

## Digital Platform Economy Merger Control

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### Abstract

With inputs from recent academic findings on the types, characteristics, critical traits for success and trends of digital platform economies, this paper examines the challenges facing modern antitrust merger control. Based on two(multi)-sided market business models, digital platform industries share the following characteristics: significant network effects, low marginal costs, economies of scale and scope, low-transparency in platform algorithms as well as global competition. Though there are differences among industries, especially between different types of platforms, the above have combined to shape a unique competitive environment that hinges on the strength of network externalities, inter-platform portability, data accessibility, quantity and quality, as well as innovation capacity. There is also an unmistakable trend toward large scale cross-ecosystem competition. That is the reason why the almighty GAFAM—an acronym for the most dominant firms in digital economies including Google, Apple, Facebook, Amazon and Microsoft—remain restless despite having conquered their respective core markets.

Given the competitive dynamics as such, antitrust merger control faces multiple challenges. The most significant—and also the one attracting most attention, among antitrust regulators scholars, and practitioners alike—is how relevant markets should or could be defined. After thorough discussion we advise taking a more flexible approach to market definition with less reliance on the orthodox hypothetical monopolist test and less

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adherence to the smallest market principle. We also carefully consider the obstacles facing other tasks in typical merger reviews, such as how to assess market concentration or the health of market competition, how to properly evaluate possible impacts (including unilateral and coordinated effects), how to gauge potential near-term entries of new competitors, as well as how to appraise merger-related efficiency claims. These were never easy tasks in traditional merger reviews to begin with, and the unique set of characteristics of digital economies have just made them a lot more difficult. While there is no immediate solution to many of the issues identified, this paper tries to provide a clear outline to the challenges at hand and offers some modest suggestions.

**Keywords:** Antitrust Law, Competition Law, Merger Control, Digital Economy, Platform Economy, Two-sided Market, Multi-sided Market, Network Effects.