

INDEX

REGULATION.....	3
European Union.....	3
United Kingdom.....	6
France.....	6
Spain.....	6
Italy.....	7
Austria.....	7
United States.....	7
Japan.....	8
Colombia.....	8
MERGER CONTROL.....	8
United Kingdom.....	8
Germany.....	9
Japan.....	9
Hong Kong.....	10
Singapore.....	10
ANTITRUST ENFORCEMENT.....	10
European Union.....	10
United Kingdom.....	11
Germany.....	13
France.....	15
Spain.....	16
United States.....	17
Australia.....	17
Brazil.....	18
Colombia.....	18
Argentina.....	18

MARKET STUDIES.....	19
European Union.....	19
United Kingdom.....	19
France.....	19
Brazil.....	20
BLOGS/ARTICLES.....	20
PRESS.....	21
CONFERENCES.....	22

INNO NEWS

COMPETITION AND DIGITAL PLATFORMS NEWSLETTER

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NEWSLETTER

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REGULATION

European Union

09/11/2023

Parliament backs plans for better access to, and use of, data

- The “Data Act”, already agreed between MEPs and member states, aims to stimulate innovation by eliminating barriers to data access. Among other things, it aims to facilitate the ability to switch between cloud service providers
- It establishes rules on the sharing of data generated through the use of connected products or related services (e.g. the Internet of Things, industrial machinery) and allows users to access the data they generate, contributing to the development of new services, particularly in AI, where vast amounts of data are required for algorithm training.
- MEPs secured a clear definition of trade secrets and trade secret holders to prevent unlawful data transfers and data leaks to countries with weaker data protection regulations. They want to avoid competitors in a particular field being able to exploit access to data to reverse-engineer services or devices of their rivals.

08/11/2023

EU-wide digital wallet: MEPs reach deal with Council

- Parliament and Council negotiators reached a provisional agreement on the creation of a pan-European digital identity framework, on the basis of providing a Digital Identity Wallet:
- To authenticate and access public and private services, store, share and e-sign documents;
- To be used on a strictly voluntary basis and
- That includes a privacy dashboard to give users full control over their data.

08/11/2023

G7 competition summit in Tokyo: Policy makers and enforcers adopt declaration on competition in the digital sector, focusing especially on artificial intelligence

- In a joint statement, competition authorities and policy makers underlined the importance of competition in the digital sector and their determination to protect and promote free competition, particularly also in the field of rapidly developing technologies such as generative artificial intelligence (AI), blockchain and the metaverse.

3

25/10/2023

New EU rules needed to make digital platforms less addictive

- Through a report, MEPs raise alarm over the addictive design features of certain digital services such as online games, social media, streaming services, and online marketplaces, which exploit people’s vulnerabilities to capture their attention and monetise on their data, and call for fostering ethical design by default, considering mental health effects.

25/10/2023

MEPs back plans to boost Europe’s Net-Zero technology production

- The legislation voted on by the Industry Committee is intended to bolster Europe’s manufacturing output in technologies needed for decarbonisation.
- The “Net-Zero industry act” sets a target for Europe to produce 40% of net-zero technologies based on National Energy and Climate Plans (NECPs) and to capture 25% of the global market value for these technologies.

17/10/2023

A STEP towards supporting EU competitiveness and resilience in strategic sectors

- The “Strategic Technologies for Europe Platform” aims to boost digital, net-zero and biotechnologies and enable the EU’s industry to achieve the digital and net-zero transitions.

21/09/2023

Digital sovereignty: European Chips Act enters into force today

- Considering that Semiconductors are the essential building blocks of digital and digitised products, it puts in place

a comprehensive set of measures to ensure the EU’s security of supply, resilience and technological leadership in semiconductor technologies and applications.

- Concretely, it aims to strengthen manufacturing activities in the EU, stimulate the European design ecosystem, and support scale-up and innovation across the whole value chain, with the target of doubling its current global market share to 20%, by 2030.

19/09/2023

Gigabit Infrastructure Act: faster rollout of gigabit-capable connectivity

- The Industry Committee adopted its position on the “Gigabit infrastructure Act”, designed to reduce costs, increase simplicity, tackle disparities among member states as well as rural and urban areas, and end feed for intra-EU calls and SMS as well as red tape for the deployment of very high-speed networks.

19/07/2023

Cyber Resilience Act: MEPs back plan to boost digital products security

- New cyber resilience rules adopted will establish a uniform set of cybersecurity requirements for all digital products in the EU, aiming for the following:
- More robust cybersecurity for all products with digital elements;
- Covering everyday products, such as connected doorbells, baby monitors and Wi-Fi routers and
- Security updates to be applied automatically, when technically feasible.

14/06/2023

MEPs ready to negotiate first-ever rules for safe and transparent AI

- The rules aim to promote the uptake of human-centric and trustworthy AI and protect the health, safety, fundamental rights and democracy from its harmful effects, by:
- Fully banning AI for the purpose of biometric surveillance, emotion recognition, predictive policing;
- Compelling generative AI systems like ChatGPT to disclose that content was AI-generated and
- Considering AI systems used to influence voters in elections to be high-risk.

08/06/2023

Deal on digital traffic data rules

- Parliament and Council agreed on rules for intelligent transport systems that require more traffic data, such as on speed limits, to be available digitally.
- The deployment of ITS services will have to be technologically neutral, to foster interoperability, not discriminate against vulnerable road users and must ensure transparency of ranking, including on environmental effects, when proposing mobility options to customers.

11/05/2023

AI Act: a step closer to the first rules on Artificial Intelligence

- To ensure a human-centric and ethical development of Artificial Intelligence (AI) in Europe, MEPs endorsed new transparency and risk-management rules for AI systems, that:
- Once approved, will be the world’s first rules on Artificial Intelligence;
- Includes bans on biometric surveillance,

emotion recognition, predictive policing AI systems;

- Tailor-made regimes for general-purpose AI and foundation models like GPT and
- The right to make complaints about AI systems.

20/04/2023

Crypto-assets: green light to new rules for tracing transfers in the EU

- Parliament endorsed the first EU rules to trace crypto-asset transfers, prevent money laundering, as well as common rules on supervision and customer protection.

06/04/2023

Quantum technologies – A regulatory perspective

- As discussed during the event, the development of quantum technologies raises a series of questions for policy makers and regulators. These included:
- How might quantum technologies stimulate wider market innovation and competition?
- How might the transition to quantum-secure cryptography be supported, and what is the role of the regulator?
- What might be the potential governance, societal and ethical implications from these technologies?
- How might standards and ecosystem consensus support quantum innovation?
- How can we take what we’ve learned from other emerging technologies such as AI to ensure that innovation in quantum and other technologies happens responsibly?

United Kingdom

18/09/2023

AI Foundation Models: initial review

- This initial review will help create an early understanding of the market for foundation models and how their use could evolve; what opportunities and risks these could bring; and what competition and consumer protection principles will best guide the development of these markets going forward.

France

08/11/2023

Participation of the Autorité de la concurrence in the work of the G7 led by the Japanese presidency on digital competition

- The Autorité de la concurrence participated in the work of the G7 on digital competition, chaired this year by Japan. The creation of this working group is the result of an initiative by the French presidency of the G7 in 2019 to bring together the G7 competition authorities around the issues raised by the application of competition law in the digital economy.
- During the meeting, the G7 competition authorities and policymakers adopted the joint annual update of the “Compendium of Approaches to Improving Competition in Digital Markets” and for the first time a “Digital Competition Communiqué” which sets out the initiatives to promote and protect competition in digital markets and commitment to address competition concerns arising from emerging technologies.

12/05/2023

The Autorité issues an opinion on certain provisions of the draft law to secure and regulate the digital space

- The Autorité has issued an opinion on three articles of the draft law to secure and regulate the digital space. In it, it shares the concerns expressed in the draft law regarding certain market practices or failures in the cloud computing sector that may warrant regulatory intervention. However, it emphasises that, given the European regulatory context in which the draft law is being introduced, it is important to ensure that the planned measures are properly coordinated with the future European framework, so as not to penalise the stakeholders operating in the French market.

Spain

28/08/2023

The CNMC analyzes the regulations that intend to create a regulatory environment to test artificial intelligence projects

- The text proposes a testing environment in Spain, before the European standards on AI come into force.
- This tool encourages innovation, but must be well designed to avoid distortions in markets and competition.
- The environment does not exempt participating operators from complying with national and European antitrust regulations.
- Among other improvements, the CNMC recommends that the project selection criteria be more specific, and further suggests: (i) Categorizing AI systems; (ii) access to controlled testing environments and (iii) avoiding unjustified circulation of information.

17/04/2023

The new Audiovisual Registry will include new providers such as video sharing services through platforms or vloggers

- The CNMC considers that it should be clarified how the challenges posed by the registration and supervision of certain agents, such as video sharing platforms, vloggers and podcasts, will be addressed.
- The Registry will continue to depend on the Ministry of Economic Affairs and Digital Transformation, and intense coordination with the CNMC and the regional supervisory authorities will be necessary.
- The National Markets and Competition Commission (CNMC) has published its report on the Draft Royal Decree that regulates the State Registry of Audiovisual Communication Service Providers, Video Exchange Service Providers through the platform and Providers of the Audiovisual Communication Services Aggregation Service.

Italy

19/06/2023

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 13 April 2023 – Alphabet Inc., Google LLC and Google Italy Srl v Autorità Garante della Concorrenza e del Mercato

Austria

08/06/2023

Advocate General’s Opinion in Case C-376/22 | Google Ireland and Others

- According to Advocate General Szpunar, platforms like Google, Meta

Platforms and Tik Tok may not have additional obligations imposed on them in a Member State other than the one in which they have their registered office, except by measures taken on a case-by-case basis.

United States

07/11/2023

In Comment Submitted to U.S. Copyright Office, FTC Raises AI-related Competition and Consumer Protection Issues, Stressing That It Will Use Its Authority to Protect Competition and Consumers in AI Markets

- The FTC believes that AI has the potential to ‘turbocharge’ schemes and deceptive practices.

03/10/2023

FTC to Host Roundtable Discussion on October 4 on Artificial Intelligence and the Creative Fields

- The Federal Trade Commission staff held a virtual roundtable discussion on October 4, 2023 to better understand the impact of the use of generative artificial intelligence on music, filmmaking, and other creative fields.

25/04/2023

FTC Chair Khan and Officials from DOJ, CFPB and EEOC Release Joint Statement on AI

- Chair Khan and officials with the Civil Rights Division of the U.S. Department of Justice, the Consumer Financial Protection Bureau, and the U.S. Equal Employment Opportunity Commission released their joint statement outlining a commitment to enforce their respective laws and regulations to promote responsible innovation in automated systems.
- All four agencies have previously

expressed concerns about potentially harmful uses of automated systems and resolved to vigorously enforce their collective authorities and to monitor the development and use of automated systems.

Japan

12/10/2023

G7 Joint Competition Enforcers and Policy Makers Summit and publishing Compendium of approaches to improving competition in digital markets

- The German Bundeskartellamt and Federal Ministry for Economic Affairs and Climate Action hosted a G7 Joint Competition Enforcers and Policy Makers Summit in Berlin on October 12, in which the Japan Fair Trade Commission Chair, Furuya Kazuyuki, participated.

Colombia

13/10/2023

The SIC provides instructions for financing operations through Fintech technological means

- The SIC, in its role as consumer protection authority and after hearing multiple complaints filed by Fintech consumers and even imposing historic sanctions for this type of commerce in recent days, issued measures to instruct natural persons or legal entities that carry out operations through financing systems through Fintech means and whose control and surveillance has not been assigned to any particular administrative authority ([see here](#)).
- This decision was taken after verifying the alleged collection of interest above the legal limit allowed, collection of

amounts not owed and concepts not previously reported, dissemination of the consumer’s credit information with those he knows, disbursement of a sum less than the value of the approved credit, as well such as the inclusion of abusive clauses

MERGER CONTROL

United Kingdom

25/10/2023

Adobe / Figma merger inquiry

- The CMA is investigating the anticipated acquisition by Adobe Inc. of Figma, Inc.

13/10/2023

Microsoft / Activision Blizzard merger inquiry

- The CMA has decided to grant consent for Microsoft Corporation to acquire Activision Blizzard, Inc.

21/08/2023

Broadcom / VMware merger inquiry

- The CMA investigated and cleared the anticipated acquisition by Broadcom Inc. of VMware, Inc.

24/07/2023

Amazon / iRobot merger inquiry

- The CMA investigated and cleared the anticipated acquisition by Amazon.com, Inc of iRobot Corporation.

30/06/2023

Facebook, Inc (now Meta Platforms, Inc) / Giphy, Inc merger inquiry

- The CMA is investigating the completed acquisition by Facebook, Inc (now Meta Platforms, Inc) of Giphy, Inc.
- On 6 January 2023 the CMA made a Final Order pursuant to section 84 of the Act

for the purpose of implementing Meta’s divestment of Giphy to a purchaser approved by the CMA.

- On 23 June 2023, Meta completed Giphy’s sale to Shutterstock, Inc. This brings the merger investigation to a close.

28/04/2023

Google’s Privacy Sandbox commitments: Implementation and what comes next

- The CMA published our latest quarterly update on the implementation of Google’s Privacy Sandbox commitments.
- Google plans to remove third-party cookies from its Chrome browser and replace them with new Privacy Sandbox tools.

Germany

10/08/2023

Online food retail sector: Knuspr can take over Bringmeister

- The Bundeskartellamt has cleared the takeover of the Bringmeister group by Knuspr (Rohlik group) in the first phase of merger control.
- The merger does not raise any competition concerns. When placing a narrow focus on online food retail only, the merger parties’ highest market shares, more than 20 percent, are achieved within the city of Munich. In this area, there is also competition from REWE Lieferservice, Flaschenpost, Amazon Fresh, Getir (including Gorillas) and Flink, among other companies. The question as to whether online food retail constitutes a separate market or is to be included in an overall food retail market could be left open in this case.

Japan

16/06/2023

The JFTC Seeks Information and Comments from Third Parties Concerning the Proposed Acquisition of Mandiant, Inc. by Google LLC

- The Japan Fair Trade Commission has been reviewing possible impacts on competition from the proposed acquisition of Mandiant, Inc. by Google LLC, and decided to seek information and comments from third parties concerning possible impacts on competition that would arise from the proposed acquisition.
- It is noted that this does not mean that the proposed acquisition would pose any concerns with respect to the Antimonopoly Act.

16/06/2023

The JFTC Seeks Information and Comments from Third Parties Concerning the Proposed Acquisition of Activision Blizzard, Inc. by Microsoft Corporation

- The Japan Fair Trade Commission has been reviewing possible impacts on competition from the proposed acquisition of Activision Blizzard, Inc. by Microsoft Corporation, and decided to seek information and comments from third parties concerning possible impacts on competition that would arise from the proposed acquisition.
- It is noted that this does not mean that the proposed acquisition would pose any concerns with respect to the Antimonopoly Act.

Singapore

16/10/2023

CCCS Raises Competition Concerns on the Proposed Acquisition by Grab Rentals Pte. Ltd. of Trans-cab Holdings Ltd.

- The Parties overlap in the provision of: (a) private-hire car rentals for ride-hail services in Singapore and (b) ride-hail platform services[4] in Singapore.
- third-party feedback received by CCCS suggests concerns on the effect of Grab's ownership of the Trans-cab fleet on Trans-cab drivers' usage of rival ride-hail platforms, which may raise barriers to expansion and entry for Grab's rival ride-hail platforms, given the importance of scale in the ride-hail platform industry.
- Accordingly, CCCS needs to review the competition effects of the Proposed Acquisition in greater detail.

Hong Kong

10/11/2023

Competition Commission consults on proposal to accept new commitment offered by Deliveroo

- The Competition Commission commenced a consultation on the newly proposed commitment offered by Deliveroo Hong Kong Limited, an online food delivery platform in Hong Kong.
- To address the Commission's concerns, the two platforms had each offered commitments to amend or remove the relevant provisions to allow restaurants greater freedom in partnering with new and/or smaller platforms and in pricing menu items on their own channels and other platforms.
- The Commission takes the view

that Deliveroo's new commitment is appropriate to address its concerns and therefore proposes to accept it.

- Interested parties are now invited to submit representations on the New Commitment, including the Commission's proposed acceptance of it, no later than 6:00 pm on 24 November 2023.

ANTITRUST ENFORCEMENT

European Union

22/09/2023

Antitrust: Commission re-imposes €376.36 million fine on Intel for anticompetitive practices in the market for computer chips

- According to the EC, Intel engaged in a series of anticompetitive practices aimed at excluding competitors from the relevant market in breach of EU antitrust rules, by abusing dominant position.
- These restrictions took place between November 2002 and December 2006 and consisted in payments made by Intel to three computer manufacturers (i.e., HP, Acer and Lenovo) to halt or delay the launch of specific products containing competitors' x86 CPUs and to limit the sales channels available to these products.

11/09/2023

EP Q&A User tracking moratorium and enforcement of the Digital Services Act and the Digital Markets Act in the light of the recent Court of Justice judgment

- In a landmark decision in early July 2023, the Court of Justice ruled that data collection for advertising purposes was only allowed if the personal data was

explicitly provided by the data subject and did not include special categories of personal data, making the tracking of individuals illegal.

General Data Protection Regulation, even where a data protection supervisory authority is investigating the same conduct, in the course of investigating an abuse of dominant position under Article 102 of the TFEU.

06/09/2023

Digital Markets Act: Commission designates six gatekeepers

- The European Commission has today designated, for the first time, six gatekeepers, under the Digital Markets Act (DMA). The non-confidential version of the decisions will be made available on the Commission’s DMA website once confidentiality issues have been resolved.
- The designation decisions follow a 45-day review process conducted by the Commission after the notification by Alphabet, Amazon, Apple, ByteDance, Meta, Microsoft and Samsung of their potential status as gatekeepers.

United Kingdom

3/11/2023

Investigation into Amazon’s Marketplace

- The CMA has accepted commitments offered by Amazon that address its competition concerns in relation to how Amazon uses third-party seller data, how it selects which product offer is placed within the ‘Buy Box’ and the negotiation of delivery rates for Prime orders.

27/07/2023

Antitrust: Commission opens investigation into possible anticompetitive practices by Microsoft regarding Teams

- The EC has opened a formal investigation to assess whether Microsoft may have breached EU competition rules by tying or bundling its communication and collaboration product Teams to its popular suites for businesses Office 365 and Microsoft 365.

3/11/2023

Investigation into Meta’s (formerly Facebook) use of data

- The CMA has accepted commitments that address its competition concerns regarding Meta’s use of data obtained through digital display advertising.

26/10/2023

Investigation into Google’s ‘Privacy Sandbox’ browser changes

- The CMA has accepted commitments offered by Google that address its competition concerns resulting from investigating Google’s proposals to remove third-party cookies and other functionalities from Chrome browser.

27/07/2023

European Court of Justice in Facebook Ruling Clarifies Interplay Between EU Competition Law and Data Protection Enforcement and Challenges Reliance on Legitimate Interests for Disclosures to Law Enforcement Authorities

- The European Court of Justice clarified that an EU Member State competition authority may find a violation of the EU

24/10/2023

The CDA’s growing its Digital Markets Unit in Manchester

- The Digital Markets Unit has been set up to promote competition and tackle

unfair behaviour by the largest digital technology firms.

23/10/2023

Cloud services market investigation

- The CMA is investigating the supply of public cloud infrastructure services in the UK.

04/09/2023

Estimating the prevalence and impact of drip pricing

- Drip pricing occurs when consumers are shown an initial price for a good or service while additional fees are revealed (or “dripped”) later in the checkout process.
- This research investigates the prevalence of online drip pricing across retail, hospitality, entertainment, transport and communication sectors and assesses the detriment it may cause to UK consumers.

05/09/2023

Dr Sean Ennis v Apple Inc and Others - Summary of Collective Proceedings Claim Form

02/08/2023

Investigation into Apple AppStore

- The CMA is investigating Apple’s conduct in relation to the distribution of apps on iOS and iPadOS devices in the UK, in particular, the terms and conditions governing app developers’ access to Apple’s App Store.
- Further CMA analysis and review extended from July 2023 to December 2023.

02/08/2023

Investigation into suspected anti-competitive conduct by Google

- The CMA is investigating Google’s conduct in relation to Google’s distribution of apps on Android devices in the UK, in particular Google Play’s rules which oblige certain app developers to use Google Play’s own billing system for in-app purchases.
- Further CMA analysis and review extended from July 2023 to December 2023.

08/06/2023

Lords Communications and Digital Committee oral evidence transcript on Review of the Digital Markets, Consumer and Competition Bill

31/03/2023

Urgency and price reduction claims: are your online tactics legal?

- Countdown clocks. Scarcity claims. Eye-catching discount offers. These and similar sales tactics have become common online. Businesses use them in marketing emails, search and display adverts, home page headlines, pop-ups and plug-ins, etc.
- Designed fairly, these sales tactics can alert consumers to genuine special offers or give them helpful information about current selling conditions.
- However, the CMA is concerned that these tactics may not always be as genuine as they seem, as some may mislead consumers or put unfair pressure on them. If they do, they’re likely to be illegal. The CMA is therefore opening investigations into online businesses to probe further.

10/03/2023

Investigation into suspected anti-competitive agreement between Google and Meta and behaviour by Google in relation to header bidding

- Investigation into whether Google and Meta entered into an anti-competitive agreement, and whether Google might have abused a dominant position through its conduct in relation to header bidding services, was closed by the CMA.

Germany

05/10/2023

Bundeskartellamt gives users of Google services better control over their data

- Alphabet Inc., Google’s parent company, gives users better choice as to how Google processes their data according to Commitments undertaken by Google.
- The Commitments are the result of a proceeding conducted by the Bundeskartellamt based on the new instrument under competition law, which allows the Bundeskartellamt to intervene when competition is threatened by large digital companies (Section 19a of the German Competition Act, GWB). The new provision was introduced in 2021.
- The proceeding is a testament to the close cooperation between the Bundeskartellamt and the European Commission on the way to achieving more competition and fair markets in the digital sector.

01/09/2023

Case summary from 1 August 2023: Antitrust law examination of “Google News Showcase”

- The proceeding against Alphabet Inc., Mountain View, USA, including its associated companies, was initiated due to competition concerns resulting from a possible preferential integration of Google News Showcase content into Google’s search results, contractual provisions making it more difficult for press publishers to enforce their ancillary copyright and possible discrimination in granting access to Google News Showcase.
- By taking various measures Google was able to largely dispel these concerns.

04/07/2023

CJEU decision in Facebook proceeding: Bundeskartellamt may take data protection rules into consideration

- The Court of Justice of the European Union has ruled that the Bundeskartellamt may take data protection rules into consideration when weighing interests in decisions under competition law. The CJEU proceeding was based on the Bundeskartellamt’s decision in the 2019 Meta (Facebook) case.
- In this decision the Bundeskartellamt prohibited Meta from combining user data from several sources without the users’ consent.
- Meta appealed this decision to the Higher Regional Court of Düsseldorf. The Düsseldorf court asked the CJEU to provide clarification on how to interpret certain provisions of the General Data Protection Regulation (GDPR) and whether the Bundeskartellamt may also take into consideration GDPR norms

when weighing interests in decisions under competition law.

28/06/2023

Open markets for digital mobility services – Deutsche Bahn must end restrictions of competition

- According to the Bundeskartellamt’s decision of 26 June 2023, Deutsche Bahn AG (DB) is in violation of competition law due to abusing its market power in relation to mobility platforms. The Bundeskartellamt has ordered Deutsche Bahn to change certain practices and contractual clauses.
- Mobility platforms offer their customers comparative information on itineraries involving different means of transport and transport operators as well as the option of integrated ticketing. In this context, rail transport and the transport services offered by DB play an important role. For example, mobility platforms allow passengers to combine train tickets with flights, carsharing, long-distance coach services or rental bikes.

21/06/2023

Statement of objections issued against various of Google’s practices in connection with Google Automotive Services and Google Maps Platform

- The Bundeskartellamt has today forwarded its preliminary legal assessment of Google’s practices in connection with Google Automotive Services (GAS) to Alphabet Inc., Mountain View, USA, and Google Germany GmbH, Hamburg.
- At the present stage of the proceeding, the Bundeskartellamt intends to prohibit various of Google’s anti-

competitive practices in application of the new provisions for large digital companies (Section 19a of the German Competition Act (GWB)).

07/06/2023

Meta (Facebook) introduces new accounts center – an important step in the implementation of the Bundeskartellamt’s decision

- Meta has announced plans to introduce a new accounts center. The accounts center will allow Meta’s customers for the first time to make a largely free and informed decision about whether they want to use Meta’s services separately or in combined form.
- Using the services in combined form would allow them to use additional functionalities such as crossposting, where a post is simultaneously published across several social media outlets, but Meta would then use the combined data for advertising purposes.

31/05/2023

Inquiry into non-search online advertising: significant market position of Alphabet/Google, insufficient transparency in programmatic advertising

- The Bundeskartellamt has published the final report on its sector inquiry into non-search online advertising.
- The sector inquiry focuses on the market conditions and functioning mechanisms in the non-search online advertising sector. Adverts displayed in response to search engine queries (search advertising) are, however, not part of the investigation.
- The technical design of non-search online advertising makes possible highly complex automated trading in advertising space and the subsequent display and verification of adverts

(programmatic advertising).

- Alphabet, in particular, has a significant position in this overall system. The company is present at almost all levels of the value chain of non-search online advertising and has an extraordinarily strong market position with regard to practically all relevant services. As Alphabet also has a significant position in the search online advertising market based on the Google Search engine, it holds a prominent position in the online advertising sector as a whole.

17/05/2023

Messenger and video services: Bundeskartellamt on data protection, transparency and interoperability

- The Bundeskartellamt’s inquiry takes an in-depth look at the technical and legal framework conditions of messenger and video services. It especially focuses on the issues of data protection and data security.

05/04/2023

Case summary from 5 April 2023: Apple Inc. – Paramount significance for competition across markets formally determined (Decision of: 3 April 2023)

- In its decision of 3 April 2023, the Bundeskartellamt determined, pursuant to Section 19a(1) of the German Competition Act (GWB), that Apple Inc., including its affiliated companies within the meaning of Section 36(2) GWB, 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.

28/03/2023

Examination of Microsoft’s significance for competition across markets

- The Bundeskartellamt initiated a proceeding against Microsoft to examine whether the company is of paramount significance for competition across markets.
- The proceeding is based on the powers the Bundeskartellamt received as part of the extended abuse control rules regarding large digital companies, which were introduced in early 2021 (Section 19a German Competition Act – GWB).
- In a two-step procedure the authority can prohibit companies of paramount significance for competition across markets from engaging in certain anti-competitive practices.

France

25/07/2022

Advertising on iOS mobile applications: the General Rapporteur confirms having notified the Apple group of an objection

- The General Rapporteur of the Autorité de la concurrence has confirmed that an objection has been notified to the Apple group, concerning practices in the distribution of mobile apps sector, which are likely to have consequences on several related markets for advertising and consumer services.
- Apple is being accused of abusing its dominant position by implementing discriminatory, non-objective and non-transparent conditions as regards the data mining of user data for advertising purposes.

16/06/2023

Repair and refurbishment of electronic products: the Autorité clears the acquisition of control of the SBE Group by the Cordon Electronics Group

- In examining the transaction relating to the acquisition of sole control of the SBE Group by the Cordon Electronics Group, the Autorité examined the market for the repair and refurbishment of consumer electronics and household electrical appliances for the first time.
- After careful investigation of the transaction, the Autorité considered that it was not likely to harm competition and cleared the transaction unconditionally.

04/05/2023

Online ad verification: The Autorité de la concurrence issues interim measures against Meta

- Having received a complaint in October 2022 from the company Adloox SAS regarding practices implemented by the companies Meta Platforms Inc., Meta Platforms Ireland Ltd. and Facebook France, in the online ad verification sector, the Autorité de la concurrence has today issued interim measures against Meta, pending a decision on the merits of the case.
- The Autorité considered that the conditions for accessing Meta’s “viewability” and “brand safety” partnerships were likely to constitute an abuse of a dominant position and cause serious and immediate harm both to Adloox’s interests and to the independent ad verification sector.
- Consequently, the Autorité has ordered Meta to define and make public new criteria for accessing and maintaining “viewability” and “brand safety” partnerships which are objective,

transparent, non-discriminatory and proportionate.

- It has also issued an injunction to allow Adloox to be rapidly admitted to these partnerships, provided that the company meets the new access criteria.

Spain

18/07/2023

The CNMC fines Apple and Amazon 194 million for restricting competition on the Amazon website in Spain

- Both companies agreed to include a series of clauses in the contracts that regulate Amazon’s conditions as an Apple distributor that affected the sale of Apple products and other brands on the Amazon website in Spain.
- On the one hand, they unjustifiably restricted the number of resellers of Apple products on the Amazon website in Spain and, on the other, they limited the advertising spaces where competing Apple products can be advertised on the Amazon website in Spain and, finally, they limited the possibility of Amazon directing marketing campaigns to customers of Apple products on its website in Spain to offer them competing products from other brands.

28/03/2023

The CNMC initiates a sanctioning file against Google for possible anti-competitive practices that would affect editorials of Spanish press publications and news agencies

- The CNMC has initiated sanctioning proceedings against Google LLC, Google Ireland Ltd., Google Spain, S.L. and against its parent company Alphabet Inc., for restrictive competition

practices prohibited by articles 2 and 3 of Law 15/2007, of July 3, on the Defense of Competition (LDC) and in article 102 of the TFEU.

- The behaviors investigated could involve abusive exploitation by Google of its dominant position in Spanish markets.
- The abuse analyzed would consist of the imposition of inequitable conditions on the publishers of Spanish press publications and news agencies.
- The practices investigated would also include possible acts of unfair competition that could affect the public interest by distorting free competition.

United States

26/09/2023

FTC Sues Amazon for Illegally Maintaining Monopoly Power

- The FTC and 17 state attorneys general today sued Amazon.com, Inc. alleging that the online retail and technology company is a monopolist that uses a set of interlocking anticompetitive and unfair strategies to illegally maintain its monopoly power.
- The FTC believes that Amazon's ongoing pattern of illegal conduct blocks competition, allowing it to wield monopoly power to inflate prices, degrade quality, and stifle innovation for consumers and businesses.

20/09/2023

FTC Adds Senior Executives Who Played Key Roles in Prime Enrollment Scheme to Case Against Amazon

- Amended complaint includes significant evidence redacted in initial complaint revealing extensive knowledge of Prime nonconsensual enrollment and

complex cancellation issues, thanks to years-long efforts.

21/06/2023

FTC Takes Action Against Amazon for Enrolling Consumers in Amazon Prime Without Consent and Sabotaging Their Attempts to Cancel

- Complaint outlines details of company's knowing failure to address non-consensual subscriptions and cancellation trickery.

Australia

06/06/2023

Dell Australia declared to have misled consumers about the prices of computer monitors

- The Federal Court has declared by consent that Dell Australia Pty Ltd made false and misleading representations on its website about the prices of add-on monitors and in 'strikethrough' prices shown on the website.
- When a consumer selected a desktop, laptop, or notebook on the website, they were shown several compatible monitors and offered the option of 'bundling' a monitor to the purchase, often at a discounted price. The monitor was often shown with a higher strikethrough price, representing a significant saving if purchased with the computer.
- Dell Australia admitted that the monitors were not sold for the 'strikethrough' price for most of the relevant time and, in some cases, the add-on price shown was more expensive than if the monitor was bought on a stand-alone basis.

Brasil

08/05/2023

CADE launches enquiry into abuse of dominant position by Google and Meta in case involving 'Fake News' Bill

- Complaints indicate that the companies were using their platforms to lead a campaign against the bill.
- On 2 May, the Office of the Superintendent-General of the CADE launched a preliminary enquiry into alleged abuse of their dominant position by Google and Meta related to the 'Fake News' Bill.
- The decision considered complaints that Google and Meta used the Google, Youtube, Facebook, and Instagram platforms improperly to lead a campaign against the bill.
- The behaviour received widespread coverage by the Brazilian press in the news.

Colombia

11/10/2023

Supreme Court confirms exception of extinctive prescription in the Cotech v. Uber case

- The Court concluded that when evaluating, from a competition law perspective, a behavior in the context of the collaborative economy -where information and communication technologies play a leading role- judicial authorities must be quite careful to respect the right to enjoy scientific and technological advances, which means that using technology, communication and internet-related services cannot be classified per se as unfair.
- In addition, it stated that it must be verified whether these are actually actions of the same market in which

both the legitimate party and the defendant intervene, as well as whether the rules that are considered violated are applied, verifying whether or not such rules are obsolete according to the moment in which they were uttered and the purpose they sought to fulfill.

- In relation to the charge against the extinctive prescription, Cotech argued that Uber's acts are continuous and, therefore, the thesis of the first instance ruling must be accepted, that is, that the first day of the prescriptive period only arises when the conduct ends, since a different thesis can only result, in his opinion, from the interpretation of article 23 of Law 256 of 1996. This interpretation was completely discarded by the Court.

Argentina

09/10/2023

The CNDC created the Research and Working Group on Digital Markets

- This is a multidisciplinary and transversal group dedicated to the investigation of the different markets that make up the digital economy, with the aim of perfecting the approach that CNDC professionals take on cases that involve said markets.

24/08/2023

The Court of Appeals confirmed the extension of the precautionary measure in the "WhatsApp" case until the end of the investigation

- On August 11, 2023, the National Court of Appeals for Federal Civil and Commercial Matters, with a unanimous ruling, resolved to dismiss the judicial challenges filed by Whatsapp LLC, Whatsapp Ireland Limited, Meta Platforms Inc., Meta Platforms Ireland

Limited and Facebook Argentina SRL against Resolution No. 224/2022 issued by the then Secretary of Domestic Trade of the Nation on March 13, 2022.

- Said resolution is based on an opinion of the CNDC, issued within the framework of the ex officio investigation that was initiated in order to investigate the conditions imposed on users by Whatsapp Inc., which, together with other practices of companies of the economic group to which it belongs, could configure anti-competitive conduct of abuse of dominant position in the terms of articles 1 and 3 of Law 27,442 on the Defense of Competition.

MARKET STUDIES

European Union

28/06/2023

Market Study on Competition in Online Payment Services OMP/2023/OP/0009 – DG Comp tender

United Kingdom

03/10/2023

Mobile browsers and cloud gaming

- The CMA is carrying out a market investigation in respect of the supply of mobile browsers and browser engines, and the distribution of cloud gaming services through app stores on mobile devices in the UK.

29/09/2023

The government's work on music streaming

- The final report was published by the CMA in November, 2022.
- No market investigation took place because of it.

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.

France

29/06/2023

The Autorité de la concurrence issues its market study on competition in the cloud sector

- The Autorité is today issuing its final opinion, after publishing an interim document in the summer of 2022 and consulting all the stakeholders.
- In this opinion, the Autorité focuses particularly on cloud layers relating to IT infrastructure (IaaS, Infrastructure-as-a-Service) and platform services (PaaS, Platform-as-a-Service) for business clients.
- Developments also concern the entire cloud value chain when it is relevant to the competitive analysis.
- According to the study, the sector is dominated by three hyperscalers: Amazon Web Services, Google Cloud and Microsoft Azure, and represent 80% of the spending growth in public cloud infrastructures and applications in France in 2021. Amazon and Microsoft have captured 46% and 17% respectively of revenues from IaaS and PaaS services in 2021. Given their financial capacities and their digital ecosystems, these hyperscalers are in a position to hinder competition development.
- The Autorité proposes an analysis grid presenting possible relevant markets in the cloud sector and analyzes various practices implemented or likely to be

implemented in this sector, which could restrict competition.

technology regulation -- some quick thoughts (or a rant)

Brasil

04/09/2023

CADE issues updated study on digital platform markets

- On 21 August, the CADE issued an updated study on digital platform markets. It is the 19th volume of the series “Cadernos do Cade”, a reviewed version of the edition published in 2021, which focuses on new digital platforms identified and analysed by the agency.
- The objective of the research is to show the steps of CADE’s reviews and the case law of the institution in the proceedings related to mergers and investigations of anticompetitive conducts in several sectors that use digital platforms.
- In this regard, the new edition presents decisions of the Tribunal of CADE about matters in sectors such as online retail of agricultural, pets, beverages, pharmaceutical drugs, cosmetics, and personal hygiene products.

BLOGS/ARTICLES

Ariel Ezrachi on new research on the Digital Economy

- The Role of Secondary Algorithmic Tacit Collusion in Achieving Market Alignment
- Dark Patterns and Online Consumer Vulnerability
- Innovation Misunderstood

ProMarket

- AI For the Antitrust Regulator

How to crack a nut

- The challenges of researching digital

PLC magazine June 2023

- Digital Markets, Competition and Consumers Bill: wide-ranging changes ahead

Disruptive Competition Project

- The DMA Enforcer Playbook: Recommendations for Effective Enforcement

CPI Antitrust Chronicle Healthcare II

- Unraveling Ariadne’s Thread: Antitrust and the Big Data Revolution in Healthcare

Competition Law360

- Meta Makes More Changes Amid German Data Case
- Sony Fights To Knock Out £5B Claim Over PlayStation Store
- Amazon Seller Gets 18 Months For DVD Price-Fixing

Kluwer Blog

- Book Review – Abuse of Platform Power: Leveraging Conduct in Digital Markets under EU Competition Law and Beyond, by Friso Bostoen
- The Complementarity Between the DMA, the DSA and the GDPR: The European Commission’s Template Relating to the Audited Description of Consumer Profiling Techniques

Oxford Business Law Blog

- The Impact of Algorithms and AI on Merger Policy

Network Law Review

- Eliana Garces: “Regulation and Competition in Digital Ecosystems: Some

Missing Pieces Dynamic Competition Initiative (“DCI”) symposium

IEA

- HAYEK ON COMPETITION A liberal antitrust for a digital age? *Cento Veljanovski*

Financier Worldwide

- Can AI engage in price fixing?

CPI Antitrust Chronicle

- Algorithmic Bias
- Google’s Payments to Apple Not Monopolistic, Expert Testifies in Antitrust Trial
- EU Antitrust Warning Looms Over Adobe’s \$20 Billion Bid for Figma
- UK Urges Stricter Controls on Uber Eats, Deliveroo and Just Eat
- Microsoft and Google Accept EU Gatekeeper Status without Challenge

CDC Blog

- Private Enforcement of the EU Digital Markets Act: The way ahead after going live

PRESS

12/09/2023

- US Prosecutors Accuse Google of Operating an Illegal Monopoly – Competition Policy International

07/09/2023

Google faces GBP7 billion UK class action over mobile search practices - mlex

03/09/2023

Big Tech Escapes California’s Social Media Addiction Bill Again – Competition Policy International

31/08/2023

Microsoft Unbundles Teams from Office in Response to EU Antitrust Concerns – Competition Policy International

14/08/2023

Apple faces additional app store scrutiny in Korea – Global Competition Review

09/08/2023

SCOTUS Denies Epic’s Request To Open Up App Store Payments During Appeal – Competition Policy International

09/08/2023

Google Fights Back: Emergency Motion Filed in Antitrust Lawsuit – Competition Policy International

29/06/2023

Apple Argues Against EU Antitrust Charge From Spotify Claims – Competition Policy International

22/06/2023

Amazon, Publishers Look To Beat EBook Monopoly Claims – Competition Law360

21/06/2023

Google Calls Out Microsoft Over Anticompetitive Cloud Practices – Competition Policy International

08/06/2023

Adobe chief warns competition watchdogs against stifling innovation – Financial Times

31/05/2023

German sector inquiry considers possibility of Google break up – Global Competition Review

CONFERENCES

3/10/2023

French Competition Authority, Competition in cloud computing and other disruptive technologies: what's on the horizon ?

12/12/2023

Take part in the event "Data protection and competition: a common ambition"

1/01/2024

The Tech Antitrust Conference – 2nd edition – Palo Alto, California Concurrences