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Criteria For The Legal Assessment Of Anti-Competitive Conduct Of Digital Platforms

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Abstract: This article analyzes the unique importance of digital platforms in competition law, which are becoming increasingly important for all sectors today. In particular, it highlights the necessary signs to determine whether digital platforms have committed anti-competitive behavior and what innovations the legislation needs in this regard. The analysis shows that in order to determine the anti-competitive behavior of digital trading platforms, it is necessary to study, first of all, the market boundary, as well as new concepts such as network efficiency, the doctrine of essential infrastructures, etc., and, based on these, to determine a unique form of unfair competition environment for digital markets.

Keywords: Digital platforms, market border, network effects, one-sided market, two-sided market, essential infrastructure doctrine.

Introduction: In competition law, the identification and regulation of anti-competitive conduct are based on a number of theoretical and legal criteria. The types of these criteria and their specific characteristics differ significantly between traditional market environments and digital market settings. Certain criteria that have long been applied in traditional markets may change their functional role within digital markets, adapt to the digital environment, or even lose their relevance altogether. The criteria for assessing anti-competitive conduct by digital platforms are grounded in the distinctive features of digital markets, including multi-sided digital markets, network effects, market tipping, multi-homing, and the creation of artificial barriers to data access, all of which may be classified as core regulatory indicators specific to this market type. Accordingly, the following analysis first examines the key indicators traditionally applied in conventional markets and then proceeds to analyze.

Defining the relevant market.

As is well known, traditional antitrust analysis begins with the definition of the relevant market, which is considered one of the fundamental criteria for diagnosing competition law infringements. The primary purpose of defining the relevant market is to determine the scope and nature of the alleged anti-competitive conduct, irrespective of whether the market is traditional or digital in nature. In fact, the identification of the relevant market constitutes a necessary preliminary step in the analysis of all forms of anti-competitive conduct, particularly in cases involving abuse of dominance, abuse of superior bargaining power, anti-competitive agreements, or concerted practices. Traditional markets are generally divided into two categories—goods markets and financial markets. The main distinction between these markets lies in their respective market participants, the nature of the goods involved, and the type of economic activity conducted, which in turn leads to differences in the methodology for defining their market boundaries. The Law of the Republic of Uzbekistan “On Competition” No. 850, adopted on 3 July 2023, together with the Resolution of the Cabinet of Ministers No. 256 of 1 May 2024 “On Approval of Regulatory Legal Acts on Antimonopoly Regulation in Goods and Financial Markets,” and the relevant regulations adopted pursuant thereto, establish not only the types of traditional markets but also digital markets and the procedures for defining their boundaries. In legal and economic theory, the relevant market is commonly understood to consist of two core components: the product market and the geographic market. Both elements are equally important in determining the relevant market.

Market Definition in Digital Markets

Despite their dynamic growth and fundamental differences from traditional markets, defining the relevant market remains the initial and essential step in identifying anti-competitive conduct in digital markets. In digital environments, products are frequently updated, multifunctional, and operate across multiple segments. Digital markets, like traditional ones, may also be categorized into goods and financial markets and share certain structural similarities. However, in digital settings, product and geographic boundaries vary depending on whether the market is single-sided or multi-sided, making it significantly more difficult to establish rigid market boundaries. For example, the Google search engine operates not only in the search market but also in advertising, shopping, mapping, and various other service markets. In analyzing market definition in digital markets, it is necessary to examine certain specific types of digitized markets in greater detail, as these types fundamentally influence market characteristics. In the literature, digital markets are generally classified into two main categories: single-sided markets and two- or multi-sided markets.

Single-sided platforms are those in which only one type of user interacts with others on the platform. Social media platforms such as Facebook are often cited as examples. From the perspective of e-commerce law, such platforms are commonly categorized as consumer-to-consumer (C2C) platforms. By contrast, most digital platforms connect two or more distinct groups of users—typically producers and consumers. Online marketplaces that facilitate interactions between buyers and sellers exemplify this structure. Where businesses interact directly with consumers, such platforms are classified as business-to-consumer (B2C) platforms. Conversely, platforms that facilitate interactions among business entities are categorized as business-to-business (B2B) platforms. Platforms that embody these characteristics are commonly referred to as two-sided or multi-sided platforms.

Two sided markets. In two-sided markets, defining the relevant market typically involves a two-stage approach:

First stage – identification of market sides. The platform connects two or more user groups, such as users and advertisers in search engines, consumers and merchants in payment systems, or travelers and hotels in booking platforms. Each side must be analyzed separately while accounting for their interdependence.

Second stage – identification of substitutes for each side. For example, from the perspective of advertisers, can Google's advertising services be substituted by other online advertising channels such as Facebook or TikTok? From the users' perspective, can Google be substituted by Bing, Yahoo, or Yandex? If substitutes exist, these services may be considered part of the same relevant market. However, in some cases, substitutability may exist for one side but not the other. For instance, users may substitute YouTube with TikTok or Instagram, while advertisers may perceive significant differences between these platforms due to audience targeting, viewing duration, and advertising formats. Therefore, in two-sided markets, both sides must be assessed jointly, with particular attention paid to how changes on one side affect demand and pricing on the other. This approach is also reflected in national legislation. Specifically, under the Regulation approved by Resolution No. 256 of the Cabinet of Ministers of 1 May 2024 on the procedure for recognizing dominance and superior bargaining power of digital platform operators and identifying conduct that restricts competition or infringes the rights and legitimate interests of consumers and other economic entities, defining the boundaries of the digital market is identified as a preliminary step in assessing dominance.

Network effects are widely regarded as a defining characteristic unique to digital platforms and serve as the basis for many other distinctive features of digital markets. According to the above-mentioned Regulation, a network effect is defined as a change in the value of goods or services for one group of users resulting from changes in the number of users in another group, enabling the digital platform operator to gain economic advantages through the collection and processing of user data and to maintain or increase its market share. In economic theory, the value of a product or service generally increases as the number of users grows—a phenomenon that is particularly prevalent in the digital economy. For example, the utility of social networks increases as more users join, enhancing communication opportunities, data exchange, and overall user benefits. Network effects are typically divided into two main types:

Direct network effects occur when an increase in the number of users directly enhances the value of the service for other users. For instance, as the number of WhatsApp users grows, the service becomes more valuable to each user due to increased communication possibilities.

Indirect network effects arise when the use of a product increases demand for complementary products or services. For example, a larger Android user base incentivizes developers to create more applications, which in turn attracts additional users. Both types of network effects are relevant in defining digital market boundaries and are recognized in national regulations as key indicators for identifying

abuse of dominance.

Network effects are often viewed as beneficial, as they enhance efficiency and improve user experience. Positive effects include expanded communication networks on social media, reduced transaction costs in online marketplaces, and increased consumer choice within software ecosystems. However, network effects may also produce negative consequences, such as congestion and quality degradation due to excessive user numbers, user lock-in effects, and heightened entry barriers for competitors. As a result, while network effects initially promote competition, they may eventually become a force that restricts competition—a process commonly referred to as market tipping. This issue is addressed in greater detail in subsequent sections.

In digital platform markets, network effects constitute a primary source of market power. Large platforms such as Amazon, Google, and Facebook expand their user bases to increase network value. Each additional user generates new data, improves algorithmic accuracy, enhances advertising efficiency, and reduces user churn. This phenomenon, known as data-driven network effects, creates a self-reinforcing feedback loop that ultimately leads to market concentration in favor of one or a few dominant platforms, making sustained competition increasingly difficult. In multi-sided platforms such as Uber, Booking.com, and eBay, network effects are more complex, as value arises from interactions between different user groups. For example, an increase in drivers on Uber enhances convenience for passengers, while more passengers increase earning opportunities for drivers. These interdependencies form a mutually reinforcing system. A key competition policy challenge in such markets lies in zero-price or asymmetric pricing structures, where services may be free for one side (e.g., consumers) and monetized on the other (e.g., advertisers or sellers). Network effects represent one of the most significant barriers to entry in digital markets. New entrants must compete not only on product quality but also against the established network value of incumbents. This challenge, often described as the “chicken-and-egg problem,” explains why digital platforms frequently operate at a loss in their early stages to attract users, only to foreclose entry once the network becomes entrenched. Consequently, network effects may lead to “winner-takes-all” outcomes, increased lock-in, and market structures approaching monopoly.

The Essential Facilities Doctrine (EFD), long overlooked, has regained prominence in recent years, particularly in response to economic concentration and the rise of digital “gatekeeper” platforms. The concept of an “essential facility” has been applied in the antitrust practices of several jurisdictions, including Uzbekistan. Ihe doctrine originated in the 1912 U.S. Supreme Court case United States v. Terminal Railroad Association of St. Louis, which held that a consortium controlling essential railway infrastructure must grant access to competitors on reasonable terms. Subsequently, U.S. courts developed the principle that a monopolist controlling an essential, non-replicable facility must provide competitors with reasonable access where no legitimate business justification exists. Traditionally applied in cases of refusal to deal, particularly where access to essential resources is denied, the doctrine requires proof that the facility is indispensable and that refusal lacks objective justification.

While the doctrine was initially applied to physical infrastructure, its relevance has expanded in digital markets. Today, data is increasingly regarded as the “essential facility” of digital markets. Dominant platforms often control vast datasets that competitors require to enter or compete effectively, yet they may refuse access while leveraging this control to maintain dominance. As an “ex post” enforcement tool, EFD faces limitations in rapidly evolving digital markets, prompting calls for ex ante regulation. In this context, the EU’s Digital Markets Act (DMA) is often viewed as an evolutionary extension of the doctrine, imposing obligations such as non-discrimination, fair access, and data fairness on dominant platforms. In digital markets, the Essential Facilities Doctrine increasingly encompasses control over data, algorithms, and interfaces rather than physical assets. Accordingly, adapting and refining the doctrine to address data-related competitive constraints appears both necessary and justified.

CONCLUSION

Identifying anti-competitive conduct in digital markets is inherently complex due to their distinctive characteristics. This complexity necessitates an in-depth examination of core analytical criteria, including market definition, network effects, market tipping, and digital-specific principles. These factors constitute the primary focal points in contemporary competition law analysis of digital platforms.

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