JOURNAL OF MULTIDISCIPLINARY SCIENCES AND INNOVATIONS
VOLUME 5, ISSUE 02
MOPNTHLY JOURNALS
ISSN NUMBER: 2751-4390
IMPACT FACTOR: 9,08

EX ANTE REGULATION OF THE ABUSE OF A DOMINANT POSITION IN DIGITAL MARKETS

Utayeva Mohipari Shaxriyorovna
Lecturer and Researcher, Department of Business Law, Tashkent State University of Law
mohipariutayeva@gmail.com

Abstract

This article analyzes offenses related to the abuse of a dominant position that may arise in digital markets, including digital platforms, taking into account their specific aspects. Certain international cases are also examined while discussing the issues of ex ante and ex post regulation of these offenses. Additionally, the DMA and national legislation are compared. The article reflects on ex ante regulation and its direct application in national legislation.

Keywords

digital platform, ex ante regulation, DMA, self-preferencing, tying and bundling.

Over the past two decades, the structure of the global economy has undergone tremendous changes, largely driven by advances in digital technologies such as digital platforms and artificial intelligence (AI). This phenomenon has not only radically changed the way business is conducted but has also posed serious challenges to existing legal and regulatory frameworks, particularly competition law[1]. Competition authorities have faced new difficulties in regulating digital markets. This is primarily due to the unique characteristics of digital markets, such as their multi-sided nature, the presence of strong network effects, and the possession of big data. At this point, it is necessary to examine the nature of digital platforms, which are the main driving force of digital markets.

Today, digital platforms primarily serve as a means of connecting different groups of users. These platforms not only act as gatekeepers, providing sellers and buyers with access to the digital market, but also promote their own goods and services as independent players. This is leading to the emergence of integrated ecosystems that combine various digital services.

The fact that major technology companies like Google, Amazon, Apple, Microsoft, and Facebook operate as both intermediary platforms and suppliers of services and goods across multiple markets has heightened concerns about the potential economic harm caused by the centralized structure of the digital economy[2].

The possession of key resources, such as access to data and critical infrastructure, by a small number of digital platforms leads to increased market concentration. Furthermore, digital giants with large capital and a vast user base can leverage their dominant position in one market to influence others. This turns the well-known phrase "the winner takes all" into a reality.

The rapid development of digital markets creates the risk of new, inherent anti-competitive offenses emerging. In this context, fully regulating digital markets through traditional competition law tools (ex-post control) is becoming impossible. This necessitates the introduction of new regulatory mechanisms in this sphere.

Today, some countries are introducing new ex-ante rules by strengthening digital regulation in their competitive frameworks, while other nations are considering the implementation of these new rules. Notably, in 2024, the Republic of Uzbekistan also adopted a legal and regulatory act that incorporates the regulation of digital markets into its existing competition legislation. It is important to mention that competitive relations in digital markets are currently governed by the Regulation "On the Procedure for Recognizing the Dominant Position and Superior Bargaining Power of a Digital Platform Operator and for Identifying Actions Leading to the Restriction of Competition and/or the Infringement of the Rights and Legitimate Interests of Consumers and Other Business Entities," approved by Resolution No. 256 of the Cabinet of Ministers. This regulation was also developed based on the principles of the European Union's Digital Markets Act. This is because the competition legislation of the Republic of Uzbekistan has adopted the European Union's competition model as its standard.

At this point, it is necessary to focus on the effect of the combined application of ex-post and ex-ante regulatory tools. It would be appropriate to use relatively flexible mechanisms here. For instance, a specific conclusion can be reached by analyzing the broad application of ex-post regulation to certain existing competition-related violations in the digital market and determining the outcome of applying ex-ante regulation either in conjunction with it or separately.

In the European Union, the regulation of digital markets from a competition law perspective is also carried out mainly by Article 102 of the TFEU. With the adoption of the DMA in 2024, pre-determined rules were introduced to prevent the anti-competitive actions of certain giant digital platforms. The main focus was on prohibiting practices such as self-preferencing by platforms recognized as "gatekeepers," abolishing anti-steering restrictions, product tying, and the use of data in a manner that restricts competition.

Accordingly, anti-monopoly bodies should consider several aspects when developing ex-ante rules today. According to an OECD report, competition authorities in most G7 jurisdictions are focusing their ex-ante regulation on the restrictions digital platforms impose on their business users. This includes restrictions against anti-steering provisions - rules that prevent business users from offering their services to consumers through alternative channels - as well as most-favored-nation (MFN) clauses. These clauses prevent business users from making more favorable offers (e.g., at a lower price) through alternative channels[3].

It is precisely these restrictions that are likely to limit the market entry of new alternative platforms, restrict consumer freedom of choice, and further increase user dependency on digital platforms.

Examples of such anti-competitive practices include Apple's App Store prohibiting developers from informing consumers about alternatives to Apple's in-app payment system[4], and Amazon penalizing third-party retailers who sell products at lower prices elsewhere by lowering their platform rankings[5].

Initially, violations by digital platforms in these cases were regulated based on existing, or ex-post, regulations. These rules primarily involved prohibiting certain anti-competitive practices within the platform and modifying contractual terms.

Another crucial aspect that competition authorities should consider in ex ante regulation is the possession of data valuable to large-scale businesses. The continuous collection and

aggregation of user data by large platforms, combined with certain characteristics of digital markets, has enabled them to strengthen their market position and penetrate other markets. Over time, this has led to the expansion and reinforcement of their ecosystems. By leveraging this power, platforms can also engage in anti-competitive practices.

Examples of such cases include Amazon's use of commercially sensitive data from third-party retailers on Amazon Marketplace to inform its own retail business decisions[6], and Meta's use of data from third-party advertisers on Facebook Marketplace[7], both of which are considered anti-competitive practices.

In both cases, to address competition-related issues, the competent authorities accepted behavioral commitments from Amazon and Meta. Amazon was prohibited from using the confidential data of retailers in any decisions related to its own retail business. Meta was forbidden from using advertiser data when developing products that compete with those advertisers. These practices not only put competitors at a disadvantage but also lead to the exploitative abuse of users.

Furthermore, several types of abuse exist that are specific to the nature of digital markets. One of these is self-preferencing. In digital markets, self-preferencing issues can arise when platforms leverage their position in one market to favor their own products in a secondary market, thereby undermining competition in the relevant market. Although self-preferencing issues have recently gained more attention, they can be considered analogous to traditional leverage theories. According to these theories, firms use their market power in one market to crowd out competitors in another related market. Competition authorities are pursuing a number of cases against these practices, most of which are still under investigation and have not yet been concluded. The investigation into Google's self-preferencing behavior in its advertising technology supply chain, expected to conclude in 2025, serves as an example[8]. The primary concern here stems from Google allegedly using its dominant position with advertiser purchasing tools to favor its own ad exchange at the expense of competitors. As cases in this category are still ongoing, competition authorities have not yet reached a clear consensus on what measures should be taken to prevent this practice or how compliance with such measures can be effectively enforced.

However, under the DMA, behavioral and structural remedies are applied when such actions are committed. When the first type of remedy is applied, the gatekeeper that violated competition law submits a statement of commitments to the competition authority. The acceptance or rejection of this statement is at the discretion of the competition authority. It should be understood that this remedy is a relatively soft approach. Structural remedies are a rather reactive measure, which mainly involves the sale of certain structures within the platform or their divestiture. According to the DMA, a structural remedy is applied to entities that systematically fail to fulfill their obligations. The competition legislation of the Republic of Uzbekistan also prohibits the practice of self-preferencing by digital platforms. In national legislation, the primary remedies applied are financial penalties and decisions by the competition authority to cease a specific anti-competitive action. Structural remedies are not applied to infringements other than those related to direct economic concentration.

Due to the interconnectedness of digital products, the practices of tying and bundling are common features of digital markets. Tying occurs when a firm requires its customers to purchase

an additional product along with the product they wish to buy. This can be accomplished through technical tying - for example, by limiting interoperability with competitors' products - or through contractual tying, by obligating customers to purchase products together. Bundling, on the other hand, occurs when a firm offers several products as a single package. While tying and bundling strategies can benefit consumers, they can be harmful when used to restrict competition, including by foreclosing competitors from the market or denying them scale[9]. The 2018 Google Android case can be cited as an example[10]. As a result of this case, in 2019, Google allowed users in the European Union to choose their default search provider on mobile operating systems where the Google search app was pre-installed.

It should be noted that ex ante rules alone cannot regulate the abuse of a dominant position in existing digital markets. The DMA, a prime example of ex ante rules, is a supplementary tool specifically designed to address certain competition issues arising from the power of major players. These relationships in the digital market are not limited to just large players. In addition to global players, regional and local players are also present.

The "gatekeeper" concept introduced in the DMA offers a new criterion for ex ante regulatory intervention, moving away from the "relevant market" approach. These criteria rely on a set of presumptive thresholds that help confirm whether a core platform provider is indeed a "gatekeeper." The DMA also allows for limited, case-by-case assessments - based on criteria such as size (turnover, market capitalization, and activity) and number of users that must be met for three consecutive years - even if a platform does not meet the aforementioned thresholds[11].

Given the similar legal nature of digital platforms, it would be beneficial to incorporate decisions from international cases, or newly introduced effective ex-ante regulations, into national legislation. However, insufficient regulation of digital markets can lead to their monopolization and the exploitation of consumers, while excessive regulation can negatively impact innovation and cause market fragmentation. Therefore, the national competition authorities of developing countries should introduce ex-ante rules based on international best practices, while also considering the specific characteristics of their local digital markets.

Specifically, the competition legislation of the Republic of Uzbekistan clearly defines the quantitative and qualitative indicators for identifying entities with a dominant position in the digital market, as well as which violations constitute abuse. However, the procedure for investigating cases of abuse of a dominant position by these specific entities has not been established. Regulatory measures are defined only in general terms. In practice, there are no real national cases related to the abuse of a dominant position in digital markets.

REFERENCES:

1. Wibowo, K. P., Munakit, D. A., Gunawan, W., Majid, Q. A., Nirwan, N. I., & Ohoira, M. C. B. (2025). Digital Antitrust: Reimagining Competition Law for Platform Economies and AI-Driven Markets. Journal of Posthumanism, 5 (6), 1050-1066. https://doi.org/10.63332/joph.v5i6.2178;

2. Prado, Tiago S., Assessing the Market Power of Digital Platforms (December 12, 2020). Quello Center Working Paper, TPRC48: The 48th Research Conference on Communication, Information and Internet Policy, Available at SSRN: https://ssrn.com/abstract=3747793

3. OECD (2024), Competition Policy in Digital Markets: The Combined Effect of Ex Ante and Ex Post Instruments in G7 Jurisdictions, OECD Publishing, Paris, https://doi.org/10.1787/80552a33-en.

4. https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3706

5. https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power

6. https://ec.europa.eu/commission/presscorner/detail/cs/ip_20_2077

7. https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5801

8. https://ec.europa.eu/commission/presscorner/detail/it/ip_25_1992

9. https://ec.europa.eu/commission/presscorner/detail/en/ip_18_4581

10. Jacobides, Michael G., & Lianos, Ioannis. (2021). Ecosystems and competition law in theory and practice. Industrial and Corporate Change, 30 (5), 1215. https://doi.org/10.1093/icc/dtab061

11. Wibowo, K. P., Munakit, D. A., Gunawan, W., Majid, Q. A., Nirwan, N. I., & Ohoira, M. C. B. (2025). Digital Antitrust: Reimagining Competition Law for Platform Economies and AI-Driven Markets. Journal of Posthumanism, 5 (6), 1050-1066. https://doi.org/10.63332/joph.v5i6.2178

[12] Prado, Tiago S., Assessing the Market Power of Digital Platforms (December 12, 2020). Quello Center Working Paper, TPRC48: The 48th Research Conference on Communication, Information and Internet Policy, Available at SSRN: https://ssrn.com/abstract=3747793

[13] OECD (2024), Competition Policy in Digital Markets: The Combined Effect of Ex Ante and Ex Post Instruments in G7 Jurisdictions, OECD Publishing, Paris, https://doi.org/10.1787/80552a33-en.

[14] https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3706

[15] https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power

[16] https://ec.europa.eu/commission/presscorner/detail/cs/ip_20_2077

[17] https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5801

[18] https://ec.europa.eu/commission/presscorner/detail/it/ip_25_1992

[19] OECD (2024), Competition Policy in Digital Markets: The Combined Effect of Ex Ante and Ex Post Instruments in G7 Jurisdictions, OECD Publishing, Paris, https://doi.org/10.1787/80552a33-en.

[20] https://ec.europa.eu/commission/presscorner/detail/en/ip_18_4581