Some of the key proposals are an improved toolkit for consumer law enforcement, consumer protection at the heart of the proposals, particularly in the digital economy, and a more efficient and flexible market regime, among others.

Additionally, a Digital Markets Unit (DMU) within the CMA was created. This unit will start operating in April 2021 with the aim of introducing and enforcing a new code to govern the behavior of platforms with dominant market positions.

In Spain

On December 15, 2018, the Spanish Commission of Markets and Competition (CNMC) published its position document on the public consultation of the European Commission on the New Competition Tool (NCT) and the Digital Services Act (DSA).

The CNMC is already called to identify a series of digital issues associated with the functioning of the markets in which platforms operate. Uncertainty is generated regarding the regulatory instruments that will be designed and subsequently applied. The debate is focusing on the "how and why" should intervene, rather than "when" to intervene.

In this position paper, Spain emphasizes that the need for intervention on markets should not be taken for granted. A broad analysis is required to determine whether an intervention is necessary to protect effective competition, innovation and growth. It also indicates that the plurality of regulatory instruments should be avoided. They prefer the independence of the CNMC to defend competition, among others.

In France

The French Competition Authority (Autorité de la Concurrence) created the Digital Economy Unit (UCR) on January 2020. The UCR aims to develop in-depth expertise on digital issues and develop investigative tools using algorithms, big data and artificial intelligence, and cooperating in the investigation of anticompetitive practices in the digital economy.

This Unit will also cooperate with industry regulators, relevant government departments and other competition authorities at European and international level to develop convergent and standardized methods of analysis and intervention.

INNOLANDIA EDITIONS

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MAPPING OF ACTUAL REGULATORY INITIATIVES ON DIGITAL MARKETS AND FREE COMPETITION IN EUROPE

EUROPEAN UNION

On December 15, 2018, the European Commission set forth a new Competition Framework Act ("NFR") and the Commission aims to regulate digital platforms acting as so-called "gatekeepers" on the European market. More concretely, the DMA will apply to major platforms of "core platform services." It will prohibit a number of practices and require gatekeepers to put in place certain measures, to prevent them from entering into practices that are considered to limit competition. The DMA will introduce a sanction regime for non-compliance, with fines up to 10% of the gatekeeper’s worldwide turnover.

Articles 5 and 6 of the DMA Proposal provide a list of 18 obligations, such as:

- Prohibition of combining personal data sourced from a core platform service with data from other services offered by the gatekeeper or from third-party services.
- Obligation for search engine gatekeepers to provide their rivals with access on fair, reasonable and non-discriminatory terms to user-generated search data.
- Prohibiting a gatekeeper from conditioning access to a core gatekeeping service upon registering for or subscribing to any other core platform service.
- A gatekeeper must allow business users to offer the same products or services to end-users through third-party online intermediation services at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper.

The DMA Proposal also empowers the Commission to carry out targeted market investigations, allowing it to examine whether the application of the DSM rules need to be added. In parallel to the DMA Proposal, the Commission unveiled a proposal for a Digital Services Act to ensure a safe online environment, transparency and accountability of online intermediation services providers.

The DMA Proposal will now be discussed by the European Parliament and the Member States of the European Union in the ordinary legislative procedure. If adopted, the final text will be directly applicable in all Member States.

GERMANY

On January 19, 2021, the 19th amendment to the German Act against Restraints of Competition has entered into force.

The new law provides for new rules, which competition authorities can act on "offensive" against Digital Platform companies, before they have abused a dominant market position.

The new section 19 (a) establishes that the Competition Authority can prohibit certain abusive conduct of platforms of utmost importance for competition in markets, such as self-preferencing practices, or impeding third companies from entering the market by processing data relevant for competition.

The Act also seeks to speed up and shorten antitrust proceedings, as appeals on decisions issued by the German Competition Authority on the basis of section 19 (a), can only be heard by the Federal Court of Justice, by pasting the court of first instance.

The German Competition Authority could start applying as March 1 of the list of companies considered of utmost importance on competition across markets, which will have to obey the rules and prohibitions that the Authority establishes.

UNITED KINGDOM

On February 21, 2018, The Competition and Market Authority (CMA), published “Proposals for legislative and institutional reforms to competition and consumer protection law and policy,” to promote competition and address new and existing forms of consumer harm.

It is proposed that new consumer-related duties and responsibilities be given to the CMA. In addition to granting new tools to the CMA to address consumer duties and responsibilities, including to facilitate the use of provision measures. To help the CMA focus more effectively on its core responsibilities, it is proposed that the CMA provide some of its existing powers and functions to other bodies.

ITALY

On July, 2019, the Italian Competition and Market Authority (Autorità Garante della Concorrenza e del Mercato) published its Big Data Policy Guidelines and Recommendations.

The report seeks to debunk the link between competition policy, pluri-alignment, to integrate ways of solving problems related to abusive behavior of large digital operators in the use of personal data. It also proposes to reduce information asymmetry between users and digital operators in the data collection phase. Extend antitrust law to digital markets. Strengthen international cooperation for big data (DMA bill) and reform the control of merger operation in the digital market.