

INNOVARTE NEWS

COMPETITION AND DIGITAL PLATFORMS NEWSLETTER

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NEWSLETTER

N o . V | S E P / 2 2



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REGULATION

European Union EU

20/09/2022

[According to Advocate General Rantos, a competition authority may, in exercising its powers, take account of the compatibility of a commercial practice with the General Data Protection Regulation](#) – Curia press release

15/09/2022

[Digital Services Act – implementing regulation](#)

- This implementing regulation will lay down rules on all procedural practical arrangements in Article 83 of DSA.
- Planned for fourth quarter 2022.

14/09/2022

[The General Court largely confirms the Commission's decision that Google imposed unlawful restrictions on manufacturers of Android mobile devices and mobile network operators in order to consolidate the dominant position of its search engine](#) - See [Judgment](#)

04/08/2022

[Digital Markets Act - implementing provisions](#)

- The Commission intends to adopt an implementing regulation laying down rules concerning procedural aspects in relation to certain practical arrangements envisaged under Article 46.
- Planned for First quarter 2023.

UK GB

22/09/2022

[Ofcom to probe cloud, messenger and smart-device markets](#)

- In the coming weeks, Ofcom will launch a market study under the Enterprise Act 2002 into the UK's cloud sector.
- The largest providers of cloud services – known as 'hyperscalers' – are Amazon Web Services (AWS), Microsoft and Google.
- Collectively, these three firms generate around 81% of revenues in the UK

public cloud infrastructure services market.

Germany DE

29/08/2022

[Bundeskartellamt publishes report on non-search online advertising for public discussion](#)

- For some years now, there has been an increasingly intense legal policy discussion about restricting the collection and use of data for advertising purposes.
- The report therefore examines the consequences such measures could have from a competition point of view and how they could be dealt with.

02/08/2022

[Bundeskartellamt response to the public consultation on the revised Payment Services Directive](#)

- The European Commission is reviewing the currently applicable Payment Services Directive (Directive (EU) 2015/2366, “PSD2”).
- It initiated a public consultation on 10 May 2022.
- The comments submitted by the Bundeskartellamt within the framework of the consultation are available in the link above.

[France FR](#)

13/07/2022

[Autorite opens public consultation as part of its cloud sector inquiry](#)

- The public consultation is open until September 19th, 2022.

[Netherlands NL](#)

22/09/2022

[ACM publishes draft guidelines regarding the rules for online platforms and search engines](#)

- The draft guidelines concern the rules about which, on the basis of the market survey, there was the most uncertainty.
- These explain what information providers must provide to businesses that offer goods or services using such platforms and search engines.
- Market participants have until October 20, 2022, to submit their opinions about the guidelines.

05/09/2022

[ACM: amendments to Data Act necessary for promoting competition among cloud providers](#)

- A market study of the Netherlands ACM shows that it is hard for users of cloud services to switch or combine providers
- As a result, there are risks to the price, quality, and innovation of cloud services.
- To that extent, ACM proposes several amendments to the Data Act for easier interoperability, lowering switching barriers.

[United States US](#)

23/08/2022

[FTC seeks additional public comment advertising kids digital media](#)

- Marketers increasingly reach children by embedding advertising in video sharing platforms, social media platforms through influencer and celebrity posts, games, virtual worlds, and other digital environments.
- The FTC is seeking public input in an October event to Examine Children’s Ability to Distinguish Digital Ads from Surrounding Content
- The public will have until November 18, 2022 to submit comments

11/08/2022

[FTC explores rules cracking down commercial surveillance and lax data security practices](#)

- FTC believes that mass surveillance has heightened the risks and stakes of data breaches, deception, manipulation, and other abuses.
- Therefore, it seeks public comment on harms from business of collecting, analyzing, and monetizing information about people.
- The deadline for submitting comments will be 60 days after the notice is published in the Federal Register in the coming days.

26/08/2022

[FTC authorizes three new compulsory process resolutions for investigations](#)

- There is rising concern that the recent inflationary increase in prices may be giving companies cover to collude against the public interest.
- The resolutions will allow the FTC to more quickly and efficiently obtain evidence in connection colluding competitors, merger control and unfair and deceptive conducts in the car rental industries.

[Australia AU](#)

16/08/2022

[ACCC to examine competition and consumer concerns with social media](#)

The ACCC will examine:

- Barriers to entry, expansion faced by new platforms, and hurdles and costs faced by consumers and businesses when they try to switch services.
- Consumers' experiences with social media, including through the impact of scams and the risk of being exposed to misleading or deceptive content by businesses through social media.
- Potential consumer issues, including the way that businesses are using social media advertising services such as display advertising, sponsored posts and paid influencers to engage with and advertise to consumers.

22/07/2022

[ACCC launches CDR sandbox to assist participant design, build and testing](#)

- The ACCC has this week launched the Consumer Data Right (CDR) sandbox, a free tool that enables existing and potential CDR participants to better test and improve their CDR solutions.
- The purpose is reducing time and cost in the process of becoming an active CDR participant or updating their CDR offering.

[South Africa ZA](#)

16/09/2022

[Online Intermediation Platform Market Inquiry calls for comments from short-term accommodation and travel service providers](#)

- The OIPMI covers platforms such as Booking.com, Google, Airbnb, Travelstart, Lekkeslaap, Viator, Rentalcars, Busbud, Tripadvisor and more.
- The purpose is to follow an evidenced-based approach in identifying market features of online intermediation platforms that may impede, distort or restrict competition; and to improve the participation in these markets.
- Comments from other stakeholders such as academics, think tanks, public

interest groups, are welcome until September 30th.

[Argentina AR](#)

14/07/2022

[The CNDC participated in the second edition of the computer privacy and data protection conference](#)

- Competition, data protection and consumer welfare challenges were analyzed in the context of instant messaging platforms and interaction between public authorities.

MERGER CONTROL

[European Union EU](#)

[UK GB](#)

15/09/2022

[Microsoft / Activision Blizzard merger inquiry updated](#)

Inquiry group appointment published, Decision to refer and Terms of reference published

[Germany DE](#)

28/06/2022

[Bundeskartellamt clears acquisition of Kustomer by Meta](#)

- On 11 February 2022 the Bundeskartellamt cleared plans by Meta Platforms to acquire sole control of Kustomer, Inc., New York/USA, in the first phase of merger control.

[France FR](#)

21/06/2022

[The autorite accepts Google's commitments](#)

- The commitments consist in creating a framework for negotiating and sharing the information necessary for a transparent assessment of the remuneration of related rights.

United States US

27/07/2022

FTC seeks block virtual reality giant Meta’s acquisition popular app creator Within

- The agency alleges that Meta and CEO Mark Zuckerberg are attempting illegal acquisition to expand its virtual reality empire.
- The company’s virtual reality “empire” includes the top-selling device, a leading app store, seven of the most successful developers, and one of the best-selling apps of all time.

Australia AU

04/08/2022

Consultation begins on Dye Durham’s proposed divestiture offer for Link acquisition

- The proposed undertaking would require D&D to divest its entire Australian business to a purchaser approved by the ACCC.

Japan JP

16/06/2022

The JFTC seeks information and comments concerning the proposed acquisition of Mandiant, Inc. by Google LLC

- Google operates in a wide range of areas, notably in services regarding digital advertisement, internet search, cloud computing, software and hardware, while Mandiant operates in the cyber security industry.
- It is noted that this does not mean that the proposed acquisition would pose any concerns with respect to the Antimonopoly Act.

16/06/2022

The JFTC seeks information and comments concerning the proposed acquisition of Activision Blizzard, Inc. by Microsoft Corporation

- Both companies operate in the game industry.
- It is noted that this does not mean that the proposed acquisition would pose

any concerns with respect to the Antimonopoly Act.

Chile CL

11/08/2022

The FNE determined that the notification of the transaction between AMP Capital and Digital Bridge was complete

- AMP Capital Investors and DigitalBridge Investment notified the FNE a transaction upon which Digital Bridge would acquire competitive control over AMP’s global business of capital investment in infrastructure.
- The FNE determined that the notification was complete.

ANTITRUST ENFORCEMENT

European Union EU

UK GB

10/06/2022

Investigation into suspected anticompetitive conduct by Google

- The CMA is investigating Google’s Play Store rules which oblige certain app developers to use Google’s own payment system (Google Play Billing) for in-app purchases.

31/08/2022

Application for collective proceedings order granted in action against Google for abuse of dominance (CAT)

- On 31 August 2022, the CAT published its judgment granting an application by Elizabeth Coll to commence collective proceedings under section 47B of the Competition Act 1998 against Google.

[Germany DE](#)

28/07/2022

[Case Summary Amazon](#)

- In its decision of 5 July 2022 the Bundeskartellamt determined that Amazon is of paramount significance for competition across markets.
- The validity of this decision is limited to five years from the date on which it becomes final.

30/06/2022

[Case Summary Meta](#)

- In its decision of 5 July 2022 the Bundeskartellamt determined that Meta Platforms is of paramount significance for competition across markets.
- On 3 May 2022, Meta waived its right to appeal the decision. Therefore, the decision is final.

[United States US](#)

01/08/2022

[FTC takes action stop online buying firm Opendoor Labs Inc cheating potential sellers with misleading claims about its Home-buying service](#)

- According to the FTC, the company was tricking potential home sellers into thinking that they could make more money selling their home to Opendoor than on the open market using the traditional sales process.
- Under a proposed administrative order, Opendoor will have to pay \$62 million and stop its deceptive tactics.

[Australia AU](#)

12/08/2022

[Google LLC to pay 60 million for misleading representations](#)

- The Federal Court has ordered Google LLC to pay \$60 million in penalties for making misleading representations to consumers about the collection and use of their personal location data on Android phones, following court action by the ACCC.

[Japan JP](#)

30/06/2022

[Approval of the Commitment Plan submitted by Scinex Corporation and Smart Value Co](#)

- The two companies have been urging municipalities to redesign their websites by describing that it is essential to apply their content management systems instead of those of open source software for the purpose of information security.

[Colombia CO](#)

[Superintendence of Industry & Commerce imposes interim measures to Visa and Mastercard to protect free competition in international payments](#)

On July 28th, 2022, the SIC

- Traditionally, international payments are made through the “Cross Border” system.
- During the past 5 years, the “Local Retention Agent” system has become more frequent, benefiting consumers for various reasons.
- According to the complaint, Visa and Mastercard would be developing actions towards blocking, eliminating or making the LRA more expensive in various Latin American countries.
- The SIC believes that there is evidence to believe this derive from agreements which limit third party access to commercialization channels.

MARKET STUDIES

[UK GB](#)

21/09/2022

[Music and streaming market study](#)

- The CMA has launched a market study into music and streaming services.
- Responses to update paper were published.

BLOGS/ARTICLES

European Competition Journal:

- [Curbing Big Tech's IoT dominance \(Christophe Samuel Hutchinson\).](#)
- [Strengthening effective antitrust enforcement in digital platform markets \(Damien Geradin & Dimitrios Katsifis\).](#)

Truth on the Market:

- [The Case Against Self-Preferencing as a New Antitrust Offense](#)

Competition Law 360:

- [Antitrust Watchdogs Can Weigh Privacy Concerns, ECJ Told](#)
- [Keeping Up With New US Push On Strategic Tech Competition](#)
- [White House Calls For Clear Antitrust Rules For Big Tech](#)
- [Amazon Antitrust Class Claims Shouldn't Be Cut, Judge Says](#)
- [FTC Challenge to Meta VR Deal Could Restrict Tech M&A](#)

Platform Law Blog:

- [Amazon/iRobot: The flywheel spins once more](#)
- [Designating large platforms under the DMA and the DSA: Comparing apples and oranges? Antitrust is turning its eye to gaming](#)
- [CMA Music Streaming Market Study: What's Going On? By Tom Smith \(The Platform Law Blog\)](#)

Network Law Review:

- [Digital Consumers in European Law & Policy – Highlights #1](#)
- [Ariel Ezrachi and Maurice E. Stucke: "The Darker Sides of Digital Platform Innovation"](#)

CPI:

- [In A Win For Qualcomm, EU Will Not Appeal Court Ruling In \\$991B Fine](#)
- [EU Commission Launches Study On The Future Of Online Platforms](#)
- [UK Deepens Microsoft's \\$68.7-Billion Activision Deal Probe](#)
- [EU's Vestager Says Amazon May Have To Edit Its Proposals](#)
- [DOJ's Kanter Says No More Easy Vertical Mergers For Digital Platform](#)

- [NY & DOJ Urged A Federal Appeals Court To Reinstate Meta Antitrust Suit](#)
- [The App Association Representing Developers Funded Primarily By Apple](#)
- [Google Faces Trademark Suit By Analytics Platform Visier](#)
- [EU Court Adviser Says German Watchdog Can Probe Meta's Data Violations](#)
- [FTC Seeks More Info On Amazon's \\$1.7B iRobot Deal](#)
- [FTC Starts Review of \\$1.7B Amazon-iRobot Deal](#)
- [White House Outlined 6 Principles To Reform Big Tech Platform](#)
- [South Korean Watchdog Fines Google & Meta Over Data](#)
- [Apple Faces Mexican Competition Investigation For App Store Fees](#)
- [Russian Watchdog Says Google Complied With Antitrust Warning Over Play Store](#)
- [Dutch Competition Watchdog Proposes Amendments To The European Data Act](#)
- [Microsoft's Activision Deal Faces In-Depth Probes In EU & UK](#)
- [UK Regulator Cracks Down On 'Bundling' Rules](#)
- [UK Watchdog Says Microsoft-Activision Deal Could Hurt Competition](#)
- [EU Prepares For Legal Challenges To New Law That Tackles Big Tech](#)
- [Google Delays Third-Party Cookies Over Antitrust Concerns, Again](#)
- [German Watchdog Consider Whether Microsoft Subject To Competition Rules](#)
- [South Korea Probes App Store Giants Over In-App Payments](#)
- [DOJ Prepares New Antitrust Suit Against Google: Report](#)

CPI TechReg Chronicle:

- [TechREG Talks... with Katharine Kemp, Philip Marsden & Jacqueline Downes](#)
- [The Softwarization of Regulated Network Industries and Its Consequences for Costs and Competition](#) By Martin Cave
- ["A Rose by any Other Unique Identifier": Regulating Consumer Data Tracking and Anonymisation Claims](#) By Dr Katharine Kemp

- [What Stablecoin Regulators Can Learn from Mobile Money](#) By David S. Evans
- [Converging Proposals for Platform Regulation in China, the EU and the U.S.: Comparison and Commentary](#) By Liyang Hou & Shuai Han
- [Why Regulation of Dark Patterns Is Here to Stay](#) By Mihir Kshirsagar By Mihir Kshirsagar

European Competition Journal:

- [Exclusionary innovation in the European Commission's decisions against Google](#) - Baskaran Balasingham

The Counterbalance

- [Amazon's monopoly power: the time for tinkering is over](#)

Concurrences Review No. 3 2022

- The Digital Market Act .
- What's market power got to do with it?: The relationship between digital competition policy developments and the market.
- USA: Monopolization of mobile ecosystems - The decision in Epic v. Apple.

FOSSPatents:

- [Plot is thickening that Apple, Google, and possibly other gatekeepers will seek to derail, defang, or delay Digital Markets Act and Digital Services Act in court](#)
- [EU General Court materially affirms European Commission in Google Android antitrust case: major implications for Google Play Store investigation](#)
- [UK antitrust authority gets basic facts wrong as it declines to approve Microsoft's purchase of Activision Blizzard on fast track: extensive review was expected, but reasoning is nonsensical](#)
- [Whether Amazon instigates or draws antitrust scrutiny, it's always about avoiding price competition: abstract parallel between cloud software licensing and most-favored nation clauses](#)

Movement for an open web:

- [European Parliament report: Google using browser engine to squash competition](#)

Kluwer blog:

- [Processing of Personal Data Inside Out: the Opinion of AG Rantos in C-252/21 \(Meta Platforms v. Bundeskartellamt\)](#)
- [Google Android: The General Court takes its position](#)
- [The Microsoft/Activision Blizzard merger: the \\$69 billion deal in the light of Call of Duty foreclosure](#)

Global Competition Review:

- [UK telecoms regulator to probe Amazon, Microsoft and Google in cloud sector study](#)
- [EU takes over Portuguese Google ad tech probe](#)
- [Former Mexican telecoms chief accuses Apple and Google of leveraging market power](#)
- [More data sharing means more competition concerns, Singapore privacy regulator says](#)
- [Indian technology company accuses Google of "monopolistic practices"](#)
- [ACCC launches inquiry into social media services](#)
- [EU seeks independent studies on digital remedies and state of competition](#)

Antitrust Prof Blog selection:

- [Value in Digital Platforms: The Choice of Tradeoffs in the Digital Markets Act](#) - Carmelo Cennamo

e-Competitions Bulletin:

- [Mergers in Big Tech: an Overview of EU and national case law](#)

PRESS

- [FTC Accused of Inconsistent Facebook Merger Challenges](#) – The Deal
- [Refined theories of harm needed to counter Big Tech creativity in maintaining dominance, EU's Guersent says](#) - mlex

- [Big tech groups face probe by UK regulator over cloud services](#) – Financial Times
- [EU's Google win 'encourages' further Big Tech enforcement, Vestager says](#) – mlex
- [Australia, UK antitrust enforcers are working together on data analytics to support probes](#) – mlex
- [Google faces \\$25.4 bln damages claims in UK, Dutch courts over adtech practices](#) – Reuters
- [EXCLUSIVE Tinder-owner Match ups antitrust pressure on Apple in India with new case](#) – Reuters
- [EU antitrust regulators quiz developers on Google app payments](#) – Reuters
- [Collective Proceedings Order issued in collective damages action against Google \(CAT\)](#) - Practical Law
- [Amazon's offer to end EU antitrust probe is full of loopholes, NGOs say](#) – Reuters
- [Spotify chief urges EU to 'accelerate' antitrust case against Apple](#) – Financial Times
- [Microsoft to face new antitrust scrutiny in Germany](#) – Politico

- [A looming test for tech antitrust battles](#) – Financial Times
- [DOJ Is Preparing to Sue Google Over Ad Market as Soon as September](#) – Bloomberg

CONFERENCES

15/12/2022

[DWestforum online conference on digital competition and the role of the Digital Markets Unit](#) – fee required

25/10/2022 – 27/10/2022 (11:00 - 11.30am EDT)

[Concurrences Antitrust in Developing & Emerging Economies : New Challenges in Public Interest, Big Tech, and Regionalism Webinars](#) - free

The discussion will cover:

- Public Interest: Food, Workers, Sustainability
- Big Tech and Developing Countries: Can Developing Countries Harness the Opportunities and Control The Abuses?
- Do We Need New Forms of Cooperation? Higher Level Governance

OPINION

Digital markets: Is there a need for legal reform in the area of free competition?

Each generation has its own challenges, which it must face from multiple perspectives. The legal approach is one of those to be considered, i.e., it is important to analyze whether the current law has the ability to meet the new challenges, and whether it can do so in an adequate and timely manner. If it is not, it becomes necessary to introduce the appropriate reforms.

In Chile, as in the world in general, the last decades have been marked by the rapid advance of technology, which has burst into people's lives, modifying the way in which they relate to each other in almost all areas. Social networks, marketplaces, search engines, etc., are part of the daily life of human beings. As a result, connecting via digital marketplaces has become a common way of interacting.

As is well known, free competition is the branch of law that regulates and promotes healthy rivalry among competitors. Its ultimate goal is the general welfare of society, which is achieved to a greater extent when the production of goods and services is efficient. In general, economic theory has considered that, in order to achieve such efficiency, it is necessary that the role of the State in the economy leaves room for private participation. This is why a legal statute on free competition is only justified when the market economic system underlies the community. This system may be more or less regulated, with greater or lesser instances of state intervention, etc., but it always privileges people over the state, and recognizes their right to self-determination in economic matters, that is, at the moment of making decisions on what, how and for whom to produce.

The countries where such an economic system prevails have begun to ask themselves whether it is necessary to adapt their legislation on free trade



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in order to anticipate possible problems in digital markets. Initially, the answer is yes, if necessary. Academics, research centers, and competition authorities have made this clear, and these issues are constantly being debated in the European Union, the United States, England, Australia, and Germany, for example.

Chile has not lagged behind in terms of digital markets. The State of Chile is implementing a National Policy on Artificial Intelligence, on the one hand, and the constituent debate has taken up the relevance of personal data protection, on the other. In the same vein, authorities such as SERNAC have sought to regulate the interaction between suppliers and consumers in digital marketplaces, with the aim of avoiding abuses by the stronger party in this relationship. In terms of free competition, it is also important to adapt to the times and regulate the relationship between competitors in digital markets in order to reduce the risk of anti-competitive behavior, mainly abuse of dominant position and collusion.

For example, it would be interesting to see how Chile moves towards a regulation in this area, allowing the authority to have access to relevant information of digital companies that exceed certain thresholds and/or have a relevant position in the market in question. In this way, it would be easier to analyze the relevant market and assess whether a given transaction is potentially harmful to competition, in order to prevent the implementation of acts that increase the welfare of people, or to implement timely and appropriate measures that could mitigate any negative effects.

This implies giving more powers to the National Economic Prosecutor's Office, specifically, giving it the power to identify those companies that, complying with certain requirements, are legally considered gatekeepers, and therefore must comply with special obligations, such as the delivery of specific information and/or prior authorization to be part of a concentration operation. In case of non-compliance with these obligations, the companies would be sanctioned with a fine, and even with imprisonment for the individuals involved, in the event that the crime of collusion is committed.

To summarize, if we want to move peacefully through the virtual world, we need to keep up with the times. Therefore, it is necessary for Chile to advance in free competition reforms, considering the particular characteristics of digital markets. After all, it is in these markets where a large part of the transactions and interactions take place, and their growth potential is both high and exponential.

* The Opinion expressed in this column does not represent the position of INNOVARTE ONG, being its Author responsible for its content.

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