

**How the Ibero-American Agencies are Addressing Tech Issues**  
**Across Competition Dimensions**  
49th Annual Conference on International Antitrust Law and Policy (Fordham)  
**September 15, 2022**

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There is recognition, world-wide, of the need for **effective** antitrust approaches to the digital economy.

This follows from the view that some digital players need greater oversight, namely those who take a central role in many important markets, by organizing them and determining what happens in them.

The Digital Markets Act (DMA), a European Commission proposal approved this year by the European Parliament and the EU Member States, may be one of the most **ambitious** and complete legislations on digital platforms.

We see evidence of this trend in other places. The US is currently discussing bills with similar obligations to the DMA. In Asia, South Korea recently mandated app stores to allow alternative payment processing options.

At this stage, I do not believe there is much discussion on whether approaches like the DMA have their merits. Many seem ready to give this approach a chance.

From a national competition authority standpoint, the next key step I see now is implementation.

In the EU, the DMA is a worthy complement to national competition authorities' enforcement activity.

Indeed, national competition authorities will continue to enforce **alongside** the DMA. And this is because there may be important players in the national digital markets that will not be designated as gatekeepers by the Commission and will not be covered by the DMA.

Moreover, there are services in the digital sector beyond the core services in the DMA. Such services not covered by the DMA include e-commerce, digital maps, or software in general.

The AdC, for example, launched 2 investigations in the digital sector in 2022. And these investigations include situations that would not have been covered by the DMA, had it been in force.

These are therefore interesting times for those who wish to see more effective enforcement in digital markets.

### *Competition enforcement in the digital space*

In 2020, the AdC created a Digital Taskforce, following the Issues Paper on Digital Ecosystems, Big Data and Algorithms published by the AdC in 2019.

This is an interdepartmental team, joining people from the antitrust department and our chief economist's team.

The Digital TF is responsible for overseeing the complaints received by the AdC regarding the digital economy.

So far, in terms of new investigations, the work of the Digital TF has led to a case of unilateral conduct and another for RPM in e-commerce.

The Digital TF also made surveys to e-commerce players, marketplaces, and algorithm providers. Their purpose was to have a real grasp on what algorithms are being used for and how they work. In addition, another goal was to identify possible vertical restraints in online retail.

The Digital TF also developed web scraping tools. These are used to assess the relevance of the complaints received by the Digital TF. For example, if a complainant claimed there is an online RPM in the market, we would search for price alignment in web scraped price data.

Let me share with you details on the types of infringements we are dealing with regarding financial services and fintech.

In July this year, we issued a statement of objections (a preliminary decision) to the largest payments processor in Portugal for tying the access to its payment systems to its payment processing services.

This investigation follows a very comprehensive work on competition in the financial sector, in the context of regulatory developments that sought to open the market to new payment services providers and technologies.

First, in 2018, the AdC issued recommendations to eliminate unnecessary barriers to entry, expansion, and innovation in the financial sector.

Then, in 2021, the AdC undertook a follow-up on the recommendations and a large survey to FinTech providers. We concluded there were still significant barriers.

And we also found strong indicia of anticompetitive tying.

To access the payment systems of the largest payments processor in Portugal, issuers and acquirers would have to process the payments with the same firm.

### *International cooperation in enforcement*

I believe we all agree that antitrust enforcement can benefit from international cooperation. This is also true for digital markets. And the work done in international fora such as the OECD and the ICN testifies to how international cooperation is one of the top priorities for enforcers.

My perspective is that international cooperation in antitrust enforcement, including in the digital sector, can be effective within an appropriate framework.

Certainly, in merger control it works more seamlessly because it is in the interest of merging parties to ensure that different antitrust agencies reviewing the merger avoid for example conflicting remedies.

Cooperation in cartels is also possible. The European Competition Network (ECN) is a good example of how competition agencies can help each other when there is an appropriate institutional setting in place.

For example, last year we carried out dawn raids at the request of the Austrian antitrust agency and continue to cooperate with them on this case. We also coordinated simultaneous unannounced inspections with the Spanish antitrust agency. This would not have been possible without the ECN, ensuring legal certainty and also the rights of defence of parties.

And in the ECN we have an effective cooperation concerning digital markets. Recently the AdC had one investigation concerning Google in which it coordinated closely with the Commission. The AdC opened an investigation and the Commission decided to extend the scope of its own investigation on Google to also include the practices and markets under investigation by AdC. As such, the AdC thus closed the investigation, which will now be conducted by the Commission.

So, I would say that the example of the ECN shows that international cooperation can succeed and thrive with the appropriate setting.

Nevertheless, and beyond a successful ECN framework, we see the need to achieve a level of international cooperation in antitrust cases similar to what was gradually achieved in other areas of law enforcement. There are examples in areas including in the financial sector (eg. anti-money laundering).

Generally speaking, we seem to have done well in international cooperation regarding merger control. Some will remember the crucial Wood-Whish work (1994) on the topic.

It is time to deepen international cooperation in **antitrust enforcement** as well, particular with regard to cartel enforcement. Some of you will say that cartel offences may have a different nature across jurisdictions (from criminal offences to purely administrative) and that this may hinder cooperation.

I say, as long as jurisdictions do not find a way to cooperate, members of cartels – the most serious offence in antitrust law – will find **safe havens**.

#### *National Competition Authorities in the post-DMA framework*

I believe that post-DMA, cooperation between the Commission and the National Competition Authorities will be reinforced. And that digital markets will need National Competition Authorities to enforce antitrust rules.

The DMA is one of the most important EU antitrust developments in recent years.

It is built upon the experience accumulated by the European Commission as well as by the national competition authorities. This experience draws from antitrust investigations, market studies, merger reviews, and in many discussions in public fora, involving competition lawyers and economists, academics and digital experts.

One of the main lessons we take is that digital markets have many of the characteristics that have justified regulation in other markets (e.g. telecoms).

They have very strong scale and network effects, significant externalities between products and path dependency.

More importantly, digital markets are fast evolving.

We must not lose opportunities of contestability because contestability often comes with innovation.

And that means market interventions must be quicker. This requires a regulatory-like approach with explicit presumptions as to what strategies are likely to bring harm to competition and to consumers.

With regard to cooperation between national competition authorities (NCAs) and the Commission under the DMA, there will be a strong coordination.

This is necessary in order to ensure coherence between the Commission's enforcement of the DMA and the NCAs' antitrust enforcement against digital players designated as gatekeepers by the Commission under the DMA.

The good news is, we have the tools to ensure this coordination.

The mechanisms and obligations for cooperation are largely similar to what is already the practice in the European Competition Network.

The ECN is the network for antitrust enforcement cooperation in the EU, which brings together the European Commission and the 27 NCAs.

Indeed, under the DMA, NCAs should communicate to the Commission any new antitrust investigations and draft decisions concerning the so-called gatekeepers, so that the Commission is aware of those investigations. There is also an information exchange mechanism through which the Commission may ask national competition authorities for support – for example in dawn raids, interviews and other investigative measures.

All in all, and to sum up, there is a good precedent at the EU level to make digital enforcement work.

Thank you.