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Australian Competition and Consumer Commission
Digital Platform Services Inquiry
Email: digitalmonitoring@accc.gov.au

22 March 2022

Submission to the ACCC digital platform services inquiry

Dear Sir/Ma'am,

Please find enclosed our submission to the ACCC digital platform services inquiry – Discussion Paper for Interim Report No. 5. We cover two areas of your consultation questions with which we are somewhat familiar through our research: **addressing data advantages** and **adequate scrutiny of acquisitions**.

We are happy to address any follow-up questions you might have. Please note that the views expressed in this submission are solely ours and should not be attributed to Monash University.

Kind regards,

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Executive summary

1. Although data sharing can promote competition and facilitate research necessary for innovation, it can also lead to collusion and incur privacy costs.
2. A framework for data sharing needs to distinguish between personal and non-personal data. Sharing non-personal data related to pricing and output information should not be allowed while sharing more technology-related non-personal data should be encouraged. Sharing demand-related non-personal data needs to be assessed case by case taking into account the underlying market conditions.
3. Given the unparalleled data advantage enjoyed by big tech platforms, a case can be made in favor of compelling them to share data with competitors and potential entrants, and such data sharing should be mandated rather than left to be chosen by the tech platforms.
4. A regulation relevant to sharing personal data needs to start with two pre-conditions: a robust way to anonymize personal data; a process to obtain an informed, specific, and unambiguous consent to the processing of data by data subjects.
5. The opt-in consent in privacy laws such as the GDPR is a good starting point in protecting privacy. But it needs to be refined and standardized not to stifle competition and investment in data-driven businesses while protecting privacy more effectively.
6. Providing consumers clear and transparent information about data collection in concise and plain language and giving them choices to opt in to several standardized sets of cookies would be an improvement on the GDPR. This and recognizing the joint ownership of data are something that Australia can consider in the review of the Privacy Act 1988.
7. While often involving substantial synergies and providing attractive exit strategies for start-ups, acquisitions of start-ups by large digital platforms can significantly harm consumers through suppressing competition and innovation in already highly concentrated markets.
8. Entry-for-buyout is not a conclusive defense for the high clearance rate in start-up acquisition cases. It has an ambiguous welfare effect at best as acquisitions can harm consumers by deterring non-target firms from entering the acquirer's core market.
9. Given the potential serious damage to competition and innovation, we propose to mandate large digital platforms to notify the ACCC all their acquisitions, irrespective of market shares, turnover rates, and acquisition prices.
10. We advocate using multi-market approach to define markets when evaluating competitive consequences of mergers involving large digital platforms. It is important to define markets using well-established economic theories that clearly illustrate the feedback loops between each market that a platform operates in, especially the online advertising market.
11. The current merger law is adequate for detecting anticompetitive acquisitions for most of the cases. There can be a special framework that targets acquisitions involving large digital platforms and put them under closer scrutiny.
12. Shifting the burden of proof to merging parties can better utilize merging parties' access to information and resources. But it can also lead to cherry-picked information by the merging parties, and may lead to a too high barrier to mergers which can disrupt innovation.

Addressing data advantages

1. Data sharing

Given the data advantages enjoyed by large digital platforms that may also work as barriers to entry, data sharing can be considered necessary in promoting competition, open banking being a prime example. Some data sharing can be also vital for innovations leading to new products and services. For example, sharing health data can be instrumental in innovations in health care (or tackling the global pandemic such as the COVID-19),[1] and sharing detailed automation data is required for developing the technology for safer self-driving cars.[2]

On the other hand, data sharing can have negative effects. First, it can facilitate collusion among competing firms, for example, when firms share price or output data. Second, it can raise consumers' privacy costs, which is particularly pronounced when, for example, personal health data is shared.

In view of the above, a framework for data sharing needs to distinguish between personal data and non-personal data in that privacy costs are substantially associated with personal data. Non-personal data can be further divided into (i) pricing and output data, (ii) data related to general market conditions, and (iii) more technology- or know-how-oriented data.[3] Sharing the first type of data is most likely harmful but sharing the third type is most likely innocuous. The second type of data falls in the grey area, and needs to be assessed based on case-by-case analysis.

Research shows that sharing demand-related data that can be used for pricing can be pro- or anti-competitive depending on market conditions.[4] First, mutual sharing of customer data for price discrimination can intensify competition, lower prices and benefit consumers, if competing firms already have the data and comparable abilities to target customers. Second, mutual sharing of customer data for price discrimination can hurt consumers by softening competition if firms have asymmetric abilities to target consumers[5] or consumers have switching costs.[6] Third, in a dynamic setting where firms compete for customer data first, which can be used for pricing in subsequent stages, a data sharing agreement can soften the upfront competition although it intensifies subsequent competition, and the overall effect on consumers is negative.[7] Finally, if a dominant firm is given the

[1] See https://www.technologyreview.com/2019/09/27/132847/data-sharing-is-key-to-innovation-in-health-care/ or https://www frontiersin.org/articles/10.3389/fdgth.2020.612339/full.

[2] Krompier, Jesse (2017). Safety First: The Case for Mandatory Data Sharing as a Federal Safety Standard for Self-Driving Cars. U. Ill. Journal of Law, Technology and Policy, 2:439-468.

[3] Lundqvist, Bjorn (2018). Competition and data pools. Journal of European Consumer and Market Law, 7(4):146-154. See also Feasey, R. and de Streel, A. (2020). Data sharing for digital markets contestability: Towards a governance framework. SSRN Working Paper (https://ssrn.com/abstract=3855489).

[4] See, for example, Chen, Z., Choe, C., and Matsushima, N. (2020). Competitive personalized pricing. Management Science, 66(9):4003-4023, and various references therein.

[5] Chen, Y., Narasimhan, C. and Z. J. Zhang (2001). Individual marketing with imperfect targetability. Marketing Science, 20(1): 23-41.

[6] Shy, O. and R. Stenbacka (2013). Investment in customer recognition and information exchange. Information Economics and Policy, 25: 92-106.

[7] Choe, C., Matsushima, N., and Tremblay, M. J. (2020). Behavior-based personalized pricing: When firms can share customer information. ISER Discussion Paper 1083, Osaka University.

option to choose the amount of data to share with a data-poor competitor, then the dominant firm can choose a subset of data to share, which can soften competition and harm consumers.[8]

A general lesson from this line of research is that data sharing that is likely to intensify price competition can benefit consumers, while data sharing that can amplify product differentiation can hurt consumers by softening competition. Beyond this general point, one cannot prescribe an a priori rule that either proscribes or promotes sharing data that is related to general market conditions; assessments need to be made case by case. That said, given that the ACCC's inquiry relates to dominant big tech platforms, one may make the following observations. First, to the extent that big tech platforms already have huge data advantages over any existing or potential competitors, compelling them to share data with competitors or new entrants is more likely to promote competition than dampening their incentives to compete for more customer data. Second, data sharing needs to be mandated rather than being given as an option to the platforms.

Sharing personal data can raise privacy concerns, despite the benefits in the form of innovation and research, as pointed out previously. Therefore, two conditions can be considered a minimum requirement for sharing personal data. First, personal data needs to be anonymized before being shared for use, which is indeed a requirement in various data protection laws. However, Rocher et al. (2019) demonstrate that anonymizing personal data through deidentification is not a fail-safe way to protect privacy, showing that almost all Americans can be correctly re-identified in any dataset using 15 demographic attributes.[9] There is a need for developing a robust way to protect privacy before sharing personal data. Second, consumers should be allowed to make an informed, specific, and unambiguous consent to the processing of their data, as is stipulated in the GDPR. We discuss this point below.

2. Data collection

The main focus of the ACCC's current discussion paper is on the **use of data** such as data portability, interoperability, sharing, etc. Our view is that **data collection** should be considered to be an integral part of the discussions. It is difficult to have holistic discussions about regulating data-driven businesses such as big tech platforms by looking at only one aspect of how data is used while ignoring the other aspect of how data is generated and collected in the first place. The need for a holistic approach is even more pressing when consumers' privacy concerns are, and should be, an important part of policy discussions.

Given that the ACCC is the competition regulator while the OAIC is in charge of privacy, a seeming disconnect between the two agencies is understandable. Nonetheless, close collaboration between these agencies is necessary, as we will argue below. In this regard, the recent formation of Digital Platform Regulators Forum (DP-REG) is a good starting point.[10]

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[8] Choe, C., Cong, J. and C. Wang (2021). Unilateral sharing of customer data for strategic purposes. Department of Economics Discussion paper 2021-10, Monash University.

[9] Rocher, L., Hendrickx, J. M. and Y.-A. de Montjoye (2019). Estimating the success of re-identifications in incomplete datasets using generative models. Nature Communications, 10:3069 (https://doi.org/10.1038/s41467-019-10933-3).

[10] https://www.acma.gov.au/dp-reg-joint-public-statement

In the digital age, privacy policy and competition policy are intertwined. Privacy regulations such as the GDPR impose compliance costs on all firms in data collection, and hence can tilt the playing field in favour of large, generalist platforms at the cost of small, specialist firms.[11] In addition, several studies find evidence that the GDPR increased market concentration in websites,[12] and web technology services.[13] Somewhat related, Apple's release of privacy label requirements in 2020 is shown to have resulted in decrease in iOS app downloads and app developers' revenue, but the smaller firms are more adversely affected than larger firms.[14] In short, privacy policy that pertains to data collection affects the competitive landscape. It is conceivable that competition policy may also affect consumer privacy.

Privacy laws such as the GDPR and CCPA (California Consumer Privacy Act) aim to empower consumers by replacing the opt-out consent – a dominant form of data collection prior to the GDPR – with the opt-in consent. Research shows that this has resulted in a decrease in data collection,[15] which is also consistent with the findings following Apple's introduction of privacy labels. Two factors are at work here: transparency in data collection and opt-in consent. On the other hand, the strict privacy laws also resulted in dampening investment in data-related businesses such as advertising[16] and B2C ventures.[17] In addition, strict privacy laws can tilt the playing field in favor of large firms, as pointed out previously.

A key consideration in regulating personal data collection is then how to protect privacy while not stifling competition and investment in data-based businesses. The GDPR in its current form is rather unsatisfactory in this regard since it does not go beyond requiring opt-in consent. Indeed, GDPR-compliant cookie policies can take different forms as long as they are largely consistent with GDPR's principle of opt-in consent for data collection. For example, a website may have a simple opt-in policy as in the BBC where a user can opt in to two sets of cookies, functional cookies and performance cookies.[18] In case of the English Premier League Football,[19] non-essential and third-party cookies are further divided into nine different groups with a brief description of their purposes, and users can opt in to each of them separately. Apple's privacy labels are even more informative in that they divide cookies into layers and groups, explaining clearly the types of information collected,

[11] Campbell, J., Goldfarb, A. and C. Tucker (2015). Privacy regulation and market structure. Journal of Economics & Management Strategy, 24(1): 47-73.

[12] Schmitt, J., Miller, K. M. and B. Skiera (2020). The impact of privacy laws on online user behavior. Working paper, arXiv:2101.11366v2.

[13] Peukert, C., Bechtold, S., Batikas, M. T. Kretschmer (2021). Regulatory spillovers and data governance: Evidence from the GDPR. Marketing Science, forthcoming; Johnson, G. A., Shriver, S. K. and S. G. Goldberg (2022). Privacy & market concentration: Intended & unintended consequences of the GDPR. Working paper, SSRN: https://ssrn.com/abstract=3477686.

[14] Bian, B., Ma, X. and H. Tang (2022). The supply and demand for data privacy: evidence from mobile apps. Working paper.

[15] Aridor, G., Che, Y.-K. and T. Salz (2020). The economic consequences of data privacy regulation: Empirical evidence from GDPR. NBER Working Paper 26900.

[16] Johnson, G. A., Shriver, S. K. and S. Du (2020). Consumer privacy choice in online advertising: Who opts out and at what cost to industry? Marketing Science, 39(1): 33-51.

[17] Jia, J., Jin, G. Z. and L. Wagman (2021). The short-run effects of the General Data Protection Regulation on technology venture investment. Marketing Science, 40(4): 661-684.

[18] https://www.bbc.co.uk/usingthebbc/cookies/

[19] https://www.premierleague.com/cookie-policy

how invasive the tracking can be, and for what purposes the data is used.[20] On the other hand, Apple does not allow users to opt in to only a subset of cookies; its opt-in policy is binary.

It is reasonable to expect consumers to make more informed choices when they are given clear information and more choices as in the English Premier League Football website than in the BBC website. This can also result in more valuable data collected while more effectively protecting privacy than when consumers are given only a binary choice.

Given that Australian businesses operating outside the EU are not subject to the GDPR, we notice that Australia's websites vary widely in the way they provide information on their privacy policies. Many websites do not display cookie banners that allow users to opt in or out of their cookie policies. For example, the Age provides a long and detailed privacy policy statement without giving clear opt-out or opt-in choices on its website; in order to opt out, users are asked to send an email.[21] As another example, Commonwealth Bank of Australia describes the types of cookies they use along with an instruction of how users can delete cookies from their browsers.[22] In contrast, ABC displays a cookie banner that gives users an option to accept only required cookies or all cookies including performance and marketing cookies.[23]

As shown in recent research, consumers are unlikely to read privacy notices that are provided in a long and complex legal language; they make a more informed choice when privacy notices are provided in a more concise and salient way.[24] Our main point is that the data collection policy under the GDPR can be refined and standardized in a way that combines Apple-style privacy labels with the provision of several opt-in choices as in the English Premier League Football website. This is something that Australia may want to consider in reviewing the Privacy Act 1988.

3. Consumer data right

The GDPR's primary aim is to enable consumers to better protect their digital privacy. In this sense, the GDPR's right to explicit consent and the right to portability are justified. On the other hand, the GDPR recognizes that individuals 'own' their data, hence another privacy right called the right to erasure. We think that the right to erasure in its current form is likely to do more harm than good. Data is 'co-produced' by a consumer and the digital service she uses. For example, a driver's navigation record on Google Maps is a joint product between the driver and Google Maps. Giving the sole ownership to the driver, and hence the right to erasure, can result in loss of valuable data that other drivers may benefit from. If privacy protection is the main objective, then the data can be anonymized rather than being completely erased on demand. In sum, recognizing joint ownership of data is also something that Australia may want to consider in reviewing the Privacy Act 1988.

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[20] https://www.apple.com/au/privacy/labels/

[21] https://login.nine.com.au/privacy?client_id=theage

[22] https://www.commbank.com.au/important-info/cookies html?ei=CB-footer_cookies

[23] https://help.abc net.au/hc/en-us/articles/4447588409871

[24] Ebert, N., Ackermann, K. A., and B. Scheppler (2021). Bolder is better: Raising user awareness through salient and concise privacy notices. Proceedings of the 2021 CHI Conference on Human Factors in Computing Systems, article no: 67, 1-12.

Adequate scrutiny of acquisitions

1. Theories of harm and merger notification

The large number of start-up acquisitions done by large digital platforms (hereafter LDPs) have raised serious antitrust concerns.[25] There are two main existing bodies of theories of harm. The first one is concerned with acquisitions reducing competition.[26] By acquiring a potential competitor, LDPs suppress potential competition and eliminate possible alternatives for consumers. Moreover, by acquiring start-ups in adjacent, complementary, or conglomerate markets, LDPs can leverage its market power in its core market, possibly through network effects or data advantage, to drive out small competitors in the other market,[27] or use the acquired complementary technology to foreclose competitors in its core market.[28]

The second body of theories of harm is focused on acquisitions' perverse effects on the key activity in the digital space---innovation, which is engaged by several types of market participants. First, the recent discovery of "killer acquisitions" in the pharmaceutical industry inspired people to draw analogue to acquisitions in tech.[29] The sole purpose of this type of acquisitions is to "kill" the targets' innovation and prevent it from becoming a future competitor. Second, acquisitions of competing technologies soften future competition faced by LDPs and thus discourage their own innovation effort (i.e., reverse killer acquisitions).[30] Third, the possibility of acquisitions creates a "kill zone" by discouraging users to become early adopters of competing technologies or by incentivizing LDPs to sabotage start-ups' monetization of competing technologies.[31] Finally, the acquired technology can be used by LDPs as a deterring device to block non-target startups' entry or shift their innovation from the more efficient direction (i.e., acquisition-induced kill zone).[32]

Despite the potential anti-competitive risks mentioned above, especially those associated with innovation, several theories are proposed to defend LDP's acquisitions by highlighting their role in promoting innovation. The standard pro-merger theories emphasize the potential large synergies associated with acquisitions possibly due to product complementarity or positive network effects.[33]

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[25] See Scott Morton, F., Bouvier, P., Ezrachi, A., Jullien, B., Katz, R., Kimmelman, G., Melamed, A.D. and J. Morgenstern (2019). Committee for the study of digital platforms: Market structure and antitrust subcommittee report. Chicago: Stigler Center for the Study of the Economy and the State, University of Chicago Booth School of Business, Crémer, J., de Montjoye, Y. A., and H. Schweitzer (2019). Competition policy for the digital era. Report for the European Commission, and Furman, J., Coyle, D., Fletcher, A., McAuley, D., and P. Marsden (2019). Unlocking digital competition: Report of the digital competition expert panel. UK government publication, HM Treasury, 27.

[26] Motta, M., and M. Peitz (2021). Big tech mergers. Information Economics and Policy, 54, 100868.

[27] Chen, Z., Choe, C., Cong, J., and N. Matsushima (2022). Data-driven mergers and personalization. RAND Journal of Economics, 53(1): 3-31.

[28] Bryan, K. A., and E. Hovenkamp (2020). Antitrust limits on startup acquisitions. Review of Industrial Organization, 56(4), 615-636.

[29] Cunningham, C., Ederer, F., and S. Ma (2021). Killer acquisitions. Journal of Political Economy, 129(3), 649-702.

[30] See https://voxeu.org/content/how-tech-rolls-potential-competition-and-reverse-killer-acquisitions.

[31] Kamepalli, S. K., Rajan, R., and L. Zingales (2020). Kill zone (No. w27146). National Bureau of Economic Research, and Motta, M., and S. Shelegia (2021). The "kill zone": copying, acquisition and start-ups' direction of innovation (No. 1253).

[32] Banerjee, D., Teh, C., and C. Wang (2022), Acquisition-induced kill zones. Monash University Department of Economics Working Paper.

[33] Crémer, J., de Montjoye, Y. A., and H. Schweitzer (2019). Competition policy for the digital era. Report for the European Commission

Another prominent theory is *entry-for-buyout*.[34] The possibility of being bought by LDPs provides start-ups with an attractive exit strategy, incentivizing them to invest to enter LDPs' core market by developing high-quality substitutes, as start-ups expect this will force LDPs to increase their buy-out offer. Finally, it is argued that acquisitions are often used as an efficient way to transfer technologies and recruit talented research teams.[35]

We believe that potential synergies are not specific to LDPs' acquisitions and can be associated with any type of mergers, and therefore cannot justify the extremely high clearance rates in acquisitions associated with LDPs. While we recognize allowing acquisitions can encourage entry-for-buyout, we note that the welfare implications of entry-for-buyout are at best ambiguous. While target start-ups are more likely to generate superior competing technologies, acquisitions of these technologies allow LDPs to more effectively deter non-target start-ups from entering their core market, even by simply shelving the acquired technologies.[36]

Since many small start-ups have neither a large turnover nor a large consumer base as they have not yet started monetizing their product/service or consumer attention, merger notification requirement based on acquisition price and joint market share would not apply to them. One obvious alternative is to require LDPs to notify all their acquisitions. A caveat for implementing mandatory notifications is that it can cause notifications to lose their signaling effects and a significant increase in the ACCC's screening cost.[37] However, given that LDPs' acquisitions may seriously damage competition as illustrated above, we think obliging LDPs to notify all their acquisitions is a safer option, even though it does not mean all the notified acquisitions will be formally assessed, blocked, or challenged in court.

2. Market definition

Many LDPs are multi-sided platforms that serve several distinct user groups. They use price and non-price tools to manage the network effects generated from interactions between user groups. It is well understood that defining markets that a multi-sided platform operates in is much less straightforward than defining market for companies using more traditional business model.[38] In particular, the SSNIP test results heavily depend on which side(s) of the platform is under consideration and which cross-group externalities are accounted for when considering increasing price on one side.

To define market for a multi-sided platform, we propose the multi-market approach that separately considers each market/side a platform operates in while taking into account the externalities existing between markets/sides.[39] Compared to the single-market approach that tries to define a single market

[34] Rasmusen, E. (1988). Entry for buyout. Journal of Industrial Economics, 281-299.

[35] Cabral, L. (2021). Merger policy in digital industries. Information Economics and Policy, 54, 100866.

[36] Banerjee, D., Teh, C., and C. Wang (2022), Acquisition-induced kill zones. Monash University Department of Economics Working Paper.

[37] Choe, C., and C. Shekhar (2010). Compulsory or voluntary pre-merger notification? Theory and some evidence. International Journal of Industrial Organization, 28(1), 10-20.

[38] Hovenkamp, E. (2018). Antitrust Policy for Two-Sided Markets. Available at SSRN 3121481.

[39] Franck, J. U., and M. Peitz (2021). Market definition in the platform economy. Cambridge Yearbook of European Legal Studies, 1-37.

for intermediary service that serves multiple customer groups at the same time, the multi-market approach more clearly captures various feedback loops between sides and can be closely tied to well-established economic theory of two-sided markets. This theory shows that by the nature of multi-sided platform business there often exist "subsidy side", which receives free services or even subsidies, and "money side", who pays to use the platform service.

The most high-profile acquisition cases in the digital space might be those involving Google and Facebook, which both serve a subsidy side, i.e., consumers, and a money side, i.e., advertisers. It has been well documented in the ACCC's final report for the Digital Advertising Service Inquiry that Google and Facebook have significant market power in the online advertising industry in Australia, and moreover, Google holds a dominant position in every segments of the online advertising supply chain.[40] Defining a sperate online advertising market/side helps clarify the major direct harms an LDP acquisition can potentially cause in an already highly concentrated market. However, the acquisition often takes place in other markets/sides the LDP operates, and the key is to clearly illustrate the externalities these markets impose on consumers, and indirectly cause harms in the online advertising market through strengthening exclusive access to consumers.

An acquisition may have no direct implication on consumer price or even reduce consumer price. However, a subsidy side is only defined with respect to whether users on this side pay a positive monetary price. But LDPs often gain benefits from collecting and analyzing consumer data, enabling them to improve targeting ability in advertising but often at a cost of consumer privacy. Moreover, it is possible that high advertising cost will be passed through to consumers. Referring to zero-price on consumer side as a sign for no/low consumer harm is extremely naïve. The subsidy side deserves being defined as a separate market for analyzing harms to consumers in this market, taking into account the network externalities between this and other sides, especially that of online advertising.

3. Market power assessment

We think the current merger law is adequate for detecting and blocking anticompetitive mergers for most cases. What is needed is a special framework that is targeted at acquisitions involving LDPs. The LDPs falling into this category not only have to hold large market share but also make large enough profits for a sufficiently long period. Acquisitions proposed by these LDPs should be screened more carefully.

One question asked in the ACCC discussion paper is whether the burden of proof should be placed on the merging parties to establish the lack of competitive harm from a proposed acquisition. A standard argument goes as follows. Compared to the antitrust authorities, the merging parties often have better access to obtaining internal and market information and more resources to deploy for such investigations. Therefore, given that merging parties also have incentives to show that the acquisition does not raise anti-competitive concerns, the burden of proof should be shifted to them. While this argument indeed has a merit, the flip side is that the merging parties also have incentives to selectively collect and disclose evidence in order to stress the pro-competitive side of the proposed acquisition.

[40] ACCC (2021). Digital advertising services inquiry.

This problem can be particularly severe if the Federal Court rulings have been shown to be often in favor of the defendants.

One reason for the extremely high clearance rate for acquisitions involving LDPs is that it is very hard for antitrust authorities to show that the acquisition is likely to harm competition. But the reverse can be also true if the burden of proof is placed on merging parties: even though
they may have better access to information and more resources, the market is also characterized by large uncertainties, rapid innovation, and complex interactions involving multiple markets. Shifting the burden of proof may run a risk of significantly increasing false negatives and disrupt innovation. In sum, burden shifting needs to be more carefully thought through.

In assessing an LDP's market power, it is worth remembering from the two-sided market theory that market shares and price-cost margins might not be a good proxy of market power. For an LDP that operates in multiple markets/sides, having a large market share (even being a monopolist) on one side does not provide a clear indication of its market power in this market and other markets. A pricing structure commonly used by LDPs is to subsidize one side of users in order to exploit other sides. Then, having a large market share on the subsidy side does not mean the LDP can significantly raise price on this side or any other side (as there might be effective competition on the other sides).[41] Moreover, the network effects inherent in these markets may or may not imply a barrier to entry even if an incumbent LDP holds a large market share, depending on users' expectation of whether other users' decisions to migrate to the entrant platform.[42] It is important for the commission to recognize these arguments and inspect more closely the relationship between market share and market power when forming their theories of harm.

Finally, it is important to keep a dynamic perspective in reviewing acquisitions. Ideally, LDPs should continuously provide high quality product/service, charge low price and engage in innovation. However, the platform markets tend to tip. It is intrinsically hard for a small start-up to directly grow to become a credible competitor to constrain the LDPs. The contestability is likely to be maintained by the possibility of entry from adjacent or independent market. Thus, it would be critical to pay attention to LDPs' acquisition of start-ups in these markets and prevent them from forming a closed digital eco-system that locks in consumers permanently.

[41] Belleflamme, P., Peitz, M., and E. Toulemonde (2022). The tension between market shares and profit under platform competition. International Journal of Industrial Organization, 81, 102807.

[42] Motta, M., and M. Peitz (2020). Intervention triggers and underlying theories of harm. Expert advice for the Impact Assessment of a New Competition, Expert Study for the European Commission.