

Competition & regulation

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- **Back in fashion**

- Digital economy issues
- Tech firms increasingly B2C

- **Next steps? 3 views**

- Do more with comp law but recognise limits
- More regulatory goals in comp law
- Turn to regulation

Do more with comp law but recognise limits

- Self-preferencing (*Google Shopping*, 2017)
- Pre-installation (*Google Android*, 2018)
- Interoperability (*Microsoft/LinkedIn*, 2016; *Broadcom/Brocade*, 2017)
- Standard-essential patents (*Motorola*, 2014; *Samsung*, 2014)
- Collusion on business models (*E-books*, 2012 and 2013)
- Most-favoured-nation clauses (*Amazon*, 2017)
- Restrictions on brand bidding (*Guess*, 2018)
- Algorithm-enhanced RPM (*Consumer electronics*, 2018)
- Geoblocking/market partitioning (*Pay-TV*, 2019)
- Exclusivity (*Qualcomm*, 2018; *Google AdSense*, 2019)
- Interim measures (Statement of Objections in *Broadcom*, 26 June 2019)

More regulatory goals in competition law (1)

Consistency arguments

- Specific consistency clauses
- General consistency clause (Art. 7)
- Clause re consistency with the Charter (Art. 51)

Competition law should accommodate reg goals

- Through more comp enforcement
- Through *less* comp enforcement

More regulatory goals in competition law (2)

Question

- Comp law to actively promote other goals?
- Comp law to avoid conflict/inconsistencies?

More regulatory goals in competition law (2)

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→ Comp law to actively promote other goals?

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More regulatory goals in competition law (2)

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But reg goals can be subsumed under comp notions

- Quality
- Efficiencies
- *Wouters* "legitimate objectives"
- Article 21 EUMR "legitimate interests"

Turn to regulation?

- Clearly definable issue
- The issue is widespread or recurrent
- The issue is usually bad or always bad
- The regulatory rule takes comp into account
- Reliable enforcement mechanism
- Without prejudice to comp enforcement

Conclusion on competition & regulation

- Mutual influence
- Minimalist view of consistency
- Competition & regulation are complements, not substitutes!
 - Regulation then competition
 - Competition then regulation
 - Comp & reg at the same time

Backup slides

Competition v. regulation (1)

- Ex post v. ex ante
- Proscribe v. prescribe
- Single firm/group of firms v. all firms
- All sectors v. single sector
- Faster and adaptable v. rigid and slow

Competition v. regulation (2)

- Blunt v. surgical
- More/less democratic
- More/less stakeholder participation
- More/less capture
- Best institutional design?
- Which is better suited to international convergence?