



**PROTECTING CONSUMERS' FREEDOM  
IN THE DIGITAL ERA**

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# Aims

- ▶ Clarify the scope of EU Competition law.
- ▶ Consider its application in new emerging markets.
- ▶ Reflect on means to improve effectiveness of enforcement.
- ▶ Protect and optimise consumer welfare.
- ▶ Facilitate EU wide discussion and alignment.

# Challenges

- ▶ Dynamic and complex environment.
- ▶ Risk of over and under intervention.
- ▶ Range of beliefs as to competition dynamics and the ability of the market to self correct.

# Competition dynamic

Significant benefits,... *but* concerns over virtual competition

- ▶ Network effects (direct, indirect)
- ▶ Data as critical input
- ▶ Advanced analytics (algorithms) and data collection
- ▶ Asymmetry of information and analytical power
- ▶ Key gate keepers, Sustained market power, Market power below threshold
- ▶ Stealth - tracking, harvesting, targeting and manipulation
- ▶ Zero price markets and quality degradation
- ▶ Winner takes all (due to persistence, scale, data, networks).
- ▶ Economies of scale and scope
- ▶ Platform economy.

Aggregated effect

# The power of the platform business model

The 100 largest companies in the world by market value in 2019 (in billion U.S. dollars)	
	Market value in billion U.S. dollars
<i>Apple</i>	\$961.3
<i>Microsoft</i>	\$946.5
<i>Amazon.com</i>	\$916.1
<i>Alphabet</i>	\$863.2
<b>Berkshire Hathaway</b>	\$516.4
<i>Facebook</i>	\$512
<i>Alibaba</i>	\$480.8
<i>Tencent Holdings</i>	\$472.1

Source: Forbes, The 100 largest companies in the world by market value in 2019 (in billion U.S. dollars) Statista, <https://www-statista-com.proxy.lib.utk.edu/statistics/263264/top-companies-in-the-world-by-market-value/> (last visited August 01, 2019).

# *Key areas of concern*

- ▶ *Platform exclusionary practices*
- ▶ *Self-favouritism and search engine manipulation effects*
- ▶ Tying and bundling;
- ▶ *Exploitation of upstream providers*
- ▶ Exploitative terms and conditions
- ▶ *Data access*
- ▶ *Excessive data collection*
- ▶ *Discriminatory practices*
- ▶ Quality degradation of privacy
- ▶ Lack of interoperability
- ▶ Distort the market for ideas.



# Policy debate

*Is there a problem?*

*Is there a competition problem?*

*What is the scope of competition?*

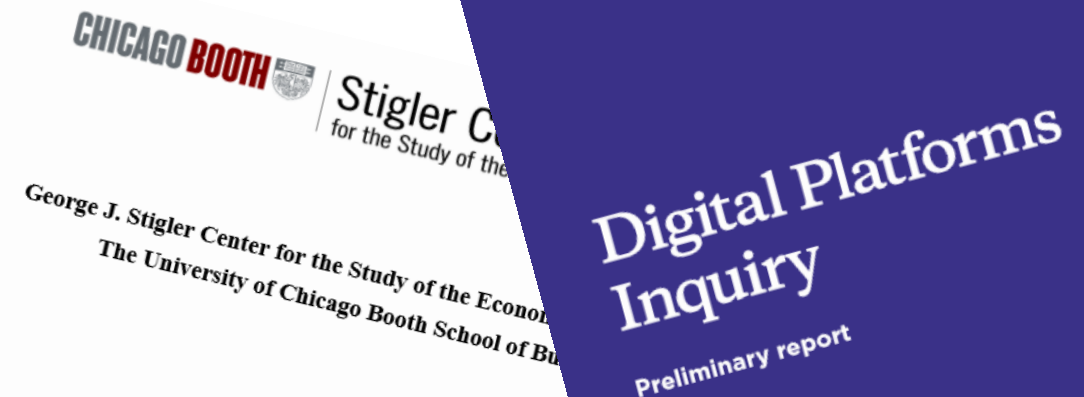
*Should we amend the law? the enforcement approach?*

*What is the role of regulation?*



REPUBLIQUE FRANÇAISE  
Autorité  
de la concurrence

ly the French version is authentic and it prevails in  
event of its differing from the translated version.



# Key studies and reports

- ▶ UK expert panel report - Unlocking digital competition
- ▶ UK Department of Digital, Culture, Media & Sport (DCMS) - Online Advertising in the UK
- ▶ EU Commission special advisers report on Competition Policy for the Digital Era
- ▶ 2019 Australian Competition and Consumer Commission (ACCC) Digital Platforms Inquiry
- ▶ French and German Study on Competition Law and Data
- ▶ French Competition Authority Report on the Online Advertising Sector
- ▶ OECD Roundtable on Big Data
- ▶ OECD Roundtable on Algorithms and Collusion
- ▶ OECD Report on Rethinking Antitrust Tools for Multi-Sided Platforms
- ▶ Chicago University Committee for the Study of Digital Platforms 2019 Report
- ▶ BEUC “Protecting Consumer Freedoms in the Digital Era”
- ▶ The Netherlands Authority for Consumers & Markets- Market study into mobile app stores
- ▶ CMA market study into online platforms and the digital advertising market
- ▶ Canada’s House of Commons Standing Committee on Access to Information, Privacy and Ethics
- ▶ U.S. Federal Trade Commission task force to monitor competition in the technology markets
- ▶ U.S. Department of Justice Investigation of Leading Online Platforms
- ▶ Common Understanding of G7 Competition Authorities on Competition and the Digital Economy
- ▶ UN World Economic and Social Survey 2018-Frontier technologies for sustainable development
- ▶ JFTC’s Study Group on Data and Competition Policy
- ▶ 2019 Italian Competition Authority & Communication Authority Guidelines on Big Data
- ▶ 2019 Report by the German ‘Competition Commission’ submitted to ministry of Econ affairs.

“What happens online doesn’t stay online. It affects all that we do, from the way we do our jobs to the future of our democracy... The businesses that have become the Internet’s giants have changed too. They’re not startups any more, fighting for a toehold among big, powerful companies. Now, they themselves are the big beasts...”

*Margrethe Vestager  
December 2018*

“...as we look to the future, it important to take a broad view of how the power of platforms is affecting the basic values of our society – values like privacy, freedom, fairness. And if it turns out that those values are under threat, then we need to be ready to act.”

8 *Margrethe Vestager  
G7, 3 June 2019*



# The Goals of Competition Law

- ▶ Not an abstract discussion...
- ▶ Institutional design, regulatory regime, law and policy make this a *jurisdiction-specific* inquiry.
- ▶ ‘[T]he ultimate purpose of the rules that seek to ensure that competition is not distorted in the internal market is to increase the well-being of consumers...’
- ▶ Competition law ‘aims to protect not only the interests of competitors or of consumers, but also the structure of the market and, in so doing, competition as such.’
- ▶ ‘The creation and preservation of an open Single Market ...’

# BEUC DISCUSSION PAPER THE GOALS OF EU COMPETITION LAW AND THE DIGITAL ECONOMY

[https://www.beuc.eu/publications/beuc-x-2018-071\\_goals\\_of\\_eu\\_competition\\_law\\_and\\_digital\\_economy.pdf](https://www.beuc.eu/publications/beuc-x-2018-071_goals_of_eu_competition_law_and_digital_economy.pdf)

Protect upstream providers, safeguard innovation & competition on the merits, ensure access and consumer choice.

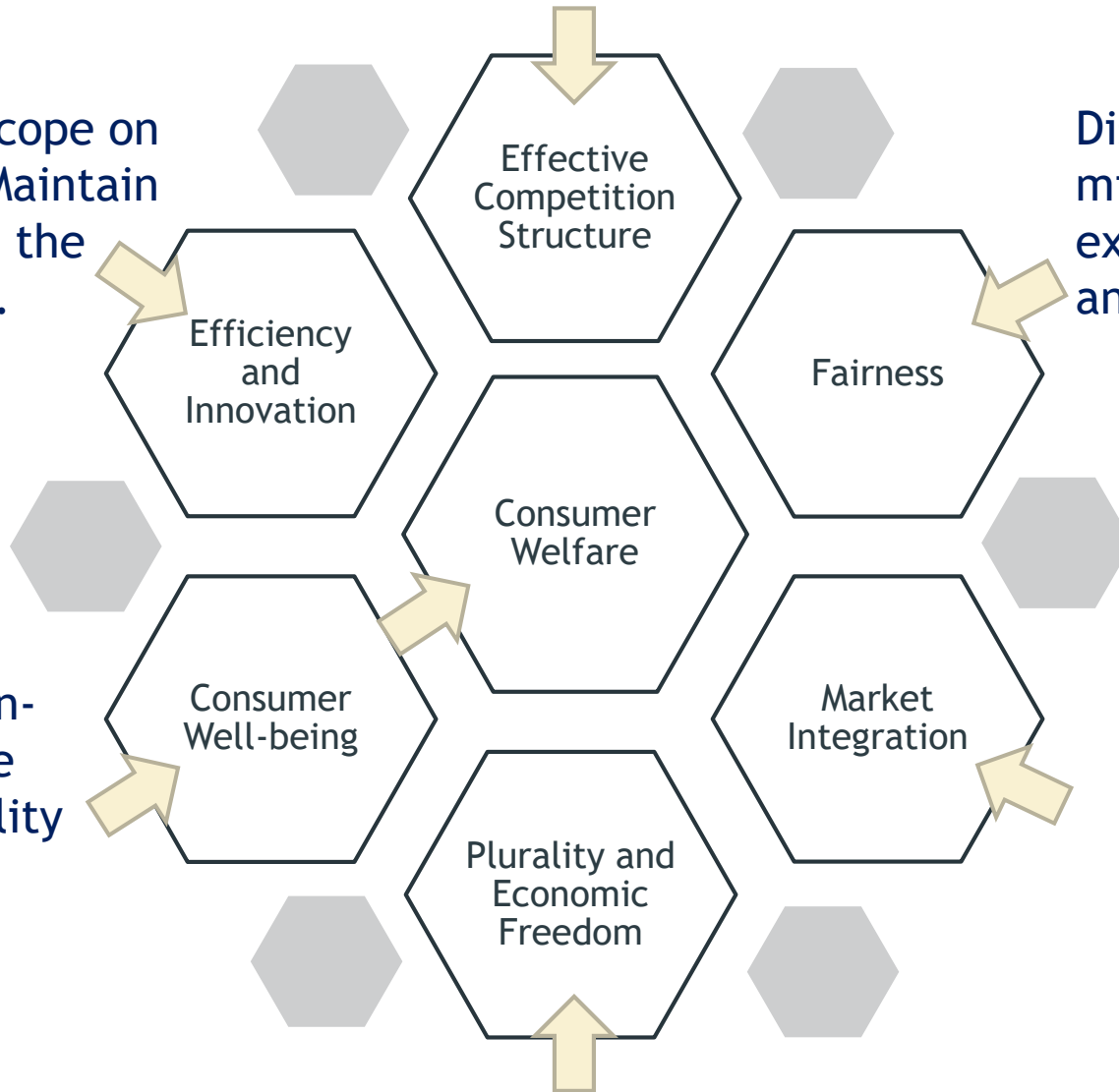
Nature and scope on innovation. Maintain innovation in the digital space.

Discriminatory practices, misleading information, exploitative data uses and wealth distribution.

Price and non-price welfare effects. Quality degradation. Wealth distribution.

Limit the use of technology, interchangeability, online access, or freedom of online retailers.

Manipulation, distort information flows, undermine plurality.



# When to intervene?

**Laissez faire** - competitive process as a self-initiating process.

**Competition dynamics in digital markets tell a different story.**

- ▶ Government intervention should not be viewed as a binary option.
- ▶ ‘Competition for the market cannot be counted on, by itself, to solve the problems associated with market tipping and winner-takes-most’ (UK Digital Report)


# Toward effective intervention

- ▶ Measuring harm
- ▶ Wider economic prism
- ▶ Dynamic efficiencies
- ▶ Fact based enforcement
- ▶ Merger review
- ▶ Burden of proof
- ▶ Effective remedies
- ▶ Clearly defined theories of harm
- ▶ Vulnerable consumers
- ▶ Guidelines
- ▶ Market studies and sector investigations
- ▶ Advocacy & Public awareness
- ▶ Increased analytical capacity



# The complementary role of regulation...

- ❖ Competition law limited as ex-post tool.
- ❖ Wide range of views on scope of competition law
- ❖ Courts on appeal may favour traditional approach.
  
- ❖ Call for increased ex-ante regulatory framework:
  
- ❖ EU Commission President-elect Ursula von der Leyen -  
‘promising new laws on artificial intelligence and the use of big data within 100 days of taking office on Nov. 1’



***... informed evolution of  
enforcement priorities,  
enforcement capacity and  
substantive theories of harm...***