LEGAL CRITERIA FOR ASSESSING ANTI-COMPETITIVE CONDUCT OF DIGITAL PLATFORMS.

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ABSTRACT

In competition law, the identification and regulation of anti-competitive conduct are based on a set of theoretical and legal criteria. The nature and characteristics of these criteria differ significantly between traditional market environments and digital markets. Certain criteria that were developed for conventional markets may change their function, require adaptation to the digital environment, or even lose their relevance altogether when applied to digital markets

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The criteria for assessing anti-competitive conduct of digital platforms are grounded in the specific features of digital markets. These include, inter alia, multi-sided digital markets, network effects, market tipping, multi-homing, and the creation of artificial barriers to data access. Such factors constitute key normative indicators in the legal assessment of competitive behavior in the digital economy.

Defining the relevant market. Despite their fundamental differences from traditional markets and their highly dynamic growth patterns, the identification of the relevant market remains the initial and most essential step in detecting anti-competitive conduct in digital markets. In the digital environment, products are frequently updated, multifunctional, and often operate across multiple market segments simultaneously. Digital markets, similar to traditional markets, may be classified into product and financial markets. However, the definition of product and geographic market boundaries in the digital context depends on whether the platform operates as a single-sided or multi-sided market. As a result, the establishment of rigid market boundaries becomes increasingly complex and, in some cases, impractical.[1]

Platforms that facilitate interaction among only one category of users are referred to as single-sided platforms. Social networking platforms such as Facebook may serve as an

[1] Belleflamme P., Peitz M. Platforms and network effects. – Edward Elgar Publishing, 2018. – C. 286-317.

example. From the perspective of e-commerce law, such platforms are typically characterized as consumer-to-consumer (C2C) platforms.

Network effects. In digital platform markets, network effects constitute the primary source of market power. Large platforms such as Amazon, Google, and Facebook increase their network value by expanding their user base. Each additional user generates new data, enhances algorithmic precision, increases advertising efficiency, and reduces the likelihood of user churn.This phenomenon is commonly described as data-driven network effects. Through the use of user data, platforms continuously improve their services, attract additional users, and create a self-reinforcing feedback loop. As a consequence, markets tend to gravitate naturally toward one or a small number of dominant platforms. Under such conditions, maintaining effective competition becomes increasingly difficult, as new entrants are unable to overcome the initial advantages conferred by established networks. In multi-sided platforms such as Uber, Booking.com, and eBay, network effects manifest in a more complex form. Here, value creation does not result solely from the growth of a single user group but rather from the interdependence between distinct groups of users. For example, an increase in the number of drivers on the Uber platform improves service availability for passengers, while a growth in passenger demand generates higher income opportunities for drivers. This interaction produces a mutually reinforcing two-sided network.

A critical challenge for competition policy in such markets arises from zero pricing or asymmetric pricing structures. Services may be offered free of charge to one group of users, typically consumers, while the other side, such as advertisers or sellers-bears the financial cost. Consequently, competition analysis must take into account the economic role of all sides of the platform. Network effects represent one of the most significant barriers to entry in digital markets. New entrants must compete not only in terms of product quality but also against the existing network value enjoyed by incumbent platforms. For instance, a new social network may fail to gain popularity due to the absence of an established user base, while a new app store may struggle to attract developers without users, and users without developers.

This interdependence is commonly referred to as the “chicken-and-egg problem” and is widespread in the digital economy. As a result, digital platforms often operate at a loss during their initial stages, engaging in predatory pricing strategies to attract users. Once the network becomes sufficiently entrenched, however, entry opportunities for competitors diminish substantially.

Lock-in effects and consumer choice. Lock-in effects refer to the restriction of users’ ability to switch from one platform or ecosystem to another. This phenomenon represents a natural yet adverse consequence of network effects. For example, users who store their photos, contacts, and personal data on Facebook may find it technically or economically burdensome to migrate to an alternative platform, resulting in a state of forced loyalty.

From a competition law perspective, lock-in effects are particularly problematic because they restrict consumer choice and intensify barriers to market entry. When combined with data-driven network effects, lock-in mechanisms can lead to strong monopolistic positions. Accordingly, modern competition policy increasingly emphasizes principles such as data portability and interoperability to mitigate these risks. Data-driven network effects and the resulting lock-in mechanisms constitute central elements of dynamic monopolization in

digital markets. While they may stimulate innovation in the short term, they tend to weaken competition, restrict consumer choice, and foreclose market entry in the long term. Therefore, assessments of anti-competitive conduct in digital markets must account for both network effects and their lock-in consequences.[2]

Market tipping position. Market tipping refers to a dynamic process in the digital economy whereby competitive balance shifts sharply in favor of one or a few dominant platforms, transforming the market into a monopolistic or oligopolistic structure. Once tipping occurs, competition ceases to function effectively, entry becomes nearly impossible for new participants, and existing rivals lose market share due to network effects and data asymmetries. At this stage, the market evolves into a self-reinforcing, closed system.[3] The tipping process generally unfolds in three stages: an initial competitive phase characterized by innovation and multiple participants; a concentration phase in which network effects intensify and users gravitate toward the largest platform; and a tipping phase in which one platform secures leadership and entry barriers escalate. Tipping thus serves not only as an indicator of structural change but also as a critical warning signal for competition policy. The transition to a tipped market is driven by strong network effects, data concentration, asymmetries inherent in multi-sided markets, lock-in mechanisms, economies of scale, and growth efficiencies. Together, these factors create a mutually reinforcing system that consolidates the market around a single focal platform. The outcome of the tipping process is often described as structural dominance. This concept extends beyond mere high market share and denotes a market structure in which competition becomes practically impossible. Under structural dominance, competitors cannot overcome the network itself, switching costs for users are prohibitively high, the dominant platform controls data flows, search algorithms, or user interfaces, and competition exists only in a potential, rather than actual, form. From the standpoint of competition policy, market tipping constitutes one of the most significant risks, as it necessitates early intervention. Traditional antitrust frameworks typically respond only after dominance has been established. In digital markets, however, delayed intervention may prove insufficient to restore competition. Consequently, identifying anti-competitive conduct in digital environments requires a multi-stage analytical approach, which, although complex, is essential for preserving effective competition.

[2] Boudreau K. J., Jeppesen L. B., Miric M. Competing on freemium: Digital competition with network effects //Strategic Management Journal. – 2022. – Т. 43. – №. 7. – С. 1374-1401.

[3] Sylwan H. Tipping Markets: An analysis of the Commission's proposal for a Digital Markets Act. – 2021.