



CCIA Submission to Rekabet Kurumu’s Inquiry into the Digital Economy

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I. Introduction

The Computer and Communications Industry Association,¹ (“CCIA”) welcomes the opportunity to contribute to the market study into competition and the digital economy by Rekabet Kurumu (“Rekabet”), the Turkish Competition Authority. CCIA commends Rekabet for seeking a better understanding of the legal, economic and policy challenges that arise with the digitalization of the global economy and its significance in the competition analysis. CCIA looks forward to furthering the dialogue with Rekabet in this regard.

The tech sector has had transformative effects on the entire economy. Tech has increased efficiency and lowered entry barriers in many markets and allowed the introduction of entirely new business models. Digital media distribution tools have created a space for individuals to broadcast their audio, photo and video content creations to the world. Online retail intermediaries like Hepsiburada and Trendyol allow small and medium sized enterprises to reach consumers and meet demand far beyond their geographic footprint, more quickly and cheaper than ever before. Social media services dramatically lower the cost for advertisers to reach their audience and avoid advertising wastage. Studies suggest that the consumer benefit of free online services is worth thousands of lira per person, per year.²

In order for innovation in the technology market to continue driving the global economy, both competition policy and sound antitrust enforcement must play a crucial role in ensuring that

¹ The Computer & Communications Industry Association (CCIA) is a non-profit membership organisation that represents the interests of a wide range of companies in the Internet, technology and telecoms industries. CCIA represents large, medium and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications and Internet products and services. Our members employ more than 750,000 workers and generate annual revenues in excess of \$540 billion. A list of CCIA members is available at <https://www.cciagnet.org/members>. CCIA advocates for open markets, open networks and full, fair, and open competition.

² See, e.g. Brynjolfsson, et al., *Using massive online choice experiments to measure changes in well-being* (Apr. 2019), available at: <https://www.pnas.org/content/116/15/7250>



competition exists across markets. Competition authorities should continue to enforce antitrust laws based on sound economic analysis that focuses on potential harm to competition and consumer welfare. It is difficult, if not impossible, to reconcile economic analysis with public interest considerations other than harm to competition and consumer welfare within the antitrust framework. Factoring other public interest concerns into the antitrust analysis could result in inconsistent application of competition norms and political intervention in the antitrust decision-making process.

The following provides our perspective on the main points that the Turkish Competition Authority should consider during the course of its study.

II. General Considerations

CCIA believes that Rekabet can apply the existing antitrust framework to a large and diverse set of businesses, including both single-sided and multi-sided business models under the consumer welfare standard. In doing so, the competition authority should take into account real-world business realities and apply sound economic analysis to its enforcement actions.

a) *The Consumer Welfare Standard*

Over decades competition enforcers have developed a body of law and practice that has ensured that competition policy works for the interest of consumers by protecting competition and the competitive process. Under this framework, companies that successfully invest and *compete on the merits* are rewarded with customers and growth. This is often referred to as the promotion of the welfare of consumers by enforcing the antitrust laws.

The promotion of consumer welfare through competitive markets is the economic model for decision-making employed by antitrust enforcers to determine whether a given business practice warrants antitrust enforcement or not. A competition system guided by the consumer welfare standard has as a goal the maximization of consumers' benefits, with 'consumer' being defined broadly to include both business and consumer purchasers.³

³ The standard also applies to purchasers in the context of supply side restrictions of competition, such as monopsony abuses.



The debate over the appropriateness of the consumer welfare standard is a healthy exercise, but significant changes should be considered with great caution. Antitrust norms should not be expanded to include other public policy factors unrelated to economics-based competition concerns.

First, the consumer welfare test best serves consumers' interests. Antitrust enforcement based on the consumer welfare standard targets harmful anticompetitive practices without penalizing practices that are pro-consumer, such as innovative strategies, or mergers that increase efficiencies. To achieve this, when enforcing the antitrust laws under the consumer welfare standard, the tradeoffs between various forms of competition and their effects are considered. As such, the evolution of economic thinking has allowed the courts to decide antitrust cases with a very high degree of accuracy in order to avoid inadvertently harming consumers or other unintended consequences. Ultimately, the consumer welfare standard has enabled antitrust enforcement to put consumers first.

Second, the consumer welfare standard enhances predictability and legal certainty by providing businesses with clear guidance with respect to the test to which business practices are subjected. Companies know that they will not be punished for competing on the merits and investing in innovation and growth to win market share. In contrast, a chaotic interpretation of antitrust as inclusive of all manner of undefined public policy considerations risks comparing apples to oranges (i.e. employment opportunities vs. impact on prices), and would not provide clarity to companies with respect to what practices are acceptable to antitrust enforcers before introducing them to the market, undermining due process norms.

Third, since the consumer welfare standard is an economic analysis-based test — non-economic considerations are not factored in — enforcement coherence is preserved. Weighing non-economic factors against economic considerations risks inviting discretionary and unjust results. As the OECD has recommended:⁴

⁴ OECD, “Competition and Efficiency as Organising Principles for All Economic and Regulatory Policymaking” (2003) at 6,
<https://www.oecd.org/daf/competition/prosecutionandlawenforcement/2490195.pdf>.

“By giving predominance to competition and efficiency, the OECD and PECC approaches provide a framework for resolving policy conflict with non-efficiency goals in, or underlying, existing or proposed regulations. In the OECD approach, this predominance is achieved by reforming economic regulations in all sectors to stimulate competition and eliminate competition distorting impacts except where clear evidence demonstrates that they are the best way to serve broad public interests. In such cases, it is advocated that any required regulation be designed to promote efficiency. In the PECC and APEC approaches, this predominance is achieved by promoting competition and efficiency in cases of conflict with non-efficiency goals, except where application of this principle is simply not practicable or politically feasible, in which case the competition distorting impact of the regulations is minimised. Moreover in the latter circumstances, it is recommended that reasons for divergence from the principle of fully promoting competition and efficiency ‘should be compelling and transparent’.”

Antitrust enforcement based on the consumer welfare standard is encouraged at the OECD, ICN, ECN and other international fora, and why competition policy must continue to advance the interests of efficiency and consumer welfare.

With regard to the potential conflict between a consumer oriented competition policy and industrial policy and national champion goals, the OECD has made clear that the latter has “major drawbacks”⁵:

⁵ OECD, *Policy Roundtables: Competition Policy, Industrial Policy and National Champions* (2009) at 14-15, <http://www.oecd.org/daf/competition/44548025.pdf>; See also Deborah Platt Majoras, *National Champions: I Don’t Even Think It Sounds Good, Remarks at International Competition Conference/EU Competition Day* (Mar. 26, 2007) at 4, http://www.ik2007.de/seiten/Majoras_en.pdf (“Thus, a national champion policy, by its very design, does not benefit consumers. Instead, it replaces domestic competition with a monopoly firm sheltered by the government to be a bulwark against foreign firms in both domestic and international markets. Consumers lose twice, through higher domestic prices and reduced imports.”); Int’l Competition Pol’y Advisory Comm., *Final Report to the Attorney General and Assistant Attorney General For Antitrust* (2000) at 62-63, <https://www.justice.gov/atr/chapter-2> (“Nations should apply their laws in a non-discriminatory manner and without reference to firms’ nationalities. In particular, nations should agree that competition enforcement efforts will not be targeted toward foreign firms for the purpose of protecting domestic firms or industries from competition. Further, nations should agree to refrain from using national champion policies to protect domestic firms or industries from foreign competition. Nations should neither enforce their competition laws nor withhold enforcement of their competition laws to further the interests of a national champion.”); Int’l Competition Network, *Guiding Principles for Procedural Fairness in Competition Agency Enforcement* (2018), https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AEWG_GuidingPrinciples_ProFairness.pdf (“Agencies should not discriminate on the basis of nationality in their enforcement.”).

“One of the main challenges currently facing those governments adopting emergency measures to deal with the impact of the crisis on the real economy relates to the issue of national champions. In dealing with the current crisis one should never lose sight of the underlying principles of sound competition, and in particular one should be conscious of the major drawbacks in this context of an industrial policy that encourages the creation and maintenance of national champions. Empirical evidence suggests that the case in favour of national champions is weak.”

CCIA submits that Rekabet should continue to apply competition law, including merger control, in the same way to all sectors and without discrimination, taking into account the legal and economic circumstances of the industry concerned and requiring evidence of likely anticompetitive harm before enforcement or merger prohibition.

b) Dynamic Competition and Proof of Harm

While the existing competition frameworks are fit for purpose, competition authorities need to ensure the dynamics of the digital sector are taken into account when enforcing the competition laws in light of factors of particular relevance in digitally affected sectors, including dynamic competition, multi-sided markets, network effects, data and the interplay with privacy.

This is the reason why it is fundamentally important to have a clear understanding of the underlying business models of these complex services. Competition law *itself* does certainly not have to be adjusted for online players.⁶ Antitrust frameworks have deliberately been constructed in a flexible manner to be able to deal with a broad range of companies and their

⁶ By way of example, the Belgian, Dutch and Luxembourg competition authorities’ paper discussing new enforcement tools nevertheless emphasizes that on substance, such instruments should be “closely following the interpretation of dominance and abuse in the context of Article 102 TFEU” because “[s]taying close to well-established terminology and case law of EU competition law reduces the risk of lengthy legal procedures that the introduction of new concepts will involve. Additionally, it increases legal certainty and predictability.” *Joint memorandum of the Belgian, Dutch and Luxembourg competition authorities on challenges faced by competition authorities in a digital world* (Oct. 2019), available at: https://www.belgiancompetition.be/sites/default/files/content/download/files/bma_acm_cdclcl.joint_memorandum_191002.pdf

business practices, including those characterised by multi-sided business models, network effects, low marginal cost, efficiencies of scale, and the use of data.

The complex nature of the market dynamism that characterizes the digital economy has brought about an ongoing discussion of potentially anticompetitive ‘leveraging’ in digital markets. This theory has been applied to digital service providers that improve their functionality and expand their range of use cases. The theory is based on the leveraging of market power from one narrowly defined product market to a different product market, on the basis that new features and functionalities constitute different product markets, and that services cannot evolve.

With respect to this novel theory of harm, it is important to make sure that it does not become a catch-all theory of harm that would prevent companies that are allegedly dominant in one market from efficiently expanding and improving their products to provide a better user experience. In this sense, it must be clarified that there are important nuances between accusations of abusive leveraging and an “efficiency offense” that penalises genuine product improvement and competitive entry. This is particularly true for digital services where new features and functionalities are constantly being introduced.

CCIA is concerned that if competition authorities developed a too wide view of ‘leveraging’, they would effectively lock companies into one tightly defined market unable to innovate or meet changing consumer preferences. The competitive process (and ultimately consumer welfare) is not served by preventing companies from improving their products, or by indirectly subsidising companies that have failed to innovate. Product development, expansion, and improvement are key characteristics of companies competing on the merits when taking a holistic view of competitive dynamics as described above.⁷ Particularly due to the multi-sided nature of the markets described above, competition authorities should show evidence of likely

⁷ See e.g. *Verband v Google*, 408 HKO 36/13 (4 April 2013), unofficial translation available here: https://www.taylorwessing.com/fileadmin/files/docs/pdf-german/Google_Weather_InBox_-_Court_Order_2013-04-04_Unofficial_Translation.pdf (stating that “[t]he prohibition of the abuse of a dominant position does not have as its objective to preserve outdated business models that cannot withstand change” in relation to Google’s introduction of weather related information on its search engine results page); *Streetmap.EU Ltd v Google Inc. & Ors* [2016] EWHC 253 (Ch) (12 February 2016), available here: <http://www.bailii.org/ew/cases/EWHC/Ch/2016/253.html>, (rejecting claims that Google’s introduction of map thumbnails was anticompetitive as against online maps providers on the grounds that “the whole thrust of Google’s initiative was to improve its general search engine.” at para. 79).

anticompetitive harm before finding an infringement. Any sort of presumption against such conduct would chill legitimate competition, disincentivize investment and innovation, and have other unintended consequences.

On a more general level, digital players have always operated and will continue to operate in a highly dynamic and competitive environment. This is because the online market environment is characterized by very low barriers to entry. Very often the capital costs of starting and scaling a business will be much lower than in the offline world. Decreasing prices for cloud storage and cloud computing, worldwide reach, and widely accessible data analytics tools make it easier than ever to start a business online. In addition to this, consumers often multi-home and are in no way prevented from switching to other online services. In fact, industry-led initiatives like the Data Transfer Project (DTP) make it even easier for consumers to switch to another online provider.⁸

While it is true that these market dynamics allow companies to grow very quickly, it's the very same dynamics that continue to place competitive pressure on them. The dynamics that helped companies grow fast could just as fast turn against them if they stopped innovating and serving consumer needs. These are often part of the economic circumstances that competition authorities should consider when reviewing markets involving digital technologies, whether with regards to competition enforcement or merger control.

c) Market Definition

The antitrust framework requires the definition of markets to assess competitive effects and determine whether an antitrust violation has taken place or not. However, competition authorities should account for the elasticity of demand that characterizes multi sided business models that are prevalent in the digital economy. Similarly, the digitization of the economy has led many traditional businesses to offer their services online, and thus, should be accounted for when engaging in antitrust analysis, rather than artificially ignoring this phenomenon.

⁸ Data Transfer Project - Overview and Fundamentals (Jul. 2018), available at: <https://datatransferproject.dev/dtp-overview.pdf>

For example, most businesses have some degree of digital technology already incorporated, and this integration and development is likely to increase going forward. Brick & mortar retailers have websites where they offer online delivery (and even in-store pick-up, a comparative competitive advantage to online-only retailers). The lines between digital and non-digital “markets” are increasingly blurred. It is therefore important to consider the competitive constraints imposed even by so-called “non-digital” market players. Companies like Migros increasingly compete by offering customers online shopping options. They also have a wealth of consumer data, and sometimes more than the digital only players.

Furthermore, even when focusing exclusively on digital delivery models, competition authorities should carefully consider dynamic competitive constraints. Online advertising is a good example where online players not only stand in fierce competition with traditional advertising channels, but also with each other. While they compete to attract ‘eyeballs’ and consequently advertisers, many think of these companies as operating in their own silos unconstrained by their competitors who target the very same advertising income (e.g. search, social media, other audio, video or written content). A newspaper that offers a website can easily switch from providing advertising in static display format, to advertising in video format. Similarly, a digital service such as a mobile camera application, can easily add new functionalities (e.g. commenting, private messaging, and other social-graph related features) that would make it a potential substitute for video, messaging, or even social media services.

Given the dynamic nature of competition and the ability of digital services to easily add new features, analysing effects only on a narrowly defined product market risks serious assessment errors.

III. Multi-sided Business Models

The term ‘platform’ is frequently used in reference to certain Internet-based business models, but usually without any definitional rigor. In lieu of these terms, the concept of ‘two-sided’ or ‘multi-sided’ markets is better substituted for ‘platforms’ when considering competition policy

matters.⁹ From an economic perspective, these business models, including certain online marketplaces, stock exchanges, dating websites, messaging services, and payment networks, enable two or more distinct sets of users to interact with each other, realizing gains from such interactions.¹⁰ What characterizes these business models is that there is interdependency of demand between them. In other words, the demand for the services by each set of users depends on the demand for the services by at least one other set of users (this is sometimes referred to as “indirect network effects”).¹¹ Whenever competition enforcers or regulators deal with companies based on these business models, this interdependency of demand needs to be taken into account. In practical terms, it is insufficient to look at effects of a given practice or conduct on only one side of the market. A competitive assessment should always include all affected sides, as well as the impact of actual or potential platform-to-platform competition. The need for such a holistic approach was confirmed by the Court of Justice of the EU (CJEU) in *Cartes Bancaires*¹² and *American Express*.¹³

In particular, it is critical to understand the role of these indirect network effects in the competition analysis of markets involving digital intermediaries operating multi-sided business models. As with all other economic concepts (such as the elasticity of supply), it is impossible to analyse the role of network effects on competition in a general manner, it depends on the particular circumstances of the market at the time. That is why *ex post* competition enforcement

⁹ Daniel O’Connor & Matthew Schruers, *Against Platform Regulation*, Presentation Draft, Oxford Internet Institute Conference on Internet, Policy, and Politics (Oct. 2016) pgs. 3-8, available at: <http://blogs.oii.ox.ac.uk/ipp-conference/sites/ipp/files/documents/OConnor-Schruers%2520-%2520Against%2520Platform%2520Regulation.pdf>.

¹⁰ See, e.g., David S. Evans & Richard Schmalensee, *The Antitrust Analysis of Multisided Platform Businesses*, Oxford Handbook of International Antitrust Economics 404, 404-405 (Roger D. Blair & D. Daniel Sokol, eds., 2015).

¹¹ See, e.g., Lapo Filistrucchi et al., *Market Definition in Two-Sided Markets: Theory and Practice*, 10 J. Competition L. & Econ. 293, 296-97 (2014). For example, an assessment of the competitive realities facing a website serving advertisements must take into account the interests of both advertisers and site visitors who experience the advertising.

¹² Case C-67/13 P *Cartes Bancaires v European Commission*. Judgement from 11 September 2014, available at: <http://curia.europa.eu/juris/liste.jsf?num=C-67/13&language=EN>

¹³ *Ohio v. American Express Co. et al.*, Docket No. No. 16-1454 (June 25, 2018). CCIA filed an amicus brief in this case, showing how antitrust analysis must account for the complexity of multi-sided markets. Enforcers should pursue enforcement actions only with a sound understanding of the business models at issue. See Brief of CCIA as *Amicus Curiae*, *Ohio v. American Express Co., et al.*, Docket No. 16-1454 (filed Jan. 23, 2018).

is based on a case-by-case approach, and the role of network effects must be assessed in each individual case.¹⁴

Network effects are present when the value of adopting a service to an incremental user is larger when more users have already adopted.¹⁵ Direct network effects exist in many traditional markets (e.g. telephone users who benefit from being able to contact other telephone users). Importantly, this dynamic is likely to produce consumer benefits as the value and usefulness of the network increases in parallel with the number of network participants. Network growth creates, therefore, pro-competitive benefits that are reaped by consumers. However, reflecting the multi-sided nature of most digital service providers, there can also be cross-platform network effects¹⁶ where the number of users on one side of the service increases the value to the other side. For example, in an online marketplace, the supply side of the service benefits from increased users on the demand side, and the demand side benefits from increased competition on the supply side. Competition authorities should acknowledge this dynamic when assessing conduct that has effects in multiple dimensions. This emphasises the need for competition authorities to take a holistic and case-by-case approach to the assessment of network effects.

Bearing the above in mind, the evaluation of network effects in competition analyses should also be accompanied by an analysis concerning the extent to which ‘single-homing’ and ‘multi-homing’ are present in a given market.¹⁷ For example, Professors Haucap and Heimeshoff acknowledge that:

“In two-sided markets increasing concentration will be driven by indirect network effects, but capacity limits, product differentiation and the potential for multi-homing

¹⁴ See, e.g. the CMA’s in-depth discussion of network effects in the recent *Just Eat/Hungryhouse* merger inquiry, available at: <https://www.gov.uk/cma-cases/just-eat-hungryhouse-merger-inquiry#final-report>

¹⁵ See, e.g. Hal R. Varian, *Use and Abuse of Network Effects* (Sept. 17, 2017), available at <https://ssrn.com/abstract=3215488>.

¹⁶ These are sometimes called indirect network effects, or indirect network externalities in the economic literature.

¹⁷ See Jean-Charles Rochet & Jean Tirole, *Two Sided Markets: A Progress Report*, 37 RAND J. ECON 646 (2006); Jean-Charles Rochet & Jean Tirole, *Platform Competition in Two-Sided Markets*, 1 J. EUR. ECON. ASS’N 990 (2003).

(i.e., the parallel usage of different platforms) will decrease concentration levels. How easy it is for consumers to multi-home depends, among other things, on (a) switching costs (if they exist) between platforms and (b) whether usage-based tariffs or positive flat rates are charged on the platform.”¹⁸

Multi-homing refers to those instances where customers use more than one digital intermediary or service, whereas single-homing refers to those instances where customers choose to use only one particular service. Compared to previous physical networks, many of today’s online service providers may be more susceptible to disruption from new entrants thanks to lower entry barriers, low switching costs, the prevalence of free-to-the-user business models, and multi-homing. Economist David Evans rightly states that:

“Online platforms are more susceptible to attack by entrants than network industries of a century ago. Network effects and sunk costs made the natural monopolies around the turn of 20th century difficult to challenge. Rivals had to sink massive amounts of capital into duplicating physical networks such as railroad tracks and telephone lines. Using multiple networks, or switching between them, was expensive for customers, even if a second network was available. However, online platforms can leverage the Internet to provide wired and wireless connections globally. People find it generally easy, and often costless, to use multiple online platforms, and many often do. The ease and prevalence of multihoming have enabled new firms, as well as cross-platform entrants, to attract significant numbers of users and secure critical mass necessary for growth. Incumbent platforms then face serious competitive pressure from new entrants—startups or other online platforms—because their network effects are reversible.”¹⁹

In sum, the presence of network effects merits closer analysis, but in doing so competition authorities should carefully account for market factors that limit their prevalence such as low switching costs, low barriers to entry, and user multi-homing. In addition, network effects cannot be seen as a long-lasting moat. They are reversible, i.e. just like they have worked in

¹⁸ Justus Haucap & Ulrich Heimeshoff, *Google, Facebook, Amazon, EBay: Is The Internet Driving Competition Or Market Monopolization?*, Düsseldorf Institute for Competition Economics (Jan. 2013).

¹⁹ David Evans, *Why The Dynamics Of Competition For Online Platforms Leads To Sleepless Nights, But Not Sleepy Monopolies* (2017), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009438.



favor of a company, they can start working against it as competitors benefit from the same effects and users can leave *en masse* when they feel they are no longer getting a good deal. This creates an opportunity for competitors with a unique value proposition (e.g. Snapchat's disappearing messages, TikTok's content creation tools, or Zoom's extremely user friendly interface), and means that digital service providers are always sensitive to the competitive constraint of potential entry. A case-by-case analysis that takes into account evidence, economic analysis, and that is specific to the facts remains key to safeguarding consumer welfare.

IV. The Role of Data as a Dimension of Competition

In recent years some have made the argument that the mere accumulation of data by consumer-facing technology companies raises antitrust concerns. Based on the notion of an endless, positive feedback loop, the argument states that the more data is collected, the better companies' products become which in turn attracts more users who allow for even greater data collection. The end result of this process is a supposedly insurmountable data advantage keeping companies immune from competition.

However, intervention in data-driven markets without evidence of harm to competition could harm consumers and deter innovation, especially when based on a misunderstanding or incorrect understanding of the role data plays in these markets. Therefore, understanding the nature of data usage in Internet and technology services is crucial. The following provides CCIA's views on this topic and the reasons why we believe data should be analyzed as any other asset when enforcing the antitrust laws.

a) *Data is an asset like any other*

Competition systems based on the consumer welfare standard rely on evidence-based analyses, and such same standards should continue to be applied to data-driven markets. The value of data depends on its commercial utility, and does not present special characteristics as a dimension of competition. Authorities should therefore assess data as any other non-rivalrous asset that companies use to compete in the market under the existing competition framework.

Indeed, many of this data is widely available, both to companies that attract users, and from third-party data brokers.²⁰

Data itself should not be seen as a barrier to entry, or to automatically grant a competitive advantage in the market. Data is characterized by the so-called “Four Vs”, namely:

- **Volume:** The amount of data available, which is infinite and non-rivalrous.
- **Velocity:** The speed of data generation, which requires business to update datasets quickly
- **Variety:** The diverse forms of data that are available to companies.
- **Veracity:** The trustworthiness of data.²¹

The mere accumulation of data, in and of itself, is useless and not of importance to compete effectively. In addition to the Four Vs, data must be analyzed before it becomes useful. As such, the value of data only appears once companies have processed such data. As economists Anja Lambrecht and Catherine Tucker note:

“Our analysis suggests that big data is not inimitable or rare, that substitutes exist, and that by itself big data is unlikely to be valuable. There are many alternative sources of data available to firms, reflecting the extent to which customers leave multiple digital footprints on the internet. In order to extract value from big data, firms need to have the right managerial toolkit. The history of the digital economy offers many examples, like Airbnb, Uber and Tinder, where a simple insight into customer needs allowed entry into markets where incumbents already had access to big data. Therefore, to build sustainable competitive advantage in the new data-rich environment, rather than simply amassing big data, firms need to focus on developing both the tools and

²⁰ See e.g. Federal Trade Commission, “Data Brokers: A Call for Transparency and Accountability” (2014), available at <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf>

²¹ See IBM, The Four V’s of Big Data - Infographic, available at <http://www.ibmdatahub.com/infographic/four-vs-big-data> (last visited July 20, 2018).

organizational competence to allow them to use big data to provide value to consumers in previously impossible ways.”²²

The authors further conclude that the tools used to analyze the data and ‘provide value to consumers’ confer a ‘sustainable advantage’ to companies rather than the mere possession of data.²³

The key to gaining a competitive edge is not data, but rather, the capacity to analyze and monetize data. In other words, human capacity and better products such as improved algorithms, rather than data or scarcity thereof, is what is necessary to compete in data-driven markets. As detailed in the Lambrecht paper, rather than facing a ‘data bottleneck’, companies are faced with a ‘talent bottleneck’. The key to gaining a competitive edge is not data as such but the willingness to invest in the resources and people necessary to analyse and monetize data. In other words, human talent is the main ingredient to successfully compete in technology markets. Second, there is no evidence that data has served as an insurmountable barrier to entry, nor that access to data guarantees success.

b) Data to expand market power

The key element is to better understand whether incumbents that have accumulated data over the years may expand or maintain market power by the mere possession of historic data. Like any other factor of production, there is empirical evidence to prove that there are diminishing returns to the mere accumulation of data.

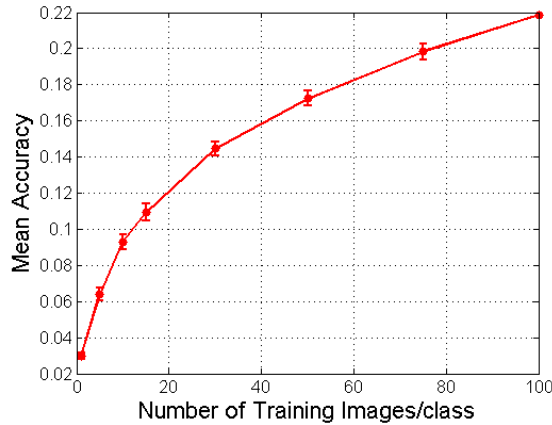
Stanford University conducted a study to analyze whether increased accumulation of data improves the outcomes of the analysis performed on such data. The Stanford Dogs Dataset contains images of 120 breeds of dogs from around the world.²⁴ This dataset was constructed for the purpose of fine-grained image categorization. Researchers used this dataset for classifying breeds of dogs in images, and calculated the mean accuracy for identification as the

²² Anja Lambrecht & Catherine Tucker, *Can Big Data Protect a Firm from Competition* (Dec. 18, 2015), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2705530.

²³ Id.

²⁴ Stanford Dogs Dataset, available at <http://vision.stanford.edu/aditya86/ImageNetDogs/>.

number of images in the dataset increased. The results showed that additional access to data provided diminishing returns to the accuracy of classification results (see chart below).²⁵ In short, a growing dataset provided diminishing returns as it grew.



Similarly, economists David Evans and Richard Schmalensee found that across technology companies, data did not grant incumbents the power to restrict competition. Their research highlighted that:

“A number of previously dominant companies all had user data — so-called “attention platforms” such as AOL, Friendster, Myspace, Orkut, Yahoo!, Blackberry in mobile, as well as numerous search engines including AltaVista, Infoseek, and Lycos. This data did not give the incumbents the power to stifle competition in their respective markets, nor is there any evidence that data increased the network effects for these firms in a way that gave them a substantial lead over challengers.”²⁶

University of Florida Professor Daniel Sokol and Central University of Finance and Economics School of Law (China) Professor Jingyuan (Mary) Ma conclude that little, if any, user data is required as a starting point for most online services. They noted that:

²⁵ *Id.*

²⁶ David S. Evans & Richard Schmalensee, *Network Effects: March to the Evidence, Not to the Slogans*, Antitrust Chronicle (Aug. 2017) at 9, available at <http://mitsloan.mit.edu/shared/ods/documents/?DocumentID=4243>.

“The data requirements of new competitors are far more modest and qualitatively different than those of more established markets. Little, if any, user data is required as a starting point for most online services. Instead, firms may enter with innovative new products that skillfully address customer needs, and quickly collect data from users, which can then be used towards further product improvement and success.”²⁷

This research shows why the accumulation of data alone is not a tool for companies to shut out competitors, and is unlikely to lead to decreased competition in the relevant market.

V. The Intersection between Privacy & Competition

Privacy can be a parameter of competition if users demand it and competitors respond by offering e.g. different privacy settings and features. In fact, as a result of competition many digital services offer a wide variety of privacy settings, including the ability to opt-out of unnecessary data gathering. In circumstances such as these, competition authorities should continue to treat privacy as a relevant dimension of quality competition in their assessment alongside other potential factors of competition (such as price, variety, etc.). However, just because privacy can be a parameter of competition does not mean that it should be *the aim* of competition enforcement. A clear separation between competition law enforcement and privacy policy objectives should be maintained.

Competition law and enforcement serve to protect the competitive process while privacy laws protect individual privacy rights. When enforcing competition rules, authorities should continue to be guided by the question whether a given transaction or conduct reduces the degree of competition in the market. Non-competition considerations like the protection of privacy should not guide antitrust enforcement.

Back in 2003 the OECD cautioned against using competition enforcement for objectives other than economic efficiency and consumer welfare by stating that the “inclusion of multiple

²⁷ D. Daniel Sokol & Jingyuan (Mary) Ma, *Understanding Online Markets and Antitrust Analysis*, 15 Nw. J. Tech. & Intell. Prop. 43 (2017), available at <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1267&context=njtip>.

objectives [...] increases the risks of conflicts and inconsistent application of competition policy. The interests of different stakeholders may severely constrain the independence of competition policy authorities, lead to political intervention and compromise and, adversely affect one of the major benefits of the competitive process namely, economic efficiency”.²⁸ The UNCTAD secretariat made similar observations in a study dating back to 1995.²⁹

CCIA fully supports this approach. Just like competition authorities do not use competition rules to enforce e.g. environmental laws, they should equally not use them to enforce privacy law. Adding consumer protection-related privacy concerns into the competition assessment will lead to a much more subjective competition enforcement that would be much less grounded in economic efficiency considerations. For example, it is not clear how a competition authority would balance economic efficiency considerations ‘against’ privacy rights. Even if we discount the practical difficulties, such a balancing exercise should probably not be made in the first place. CCIA would further caution against such an approach in light of the significant enforcement powers that competition authorities are entrusted with. If such an approach were followed in other international jurisdictions, Turkish companies would face increased uncertainty, cost and vulnerability to political interference and retaliation.

In sum, antitrust and privacy actions in data-driven markets should be economically informed, so as to ensure that consumers benefit from those actions. Understanding the economic role that data plays and how it is used by companies is thus fundamental for authorities. For this reason, any action related to data-driven enterprises would benefit from expert analysis, in order to avoid consumer harm and other unintended consequences.

VI. Conclusion

The current competition framework has proven to have the necessary tools and to be flexible enough to ensure effective competition in the market. While the emergence of new business models may present new challenges for competition enforcers, there is no need to change competition rules for digital service providers. Competition authorities’ enforcement practice

²⁸ OECD Global Forum on Competition, *The Objectives of Competition Law and Policy* (2003), pgs. 2-3, available at: <http://www.oecd.org/daf/competition/2486329.pdf>

²⁹ UNCTAD Secretariat, *The basic objectives and main provisions of competition laws and policies* (1995), available at: https://unctad.org/en/Docs/poitd_15.en.pdf



should be guided by economic analysis on a case-by-case basis and with a clear identification of consumer harm.

In this respect, CCIA encourages Rekabet to pay attention to the value that consumers derive from free services, actual consumer preferences with regards to privacy, the tremendous investments in human talent, research and development that digital technology companies are engaged in, and competitive dynamics and the degree of competition as between digital service providers.