Position Paper on the EU Commission's proposals of a New Competition Tool and ex-ante regulation of gate-keeper platforms under the Digital Services Act package - Elias Deutscher

The members of the Centre for Competition Policy (CCP) welcome the opportunity to contribute to the European Commission's consultations on the recent policy initiatives of a New Competition Tool (NCT) and of the ex-ante regulation of powerful online platforms under the Digital Services Act (DSA) package. This position paper accompanies the CCP's response to both consultations.

The major lines of the proposals of an NCT and an ex-ante regulatory regime under the DSA have been set out by the European Commission in two separate Inception Impact Assessments[1]. With the NCT, the European Commission proposes a new antitrust tool that – akin to the Market Investigation tool established in UK competition law by the Enterprise Act 2002 and updated by the Enterprise and Regulatory Reform Act 2013 – would allow the European Commission (or another regulatory authority) to impose remedies to address structural and conduct issues without necessarily finding an infringement of Article 101 and/or 102 TFEU. Along with the NCT, the Commission also envisages the creation of an ex-ante regulatory framework as part of the DSA package that would impose ex ante obligations and prohibitions on large online platforms which benefit from significant network effects and act as gatekeepers.

Assumptions

Four basic assumptions seem to underlie the Commission proposals for the NCT and ex-ante regulation under the DSA.

1. Increased levels of industry concentration and profitability in digital and non-digital markets are symptomatic of a lack of competition.[2]
2. Increased levels of concentration, compounded by algorithmic pricing facilitate tacit collusion.[3]
3. Large vertically integrated platforms that benefit from large economies of scale, network effects, data dependency and low levels of multi-homing act as gatekeepers of digital ecosystems, and may undermine fair trading conditions and contestability in digital markets. [4]

[1] Inception Impact Assessment - New Competition Tool ('NCT'). Document Ares(2020)2877634; Inception Impact Assessment: Digital Services Act package: Ex ante regulatory instrument for large online platforms with significant network effects acting as gate-keepers in the European Union's internal market. Doumcent Ares(2020)2877647.
[2] Inception Impact Assessment - New Competition Tool ('NCT') (n 1) 1.
[3] ibid.
[4] Inception Impact Assessment - New Competition Tool ('NCT') (n 1) 1–2; Inception Impact Assessment: Digital Services Act package: Ex ante regulatory instrument for large online platforms with significant network effects acting as gate-keepers in the European Union's internal market (n 1) 2.

4. The existing tools of competition law enforcement are insufficient to tackle both the structural risks for competition and the structural lack of competition in these markets (in the most effective manner).[5]

So far, neither of these four assumptions is substantiated by empirical or qualitative evidence in the Inception Impact Assessments. Any forthcoming legislative proposal should be accompanied by a comprehensive impact assessment that engages with various strands in the antitrust and recent economic literature that suggest that industrial concentration is not necessarily a source of concern or a result of feeble competition.[6] A number of recent studies point to explanations other than market power, such as superior productivity/efficiency[7] or intensified international competition[8], as sources of increased levels of concentration.

A comprehensive impact assessment should also consider long-standing literature that casts doubt on the causal link between industry concentration and tacit collusion,[9] initially postulated by the S-C-P paradigm of the Harvard School.[10] In addition, the impact assessment should set out in clear terms under which circumstances pricing algorithms may facilitate tacit collusion that cannot be addressed by Article 101 TFEU. Such discussion should account for the importance of communication and the 'human factor' in ensuring the stability of (tacit) collusion.[11]

As part of a comprehensive impact assessment, the Commission should also discuss when the presence of network effects, personal data, vertical integration or absence of multi-homing give rise to antitrust issues. This assessment should focus on the degree of contestability of markets as the relevant benchmark to distinguish between well-functioning and markets that may require regulatory intervention.

Most importantly, any further policy proposal would have to put forward evidence in support of the assumption that the existing competition law toolkit is insufficient to resolve the competition issues identified in the Inception Impact Assessments for both instruments. First, it remains unclear the extent to which the concepts of concerted practice under Art. 101 (1) TFEU and the collective dominance/coordinated effects doctrine under Art. 102 and the Horizontal Merger Guidelines are insufficient to address tacit collusion in oligopolistic industries.[12]

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[5] Inception Impact Assessment - New Competition Tool ('NCT') (n 1).
[6] R. H. Bork, *The Antitrust Paradox: A Policy at War with itself [1978]* (Maxwell Macmillan 1993) 164–196; R. A. Posner, *Antitrust Law* (University of Chicago Press 2001) 101–117. D. Autor and others, 'The Fall of the Labor Share and the Rise of Superstar Firms' (2019) forthcoming Quarterly Journal of Economics; G. J. Werden and L. M. Froeb, 'Don't Panic: A Guide to Claims of Increasing Concentration' (2018) 33(1) Antitrust.
[7] Autor and others (n 6).
[8] J. van Reenen, 'Increasing Differences Between Firms:Market Power and the Macro-Economy' (2018). CEP Discussion Paper No 1576 <https://cep.lse.ac.uk/pubs/download/dp1576.pdf> accessed 14 May 2020.
[9] R. A. Posner, 'Oligopoly and the Antitrust Laws: A Suggested Approach' (1968-1969) 21 Stanford Law Review 1562.
[10] D. F. Turner, 'The Definition of Agreement under the Sherman Act: Conscious Parallelism and Refusals to Deal' (1962) 75(4) Harvard Law Review 655; J. S. Bain, 'Relation of Profit Rate to Industry Concentration: American Manufacturing, 1936-1940' (1951) 65(3) The Quarterly Journal of Economics 292; J. S. Bain, *Industrial Organization* (John Wiley & Sons 1959).
[11] K.-U. Kühn, 'Fighting Collusion by Regulating Communication between Firms' (2001) 16(32) Economic Policy 167; D. J. Cooper and K.-U. Kühn, 'Communication, Renegotiation and the Scope for Collusion' (2014) 6(2) American Economic Journal: Microeconomics 247.
[12] See for instance G. Monti, 'The Scope of Collective Dominance under Articles 82 EC' (2001) 38(1) Common Market Law Review 131.

Second, under Regulation 1/2003[13] the Commission already disposes with Commitment Decisions (Art. 9) and Interim Measures (Art. 8) of versatile instruments that enable a swift antitrust intervention in markets without the need to engage in a full (often lengthy) investigation of the theory of harm. The successful use of Article 9 Commitment decisions in high-tech markets,[14] as well as the recent recourse to Article 8 Interim Measures in *Broadcom*[15] suggest that both instruments constitute effective tools to prevent market tipping or other forms of entrenchment of market power. The recent use of an Article 9 decision by the Commission to tackle signalling in the container shipping sector also suggests that commitment decisions constitute an effective tool to address tacit collusion in oligopolistic markets.[16] Any comprehensive impact assessment would thus have to substantiate the need for new antitrust tools, in the form of the NCT and ex-ante regulation under the DSA. An increased use or reform of existing antitrust tools and other regulations might constitute a more effective and less costly solution to address the concerns identified in both Inception Impact Assessments.

Goals

The policy goals underpinning the proposal of the NCT and the proposed ex-ante regulation of platforms as part of the DSA remain obscure. Instead of referring to the protection of consumer welfare (which may include adverse effects on quality, choice or innovation), as overarching policy objective, the Inception Impact Assessments refer to a hotchpotch of various goals that both instruments are supposed to protect. The goals listed in both Impact Assessments encompass market contestability, fairness, competitive opportunities of SMEs and small innovators, a socially beneficial distribution of the gains of innovation and digitisation, EU digital sovereignty and Covid-19 recovery.[17]

Any legislative proposal should clearly state whether both instruments are still grounded in the consumer welfare standard as overarching policy objective, or rather pursue broader societal goals. Also, potential conflicts between some of the goals listed in the Inception Impact Assessments and the question of how they could be resolved merit more consideration. In particular, the Commission would have to clarify whether and how it intends to prevent that both tools transform themselves into a Robinson-Patman-like regulation that protects less efficient small players against fierce competition of large, but more efficient online platforms. In the absence of a clear definition of their underpinning policy goal(s) and the hierarchy between them, both instruments may lead to unintended policy outcomes. For instance, they

[13] Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. OJ [2003] L 1/1.
[14] See for a discussion of the use of commitment decisions in high-tech markets S. Makris, 'Antitrust governance in an era of rapid change: Commitments-centred intervention in digital markets and the rule of law' in B. Lundqvist and M. S. Gal (eds), *Competition law for the digital economy* (ASCOLA competition law series. Edward Elgar Publishing Limited 2019).
[15] European Commission, 'Antitrust: Commission imposes interim measures on Broadcom in TV and modem chipset markets' <https://ec.europa.eu/commission/presscorner/detail/en/IP_19_6109> accessed 10 January 2020.
[16] Case AT.39850 Container Shipping. C(2016) 4215 final. See for a similar use of commiment decisions by the Dutch Competition Authority Dutch Cometition Authority (ACM), 'Commitment decision regarding mobile operators' (2014).
[17] Inception Impact Assessment: Digital Services Act package: Ex ante regulatory instrument for large online platforms with significant network effects acting as gate-keepers in the European Union's internal market (n 1) 2–3; Inception Impact Assessment - New Competition Tool ('NCT') (n 1) 2.

may promote greater competitive opportunities (aka. 'fairness') for small and medium-sized competitors, while stifling efficiency and innovation and, ultimately, leading to higher prices.

The sectorial, personal and substantive scope of the NCT and DSA

The design of the proposed NCT and the ex ante regulation under the DSA raises a number of questions about the scope of both policy instruments.

First, the **sectorial scope** of both instruments would have to be defined. The Inception Impact Assessment for the NCT considers two options: (i) the application of the NCT to digital markets only, (ii) or its horizontal application across digital and non-digital markets alike. In light of the digitisation of an ever-growing number of industries and the difficulties of providing a succinct definition of digital markets,[18] a horizontal scope of the NCT appears to be preferable. Moreover, some competition concerns identified in the Inception Impact Assessment, such as tacit collusion, network effects and oligopolistic market structures are not limited to digital markets. The horizontal application of the NCT across various sectors would also be in line with the regulatory principle of technological neutrality which is crucial in ensuring the applicability of the proposed instruments to new competition issues in fast-changing markets. The question of the sectoral scope should also be considered with respect to ex-ante regulation under the Digital Services Act. For instance, it remains unclear why self-preferencing by digital platforms poses more competition concerns than the use of private labels or category management agreements by large supermarkets.

Second, the **personal scope** of the new competition tool and the ex ante regulation under the Digital Services Act would have to be defined: should the NCT and the ex-ante regulation under the DSA apply (i) only to dominant or also (ii) to non-dominant firms?

If both instruments are to be applied to non-dominant firms, any future legislative proposal and impact assessment should put forward a clear test to determine the personal scope of both instruments. The 'significant market power'[19] (SMP) regime developed under the EU regime for electronic communications or the 'strategic market status'[20] (SMS) regime advocated by the Furman report may constitute potential candidates for such a test. Any alternative to the 'dominance test' would have to be anchored in a clearly defined set of criteria to determine when specific markets are not sufficiently contestable/controlled by firms with significant market power/strategic market status.

[18] E. Deutscher, 'Is Furman right to propose ex ante platform regulation as the best way to address competition concerns in the digital economy?' (2019) <https://competitionpolicy.wordpress.com/2019/04/24/is-furman-right-to-propose-ex-ante-platform-regulation-as-the-best-way-to-address-competition-concerns-in-the-digital-economy/> accessed 6 December 2019.

[19] Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services. OJ [2002] C 165/6; Communication from the Commission — Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services. OJ [2018] C 159/1.

[20] J. Furman and others, 'Unlocking digital competition: Report of the Digital Competition Expert Panel' (2019) 81.

Relatedly, the sequencing of the SMP/SMS regime would have to be further clarified. There are two options: either (i) firms with SMP/SMS are identified on a case-by-case basis; or (ii) markets which fall under the SMP/SMS regime are identified ex ante and are periodically reviewed akin to the SMP regime under the EU regulatory framework for electronic communications. The case-by-case approach may ensure greater flexibility and reduce type I and II errors. By contrast, the ex-ante approach has the virtue of ensuring legal certainty for firms.

Third, the **substantive scope** of the NCT and the ex-ante regulation under the DSA has to be clarified. With respect to the NCT, the crucial question is whether regulatory intervention is triggered by (i) specific anti-competitive conduct, or whether (ii) the tool is also to be used to address purely structural issues without any conduct element.[21] Even if the intervention under the NCT did not ensue any finding of an infringement of competition rules and fines, the adoption of a non-fault regime (option ii) would constitute a considerable rupture with the long-standing principle that in the absence of abusive conduct, market power and industry concentration as such do not constitute an antitrust violation.[22] Any future proposal of a NCT should also clearly set out the market features/conduct elements that are considered a source of potential anticompetitive harm and would justify intervention and remedial action.

The envisaged ex ante regulation under the DSA raises similar questions about the substantive scope of any ex-ante obligations and prohibitions in the form of per se-like rules. First, further clarification is necessary as to the type of conduct by gatekeeper platforms which should be required/prohibited under the ex ante regulatory framework. Second, it would have to be clarified whether these obligations/prohibition should apply horizontally across various digital sectors, or whether will they should be tailored to specific markets.[23] This raises the question about the extent to which ex-ante obligations and prohibitions can be optimally calibrated to minimise type I or II errors.[24] A more detailed analysis is necessary to identify the relevant market features and conduct elements that would require an ex ante obligation/prohibition of certain conduct.

The Legal Test and Standard of Intervention

The issues of sectoral, personal and substantive scope of the NCT and the ex-ante regulation under the DSA are closely intertwined with the question of the relevant standard of intervention. Any future proposal would have to define the relevant legal test and threshold of actual, likely or potential anticompetitive harm that would trigger the intervention under the NCT or ex-ante regulation under the DSA.

[21] For a similar proposal of an antitrust tool to address structural issues by the Harvard School C. Kaysen and D. F. Turner, *Antitrust Policy: An Economic and Legal Analysis* (Harvard University Press 1959) 46-49, 89-90, 98, 111-112.

[22] *United States v. U. S. Steel Corp.* 251 U.S. 417 (1920) 451; *United States v Grinnel Corp.* 284 U.S. 563 (1966) 570–571; *Case 85/76 Hoffmann-La Roche v Commission* ECLI:EU:C:1979:36 paras. 69-70.

[23] See option 3 (a) and (b) Inception Impact Assessment: Digital Services Act package: Ex ante regulatory instrument for large online platforms with significant network effects acting as gate-keepers in the European Union's internal market (n 1) 3.

[24] A. Christiansen and W. Kerber, 'Competition Policy with Optimally Differentiated Rules Instead of per se Rules vs. Rule of Reason' (2006) 2(2) Journal of Competition Law and Economics 215.

For instance, remedial action with respect to specific conduct or structural issues under the UK Market Investigation must be based on the showing adverse effects on competition (AEC).[25] An AEC arises when 'any feature, or combination of features, […] prevents, restricts or distorts competition'.[26] This means that intervention can be in theory triggered by a single market feature (say, high entry barriers) or by the cumulative effect of several market features, each of which, when considered in isolation, does not necessarily give rise to competition concerns.

In terms of standard of intervention, the UK Market Investigation Tool is used to address not only adverse effects on actual, but also on potential competition.[27] The CMA relies on a probabilistic, 'balance of probabilities' standard, to determine whether the adverse effect on actual or potential competition is more likely than not.[28] Under this threshold of intervention, the CMA carries out a counterfactual analysis to examine whether absent intervention competition would be adversely affected. To this end, it compares the market features at issue with the rather loosely defined standard of a 'well-functioning' (not perfectly competitive) market, i.e. a market which does not display the market feature or combination of features that raise concerns.[29]

In any further Impact Assessment or legislative proposal, the Commission should clarify the relevant legal test under the NCT and the DSA. In particular, it should specify whether intervention can be triggered by a single market feature, or whether a combination of structural or conduct elements has to be present. Also, the Commission would have to set out whether the cumulative effect of a number of market features that are in themselves innocuous would justify regulatory intervention.

The Commission would also have to consider various possible standards of intervention/proof for intervention under the NCT and the DSA to determine the necessary degree of likelihood of anticompetitive effects that would warrant regulatory intervention. Various standards could be envisaged: either (i) a 'balance of probabilities' standard akin to that of the UK Market Investigation tool;[30] or (ii) a stricter standard of proof recently endorsed by the General Court in *CK Telecoms*;[31] or (iii) a looser standard of proof that does not only account for the likelihood of competitive harm but also its magnitude. Decision theory,[32] as well as various recent expert reports on digital competition[33] counsel for a departure from the 'balance of probabilities' standard in cases where the anticompetitive effects are of a large order of magnitude, even if they are rather unlikely. Relatedly, the relevant benchmark of the counterfactual analysis under the New Competition Tool and the Digital Services Act should be specified. Recent expert reports advocate a bolder counterfactual analysis that relies on rather strong assumptions about

[25] Guidelines for market investigations: Their role, procedures, assessment and remedies 2013. CC3 (Revised) para. 19.
[26] ibid para. 28.
[27] ibid para. 29.
[28] ibid para. 319.
[29] ibid paras. 30, 320.
[30] ibid para. 319.
[31] *Case T-399/16 CK Telecoms UK Investments v Commission* not yet published para. 118.
[32] C. F. Beckner, III and S. C. Salop, 'Decision Theory and Antitrust Rules' (1999) 67 Antitrust L.J. 41 61–62.
[33] Furman and others (n 20) 13, 99-100; J. Crémer, A.-Y. de Montjoye and H. Schweitzer, 'Competition policy for the digital era' (2019) 4, 11, 51, 116-124. See also in this respect Professor Bruce Lyons' response in E. Deutscher, B. Lyons and W. Lam, 'CCP response to HM Treasury: Digital Competition Expert Panel - Open consultation' (December 2018).

the functioning of the market absent the adverse features and, conversely, about the detrimental effects on competition absent regulatory intervention.[34]

Remedies

The design of remedies under the NCT and the DSA also merits further consideration. The Inception Impact Assessments for both instruments envisage a mix of behavioural and structural remedies. However, they do not go any further in setting out how the choice of a specific set of remedies should be made.

In this respect, the Commission should first clarify the specific purpose of remedial action under both instruments: Should remedies only be used to offset the identified adverse effect(s) on competition? Or should they go beyond and be used to approximate the functioning of a specific market with a theoretical standard of a well-functioning market, for instance, by facilitating a greater degree of competition than would have existed even in the absence of a specific structural or conduct feature that raises antitrust concerns?

Second, any future policy proposal should clarify the relationship between behavioural or structural remedies: are structural remedies only available as a last resort if the anticompetitive harm cannot be effectively addressed by behavioural remedies (akin to Regulation 1/2003)?[35] Or are structural and behavioural remedies substitutes between which the competition authority can choose as it sees fit? This also raises the question of relevant procedural constraints, such as the principle of proportionality, a competition authority is subject to when imposing remedies under both acts.

Third, the monitoring and duration of remedies should be clarified. This question is closely related to the institutional design of the New Competition Tool and Digital Services Act. The Commission would have to clarify whether the remedies are to be monitored by an independent regulator (Commission; or new authority) or, for instance, remedy trustees. Likewise, the default duration of the remedies and the frequency of their periodic review would have to be clarified. The (cost of) monitoring and adequate duration of remedies may have an important impact on the choice between behavioural and structural remedies.

Efficiencies and countervailing factors

In the Inception Impact Assessments for the NCT and the DSA there is little mention of efficiencies and other countervailing factors that would tip the scales against intervention. This absence of efficiency considerations is surprising, not least because even advocates of non-fault intervention in oligopolistic or monopolistic markets have recognised the need of an efficiency defence lest antitrust intervention entails greater costs than the harm it is supposed to remedy.[36]

There are various channels through which efficiencies and other countervailing factors can be accounted for under the NCT and any ex-ante regulation under the DSA. First, the personal (and sectoral) scope of both instruments may operate as an indirect filter for efficiency

[34] Furman and others (n 20) 99–100.
[35] Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (n 13) Art. 7 (1) and recital 12.
[36] *United States v. Alcoa* 148 F.2d 416 (2d Cir. 1945) 430. Kaysen and Turner (n 21) 80.

considerations. For instance, both instruments could be based on a market share/concentration filter akin to that of the Vertical Block Exemption Regulation (VBER)[37] or the Horizontal Merger Guidelines,[38] that encodes the presumption that conduct of firms or market outcomes in markets falling below specific thresholds are most likely the result of efficiencies, rather than market power. Second, efficiencies can be factored in at the definitional stage of the adverse effect on competition. Here, the finding of considerable efficiencies or countervailing factors may undermine or prevent the finding of an adverse effect on competition. In particular, under the DSA, efficiency considerations could be encoded in the specific design of ex ante obligation and rules. Such optimally calibrated rules could take the form of a black-/grey-listed practices akin to the black- and grey-listed clauses under the VBER.[39] Third, the New Competition Tool and the Digital Services Act could also provide for an explicit 'efficiency defence' allowing firms to proffer an objective justification to rebut the finding of adverse effects on competition (New Competition Tool) or the breach of ex-ante obligations/regulations (Digital Services Act). Fourth, efficiencies and other countervailing factors could also be accounted for at the remedies stage by requiring the showing (and periodic review) that the proposed (and implemented remedies) do not deprive firms of legitimate sources of efficiencies.

The error-cost framework

It is striking that the Inception Impact Assessment of the NCT and the ex-ante regulation under the DSA give only little consideration to the costs and benefits of regulatory intervention. Both Impact Assessments posit that the new possibilities of antitrust intervention to be created by both policy instruments will generate various benefits for society, consumers and in particular small- and medium-sized competitors. Absent any articulation of specific theories of harm, these benefits remain, however, rather diffuse. At the same time, both Inception Impact Assessments consider behavioural and structural remedies as the sole source of regulatory costs for firms. They thereby obfuscate the costs arising from type I errors. Too bold intervention under the New Competition Tool or overly broadly construed ex-ante rules under the DSA may not only entail welfare losses by erroneously intervening in an efficient market or prohibiting welfare-enhancing conduct, but they may also deter other firms from competing aggressively or making welfare-enhancing or innovative business choices.[40] Even more, the mere introduction of an additional regulatory layer and the risk of falling within the scope of the new regulatory instruments may adversely affect firms' incentives to compete aggressively and to innovate. In particular the adoption of a non-fault, structural regime under the NCT or ex-ante per se rules for certain conduct under the NSA may lead to a situation where firms will refrain

[37] Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices [2010] OJ, L 102/1 2010. O.J. L 102/1, Art. 3.
[38] Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings. OJ [2004] C 31/5 paras. 17-20.
[39] Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101 (3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices [2010] OJ, L 102/1 Commission Regulation No 330/2010 of April 20, 2010 on the application of Article 101 (3) TFEU (n 37) Art. 4 and 5; Inception Impact Assessment: Digital Services Act package: Ex ante regulatory instrument for large online platforms with significant network effects acting as gate-keepers in the European Union's internal market (n 1) 3. (option 3 a)
[40] F. H. Easterbrook, 'The limits of Antitrust' (1984) 63(1) Tex. L. Rev. 1.

from competing aggressively and growing their market shares lest to fall within the scope of the New Competition Tool or the ex-ante regime under the Digital Services Act.[41]

The specific scope and design of both policy instruments will have a considerable impact on the balance between type I and II errors. Any further policy debate should consider various options as to how to strike an appropriate balance between both types of error costs. In line with recent expert reports, the Inception Impact Assessments for the NCT and the DSA represent a rupture with the long-standing view that innovative industries, characterised by dynamic competition are often self-correcting and that false positives are particularly costly in these markets.[42] Such recalibration of the prevailing error-cost framework and its potential costs and benefits should be made explicit and analysed in a comprehensive impact assessment.

[41] Bork (n 6) 197; Posner (n 6) 116.

[42] J. B. Baker, 'Taking the Error out of "Error Cost" Analysis: What's Wrong With Antitrust's Right' (2015) 80(1) Antiturst Law Journal 1 71–95; Stigler Committee on Digital Platforms, 'Final Report' (2019) 94–95 <https://research.chicagobooth.edu/stigler/media/news/committee-on-digital-platforms-final-report> accessed 20 September 2019; Crémer, Montjoye and Schweitzer (n 33) 51; Furman and others (n 20) 99–100.