing efforts. This allows rivals to focus their investment in the “special sauce” of differentiating features, which is where most search competition and innovation happens.

### B. *Digital Ads Do Not Dominate the Market*

Digital companies compete with TV broadcasters, newspapers, radio, podcasts, and outdoor for a piece of a single advertising budget. Advertising investments are a reflection of consumer trends. Most advertisers and agencies use a mix of different media as the most effective way to reach a target audience. Different media, both online and offline, compete with one another

2 <https://www.searchenginejournal.com/duckduckgo-hits-a-record-1-billion-monthly-searches-in-january-2019/291609/>.

3 <https://www.socialmediatoday.com/news/how-much-data-is-generated-every-minute-infographic-1/525692/>.

4 <http://commoncrawl.org/>.

for consumer attention and ad spend. Advertisers focus on their goals (reaching audiences, ROI, etc.), not on artificial distinctions based on media.

Secondly, the ad tech ecosystem is famously crowded and competitive. There are thousands of companies operating in “ad tech” that work together and in competition with each other. Some of them are big, familiar names like Adobe, Amazon, AT&T, Facebook, Google, Oracle, and Verizon. Others — including Criteo, Index Exchange, MediaMath, OpenX, Magnite, and The Trade Desk — are less well-known outside the industry but operate important, scaled businesses.

Lastly, digital ads allow advertisers and publishers benefit from a plethora of options. Advertisers and publishers work with multiple ad tech vendors to get the best possible deal, achieve the best possible results or take advantage of innovative new offerings from startups or established players. They are able to freely choose different players at each level of the ad tech stack and use more than one provider for the same function (i.e. “multi-home”). Publishers and advertisers also can, and do, switch between suppliers. In the US, market research firm Advertiser Perceptions interviewed 441 marketers and found that, on average, advertisers used 3.7 demand-side platforms (“DSPs”).<sup>5</sup> 41 percent of advertisers used Amazon’s DSP, 35 percent used Google’s, and 26 percent used The Trade Desk. In addition, suppliers are incentivized to ensure their products are interoperable with others, because many businesses use a combination of ad tech products. In a study this year of 155 major digital publishers, Advertiser Perceptions found that the average publisher uses six supply-side platforms (“SSPs”) and intends to use eight SSPs next year.<sup>6</sup> The Wall Street Journal sells their inventory through 17 different platforms<sup>7</sup> (see WSJ’s ad.txt file). In Australia, advertisers and publishers regularly multi-home and mix-and-match ad tech products from different vendors.

### III. BENEFITS OF A DIGITAL ERA AND TECH’S ROLE IN SPURRING ECONOMIC RECOVERY

#### A. *Consumers benefit from an unprecedented choice in digital*

Digital goods (e.g. smartphones) and services (search engines, messaging etc.) have created consumer surpluses and large gains in well-being that are not reflected in conventional measures

of GDP and productivity. A recent study from MIT<sup>8</sup> (April 2019) shows that people valued search engines at an average of US\$17,530 per year, and email at US\$8,414. Consumers around the globe have never had such a wide choice of digital products and services that (i) meet their needs for information (ii) enable them to connect with one another and (iii) seamlessly perform tasks that used to take sizeable amounts of their days.

The ad tech industry has enabled small and medium size businesses to grow. The benefits, among others, include:

- **Maximizing ROI:** the development of the ad tech industry has enabled small and medium businesses to utilize advertising in continually more efficient and cost-effective ways. The use of targeted advertising and pay-per-click (rather than per-impression) allows small advertisers to maximize returns from their campaign.
- **User relevance:** unlike other traditional forms of advertising, ad tech helps deliver more targeted and relevant advertisements to users. Another benefit over traditional forms of advertising is that ad tech provides for detailed reporting and analysis through sophisticated analytic tools, allowing businesses to clearly track the effectiveness and success of campaigns.
- **Leverage inventory:** ad tech, and in particular programmatic advertising, has created many more monetizing opportunities for the publishers. It has also enabled publishers to maximize the yield from their inventory, and allows publishers to realize profits per impression.

#### B. *Covid-19 & Economic Recovery*

Tech companies’ diversified, stable businesses coupled with cash reserves to weather a downturn, means the tech sector can help power the recovery for the broader economy.<sup>9</sup>

- *Apps:* Google Play and App Store downloads were up in Q1 2020, with over 30 billion new app downloads, driving value to developers and increasing choice for consumers.<sup>10</sup>
- *E-Commerce:* Google Shopping recently made it free to sell

5 <https://www.marketingdive.com/news/amazons-dsp-jumps-ahead-of-googles-as-most-used-by-advertisers-study-say/541464/>.

6 <https://www.adexchanger.com/platforms/amazon-emerges-as-google-challenger-in-advertiser-perceptions-ssp-report/>.

7 <https://www.wsj.com/ads.txt>.

8 <https://www.pnas.org/content/116/15/7250>.

9 [https://www.wsj.com/articles/surging-tech-stocks-nearly-push-nasdaq-out-of-the-red-11588248000?mod=tech\\_featst\\_pos1](https://www.wsj.com/articles/surging-tech-stocks-nearly-push-nasdaq-out-of-the-red-11588248000?mod=tech_featst_pos1).

10 <https://www.appannie.com/fr/insights/market-data/weekly-time-spent-in-apps-grows-20-year-over-year-as-people-hunker-down-at-home/>.



on Google.<sup>11</sup> This increases competition and choice in online shopping and among retailers. It gives retailers free exposure to millions of people who come to Google every day for their shopping needs. And it gives shoppers access to more products from more stores.

#### IV. MOVING FORWARD, A GLOBAL POLICY MINDSET IS NECESSARY

We wish to reference a position paper on EU competition policy,<sup>12</sup> jointly developed by the Nordic competition authorities about the potential changes to EU competition law, they emphasize the need for regulatory harmonization to avoid fragmentation and ask for clarity on the problems that regulations aim to tackle.

The Nordic competition authorities also stress the importance of ensuring compatibility between traditional competition enforcement tools and the proposed legislative initiatives by clarifying the kind of problems intended to be tackled by these different policy tools. This is essential for ensuring the effective enforcement of the competition rules to the benefit of consumers and companies, as well as appropriate legal certainty and transparency for all, paving the way for open markets and innovation incentives."

Finally, it is essential to note that these digital platforms have also played an important and positive role in our economies, not only fostering innovation and underpinning economic growth, but also creating opportunities for companies and consumers. Therefore, regulatory intervention may not ensure the same level of flexibility and adaptability seen in the enforcement of competition law. In particular, it is doubtful that it would be beneficial to introduce a detailed list of obligations and prohibitions within an ex ante regulatory framework. This is because the same type of conduct can have both pro and anticompetitive effects depending on the market and/or the specific gatekeepers, and because digital markets are fast-moving. Furthermore, such a regulatory intervention should rely on a clear and objective set of criteria.

#### V. APPENDIX

##### Competition landscape:

- **Australia:** The Australian Competition and Consumer Commission ("ACCC") is increasingly focusing on digital platforms, and competition and consumer law issues in the digital economy and traditional markets affected by digital disruption. ACCC is working on Digital Platforms Inquiry, which is examining the impact of search engines, social media platforms and other digital content aggregators on competition in media and advertising services markets.

- **Singapore:** The Competition and Consumer Commission of Singapore ("CCCS") has a keen interest in competition issues relating to digital platforms, and has been actively considering the opportunities, challenges and policy implications of digital platforms for several years. CCCS is updating its competition guidelines to provide more clarity and guidance to businesses in the digital sector. This follows the commission's e-commerce platform market study report released on 10 September 2020. CCCS has urged e-commerce platform operators to raise sellers' awareness and understanding of the Consumer Protection (Fair Trading) Act (CPFTA) and encouraged sellers to adopt its recommended "good trade practices." As the COVID-19 pandemic catalyzes business digitalization in Singapore and the region, it is expected that CCCS will continue its focus on competition issues in the digital sector well into 2021.

- **Japan:** The JFTC is updating the Draft Guidelines concerning Abuse of a Superior Bargaining Position Transactions between Digital Platform Operators and Consumers.

- The Draft Guidelines is a further departure from international competition law norms. Abuse of Superior Bargaining Power (ASBP) in its original application to B2B was already a departure from international competition law principles (i.e. enforcement against abusive conduct based on dominance or substantial degree of market power). The extension of ASBP to cover B2C — in particular with regard to personal data — is a further departure from international norms.

- Divergence of Japanese competition law policy from internationally-recognized competition law principles risks creating a significant barrier to entry into the Japanese market, particularly given the global nature of the digital economy.

- AIC proposed aligning definition of "digital platforms" to be consistent with international discussion. For example, in the EU, Platform to Business (P2B) regulations defines "platform business" as Online Intermediation Service which fulfils 1) It is an online platform 2) It allows other businesses to offer goods or services to consumers so that those businesses can transact with consumers.

- The regulation should also avoid duplication of or inconsistency with existing laws. Where other laws and legal regimes already address the protection of consumer data and are naturally better suited to do so, it is ill advised to create additional rules.

11 <https://www.blog.google/products/shopping/its-now-free-to-sell-on-google/>.

12 <https://www.kfst.dk/media/ockjqz0b/digital-platforms-and-the-potential-changes-to-competition-law.pdf>.

- **India:**

- The Government of India introduced new e-commerce rules in 2018 to promote competition and prevent restrictive practices by online e-commerce platforms. The new rules, which came into effect on 1 February 2019, prohibit e-commerce platforms from selling products from companies in which they have an equity interest; platforms are required to provide services, including fulfilment, logistics, warehousing, advertisement and marketing, payments and financing to sellers on the platform at arm's length and in a fair and non-discriminatory manner; and platforms are not permitted to mandate any seller to sell any product exclusively in their marketplaces.

- India also amended the Competition (Amendment), Bill 2020. The Draft Bill proposes to introduce several changes which shall have the effect of making the overall competition enforcement more efficient, thereby benefiting the market players, end consumer as well as the overall market. ■

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