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The Evolving Concept of Market Power in the Digital Economy – Note by Spain

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More documents related to this discussion can be found at
https://www.oecd.org/daf/competition/market-power-in-the-digital-economy-and-competition-policy.htm

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1. Introduction

1. The nationwide authority in charge of the application of competition law provisions in Spain is the Spanish National Markets and Competition Commission (Comisión Nacional de los Mercados y la Competencia hereinafter, the 'CNMC'), which is an integrated authority not only empowered to enforce competition policy (overseeing mergers and acquisitions and potentially anticompetitive practices) and to engage in advocacy (with the ability to prepare reports and studies evaluating the functioning of market forces in relation to particular activities and particular industries), but is also competent to enforce sector-specific regulation in telecommunications, media, energy and transport.

2. The investigative and enforcement powers of the CNMC in its role as a Competition Authority aim to preserve, guarantee and promote the existence of effective competition. In so doing, attention is paid to all the recent changes in the actual economic framework, especially the ones related to the irruption of new technologies and digitalization, which have sparked a debate about the need of a review of the competition policy framework in order to adapt it to the new reality of digital markets. Such markets present some features that naturally lead to a higher level of concentration that increases the market power of big operators. This contribution refers to specific cases where the CNMC has addressed market power in digital markets.

3. Advocacy measures are another essential tool to promote better regulation across all markets and economic sectors and disseminate a culture of competition, in order to preserve and promote competition in all sectors to the benefit of consumers. The CNMC has closely followed digital markets from an advocacy perspective, with the aim of understanding competition dynamics in these markets and to detect inefficient regulations or other barriers to effective competition. In particular, this contribution summarizes the two most recent market studies on digital sectors, Fintech[1] and online advertising[2]. These studies do not examine the specific measurement of market power nor the definitions of this concept from the enforcement perspective. Yet, the analysis in these market studies can help to understand the functioning of market power in digital markets and to identify barriers to entry that restrain competition and could become a source of market power.

2. The CNMC's practical experience concerning the development of market power in the digital economy

2.1. Market definition

4. Transformation of business models regarding the increasing digitalization of the economy has brought with it new developments in economic theory, and the CNMC's

[1] E/CNMC/001/18: ESTUDIO FINTECH https://www.cnmc.es/expedientes/ecnmc00118

[2] E/CNMC/002/19: ESTUDIO SOBRE PUBLICIDAD ONLINE https://www.cnmc.es/expedientes/ecnmc00219

approach to the concept of market definition and market power has gradually evolved accordingly.

5. In this context, the authority has not departed from the usual tools to identify the relevant product and geographic markets. However, when it comes to online-related segments, - and taking the specificities of platform markets into consideration -, there are two remarkable features that deserve further attention: the two-sided (or multi-sided) nature of markets and the data aspects.

6. Firtsly, among the cases considered by the Spanish authority, the single most distinctive feature concerns the two-sided nature of some segments and/or markets. Since the early 2000s economic literature has explored the way in which this feature complicates the definition of the relevant market. The distinguishing feature of a two-sided platform is the two categories of customers, interacting with each other. Due to interdependence between the two sides of the platform, focusing on one of them alone may not fully capture the interplay of market power at both sides and thus may lead to errors when defining the relevant market. Therefore, the usual analytical tools may need to be refined or adapted. The fundamental question that emerges in this sense is whether it is appropriate to define a single market encompassing the two sides or two separate markets, one for each side, instead.

7. Secondly, data aspects of the digital economy have also caught the attention of the CNMC, as in these market data are commonly one of the main features and considered a valuable asset. Consequently, mergers in these markets have led the CNMC to assess the rationality of the operation in order to detect whether one of the objectives of the merger is to get access to customer information, which can raise concerns as to whether that could place the acquirer's competitors at an unjustified disadvantage. Other relevant dimensions of data include the use of zero-pricing strategies and the importance of ecosystems.

2.2. Market power and its relation to merger control

8. Many jurisdictions establish merger control thresholds based on the annual turnover of the undertakings involved in the merger as main criteria in order to evaluate the level of market power of firms. But some jurisdictions, including Spain, have an additional threshold in place that takes into account the market shares of the companies concerned. This type of threshold has proven effective to capture many mergers in the digital sphere, so it is worth mentioning that the CNMC has been able to analyse several mergers in digital markets (regardless of turnover criteria) thanks to the alternative notification threshold based on market shares stipulated by Spanish law.

9. More specifically, Spain's Law on the Defence of Competition establishes a system of compulsory notification to CNMC for any concentrations representing a certain market share or a certain amount of turnover, both based on the relevance that such operations have either for the markets being affected by the concentration (market share threshold) or for the Spanish economy in general (turnover threshold).

10. The market share threshold presents as a potential drawback an increase in uncertainty for the notifying parties. However, appropriate communication channels with the competition authority may effectively mitigate that risk.

11. All in all, the notification threshold based on market shares has proved to be particularly useful to:

- review potentially problematic mergers that would have escaped scrutiny otherwise,

- refer to the EC potentially problematic mergers when they had an international reach, but lacked a Community dimension under the EC Merger Regulation (e.g. Facebook/Whatspp merger, under art. 4(5) of the Merger Regulation, or the Apple/Shazam, under art. 22 of the Merger Regulation).

12. The Authority has not identified cases where its notification threshold has failed to capture relevant mergers in the digital economy (or where alternative options, such as transaction value-based criteria or a lowered threshold for turnover, would have been more effective).

13. Nonetheless, the assessment of market power (in both merger control and antitrust) does not only involve market shares assessment (even if market shares can be the starting point of the analysis). This is systematically being complemented by an analysis of other features of the relevant market, such as its expanding or dynamic nature, barriers to entry and expansion, the effects on innovation, the competitive dynamics and business models as well as the regulatory context of which the practices or transactions are a part.

2.3. Cases assessed by the CNMC[3]

2.3.1. Multi-sidedness in online food delivery

14. The Spanish CNMC has been active in this sector in recent years, both with merger control and with one antitrust investigation (which was closed given that it was found that competition law had not been infringed).

15. The first merger case was *Just Eat/La Nevera Roja*[4], cleared in 2016. It involved the acquisition by JUST EAT, a multinational online platform offering food delivery services to restaurants and consumers, of a local rival. The merger was cleared in Phase I subject to commitments that consisted in removing exclusivity clauses in contracts with restaurants for a certain period.

16. It is important to point out that this sector has undergone substantial transformation with the rise of the Internet, particularly in recent years. The activity affected by the operation involves two sides: food delivery platforms deal with restaurants, on the one hand, and with end-users, on the other. The interplay of the two sides of the market is a source of network effects, and, in spite of the very high market shares of the merging parties (that would have traditionally meant a great level of market power), the CNMC was satisfied with the abovementioned commitments. Those remedies were aimed at preventing the merged entity from entering into exclusivity agreements with restaurants that could, in turn, hinder the entry and expansion of competing platforms.

17. So, in this case, the caveats of using market shares as proxies for market power became apparent. Following the transaction, the parties would have had a market share of over 70%, which is prima facie indicative of a possible dominant position.

18. In addition, the two firms were deemed to be close competitors operating similar business models.

19. At the same time, the CNMC introduced some caution in its analysis. It conceded that the data arguably could over-estimate the position of the merging parties. This is a

[3] The analysis in this section refers only to cases where a final decision has been reached, leaving aside other cases where the investigation is still ongoing (see for instance S/0013/21: AMAZON / APPLE BRANDGATING https://www.cnmc.es/expedientes/s001321)

[4] C/0730/16: JUST EAT/ LA NEVERA ROJA https://www.cnmc.es/expedientes/c073016

relevant issue if one bears in mind that there are major multinational players which, at the time, did not enjoy a strong position in the relevant geographic market(s).

20. Moreover, the analysis showed that the Spanish market was not mature and that there was, as a result, significant scope for expansion. In such circumstances, the primary source of competition concerns (ultimately leading to the approval being subject to commitments) was not so much the parties' position when measured in terms of market power, but the underlying economic dynamics (namely, the economies of scale achieved and the operation of network effects).

21. Consequently, the transaction was cleared with the previously mentioned commitments that solved the competition concerns identified.

22. The second case was *JUST EAT/CANARY*[5], in which, again, the multinational offering food delivery services to restaurants JUST EAT acquired the exclusive control of Canary Delivery Company, S.L. (CANARY), a Spanish company established in 2014 only operating in the Canary Islands. This merger was cleared without commitments in 2019, as the CNMC, after an exhaustive analysis of the case, considered that the operation could not be expected to involve a threat to competition in the relevant markets. The competitive landscape had changed significantly since the previous merger with a number of strong players successfully entering the market.

23. In this specific case, the CNMC assessed, among many other aspects, whether CANARY was a fast-growing company in the Canary Islands that had the potential to exert significant competitive pressure, but this was excluded taking various factors into consideration. On the one hand, CANARY, which had been operating for several years, had a low turnover and only one employee. Additionally, it did not invest in R&D, and its pricing policy was very similar to JUST EAT´s. As a result, the target could not be considered an innovative or aggressive competitor and the CNMC ruled out the possibility of treating the operation as distortive to competition.[6]

24. An antitrust investigation arose from the merger *Just Eat/Canary*, where the market test carried out revealed that new entrants had successfully joined the market and that they themselves entered into exclusivity agreements with restaurants which JUST EAT was prevented from using due to the commitments. This led to the opening of preliminary proceedings, *REDES PARALELAS EXCLUSIVIDADES PLATAFORMAS*[7], in order to investigate the possible presence of parallel vertical restrictions affecting competition in the sector, and whether those restrictions could constitute an infringement of competition law.

25. Regarding the assessment of market power by the Spanish NCA, it is important to highlight that the Agency factored in many diverse factors other than the market shares

[5] C/1046/19: JUST EAT / CANARY https://www.cnmc.es/expedientes/c104619

[6] The other online food delivery platform service case assessed by the CNMC was C/1072/19 MIH FOOD DELIVERY HOLDINGS/JUST EAT, which consisted in the acquisition of sole control of MIH FOOD DELIVERY by JUST EAT.

The operation was finally cleared without commitments, as the acquired company´s presence in the relevant market, (which was the same as the mentioned in the previous case, with the particular characteristic of being a two-sided market) was indirect, by minority shareholdings in some competitors, but such indirect participation was so small that the CNMC reached the conclusion that it was not enough to distort competition.

[7] S/0026/20 REDES PARALELAS EXCLUSIVIDADES PLATAFORMAS https://www.cnmc.es/expedientes/s002620

themselves (as it would have probably done in a traditional scenario). At that moment there were four main operators in the market, and none of them with a market share that by itself could have represented a threat to competition.

26. Finally, the CNMC considered that, in this particular case, taking the legal and economic context into account, parallel networks of vertical agreements containing exclusivities on the part of individual operators were not likely to have a significant impact on the competitive position of actual or potential third party competitors or to restrict competition to any significant extent in the affected markets. Consequently, it considered that there were no indications that those agreements were likely to be restrictive in terms of competition, either individually or considering their cumulative parallel effect, so the preliminary proceedings were closed.

2.3.2. Multi-sidedness in ride-hailing apps

27. *Daimler/Hailo/MyTaxi/Negocio Hailo*[8] was an operation cleared in 2016. It consisted in the joint acquisition by Daimler and Hailo of two online business allowing end-users to hire taxi services online, MyTaxi and Hailo (which would be merged following the transaction).

28. Even though some aspects of the analysis suggested that the merged firm would enjoy a very strong position (at least so if measured in terms of market share in certain geographic areas) and that some market features could entrench that position, the transaction was approved without any commitments from the firms. The features of the relevant market and, in particular, the fast expansion of the sectors in question, played a fundamental role in this conclusion.

29. The operation also concerned a transaction platform, in this case bringing together taxi drivers and riders. The two-sided nature of the relevant market was not disputed in the case, nor was the fact that there was a single relevant market comprising the two sides. The thrust of the analysis involved two other aspects.

30. The first one was whether the relevant product market included both taxi services and private hire vehicles, and this was ultimately left open. The second one focused on the interchangeability of the various means and technologies to hire vehicles, and more precisely on whether hiring via an online application is substitutable with other forms of hiring, including on the street and via traditional radio taxi services. In this case, the CNMC took the view that hiring via app represented a separate market.

31. In terms of market power assessment, this operation is a case in which the caveats of market shares (and/or the methods used to provide estimations in this regard) were acknowledged by the CNMC.

32. Estimates in terms of market share fluctuated significantly depending on the source used to obtain the data. In fact, the notifying parties estimated their shares in the relevant geographic markets to hover around 80%. However, the authority, following a market test, concluded that in some cities the parties would be around one third of the relevant market.

33. The assessment of the transaction focused on the features of the relevant market. In this sense, the CNMC pointed out that, even though the new entity would enjoy advantages due to network effects and economies of scale, actual or potential rivals would not enjoy any significant barriers to expansion.

[8] C/0802/16 DAIMLER/HAILO/MYTAXI/NEGOCIO HAILO https://www.cnmc.es/expedientes/c080216

2.3.3. Classified webs and comparison websites

34. *Schibsted/Milanuncios*[9] was a transaction that concerned the acquisition of Milanuncios, an online platform specialised in classified ads, by a multinational operating in the same industry – including in Spain through Anuntis Segundamano and Infojobs.

35. Such transaction was cleared with commitments in November 2014 following a Phase II assessment. These commitments included the licensing of the motor section of the website together with other measures (option for free ads, interoperability to export ads to other platforms).

36. The operation exemplifies the disruptive impact of the Internet on some economic activities and more precisely on their business model. Online platforms allow end-users to access, for free, the classified ads in which they may be interested.

37. In terms of market definition, the CNMC was confronted with a two-sided platform. In the preliminary report and draft decision, the multi-sided nature of the industry is readily noted; at least two sides are identified: one side involving those placing the classified ads and the other involving users accessing these tools.

38. Given that the purpose of the platform was to allow for the two sides to complete their transactions, it would be natural to conclude that there is a single market encompassing both advertising and access to the classified ads. Such was exactly the market defined by the CNMC. The case presented additional complexity, related to whether the market could be further segmented based on the services offered by the different platforms, and more precisely on whether they are general-purpose (horizontal) ones or specialised in different products (vertical ones).

39. Regarding market power assessment, the authority gave considerable weight to the fact that, in several segments, the combined share of the merging parties would be above 60%, and in some cases (such as the provision of motor-related classified ads) it would be above 90%. In addition, rivals' positions in some of these segments were below 10%.

40. However, market shares only constituted the starting point of the analysis. In its evaluation of non-coordinated effects, the CNMC focused on the fact that the transaction amounted to the elimination of a substantial source of competitive pressure, resulting as much from the parties' shares as from the fact that they were particularly close competitors with comparable (albeit not identical) strategies.

41. In a similar vein, *Bauer/Acierto*[10] consisted in a merger of online comparison tools in insurance products (actually, potentially narrower markets could be defined depending on the type of insurance). The relevance of multi-sided markets and network effects was considered in the assessment.

2.3.4. Search engines

42. The CNMC has also carried out two main antitrust investigations involving search engines, although they were both closed in the end, as the CNMC did not find enough evidence of anticompetitive conducts.

43. The first one, GOOGLE EL TENEDOR[11], had its origin on a complaint against El Tenedor (La Fourchette, specialized in restaurant bookings) and Google. After all the

[9] C/0573/14 SCHIBSTED / MILANUNCIOS https://www.cnmc.es/expedientes/c057314

[10] C/1147/20: BAUER / ACIERTO https://www.cnmc.es/expedientes/c114720

[11] S/0004/19 GOOGLE EL TENEDOR

preliminary investigations, the case was filed because the Spanish NCA found no evidence of discriminatory agreements towards restaurants, nor of El Tenedor's conditions towards restaurants that could constitute an abuse of dominant position.

44. The CNMC carried out the investigation emphasizing the role of network effects in in three relevant markets: (i) online search, (ii) social media and (iii) booking through other websites.

45. The second case, GOOGLE SERVICIO TÉCNICO NO OFICIAL[12], arose from a complaint against Google for a possible abuse of dominance. The relevant market was general search, the CNMC didn´t find enough evidence of abuse of dominant position practices, as the terms and conditions of exclusion of some advertising categories were found to be objective, transparent and non-discriminatory.

46. Regarding market definition and market power assessment, it is worth mentioning that, although there was no need to close the market definition given the fact both cases ended up being filed, the CNMC carried out a deep assessment and evaluation of these digital markets, including of their double-sidedness. Apart from that, market shares were estimated not only in terms of value but also in terms of volume (% of search).

2.3.5. Zero pricing, innovation and ecosystems in other digital services

47. The CNMC has recently had the opportunity to assess mergers in relevant digital markets where other forces play a significant role.

48. In *Turnitin/Ouriginal* [13], a merger affecting anti-plagiarism software (APS) and other services related to education software, some issues relevant for digital markets were analysed. For instance, the effects on innovation, barriers to entry due to lock-in effects, the bundling of digital products and the actual/potential competition of Big Tech. The operation was cleared in phase I, after conducting a market test which showed that barriers to entry were not high and that relevant competitors at EU level and Big Tech companies that had recently entered the market could exert significant competitive pressure. As to innovation, given the low R&D investment to turnover ratio of the target and the capacity to innovate of other players in the market, the merger was deemed not to threaten innovation.

49. In *Norton/Avast*[14], a merger affecting cybersecurity solutions for final consumers, some issues relevant for digital markets also arose. For instance, the effects on innovation and barriers to entry due to lock-in effects. But especially the competitive pressure exerted by free products (which implies that market shares in terms of value can overestimate market power and alternative metrics, such as the number of users, may be needed) and by pre-installed solutions (pointing to the relevance of ecosystems and the actual/potential competition of Big Tech). The operation was cleared in phase I, after conducting a market test which showed that free solutions and the services offered by Big Tech exerted significant competitive pressure. In turn, the merger was not considered a threat to innovation in light of the competitive landscape and the rise of cyber threats (which mean a permanent incentive to improve products’ price/quality ratio).

[12] S/0007/20: GOOGLE SERVICIO TÉCNICO NO OFICIAL https://www.cnmc.es/expedientes/s000720

[13] C/1220/21: TURNITIN/OURIGINAL https://www.cnmc.es/en/node/390313

[14] C/1263/22: NORTON / AVAST https://www.cnmc.es/expedientes/c126322

3. Assessment of market power in digital markets from an advocacy perspective

50. The CNMC has analysed in numerous advocacy documents the impact of digitalization on different sectors. These analyses do not focus on the specific measurement of market power nor the definitions of this concept. Yet, they can be helpful to understand the nature of market power in digital markets and to identify barriers to entry, which can hamper competition.

51. In this regard, given the fast-moving nature of this markets, competition advocacy may play a crucial role. Indeed, competition enforcement tools act ex post – except for mergers-, which means sanctions or remedies can come too late, when competition has already been altered and the market has been favored by a few players. Advocacy instruments may therefore help asses and monitor potential competition issues on those markets.

52. In this section, we comment on two market studies on digital sectors: Fintech[15] and Online Advertising[16]. These market studies examine the competition dynamics in each sector and identify several aspects that can restrain competition and be eventually a source of market power.

53. These two studies reaffirm that digital markets share between them several common features related with the nature of digitalization and with the potential effects of digitalization on consumer welfare and efficiency. In particular, digitalization in general produces economies of scale and scope, learning economies and network effects. All of these can lead to price reductions, higher efficiency and benefits in terms of quantity, quality or variety of good and services available in markets. Yet, these effects also pose competition challenges, in particular when they become barriers to entry and lead to high concentration levels.

54. In the next subsections, we present the summary of the Fintech and online advertising market studies, focusing particularly of the competition challenges in these sectors that could be a source of market power.

3.1. Fintech

55. In 2018, The CNMC published a market study on the impact on competition of new technologies in the financial sector (Fintech)[17]. In this study, the CNMC analyses the opportunities and challenges of Fintech and presents some policy recommendations.

56. Fintech refers to a group of new financial services, which rely on the disruptive application of new information and telecommunications technologies (ICT) to the financial system. This phenomenon is a milestone in the sector with the potential to have a major impact of financial services. It can promote more efficient and diversified financial services. The Fintech phenomenon is a result of different elements, including the technological innovations, the expansion of the sharing economy and of services on demand, or even heavier regulation and certain distrust of traditional financial institutions after the global financial crisis. Information plays a key role in the financial industry in general, and especially in the Fintech sector. Fintech innovations help to increase efficiency

[15] E/CNMC/001/18: ESTUDIO FINTECH https://www.cnmc.es/expedientes/ecnmc00118

[16] E/CNMC/002/19: ESTUDIO SOBRE PUBLICIDAD ONLINE https://www.cnmc.es/expedientes/ecnmc00219

[17] E/CNMC/001/18: ESTUDIO FINTECH https://www.cnmc.es/expedientes/ecnmc00118

in the usage of all available information in order to offer new services for consumers. It includes different subsectors, such as distributed ledger technologies (DLTs)[18], payment services, asset management and advice, and crowdfunding. Fintech is therefore an opportunity to achieve higher efficiency levels, and to develop the personalization or individualization of financial services. Also, it could lead to the introduction of new products or services, and even to higher competition levels. This could help to facilitate financial access to more consumers and businesses, increasing financial inclusion.

57. Fintech also poses risks and challenges from a competition perspective. For instance, network effects could, as happens in other digital sectors, become a relevant entry barrier and provide wide market power to a few dominant firms. This phenomenon also presents competition risks regarding the usage of information, the role played by algorithms and the potential leveraging of Big Techs since they could extend their market power to the financial sector. Therefore, these aspects have the potential to become relevant barriers of entry in this sector and, as a result, they could facilitate higher levels of market power of dominant firms. Another relevant question for financial regulators is the effect of Fintech and of increased competition on risk taking and on the stability of financial intermediaries.

58. To address these risks and challenges, promote competition and reduce market power, the Fintech market study presents some policy recommendations. Regulators should welcome Fintech due to its potential to facilitate new and more efficient financial services. It could be an opportunity to analyse current financial regulation to verify whether new Fintech services can help to address some financial market failures, and to study if there are unnecessary regulatory barriers. Regulation should follow a functional approach rather than its traditional entity-orientation. In addition, regulatory sandboxes could be particularly useful is this area, since they can facilitate the development of new business models.

3.2. Online advertising

59. In 2018, The CNMC published a market study on the competition conditions in the online advertising sector in Spain. In this study, the CNMC analyses competition dynamics in the online advertising sector in order to identify competition problems and present some policy recommendations to address them.

60. Advertising is key for competition, since it allows advertisers to reach consumers. Thus, higher competition levels in this sector can help to increase the efficiency of the whole economy. The relevance of this sector also results from its role as the main source of funding of internet content and a key business for digital giants. The study also underlines that this is one of the sectors where the impact of digitalisation is more evident and relevant: revenues from online advertising in Spain exceeds that of traditional media[19].

61. Digitalization has created several positive effects. For instance, the capacity for ad personalisation and a more accurate measurement of the performance of campaigns. It has

[18] Distributed ledger technologies (DLTs) are a tool that can be deployed horizontally throughout the financial sector (and the whole economy). They allow keeping and updating a digital record of transactions in a transparent manner, thanks to validation by participants or “nodes” of the network.

[19] The CNMC's internal estimates (obtained from requests for information to sector agents) suggest that online advertising renenues in Spain could have exceeded 3,450 million euros in 2019 (more than the traditional media combined, approximately 2,000 million euros from television advertising, 700 million in press and magazines and 500 in radio). Also, annual growth rates of online advertising revenue may have been around 20% per year in the last few years.

also favoured the entry of new players and media, broadening the possibilities for advertisers and consumers. Finally, it has led to the emergence of new forms of contracting.

62. The study also identifies a number of risks to competition that may ultimately harm overall efficiency and, in particular, consumer welfare. Firstly, digital advertising registers high levels of concentration in very few players, with two companies (Google and Facebook) estimated to account for more than 70% of revenues of the sector in Spain. By subsectors, Google has more than 90% of income in search advertising and between 50% and 70% in the various open display intermediation services; while Facebook can account for more than 40% of revenue in display advertising.

63. The high concentration levels suggests that the economies of scale and scope that are present in this sector are conducive to large, service-integrating operators. In particular, the study shows that the main cause of this concentration is the role of data accumulation as a competition variable and its interaction with network effects. Data increases the competitiveness of platforms and may introduce certain interoperability problems when using different providers, generating switching costs and a tendency to concentrate or integrate services in a single provider (single-homing). As a result, data can be a barrier to entry and growth in the sector.

64. As it usually happens, integration and concentration in the sector could incentivise big firms to engage in competition-distorting behaviour, such as the extension of market power from one market to another (**leveraging**) or discrimination in favour of one's own services (**self-preferencing**).

65. Another competition challenge is the general opacity and lack of transparency in the sector. In particular, actors at the ends of the value chain suffer from asymmetric information that hinders their optimal decision-making and distorts market power in favour of platforms and intermediaries.

66. To address these challenges, the market study presents a series of recommendations. First, competition authorities must keep enforcing competition policy continuously and decisively as the first line of defence. Second, competition policy tools should be complemented by regulation on digital platforms that addresses the potential problems in digital markets. Third, national and European legislators must take into account the complex relationship between consumer and privacy protection and the promotion of competition in digital markets in order to empower consumers and ensure their maximum welfare. Fourth, institutions should adopt a multidisciplinary and cooperative approach. Finally, the capacities and means of competition and regulatory authorities must be strengthened.

4. Main conclusions

67. The enforcement of competition law in digital markets is especially challenging, especially regarding market definition and the assessment of market power. Competition policy tools are flexible enough to adapt to the disruption driven by digitization, but the analysis must be refined given the complexities inherent to multi-sided markets, data-driven network effects, zero-pricing business models, ecosystems, etc. The Spanish CNMC has gained experience all these issues in recent years, both in antitrust investigations and merger control.

68. As far as advocacy is concerned, the CNMC has examined the effects of digitalization on several markets, including Fintech and online advertising. Our analysis reaffirms that digitalization presents numerous advantages that can boost efficiency. Yet,

it also poses important competition challenges and can result in the creation of barriers to entry, which can lead to market power dynamics. The analysis of competition conditions through reports and market studies is relevant since it can help to understand these challenges posed by digitalization and help to achieve a more efficient use of competition policy tools.