

Key Themes and Ideas

1. AI as a Disruptive Force & Regulatory Challenges

- **Transformative Potential & Risks:** AI offers significant benefits like efficiency and innovation, but regulators are concerned about potential anti-competitive practices arising from the massive data and computing power required for large AI models. The Mayer Brown article notes that "the transformative potential of AI, together with its unprecedented global growth, has made competition authorities around the world take stock."
- **Pace of Change & Regulatory Adaptation:** The speed at which AI is advancing creates challenges for traditional regulatory tools, which may be too slow to respond effectively. This creates a tension between acting quickly to prevent harm and allowing sufficient time to gain a full understanding of the technologies, which might stifle innovation.
- **Divergent Regulatory Approaches:** Different jurisdictions are adopting varying regulatory approaches. The EU has adopted a comprehensive "AI Act", while the UK favors a more sector-specific, "pro-innovation" approach. This highlights the challenges of creating a cohesive global regulatory framework for AI.
- **New Regulatory Frameworks:** New laws such as the EU's Digital Markets Act (DMA) and the UK's Digital Markets, Competition and Consumer Bill (DMCC Bill) are expected to be central to addressing AI-related competition issues, especially with regards to large technology companies.

1. AI & Competition Law Concerns

- **Ambiguity of DMA Application:** The scope of the EU's DMA in relation to AI is unclear, particularly regarding generative AI and foundation models. There's a push for a more flexible interpretation of the DMA to include these technologies, potentially through amending the DMA to expressly include standalone AI services.
- **Increased Scrutiny of Mergers & Partnerships:** Competition authorities are closely scrutinizing mergers and partnerships involving AI companies, with concerns about "killer acquisitions" where larger companies buy up AI start-ups. For example, the UK's CMA investigated the partnership between Microsoft and OpenAI. The US FTC is also actively gathering information on investments and partnerships in the AI sector, showing a shared interest across different jurisdictions.
- **Collusion Risks:** AI's ability to rapidly gather, analyze and respond to market data creates a risk for algorithmic collusion, either intentional or inadvertent. Competition authorities worry that AI could "replace the risks of competition with the certainty of collaboration," especially via price signaling or even price-fixing.
- **Abuse of Dominance:** Dominant companies could use AI to strengthen their market position and exclude competitors, through actions like leveraging their AI foundation models for excessive prices, or preferencing their own services via algorithmic bias. Competition authorities are aware of the potential for self-preferencing, tying, and bundling, which they have seen in previous digital markets. As the Mayer Brown article notes, "the technicality and complexity of AI models could constitute fertile grounds for imaginative theories of harm."

1. Data Portability & Competition

- **Nadirkıtap Case:** This case focused on a Turkish online marketplace for second-hand books, Nadirkıtap. The Turkish Competition Board found that Nadirkıtap abused its dominant position by restricting data portability for its seller members, preventing them from easily transferring their product listings and data to competing platforms.
- **Data as a Key Input:** The Nadirkıtap decision highlights that in digital markets, data has become a crucial input for businesses. Restricting access to and portability of data can create artificial barriers to entry for competitors and impede innovation.
- **Transition Costs & Exclusivity:** Restrictions on data portability may create "transition costs" that make it difficult for users to switch to competing platforms. This can lead to de facto exclusivity, where users feel compelled to stay with the incumbent platform despite the availability of better

alternatives. The Nadirkitap decision highlighted that "the restriction of data portability by an undertaking in a dominant position may create entry barriers for competitors by creating artificial transition costs."

- **Conflict of Laws:** The Board in the Nadirkitap case addressed the tension between intellectual property rights and competition law by noting that even though IP law may grant exclusive rights, it does not preclude the application of competition rules. The end goal of both areas of law is ultimately the same: promoting a competitive market.

1. Regulatory Responses & Key Considerations

- **Active Intervention:** Regulators are indicating a preference for active regulation and management of AI markets over digital self-regulation.
- **"Lighter Touch" approach:** At this stage, authorities are showing flexibility in how they are gathering information about AI, though they are signaling that this may be a precursor to more forceful action. This means companies should be prepared for a more stringent future.
- **Proactive Engagement:** Companies are advised to strategically plan their engagement with regulators. While regulators are eager to learn about AI, companies need to be cautious about what information they share, particularly in these early stages. The article from Mayer Brown advises that "engagement with regulators should be planned strategically...however, companies should plan carefully when and how to discuss these issues with competition authorities, if at all, especially during these early stages of development."
- **Focus on Compliance:** All participants in the AI market should focus on compliance with evolving rules, paying particular attention to the underlying methodologies of algorithmic and AI tools.

Quotes from Sources

- **On AI's Transformative Potential:** "The transformative potential of AI, together with its unprecedented global growth, has made competition authorities around the world take stock."
- **On DMA Ambiguity:** "it will be interesting to see how the DMA works with AI, given the new market dynamics that AI introduces and the colossal speed at which it is advancing."
- **On AI Collusion:** "A competition authority's theory of harm in AI collusion cases may be that an AI tool replaces the risks of competition with the certainty of collaboration."
- **On Abuse of Dominance and AI:** "the technicality and complexity of AI models could constitute fertile grounds for imaginative theories of harm."
- **On Data Portability:** "the restriction of data portability by an undertaking in a dominant position may create entry barriers for competitors by creating artificial transition costs."
- **On Regulatory Engagement:** "Companies should plan carefully when and how to discuss these issues with competition authorities, if at all, especially during these early stages of development."

Conclusion

Both articles showcase the dynamic and challenging landscape of competition law in the digital age. The rapid growth of AI raises complex issues related to market power, collusion, and abuse of dominance. Meanwhile, the Nadirkitap decision underscores the importance of data portability and the potential for anti-competitive behavior through data access restrictions. Regulators worldwide are actively engaging with these issues, and companies operating in these sectors should prioritize compliance, strategic engagement, and a careful evaluation of their business practices.