Competition Policy for the Data-Driven Economy

With: Sara Nyman

Hello, my name is Sara Nyman and I'm a senior economist in the Markets Competition and Technology in the World Bank. In this presentation I'm going to give you an overview of Competition policy for the Data driven economy particularly focusing on digital platform firms in developing countries. This module compliments the earlier module on data as a resource for the private sector where I outline some of the key risks that lie in the increasing use of data by the private sector including risks of a tendency towards concentration and entrenched market power.

So, to start from basics, ‘What do we mean when we talk about data driven platforms and why did they raise competition challenges?’ Well, the data driven, or digital platform is an economic agent with a business model that intermediates the exchange of information goods or services between multiple types of users through digital means. In that sense the key characteristic is that they connect two or more different types of users that could be consumers, producers such as businesses or individual service providers or advertisers and their ability to collect and use data on these users and the transactions that occur on the platform is key to their intermediation and to their innovation.

But this ability to collect data is also a fundamental reason why digital platforms tend towards concentration and entrenched market power. The proprietary data that platforms collect provides them with a competitive advantage over rivals by allowing them to improve or target their offering and this advantage is magnified through the network effects that arise between the platform’s different types of users and when coupled with economies of scale and scope from data that possession of data can therefore create barriers to entry that newcomers would find quite difficult to overcome.

So, while digital platforms do hold tremendous potential to solve market failures, if we were to enable broader usage and participation in digital ecosystems, we need to seriously consider competition policies to address those market power concerns while also preserving the value that digital platforms create.

This is especially since the specific features of data driven markets render competition issues more complex and gives rise to specific forms of behavior in terms of exclusion of potential rivals, exploitation, especially with scope for excessive data collection on individuals, collision where increased transparency and algorithms can facilitate cartel like behavior and motives where issues like killer acquisitions have become relevant. These challenges have led to much policy discussion in recent years on the adaptations that might be needed to traditional competition policy to address these issues.

So, as a quick overview there are two complementary competition policy tools that we can consider to safeguard against these risks. The first tool is enforcement of antitrust laws, this involves detecting and punishing anti-competitive practices or preventing anti-competitive mergers. And the second tool is to design of a regulation ex ante to allow data driven firms to enter markets and compete on a level playing field whilst also protecting users. The two tools are complementary and can be applied in
parallel depending on the institutional setting and the issues that need to be tackled. At the same time competition policy has also begun to consider it interface with data protection and user privacy and the need to ensure that user rights are protected. I wouldn’t have time to discuss this today, but you can read about this in chapter seven of the World Development Report.

So, turning to the first tool on antitrust enforcement the positive views is competition authorities all over the world are looking at these topics already. This data comes from a database that we built in the World Bank based on all finalized antitrust cases involving a digital platform globally as at the beginning of 2020. You can see that Europe leads the geographic distribution followed by East Asia Pacific. 40% of cases though were in less developed jurisdictions although there haven't yet been any cases finalized in low-income countries most likely due in part to a lack of enforcement capacity in those countries. Most cases on anticompetitive practices actually found misconduct by firms and the majority of cases involve at least one foreign firm with Google and Uber being the firms involved in the highest number of cases globally and we've also seen a bit of an uptick in these cases over time. So, between 2006 and 2009 we were seeing around one case finalized a year globally and in the last few years it's been around 20 cases per year.

More than half of the antitrust cases involving digital platforms that we've seen our focus in three sectors those are E-commerce, Passenger transport and Software and operating systems. And we also see the different types of anticompetitive behavior are investigated more frequently in different types of sectors. So, passenger transport market have seen a mix of collusion in abusive dominance. Abusive dominance has been relatively more prevalent in software operating systems and online search and vertical restraints where restrictions are placed on sellers by a player in another part of the value chain are relatively more common in E-commerce and tourism. And this may hold lessons for the types of anticompetitive behavior that policy makers may need to look out for in these sectors in the future.

So, what are the specific types of adaptations that antitrust agencies may need to make to the way they assess cases in the data driven economy - so first antitrust approaches need to adapt to the economics of platform plans taking into account their multisided nature. This includes adaptations to how markets are defined and how market shares are calculated. For example, Kenya has recently updated its guidelines on market definition to account for this. Antitrust may need to account for the role of platforms as a buyer of services or as a day factor employer. Say for example we seen South Africa published regulations on abusive buyer power which explicitly mention the market power of platform vis a vis the often-small suppliers that trade on them. Antitrust also needs to account for how to assess for anti-competitive consumer hauled in markets where products are provided nominally for free as well as accounting for other non-priced dimensions of competition like data protection.

For mergers there are some specific additional issues to think about such as being where mergers that are driven by a desire to acquire new data. The potential for killer acquisitions to arise so this would be where a digital firm acquires a smaller firm and puts their innovations on hold before they can become a competitive threat and it could be a way that mergers may cause harm to the market and to the consumer.

And finally, there's also the need to update the thresholds better use for the review of mergers in order to better capture data driven firms which are less likely to meet traditional assets and turn over
thresholds. With several of these topics there are still ongoing debate as to the right approach but there is one area that is generally agreed on and that is the need to build institutional capacity to deal with these topics and of course along with that we also need to foster cooperation between authorities across borders given the global nature of large platforms.

It is important to note though that our global database shows that competition authorities are increasingly considering digital specific issues in their investigations. So, for example data use and data as a barrier to entry are increasingly being investigated being partly mentioned in around thirty to forty percent of cases in developed jurisdictions.

In developing jurisdiction however we do see that those factors are less frequently considered and that does seem to be most scope to perhaps increase focus on these data related topics.

But even if authorities can accurately analyze cases what can they do about this anti-competitive behavior. There has been some discussion that finds seem not to be a sufficient deterrent to firms and indeed we find from our database that fines were imposed for only 34% of cases where wrongdoing was found by a data driven platform. And the overall median fine globally of USD 14.5 m seems pretty low relative to the revenue of many platforms that operate at a global scale. So, consensus is growing that imposing fines that are based on local revenues may be insufficient especially in the context of large global platforms. So, attention has started to turn more to remedying harm caused by anti-competitive behavior through structural and behavioral obligations based on firms and in some cases, it may be measures targeting data and algorithms that could be helpful to restore competition. Some examples of these are provided in chapter seven of the world development report. It is really important to bear in mind however that these types of remedies are difficult to design and monitor and evidence on the efficacy is scarce even in developed countries, so it’s a scenario that does require further research.

So, I’ve just discussed antitrust I’m now going to move on to the second pillar of competition policy and that is ex ante regulation. We've identified three key avenues to promote competition in digital markets through ex ante regulation. And this is really just as important as competition enforcement if not more especially where there is no functional competition authority in a country.

The first avenue that we've looked at for ex ante regulation is mandatory or voluntary schemes to improve access to data for businesses. There are several options here that you can see on the slide including giving consumers the right to port their data between platforms. A number of countries have enacted this right already although it remains quite untested even in advanced markets.

One could go further than this and look at mandatory data interoperability also between platforms. This goes further than portability as it eases the technical barriers to sharing and could be more useful when continuous sharing of data is required between platforms. One of the most successful examples of this type of regulatory remedy has been the use of open banking regimes that operate currently in around ten jurisdictions around the world.

And finally, voluntary industry schemes could also be used to encourage data sharing between firms. There are some examples of this in sectors like agriculture and logistics for example, but this faces the problem that larger firms may lack incentives to participate in these types of voluntary schemes.
The second avenue for ex ante regulation to promote competition is regulating the structure and behavior of data driven platforms. An example of these types of regulation of the digital services act and the digital market act that were unveiled by the EU recently and we see this type of regulation becoming influential for a number of countries around the world.

However, because these schemes could dampen firms’ incentives to invest in and create value from data it’s important these regulations are targeted and grounded in economic analysis. So, here an essential facility style framework may help to check that data is indeed essential for rivals to compete and that it cannot be feasibly replicated. There has also been a growing discussion on the breakup of large data driven platform firms and again given the potential negative impact on certainty and incentives that this could have, this type of inspection should be very carefully targeted. For example, if it is applied it should be narrowly targeted situations where there is strong evidence that market power is entrenched and durable. Well, this type of solution may reduce some risks we need to remember it may not be a panacea if the network effects that leads to dominance in markets where entrenched market power in the first place could continue to persist.

And third here authorities can regulate the terms provided to suppliers, the often-small suppliers that act on platforms and they could do that in order to provide access to small suppliers to these platforms on a fair consistent and transparent basis.

The last the final avenue very important is that we can’t forget about traditional or offline regulation when setting the stage for competition in data driven markets. This includes traditional regulation that protects incumbents in various sectors and can range from outright bans on entry as we’ve seen in the case of ride hailing in a number of countries as well as factors that raise the cost of entry for data driven businesses.

So just to finalize how can we translate these various approaches into a path forward in a way that takes into account each country’s institutional capacity -

- So with low-income countries with limited institutional capacity, we recommend to concentrate on creating a level playing field for digital platforms and other firms building on existing sectoral and offline regulations while developing institutional capacity for dealing with data driven platforms.
- As countries develop their institutional capacity they can start to establish and encourage data sharing between digital platforms and consider ex ante regulation of large platforms including supplier protections and
- In countries were functioning antitrust enforcement regime exists authorities can adapt their approach to account for their data driven platforms, they can publish clear guidelines for digital antitrust and they can also encourage cooperation amongst regulators that could include coordination with sector regulators and data protection agencies

And in all cases given the cross-border nature of platforms and the fact that we see similar behavior by platforms across countries we should promote international cooperation on antitrust so that authorities can learn from each other and cooperate in tackling competition issues in digital markets. And with that I’d like to thank you for your time today.
Thanks very much.