



Mergers in online platforms

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Outline of the presentation

- **Challenges in assessment of mergers in online platforms**
- **Case study**
 - Facebook/Whatsapp.
- **Consultation on turnover thresholds**
- **Other topics : Big data and privacy**



Challenges in assessment of mergers in online platforms (1)

■ Relevant market

- More difficult to define recent and evolving markets – lack of hindsight experience.
- Hard to define the boundaries of a market – What is a social network?
- SSNIP test not always operational : Customers may be more interested in performance than price and new substitutes may become quickly available.
- Firms may also engage in very low pricing (to benefit from network effect) - blurring the scope of the product market.

Challenges in assessment of mergers in online platforms (2)

- **Market shares**

- Data may be particularly scarce to estimate market shares (example of free apps).
- In addition, in a changing market, past shares may be misleading of the competitive potential. Even a monopolist can be constrained by threat of entry.
- Need to take into account potential competition but who are the potential competitors?
- Innovation shares?



Challenges in assessment of mergers in online platforms (3)

▪ Substantive assessment

- Relevance of network effects in the assessment. Significant "first-mover" advantage.
- These network effects can benefit consumers but may also have the consequence of excluding rivals (feedback loop).
- These effects can be further enhanced by technical interoperability issues or by customer switching costs.
- Prospective assessment is challenging in fast-evolving markets!



Case study : M.7217 Facebook/WhatsApp (1)

- Considerable attention to this deal due to the difference between the deal size(\$19 billion) and the Target's turnover (€10 million)
- However, valuation in revenues per user in line with other transactions in the same sector.
- European Commission not directly competent.
- Whatsapp has no turnover : services are offered for free and not monetized through advertising.
- Is turnover an appropriate yardstick to appreciate jurisdiction for mergers in the digital sector? (to be discussed)

Case study : M.7217 Facebook/WhatsApp(2)

■ Market definition

- Assessment of substitutability between communication application and traditional communication services offered by mobile telecom operators (SMS, phone calls).
- These services appear to be more complementary than substitutable.
- Significant differences between social networking services and communication services in terms of richness of communication experience, speed and size of the audience.
- Ultimately, market definitions left open.

Case study : M.7217 Facebook/WhatsApp (3)

- **Competitive assessment : market shares**

- As services are offered for free, market shares based on sales revenue do not provide an appropriate benchmark for measuring market positions of Facebook and Whatsapp.
- No consolidated industry practice for measuring market performance for applications and social networking services. We retained penetration rate per user although it also has shortcomings.
- Significant fluctuations of market shares (within months or weeks). Difficult to rely on for prospective assessment.

Case study : M.7217 Facebook/WhatsApp (4)

- **Substantive assessment : network effects?**
 - Assessment of network effects in consumer communication apps, the main affected market.
 - Vast users base (600 million for WhatsApp and 250-350 million for Facebook Messenger). Size of user base is important for consumers (it determines their chances to reach other people).
 - Lack of interoperability between the parties' communication apps and those of their competitors.
 - Do we have concerns on that basis?

Case study : M.7217 Facebook/WhatsApp (5)

- **Substantive assessment : No network effects**
 - Dynamic and fast moving market for communication apps. Regular new entries (Telegram, Snapchat) which are quickly successful.
 - Customers use more than one app and switch instantaneously between apps because they are very differentiated, free, easy to install and use.
 - Neither Facebook not WhatsApp control any mobile operating system, mobile phones or essential parts of the network. No risk of foreclosure of access to consumers.
 - No competition concerns based on network effects in this case.



Consultation on turnover thresholds for mergers in the digital economy

- On 7 October 2016, the Commission has launched a public consultation regarding possible reforms of EU Merger Regulation.
- This consultation also discusses relevant thresholds for mergers in the digital economy (and other sectors).
- Some acquisition targets may not have always generated substantial turnover yet, but nevertheless are highly valued and may become an important competitive force in the relevant market
- Acquisitions of such companies are likely not captured under the current turnover-based thresholds even if the acquired company holds commercially valuable data, or has a considerable market potential for other reasons.
- It has been suggested to complement the existing turnover-based thresholds of the EU Merger Law by additional requirements based on alternative criteria, such as the transaction value.
- Consultation is ongoing – more details to be provided later...



Mergers in online platforms and big data

- Online platforms have access to large sets of data (big data) which are used to provide targeted advertising services based on analysis of data collected.
- In online platforms mergers, the Commission assess whether access to big data brings competitive advantages that rivals are unable to match.
- The issue here is to assess whether other large amount of valuable data are available to rivals in other ways. This is consistent with assessment carried out in other sectors (advertising).
- Moreover, in general, benefits from additional data scale tend to increase at a declining rate (*Microsoft/Yahoo*).



Mergers in online platforms and privacy

- Privacy can be regarded as a parameter of competition which can be degraded by a merged entity post merger (for example by requiring more personal data to provide services).
- However, this issue matters in a merger assessment only if users value significantly privacy and security (not always the case) .
- Commission's decisions on online platforms mergers are granted without prejudice to the application of the data protection rules.
- Data protection infringements should be tackled primarily by data protection rules (consistent with view expressed by Court of Justice).



Provisional conclusion

- Merger control is a difficult exercise involving a prospective analysis of future market events. This task is even more challenging in fast-moving technology-intensive markets in which the pace of innovation and market changes is extremely rapid and where services are often offered for free.
- EU merger control is fit to deal effectively with the specific challenges posed by mergers in the digital sector, as shown by the Facebook/WhatsApp assessment.
- The Commission is keen to be in a position to effectively and timely review those cases.
- Acculimation of "big data " or degradation of privacy have not raised Commission's concerns in previous cases. However these issues could become relevant in future merger cases under the Commission's scrutiny.



Thanks!