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Competition Issues in the Digital Economy


**Presentation by Intergovernmental Group of Experts on
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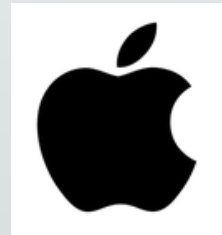
INTERGOVERNMENTAL GROUP OF EXPERTS ON
**COMPETITION
LAW AND POLICY**





COMPETITION ISSUES IN THE DIGITAL ECONOMY

DIGITAL PLATFORMS



DIGITAL PLATFORMS' GROWTH

Top 10 global companies, 31 March 2018

(Billions of dollars)

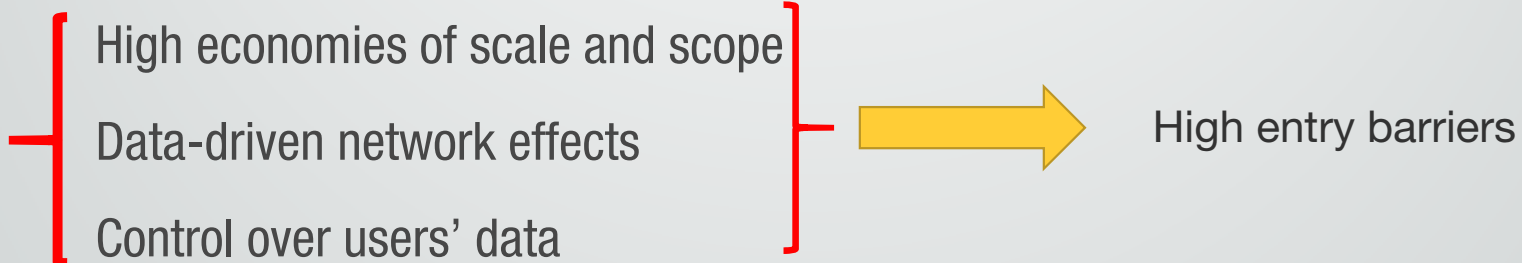
<i>Rank</i>	<i>Company</i>	<i>Industry</i>	<i>Market capitalization</i>
1	Apple	Technology	851
2	Alphabet*	Technology	719
3	Microsoft	Technology	703
4	Amazon.com	Consumer services	701
5	Tencent Holdings	Technology	496
6	Berkshire Hathaway	Financials	492
7	Alibaba	Consumer services	470
8	Facebook	Technology	464
9	JPMorgan Chase	Financials	375
10	Johnson and Johnson	Health care	344

Source: PriceWaterhouse Coopers, 2018.

* Alphabet has been the parent company of Google since 2015.



FEATURES OF DIGITAL PLATFORMS

- New business models: Algorithms and DATA.
 - High up-front sunk cost but low marginal costs
 - High economies of scale and scope
 - Data-driven network effects
 - Control over users' data
 - Switching costs for consumers (time, effort and energy)
 - Is competition really “one click away” ?
- High entry barriers
- 



PROMOTING AND PROTECTING COMPETITION IN THE DIGITAL ECONOMY

Competition Law Enforcement

- Definition of the relevant market: Price analysis based tests (SSNIP and hypothetical monopoly tests)
- Need to adapt antitrust framework to digital economy – Alternative approaches to digital platforms.
- Move from consumer welfare based approach to one focusing on the competition process:
 - Entry barriers
 - Conflicts of interest
 - Use and control of consumer data
 - Dynamics of bargaining power



PROMOTING AND PROTECTING COMPETITION IN THE DIGITAL ECONOMY

Regulation

- Regulate platforms to ensure open and fair access for all businesses, level playing field and platform neutrality (essential facilities doctrine) (Lina Khan, 2017).
- Constitutional approach to create and maintain “a regime whose goal is to constrain and divide all power that derives from the control of information” based on the separations principle (Tim Wu, 2010).
- Sectoral regulation, antitrust enforcement and self-regulation based on corporate norms (Wu, 2010).
- Break up the dominant digital platforms to mitigate the concentration of power in a single platform (Wu, 2018).



CHALLENGES FOR DEVELOPING COUNTRIES AND POSSIBLE RESPONSES

- Ensuring open and fair access to platforms under fair terms and conditions by local MSMEs.
- Supporting local start-ups in a digital world where big fish eat up little fish.
- Limited resources for competition law enforcement vis-à-vis global platforms.

Possible policy responses

- Effective e-commerce, competition and consumer protection policies and rules, ideally at the regional level to deal with abusive practices by global digital platforms and to review digital mergers.
- Regional and international enforcement cooperation and exchanges of experiences and information between competition agencies at UNCTAD IGEs, OECD, ICN and regional *fora*.



CONCLUSION

- Competition law frameworks and enforcement need to be adapted to the features and business models of digital platforms.
- Need to broaden the consumer welfare standard beyond price analysis to include consumer choice, privacy, data protection and innovation factors.
- Conduct surveys and market inquiries to understand competition issues in digital markets.
- Need to consider public interest clauses adapted to the digital economy and its challenges.
- Alternative policy options include regulation of online platforms similar to unbundling in the electricity sector and regulation of the telecommunications sector based on essential facilities doctrine.
- **COOPERATION** between competition authorities at the bilateral, regional and international levels.





**THANK YOU FOR YOUR
ATTENTION!**

Ebru Gökçe Dessemond

ebru.gokce@un.org

