

The respondent provided its answers to questions raised in Section C and D based on information supported by evidence or legal practice regarding the Hungarian market. If such pieces of information were not available, the respondent answered “Not applicable / no relevant experience or knowledge”, this paper includes the comments and remarks to some in-depth questions in Section C and D:

AD 8.2.

As regards the Hungarian market, the respondent is not aware of any particular example supported by evidence or legal practice.

Although the GVH has been proactive in the field of digital markets in the last couple of years, it has focused predominantly on the enforcement of consumer protection norms. Other major competition law enforcing jurisdictions (such as the EU and Germany) have heavily relied on regulations concerning abuse of dominance, and thus, assessed the relevant issues of digital markets even in the context of B2B relationships. In contrast, the GVH's practice is quite sporadic in this regard, and it almost entirely lacks dominance cases of this kind. Nevertheless, its reliance on consumer protection norms allowed the GVH to tackle similar issues, and to reflect on them from a B2C relationships perspective. Given the fact that consumer protection procedures are significantly shorter because they do not require a robust market analysis, they allowed the GVH to intervene in the underlying anticompetitive practices in a timely and effective manner. However, although the GVH issued multiple guidelines and other soft-law instruments concerning digital markets, none of them addressed specifically the issue of market power. Consequently, there is somewhat of a vacuum regarding judicial interpretations of market power definitions in Hungary concerning digital markets, where there is no developed case law in this field yet, since abuse of dominance focused market analyses are largely absent.

As regards market power, the GVH's practice and case law in merger control cases and a recent vertical restrictions decision can also be considered relevant. These decisions suggest that the GVH's practice acknowledges that the access to data and the increasing potentials of online platforms may be considered as significant factors of market power in digital markets, and thus, in future cases, competition law enforcement should take into account these factors as well.

AD 9.1.

Generally, the answer is affirmative, but the respondent represents the view that exact definitions of “digital markets” and “market power in the context of digital markets” are required to provide an accurate answer to the type of necessary intervention.

AD 9.3

For traditional markets, competition law has developed measures of market power and criteria applicable to dominance and abuse of dominance. Up to now, assessment of market power has been based primarily on market shares. Before deciding on the suitability of current antitrust tools, the respondent considers useful to analyse what kind of non-market-share-based measures can be applied to digital markets.

The respondent has the view that, save in respect of the very specific structural competition problems linked to digital gatekeepers which we consider would be more appropriately and effectively addressed through the introduction of ex ante regulation through the DSA amendments, and pending the outcome of the Court appeals in the various digital platform cases pending adjudication, we believe that Articles 101 and 102 of the EU Treaty, if updated and per the Commission's ongoing consultations, are suitable and sufficiently effective to address structural competition problems across all markets, particularly when supplemented by greater use of existing competition powers and tools available to the Commission (e.g., sector inquiries, interim measures).

AD 10.7

The respondent notes that it is not quite clear to what extent anti-competitive monopolisation strategies fall under the scope of antitrust. Thus, in this regard the distinction between unfair B2C, B2B and P2B rules and antitrust rules are required to be laid down.

AD 11.3.

The respondent notes that unfair B2C, B2B and P2B rules are also to be assessed as existing regulatory tools, and the option of non-market-share-based measures of market power (key databases, key software environments, etc.) applied to digital markets may put the existing dominance-related rules in new light.

AD 13.3.

Following a deeper understanding of digital markets, the current framework of antitrust rules might be able to address the relevant new challenges. Thus, the respondent adopts the standpoint that the flexibility of the antitrust framework combined with a new approach, definitions and principles fitting the digital markets could fulfil its role also in the future.

AD 14.4.

As regards the Hungarian market, the respondent is not aware of any particular example supported by evidence or legal practice.

The respondent notes, however, that for retailers which are present both online and offline, pricing algorithms applied to webshops might have a secondary effect on offline prices.

AD 15.1.

As regards the Hungarian market, the respondent is not aware of particular example supported by evidence or legal practice. It needs, however, further consideration that pricing algorithms and similar analysis tools have generated efficiencies in many industries for a number of years, and an optimal intervention (via a new competition tool or otherwise) has to avoid any unnecessary restriction in the field of innovation.

AD 15.3.

Following a deeper understanding of digital markets, the current framework of antitrust rules might be able to address the relevant new challenges. Thus, the respondent adopts the standpoint that the flexibility of the antitrust framework combined with a new approach, definitions and principles fitting the digital markets could fulfil its role also in the future.

AD 17.3.

Following a deeper understanding of digital markets, the current framework of antitrust rules might be able to address the relevant new challenges. Thus, the respondent adopts the standpoint that the flexibility of the antitrust framework combined with a new approach, definitions and principles fitting the digital markets could fulfil its role also in the future.

AD 18.8.

As regards the Hungarian market, the respondent is not aware of any particular example supported by evidence or legal practice. The respondent agrees in principal that there might be a need to consider a targeted ex ante regulation to supplement ex post antitrust enforcement. Although there might be a range of criteria available that could apply in relation to determining the gatekeeper role of large online platform companies (but e.g. user numbers seem too crude), however platforms should be identified via a more dynamic, case-by-case assessment. The following criteria could apply with equal force in relation to the proposed new ex ante regulatory tool to address online digital gatekeepers and we consider that there is a need for targeted intervention when a range of criteria are cumulatively satisfied:

- a non-contestable and concentrated market structure should be identified;
- the digital gatekeeper in question is an unavoidable trading partner; and
- the application of ex post competition rules would be ineffective in addressing the identified market failures arising from the exercise of the gatekeeping function.

AD 19.1.

As regards the Hungarian market, the respondent is not aware of any particular example supported by evidence or legal practice. In our view, it is not obvious that the NCT is necessary (and in any case it should not be introduced before the effectiveness of any new ex ante regulation can be assessed).

An updated competition framework, in combination with targeted intervention in relation to digital gatekeepers could allow the Commission to address structural competition problems mentioned in this consultation.

Concerns have arisen about the ability of traditional competition rules to address issues in relation to digital platforms, in particular when defining digital markets and identifying dominance in relation to data funded, multi- sided markets. In addition, competition law enforcement is often too time-consuming, resulting in irreversible foreclosure taking place before any, remedies are implemented effectively. Remedies also tend to be specific to individual cases and difficult to apply more generally. We believe that the EU should take the lead in addressing the regulatory challenges posed by digital markets and that competition law and ex ante regulation need to evolve together to address these challenges.

In relation to competition law, when assessing market definition in relation to digital gatekeepers, there is a need to examine the commercial and strategic links between markets or market segments and the incentives available to digital platforms to take advantage of those links through the implementation of leveraging

strategies. These leveraging possibilities open up the possibility of a broader range of conglomerate relationships being affected than would otherwise be the case in more traditional markets. Our view is that a more dynamic analysis of the market definition issue is required, focusing on not just existing but on potential competition. The Commission should issue guidance that takes into account the particular dynamics of digital platforms and internet ecosystems. In addition, the Commission should make greater use of its powers to grant interim relief where necessary to prevent markets from “tipping”.

Ex ante regulation might also be needed to fill the gaps that competition rules cannot address. Already existing ex ante regulation framework can provide a suitable reference point for the type of intervention required to address market failures, through the use of an adapted “three criteria” test designed for digital gatekeepers. The types of platforms, the types of competitive harms identified, and the remedies used to address those harms need to be varied and flexible to fit the particular issues that arise. These could vary from the prohibition of discrimination to access to key capabilities or data, to even structural separation where more extreme cases of competitive harm have been identified to occur in a systematic manner. In turn, one could foresee the adoption of a system of listed prohibited practices, accompanied by a flexible set of remedies.

AD 19.3.

Following a deeper understanding of digital markets, the current framework of antitrust rules might be able to address the relevant new challenges. Thus, the respondent adopts the standpoint that the flexibility of the antitrust framework combined with a new approach, definitions and principles fitting the digital markets could fulfil its role also in the future.

AD 20.1.

The respondent adopts the standpoint that the definition of digital markets needs further elaboration, so that the above question can be answered, because the current definition is rather underdetermined to serve as a basis of sectoral differentiation.

AD 24.1.

Following a deeper understanding of digital markets, the current framework of antitrust rules might be able to address the relevant new challenges. Thus, the respondent adopts the standpoint that the flexibility of the antitrust framework combined with a new approach, definitions and principles fitting the digital markets could fulfil its role also in the future.

Our starting point is that consistent and significant evolution in EU competition law is best way to proceed. On the proposal for a competition tool, the respondent has the view that before introducing new tools, the Commission may assess the design and scope of the proposed ex ante regulation for digital gatekeepers, and that the existing solutions also need to be updated. For example, the market definition notice needs to be adapted significantly in response to the challenges of the digitised economy and increase the use of existing powers in relation to interim measures and sector inquiries.

AD 25.1.

Based on the definition of digital markets it is not quite obvious (i) which markets belong to the scope of the new tool, (ii) whether the outlined concerns are primarily platform-related issues or there are extra elements and market phenomena.

Thus, the following steps seem reasonable: firstly, the flexibility and reaction potential of the current antitrust framework have to be tested more deeply in the enforcement, and based on the practical experience, consistent core principles are to be laid down. At this point the respondent emphasises that the efficiency of collecting proofs and evidence in the digitalised economic environment might play a key role from the perspectives of enforcement and the success of the regulatory regime. Secondly, it has to be examined what is the useful scope of platform-specific regulation and what developments are taking place in this field. Should any uncovered regulatory issues emerge beyond the scope of antitrust rules and the platform specific framework, the suitability of a new tool can be re-assessed.