

Online Competition

Professor D. Daniel Sokol
University of Florida Levin College of
Law

Overview

Innovation's impact on competition:

- Fin tech, online marketplaces and platforms more generally create opportunities to connect people and businesses

Chile's Competitive Advantages

- Highly skilled workforce
 - Chilean universities that make Times list of top global universities
 - [Federico Santa María Technical University](#)
 - [Pontifical Catholic University of Chile](#)
 - [University of Chile](#)
 - [Austral University of Chile](#)
 - [Diego Portales University](#)
 - [University of Concepción](#)
 - [University of La Frontera](#)
- Strong entrepreneurial infrastructure
 - Start Up Chile
 - “Re-entrepreneur law” for bankruptcy
 - Incorporate Your Business in a Day [online platform](#)

Success may be ephemeral because entry barriers are low

- Online markets are constantly transforming
- Challengers may overtake incumbent firms through new ideas and technologies
 - Examples: Facebook, Snapchat, Tinder, WhatsApp, Instagram,
- Data requirements of new competitors are far more modest and qualitatively different than more established markets

BUT...

Limits to competition based on unsound enforcement threaten further Chilean growth

- Companies and businesses models will rise and fall in fast moving industries - restricting that competitive process will cause problems
- No infant industry argument
- Industrial policy should not be part of competition law

Is Disruptive Innovation Different?

Competition Law Perspective:

No – The tools of competition analysis are the same (mergers and conduct)

Yes – The analysis requires understanding how assumptions of traditional competition law change with disruptive innovation

Market definition is more complicated and competition online is not always like for like

- Market definition is more complicated in a multi-sided market
- In multi-sided markets, market shares for market definition should be carried out very cautiously
- Online markets challenge traditional antitrust analysis because online services are often available to users for free
- Competition in a multi-sided market may emerge not from one platform but across different types of platforms to attract users
- Need to consider the interdependencies on the platform

Examples of different dynamics of multisided markets

Qihoo 360 v. Tencent

Microsoft/Skype

Facebook/WhatsApp

Users multi-home and have low switching costs

- In online markets switching costs are often low because of multi-homing
 - General search
 - Vertical search sites
 - Apps
 - Social networks

Need to analyze all sides of a market when examining a multi-sided market

- Direct network effects
- Indirect network effects
- Benefits of indirect network effects can only be achieved when multiple agents are coordinated

Takeaways

- Antitrust intervention in online markets requires great caution because of a number of factors:
 - proper market definition, accounting for possible low entry barriers, multi-homing and low switching costs, need for analysis of all sides of a market
- Mistaken antitrust intervention in such markets threatens innovation.
- Antitrust agencies should ensure that case specific facts and economic analysis align well with legal theories

Online RPM and MFN

Procompetitive

Anti-competitive

Anti-competitive

- Vertical coordination, inter-brand competition, and foreclosure
 - Rey and Vergé (2010)
 - Bonnet and Dubois (2010)
- Cartelization
 - Jullien and Rey (2007)
 - Foros et al. (2010)

Efficiency Justifications

- Free riding
- Reputation effects
- Better coordination between manufacturers and retailers to eliminate double marginalization

How is Online RPM Different from Online MFN?

Online MFN agreements may look like RPM arrangements and RPM arrangements may be inferred from MFN agreements

Cases

- Apple e-books (correctly decided)
- Bookings.com (different NCA approaches make a mess of case law)

Chile, competition law and high tech - Two tales (1)

US experience

- Overly restrictive case law in the US 1950s-1970s leads to economic malaise, lack of innovation, and comparative weakness as Japanese, Germans catch up.
- US changes substantive antitrust based on economic thinking and error cost framework to allow for more disruption - greater economic growth and innovation follows

Chile, competition law and high tech – Two Tales (2)

- Europe – Europe is late to economic analysis in antitrust
- No significant innovation in the new economy - aggressive rules, even post "effects based approach" because unlike mergers the conduct cases do not have limiting principles
- Result - innovation in Europe is from... US based tech companies