UNCTAD - Intergovernmental Group of Experts on Competition Law and Policy

Twenty-third session

Recent developments in digital markets

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Nuno Cunha Rodrigues (10' minutes)

LTT

1. Introduction and the AdC activities

Thank you, Chair [Ms. Eunice Hamavhwa (Executive Director, Competition and Consumer Protection Commission, Zambia)],

Distinguished colleagues,

Thank you for the kind invitation. I am delighted to be here today speaking to you about a topic that has been part of the AdC's priorities, at least, since the beginning of my mandate.

The new market realities, strongly driven by the digital sector and the development of AI, increasingly require an integrated and complementary approach between public policies in order to achieve the best outcomes for consumers.

Accordingly, the AdC has undertaken its role, in particular fostering contestability in digital markets, namely in the generative AI sector.

The AdC has been both contributing to the global understanding of the competition policy implications arising from the development of generative AI [with the publication of the seminal Issues Paper on Generative AI (in 2023), followed by the AdC's Short Paper Series[1], that aims to keep track of the fast

[1] See Portuguese Competition Authority (AdC) Short Papers Series, *Competition and Generative AI: Zooming in on Data, September 2024, https://fmos.link/30680; AdC, Short Papers Series,*

developments of the AI sector, focusing, so far, on access and use of data, on the degree of openness of AI models, on strategies related to labour mobility, and on the chip value chain], as well as monitoring developments in the digital economy.

Therefore, the AdC has been focusing not only on identifying potential competition constraints, but also on the enforcement and the application of the EU Digital Markets Act in close cooperation with the European Commission.

Furthermore, at the AdC, we have been investing in developing and implementing digital tools, for instance using AI, aiming to enhance detection of illegal practices and support investigations.

2. Setting the scene

But, let me take a step back:

The developments in digital markets over the last few years have been significantly disrupting the world economy.

Digital platforms, cloud computing, online marketplaces, data-driven services and, particularly AI, are reshaping how firms compete and how consumers interact with markets.

The question relies on how policymakers and competition authorities can ensure that these changes enhance innovation and consumer welfare without leading to excessive concentration of economic power.

As I have been affirming, these call for continuous adaptation of our policies, including of competition policy.

Consequently, we recognize that these markets pose demanding challenges for competition authorities.

For instance, from the outset, there are concerns regarding the pace of the investigations.

Competition and Generative AI: Opening AI Models, December 2024, https://fmos.link/30681; AdC, Short Papers Series, Competition and Generative AI: Labour Markets, July 2025, https://fmos.link/30683; AdC, Short Papers Series, Competition and Generative AI: Access to AI Chips, February 2026, https://fmos.link/30682.

Take the **Google Android** case, for example: last week, the Court of Justice of the European Union upheld the European Commission's abuse of dominance **2018** decision.[2]

At the same time, competition authorities are not standing still. Just last month the European Commission has stepped in with interim measures against Meta, requiring the company to preserve free access to WhatsApp for rival AI assistants while it investigates concerns that Meta's new policy could block competing AI providers and favor its own service, Meta AI[3].

Allow me to focus on **three** interconnected themes:

- First, how **AI is changing competition in digital markets**.
- Second, how competition authorities are adapting their **enforcement tools**.
- Third, why **competition policy, regulation and industrial policy** must increasingly work together.

3. Artificial intelligence as a competition issue

Generative AI is the **industrial revolution of our time**.

From a competition perspective, AI creates extraordinary opportunities: It may lower certain barriers to entry, create new business models and challenge existing incumbents.

At the same time, it echoes earlier debates regarding digital markets.

Competition in AI depends heavily on access to three strategic resources:

- Data and the ability to experiment;
- Computacional capacity, or compute;
- And, know-how.

[2] Commission Decision C (2018) 4761 final of 18 July 2018 relating to a proceeding under Article 102 TFEU and Article 54 of the EEA Agreement (Case AT.40099 – Google Android). The EC concluded that Google had abused its dominant position by requiring, in particular through pre-installation agreements and licensing conditions for certain apps, that its search engine, Google Search, and its Chrome browser be promoted on mobile devices running the Android operating system, which is also provided by Google.

[3] See Commission imposes interim measures on Meta.

The integration of all these layers will enable the creation of so-called foundation models. [These are AI-trained models on large volumes of data, capable of serving as a basis for performing a wide range of tasks.]

Therefore, preserving contestability in each of these layers will be crucial in realising the benefits of AI.

Nonetheless, there are real competition risks: from their vertical integration within large technology companies, notably through the cross-use of data, benefiting their own solutions, or defining of users' access, to partnerships across adjacent sectors, such as chips and cloud providers.

This might enable the creation of wider digital ecosystems.

[For example, agreements concerning access to data may raise concerns if they only grant privileged access to datasets that are difficult to substitute or replicate.

Moreover, there may be significant network effects from data collection about users (such as chat-logs or user feedback).]

The common thread is that the importance of scale entails incumbents to create and exploit bottlenecks, harming competition, businesses and consumers.

This is particularly important because AI is increasingly embedded in search engines, operating systems, social networks and digital marketplaces.

4. New challenges for competition authorities

Therefore, AI creates specific challenges for competition authorities.

Let me briefly mention four of them.

First: regarding mergers and strategic partnerships

Traditional merger control was designed around the acquisition of companies with significant turnover.

However, many innovative AI firms are relatively small and generate limited revenues despite having enormous competitive potential.

This creates the risk that strategically important acquisitions escape notification thresholds.

The phenomenon of acquihires illustrates this challenge particularly well.

In these cases, an acquiring company recruits key employees from another firm, often alongside licensing agreements relating to intellectual property and technology.

Although no traditional acquisition occurs, the competitive impact may resemble that of a merger.

Therefore, to review potential problematic transactions that may otherwise fall below existing notification requirements, competition authorities around the world have been implementing alternative criteria, including market-share or transaction-value thresholds, and call-in powers.

Second: algorithmic pricing and collusion

Another major challenge concerns algorithmic pricing.

The development of large language models has made discussions about algorithmic collusion much more concrete.

AI systems are becoming increasingly capable of learning from market data, adapting pricing strategies and responding to competitors' behaviour.

Competition authorities are closely monitoring whether increasingly sophisticated pricing systems may facilitate coordination or supracompetitive outcomes.

The underlying principle remains clear: firms are responsible for the algorithms they deploy.

Companies cannot escape competition law liability by delegating decisions to algorithms.

Third: AI in competition enforcement

AI is not only an object of enforcement.

It is also an enforcement tool.

Competition authorities increasingly use AI to analyse large volumes of documents, identify suspicious patterns, process procurement data and support investigations.

The growing availability of data enables authorities to detect problematic behaviour more efficiently than ever before.

At the same time, authorities must invest in technical expertise and develop institutional capabilities that allow them to understand increasingly complex digital ecosystems.

Digital markets require digital authorities.

This has been a priority for the AdC in the last years: both investing in digital tools and experts.

For instance, just last year, with the support of our recent it-tool, "detect-it", we conducted 9 investigations for gun-jumping.

Fourth: international cooperation

Ensuring both safety and effective competition increasingly requires strong international cooperation.

No authority can fully understand and intervene in these markets in isolation. The challenges posed by AI transcend national borders, as do the opportunities it creates.

There is an important role of the **international community**, **echoing our common concerns** and potentiating the **dissemination of knowledge** and **expertise**, as UNCTAD has done in the past decades.

Earlier this week, here in Geneva, at the first UN Global Dialogue on AI Governance, the UN Secretary-General captured both the promise and the responsibility, reminding us that AI *"could compress decades of development into years"* and become *"the great equalizer of the 21st century."* Yet to ensure that AI serves humanity as a whole, we need a well-designed, coordinated, and effective global framework for its governance.

5. Competition law and regulation: complementary tools

Therefore, **competition policy, regulation and industrial policy** must increasingly work together.

While competition law remains indispensable, digital markets often display structural characteristics that justify complementary regulatory intervention.

This is the logic behind the recent rise of ex ante regulation.

Ex ante regulation and ex post enforcement go hand in hand. In many ways, this is simply the digital equivalent of what we have long seen in telecommunications, energy, and banking sectors.

For instance, the Digital Markets Act in the European Union objective is not to replace competition law.

Rather, it seeks to address recurring problems before they arise by imposing obligations on designated gatekeepers.

It includes obligations concerning access to data, restrictions on self-preferencing and measures designed to reduce lock-in effects.

Many of its principles are increasingly relevant for AI.

In addition, competition policy interacts with other policy objectives regarding AI, including those enshrined in the AI Act, the GDPR, as well as industrial policy for the digital sector.

In fact, we have been witnessing the emergence of a more integrated regulatory ecosystem in which tools complement one another.

6. Competition and innovation

Here, the debate surrounding digital markets is also about innovation.

A key challenge is to strengthen innovation capacities while preserving competition.

Competition and innovation are mutually reinforcing.

As Philippe Aghion and Peter Howitt have argued, innovation tends to flourish where competition is strong enough to discipline incumbents but not so intense that it eliminates incentives to invest.

Also Anu Bradford reminds us that the commonly asserted trade-off between digital regulation and innovation is largely false: Well-designed regulation can foster innovation, build trust, strengthen competition, and steer technological development toward outcomes that benefit society. What matters is not whether we regulate, but how we regulate.

The task for policymakers is therefore to maintain this balance.

This requires:

- effective competition law enforcement;
- smart regulation;
- investment in research and capabilities;
- access to capital;
- digital infrastructure; and
- international cooperation.

In short, digital markets require an integrated approach.

Competition authorities must not only act as enforcers, but also as advocates for competitive and innovative digital ecosystems.

7. Conclusion

AI and digital markets present enormous opportunities for growth, innovation and consumer welfare.

But these benefits are not automatic.

They depend on preserving contestability, preventing the emergence of bottlenecks and ensuring that markets remain open to innovation.

Therefore, the challenge before us is not to choose between competition, regulation and innovation.

It is to ensure that all three work together.

If we succeed, AI and digital technologies can become powerful drivers of prosperity and development.

Thank you very much.