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## CHILE

### **Informe: Mercados digitales y Libre Competencia. Análisis de la Jurisprudencia Internacional.**

Preparado por el Programa de Libre Competencia de la Universidad Católica de Chile a solicitud de la Corporación Innovarte.

### **Expertos debatieron sobre el estado actual de la jurisprudencia y tendencias normativas sobre plataformas digitales a nivel internacional: Webinar - Corporación Innovarte**

## EUROPEAN UNION

15/12/2020

### **Europe fit for the Digital Age: Commission proposes new rules for digital platforms**

**Europa apto para la Era Digital: Comisión propone nuevas reglas para las plataformas digitales.**

The Commission has proposed today an ambitious reform of the digital space, a comprehensive set of new rules for all digital services, including social media, online market places, and other online platforms that operate in the European Union: the Digital Services Act and the Digital Markets Act.

European values are at the heart of both proposals. The new rules will better protect consumers and...

### **Statement by Executive Vice-President Vestager on the Commission proposal on new rules for digital platforms**

**Declaración del Vicepresidente ejecutivo Vestager en la propuesta de la Comisión sobre las nuevas reglas para plataformas digitales**

Today, we present two proposals that are milestones in our journey to make Europe Fit for the Digital Age: the Digital Services Act, and the Digital Markets Act. The two proposals serve one purpose: to make sure that we, as users, as customers, as businesses, have access to a wide choice of safe products and services online, just as well as we do in the physical world. And that all businesses operating in Europe,...

### **Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC**

**Propuesta para una regulación del Parlamento Europeo y el Consejo en un mercado único para servicios digitales (Digital Services Act) y amendando Directive 2000/31/EC**

Since the adoption of Directive 2000/31/EC (the “e-Commerce Directive”), new and innovative information society (digital) services have emerged, changing the daily lives of Union citizens and shaping and transforming how they communicate, connect, consume and do business. Those services have contributed deeply to societal and economic transformations in the Union and across...

### **Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on contestable and fair markets in the digital sector (Digital Markets Act)**

**Propuesta para una regulación del Parlamento Europeo y el Consejo por mercados más competitivos y justos en el sector digital (Digital Markets Act)**

Digital services have brought important innovative benefits for users and contributed to the internal market by opening new business opportunities and facilitating cross-border trading. Today, these digital services cover a wide range of daily activities including online intermediation services, such as online marketplaces, online social networking services, online search engines, operating systems or ...

07/12/2020

### **OnLine platforms: Commission publishes ranking guidelines to increase transparency of online search results**

**Plataformas en línea: Comisión publica guías para aumentar la transparencia de los resultados de búsquedas en línea**

Today, the Commission is publishing guidelines for online platforms on how to improve the transparency of their ranking parameters. Algorithmic ranking determines visibility of a certain page among search results, which has a crucial impact to the success of businesses – especially as the...

30/11/2020

### **Commission publishes its short-term review of the Geo-blocking Regulation**

**Comisión publica su reseña de corto plazo de la Regulación del “Geo-blocking”**

Tomorrow, the von der Leyen Commission marks one year since it took office on 1 December 2019. With the mandate received from the European Council and the European Parliament, we have put forward a set of ambitious goals for Europe's future: climate neutrality by 2050; making the 2020s Europe's Digital ...

## UK

27/11/2020

### **New competition regime for tech giants to give consumers more choice and control over their data, and ensure businesses are fairly treated**

**Nuevo régimen para los gigantes de la tecnología en dar a los consumidores más elección y control sobre sus datos, y asegurar que los negocios sean justamente tratados.**

Tech giants will be subject to a new regime to give consumers more choice and control over their data, help small businesses thrive, and ensure news outlets are not forced out by their bigger rivals. A dedicated Digital Markets Unit, which will be set up within the Competition and Markets...

### **UK probes Google Chrome privacy changes. El Reino Unido investiga los cambios de privacidad de Google**

The UK's competition authority has launched its first-ever abuse of dominance case against one of the four 'big tech' companies, as it scrutinises Google's proposals to remove third-party cookies and other functions from its Chrome internet browser.

[Via Global Competition Review](#)

### **CMA adds voice to sustainability debate: CMA añade voz al debate de sustentabilidad**

The UK's antitrust watchdog has published advice for businesses on sustainability agreements, matching calls from its Dutch counterpart to exempt certain types of cooperation from competition rules.

[Via Global Competition Review](#)

## NETHERLANDS

04/12/2020

### **ACM launches an investigation into users' freedom of choice regarding payment apps on smartphones**

**ACM comienza una investigación a las libertades de los usuarios con respecto a aplicaciones de pago en smartphones**

The Netherlands Authority for Consumers and Markets (ACM) has launched an investigation into payment apps' access to NFC communication ('Near-Field Communication'). NFC communication...

26/01/2021

### **Dutch enforcer calls for cohesion on sustainability across EU:**

**Ejecutor holandés pide cohesión en materia de sostenibilidad en la Unión Europea**

The Dutch competition authority has said its draft guidelines on sustainability agreements are ready to be discussed at an EU-wide level after updating the advice to clarify what types of cooperation qualify for exemptions from ...

[Via Global Competition Review](#)

01/12/2020

### **Big Tech and the Dutch payment market: tightening of rules needed to maintain a level playing field**

**Big Tech y el mercado de pagos holandeses: es necesario endurecer las reglas para mantener la igualdad de condiciones**

Big Tech companies such as Apple, Facebook, Amazon, or Ant Group (Alibaba) must ensure that their platforms or devices are suitable for different providers of payment services. The Netherlands Authority for Consumers and Markets (ACM) argues in favor of a level playing field for ...

## GERMANY

10/12/2020

### **Bundeskartellamt examines linkage between Oculus and the Facebook network**

**Bundeskartellamt examina el vínculo entre Oculus y la cadena Facebook**

The Bundeskartellamt has today initiated abuse proceedings against Facebook to examine the linkage between Oculus virtual reality products and the social network and Facebook platform. Andreas Mundt, President of the Bundeskartellamt: “In the future, the use of the new Oculus ...

## UNITED STATES

09/12/2020

### **FTC Sues Facebook for Illegal Monopolization**

**FTC demanda a Facebook por Monopolización Ilegal**

The Federal Trade Commission today sued Facebook, alleging that the company is illegally maintaining its personal social networking monopoly through a years-long course of anticompetitive conduct. Following a lengthy investigation in ...


01/2021


### **Cartel enforcement under Biden expected to shift focus:**


**Se espera que la aplicación de los carteles bajo el gobierno de Biden cambie de enfoque**


The Department of Justice's cartel enforcers during the Biden administration are likely to re-engage on the international stage and reevaluate policies that may weaken incentives for applying for leniency, according to a report from Simpson Thacher & Bartlett.

## BLOGS/ARTICLES


 **ProMarket: [Essential Platform Monopolies: Open Up, Then Undo](#)** It is high time to revive, renew, and expand the antitrust essential facilities doctrine

 **Disruptive competition project: [Preserving Dynamic Competition with the Digital Markets Act](#)**

 **Kluwer Blog: [Draft German competition rules on powerful digital gatekeepers](#)**

 **CEPR: [Antitrust actions: Views of leading economists on the cases against Facebook](#)**

 **EU Law Blog: [Pricing Algorithms: Should Competition Authorities be Worried?](#)**  
by Kaela Murie

 **[Antitrust in Attention Markets](#)** John M. Newman University of Miami - School of Law

## PRESS


31/12/2020

 **[The big questions for Big Tech in 2021](#)** – Financial Times


17/12/2020


 **[Apple Pay draws antitrust attention](#)** - Financial Times

09/12/2020

 **[Federal Trade Commission and states file antitrust lawsuit against Facebook](#)** – Silicon angle

02/12/2020

 **[What does aggregation theory tell us about Google's antitrust case? Tech's big idea is running up against the antitrust movement](#)** – the Verge


 **[Google could be self-preferencing an Australian Report warns.](#)** - Via Global Competition Review

## CONFERENCES

04/12/2020

 **[Video of The Digital Markets Competition Forum](#)** initiative at Copenhagen Business School, directed by prof. Carmelo Cennamo, hosted its third virtual roundtable discussion on “Platforms & Digital Markets Regulation: In Search of New Principles”

16/11/2020

 **recording of [Competition law and policy in digital markets](#)** – with Professor Pinar Akman – organised by the Autoritat Catalana de la Competència

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Discussing general trends of any legal matter in Latin America is never a simple task. The region does not have a unifying reference point with the same strength and relevance of European Union institutions. Legal systems in the region are fragmented – notwithstanding their common origin. Although regional economic areas, such as the Mercosur or the Comunidad Andina, have some economic relevance in trade matters, they have limited to no influence in the development of common legal rules and enforcement practices. In competition law matters, Latin-American authorities and practitioners tend to pay more attention – and be more influenced – by trends in the United States and Europe than in those of their neighbors. Furthermore, competition laws and institutions in the region are at very different stages of development.

This text discusses the expected impacts, in Latin America, of the enforcement of competition law in digital markets. It will start by evaluating if current enforcement activities in the United States and Europe will have a different influence in the region when compared to what has been seen in the past. Then it will highlight some challenges for authorities in Latin America.

Over the past decades, global competition law trends have had uneven impact in enforcement activities within the region. In some cases, they had no relevant impact – such as the cases against Microsoft of the past century. In others, there were noticeable developments concentrated in certain countries. Enforcement against cartels in the electronic equipment and components markets as well as autoparts markets are examples of such developments. They generated dozens of investigations, settlements and heavy fines in Brazil. The first ones – electronic equipment and components – put Brazil on the map of international cartel enforcement. In other countries in the region, however, these cases seem to have no perceptible consequence.

Therefore, why should we expect more relevant and broad developments in the region this time around? There are two main reasons.

First, the international cartel cases mentioned above played out differently in each country not only because of the asymmetry in laws and institutions, but also because of the very nature of the activities they referred to. These cases referred to industrial activities that require brick-and-mortar factories. Brazil has a highly developed automotive industry and a relevant electronic industry. This is an important factor to explain why these global investigations had a significant impact in Brazil but not in many of its neighbors. Now, relevant players in digital markets are broadly present in all of Latin America. Although some players, like Amazon, have limited or no presence in certain countries, in general, digital markets have a high social and economic relevance throughout the region and the types of competitive issues that appear are similar in all countries.

The other reason is that digital markets have a more clear and pervasive impact on day-to-day activities, work and consumer patterns. They also have a more disruptive impact on different sectors of society. Consumers cannot properly measure the impact of a cartel affecting a component used in an electronic equipment. They might not even know what purpose that component serves. It is true that the same can be said of certain practices that are being investigated in digital markets. Consumers cannot measure the impact of preferential advertisement or MFN clauses. But on the other hand, they are much more aware of privacy issues and of disruptions that challenge a way of life, leading to complaints before competition authorities. An example of the last are the investigations against Uber by authorities in Brazil and Colombia following complaints of taxi-drivers associations.<sup>1</sup>

There is much more awareness and debate concerning the issues posed by digital markets, which leads to more pressure and complaints from different players. There will also be an opportunity for enforcers to increase their status and relevance within the region.

While this is expected to increase the likelihood of investigations in the region, it can also represent a challenge to enforcers. Enforcement in digital markets involves not only dealing with novel issues that require the use of different analytical approaches – which is a challenge in itself. But also, in dealing with matters in which competition law concerns are commingled with other important contemporary issues.

Privacy appears to be the most relevant one and more countries in the region are adopting legislation to increase protection of personal data. Privacy issues have an impact on competitive dynamics – the level of privacy protection can be seen as a form of competition based



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on quality for zero pricing services for example (or competition on price if you look at personal data as equivalent to a payment for these services). But there are privacy issues that are not related to and cannot be addressed by competition laws.

Another noticeable link can be seen in the social impact of certain platforms in labor relations. There are relevant claims that drivers and people delivering food or packages are in fact low paid workers with no access to social security and other guarantees. How the pricing of labor in these platforms is established affect the dynamics of competition and can be relevant for competition law enforcement. However, competition law is not an adequate tool to substitute social security regulations. Neither is it the best tool to address other types of harm associated with the use of social networks – such as addiction and fake news.

Therefore, the same factors that will assure preeminence for competition law enforcement in digital markets raise the question of what its role should be. This may push authorities to tackle matters that go beyond their traditional roles and make enforcement more unpredictable. The traditional consumer welfare approach may be insufficient to deal with all competitive issues raised by digital markets. But one should be careful in looking for novel approaches that seek to accomplish too much through competition law. There are issues that should be properly solved through other types of regulation and overenforcement can lead to less innovation and competition.

Although there are reasons to believe that competition law in digital markets will have more impact in the region than past global trends, at this point overenforcement is far from becoming a concern. There are still only a limited number of cases and some of them – such as the three conduct cases against Google in Brazil – have been closed without relevant findings.

At the same time there are noticeable developments. There is an increasing awareness by enforcers of the specific types of issues raised in digital markets. Brazilian and Mexican authorities have prepared thorough reports on digital markets. In Brazil, CADE has also launched a market inquiry to assess past acquisition of big tech firms, echoing a view that authorities worldwide may have been too lenient and reviewed such transactions under a wrong analytical framework. CEPAL (the UN Economic Commission for Latin American and the Caribbean) has issued three reports on the matter in 2018. There is also an increasing number of academic research groups and papers regarding the subject.

The electronic payment industry, which fuels e-commerce and offers innovative solutions to compete with traditional payment cards, is receiving increasing attention in this context. In the Prisma case decided in 2017, the Argentinian authority used, for the first time, a full divestment solution for a behavioral matter to address several abuse of dominance charges in the acquisition and data processing markets. In Brazil CADE has several ongoing investigations regarding this industry. In 2020 it temporarily blocked Facebook/Whatsapp's attempt to introduce the Whatsapp payment service together with Cielo, a dominant player in the Brazilian payment industry. Although CADE latter suspended the prohibition until a final decision on the merits was issued, the services are still unavailable due to a temporary suspension imposed by the Brazilian Central Bank. This illustrates the increasing concern in the region with the expansion of big techs to new fields of activities.

In sum, there are enough reasons to believe that digital markets will be among the main topics in competition law enforcement in the region. At the same time, they will bring new challenges to national authorities and may require improved analytical tools.

<sup>1</sup> In Brazil CADE closed the investigation without finding an anticompetitive offense. In Colombia, SIC has issued a decision suspending the activities of Uber in the end of 2019, which was later reversed by a judicial court, but based more on unfair competition concerns.

“Traducción al español no oficial en: <https://www.corporacioninnovarte.org/derecho-de-la-competencia-y-mercados-digitales-que-esperar-en-america-latina/>”