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Theories of Harm for Digital Mergers – Summaries of contributions

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This document reproduces summaries of contributions submitted for Item 8 of the 140th OECD Competition Committee meeting on 14-16 June 2023.

More documents related to this discussion can be found at
<https://www.oecd.org/competition/theories-of-harm-for-digital-mergers.htm>

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Summaries of contributions

This document contains summaries of the various written contributions received for the discussion on Theories of Harm for Digital Mergers (140th OECD Competition Committee meeting on 14-16 June 2023). When the authors did not submit their own summary, the OECD Competition Division Secretariat summarised the contribution. Summaries by the OECD Secretariat are indicated by an *.

Austria

Mergers in digital markets are a specific challenge for merger policy. This contribution sheds light on some issues related to mergers in digital markets. Specific features of digital markets derive specific issues that cannot simply be addressed with applying traditional theories and instruments. Some of these issues have been already addressed with new or modified traditional instruments and theoretical concepts.

This applies to the market definition (e.g. SSNDQ test) and horizontal theories of harm (e.g. gross upward pricing pressure index). Another particularity is the importance of data. The legal framework has also already been on national (e.g. Austria) as well as supranational level adjusted to the challenges of digital markets.

Assessing ex-ante effects is a typical challenge of merger control. This is especially the case for mergers in digital markets. Plenty of recent ex-post evaluations may provide for challenges that have not been addressed yet useful lessons. For other issues there are no appropriate answers found yet. This is also because some specific features of digital markets can be ambiguous in respect to its competitive effects. Due to the dynamics of digital markets, new issues will certainly arise. The rising importance of digital markets, hence, already brought and will bring in future dynamics into the merger policy.

BIAC

Business at OECD (BIAC) is grateful for the opportunity to contribute to the Competition Committee's roundtable on theories of harm for digital mergers.

The debate on theories of harm in digital mergers is both timely and important to ensure that merger control continues to identify and address competitive harm in dynamic markets, while avoiding unwarranted or speculative enforcement. BIAC stresses the importance of merger control policy that is based on well-established economic insights. It is also important that jurisdiction in relation to proposed digital mergers only be asserted by a competition authority in a manner that respects leading case principles and is consistent with the recommendations of the OECD and the International Competition Network (ICN) made in recent years.

This is important for the business community and consumers more broadly because it promotes predictability and legal certainty in merger review, avoids unnecessary system frictions at the international level and reduces the risk and incidence of both type 1 (false positives) and type 2 (false negatives) errors.

For that reason, Section II of this paper explores whether existing theories of harm are largely sufficient to address the issues arising in digital mergers (by reference to the large number of digital mergers reviewed in the EU, for example).

BIAC endorses, however, the introduction of modifications to the analytical tools applied to existing theories of harm to adapt to changing circumstances, provided that such change is pursued in an economically sound manner that is predictable and consistent with evidence-based enforcement. Section III considers potential new theories of harm and explains why the careful modification/adaptation of existing analytical tools is the better approach.

Section IV explains why certain presumptions, including reversals of the burden of proof, should be avoided (given their impact on legal certainty) and how the role of behavioural remedies plays a consumer-friendly role in resolving vertical issues, while retaining efficiencies.

Brazil

Mergers in the rapidly changing digital economy raise competition concerns. The rapid increase of this sort of merger has raised global concerns about whether they will escape notice due to legal notification thresholds and whether current substantive assessments adequately address their unique competitive risks. This article examines these challenges, focusing on the experience of CADE, the Brazilian antitrust authority, and its use of the merger review framework of Law 12529/2011. It examines current debates and proposes new theories of harm from digital horizontal, vertical, and conglomerate mergers, which include data-driven foreclosure or increased access to competitively sensitive information, the interaction between privacy and antitrust, and the potential harm of digital ecosystems. The paper draws lessons from the authority's recent case law to improve antitrust analysis; moreover, it points out the need to incorporate new theories of harm to make merger control more responsive to potential new forms of economic power abuse in the digital economy.

European Union

As has been found in many reports and studies conducted in recent years¹, mergers and acquisitions in the digital sector may raise specific competitive risks. Strong network effects and advantages generated by data access, which are generally integral to digital services, may reinforce the market power of large digital platforms engaging in external growth. Preventing such effects poses several challenges to competition agencies, including the assessment of a target's potential competitive significance and the fact that these transactions often involve complementary rather than overlapping products, thus potentially leading to non-horizontal effects.

This Paper examines how these concerns translate in concrete cases investigated by the European Commission under the EU framework. In particular, the Paper provides a systematic review of the Commission's decisional practice for the substantive assessment of digital and tech mergers, setting out a structured analysis under the following four categories:

First, the Paper discusses conglomerate effects in digital markets, focusing on interoperability degradation, and outlining the framework of assessment in several cases including *Google/Fitbit*, *Qualcomm/NXP* and *Broadcom/Brocade*.

Second, the Paper sets out how the Commission has assessed vertical effects in a number of recent digital mergers, focusing on access degradation, and illustrating this approach by reference to cases such as *Meta/Kustomer* and *Microsoft/LinkedIn*.

Third, the Paper outlines how data related effects have been approached so far in the Commission's decisional practice, including *Google/Fitbit* and *Meta/Kustomer*, where data-related effects were examined through a horizontal lense (data combination), and *Microsoft/LinkedIn*, where data-related effects were examined from a vertical effects standpoint (data as an input).

Fourth, and finally, in a forward-looking effort, this Paper also discusses the potential impact of horizontal mergers on innovation competition and long-term entry deterrence risks, notably in the context of ecosystems-related effects.

¹ See, for example, Special Advisers Report to the European Commission, Competition policy for the digital era (2019); Report of the Digital Competition Expert Panel to the UK Chancellor of the Exchequer and Secretary of State for Business, Energy and Industrial Strategy, *Unlocking digital competition* (2019).

Hungary

This contribution provides a summary of the theories of harm for digital mergers, based on the legal background and the experience of the Hungarian Competition Authority (GVH). The GVH operates under the Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices, which includes provisions for merger control.

Under the Hungarian merger control regime, there are mandatory and voluntary notification thresholds. Parties are obliged to notify a transaction if their net turnover reaches a certain threshold, and they may also notify the merger if their joint net turnover reaches a lower threshold, and it is not obvious that the transaction would not harm competition on the relevant market. The voluntary notification regime is particularly relevant for digital mergers as it can capture acquisitions involving start-up undertakings, even if the target company has no or limited turnover.

Digital markets have unique characteristics that impact the dynamics of competition. These markets are typically multi-sided, with strong network effects. Consumers often access digital products or services for free, but they provide their data in exchange, while data collection and processing enable customization and targeted advertising. On markets with such features, high concentration, economies of scale, data advantages, network effects, and switching barriers can reduce competition and challenge traditional theories of harm. The rapid evolution of digital markets makes market power assessment less reliable compared to traditional markets.

In the GVH's experience, traditional concerns about pricing, including algorithmic pricing, can still be relevant in digital markets. The GVH has observed cases where even indirect price increases were unfeasible, but also found that consumers were willing to pay a premium price for better quality or innovative services. Non-price related theories of harm, such as the impact on quality, variety, and innovation, however, are often even more important due to the commonly used zero-price models in this field.

Non-horizontal theories of harm, including vertical and conglomerate effects, are crucial in evaluating digital mergers. Incumbent platforms with market power may leverage their position and expand into other markets, creating challenges for fair competition.

Data-related theories of harm are significant in digital markets. Data can grant market power and raise concerns about vertical integration, and the accumulation of data and datasets. The GVH has assessed the importance of data based on its characteristics (velocity, volume, value, variety), and the interconnection of databases and the potential to become an industry standard were also considered, but the GVH found that harm to competition in this regard was unlikely in the cases it examined. The paper also considers "killer acquisitions" in view of digital economies.

The GVH is of the opinion that traditional theories of harm can still often apply but may require modifications considering the special characteristics of digital markets. Consequently, more emphasis needs to be put on a dynamic approach when assessing competitive effects in digital markets. The unique characteristics of digital markets pose challenges for competition authorities in defining relevant markets, assessing market power, and evaluating potential harm from mergers, therefore a more rigorous and interventionist approach may be needed in order to prevent serious market distortions which traditional theories of harm cannot properly capture, especially in fast-developing markets.

India

With the increase in M&A activity involving enterprises engaged in digital space and given the specificities of the digital sector, the debate regarding need for fine tuning, developing, and validating the theories of harm in assessment of such M&As continues to gather significant momentum. The contribution seeks to bring out the theories of harm (such as net neutrality, self-preferencing, data-based market power) applied by CCI for assessment of combinations involving Big Tech players. Further, apart from theories of harm, there are various other issues relating to regulation of M&As in digital space viz., the transactions not meeting the traditional assets/turnover based notification thresholds, issues of traditional assessment and remedy framework not being adequate to have the necessary effect on competition or failing to produce the efficient outcome. In this regard, the Government of India has taken a slew of measures for reviewing the fulcrum of the competition regime in India specifically in context of digital space. The write-up also seeks to discuss measures implemented/under consideration such as introduction of transaction value/deal value based thresholds for determining notification requirement of M&As which may not meet the traditional thresholds and discussion on need for a separate law on competition in digital markets etc.

Japan

Theories of harm for the merger case of Z Holdings Corporation and LINE Corporation (the Case) were different from typical ones, in light of the characteristics of the digital field including a two-sided market, indirect network effects and the importance of data. Also, the content of the remedies for the Case was unprecedented, reflecting the difficulty in predicting the impact of the merger on future competition.

One of the major services reviewed in the Case was code-based payment service, which has the above-mentioned characteristics of digital services best. Regarding the code-based payment service, the JFTC defined the two relevant markets: one is a market for consumers as users and the other is a market for member stores as users. The JFTC reviewed the Case taking into account the fact that indirect network effects bidirectionally arise between the two relevant markets. Theories of harm concerning the code-based payment services can be primarily recognized as follows.

1. In the two-sided market with two user groups of consumers and member stores, the indirect network effect works bidirectionally under the circumstances of B) or C) below. In particular, the merging parties first gain market power in the market where consumers are the users, and through the indirect network effect also gain market power in the market where member stores are the users thereafter.
2. Exclusive dealing by the merging parties with member stores after the merger may decrease competitive pressure by competitors in either of the two relevant markets
3. The merging parties may gain market power easily, depending on ex-post conducts of them including integration, sharing and utilization of data, as well as future market conditions which are difficult to accurately predict at the time of the merger review.

As a remedy, the merging parties will discuss with the JFTC and will study the solution when the JFTC points out competitive concerns. This is a different measure from typical ones, considering that it is difficult to predict the future of the relevant market partially because the code-based payment service is immature and the merging parties have not decided how to utilize the data after the merger.

Korea

In 2019, global food delivery platform Delivery Hero (owner of food delivery apps Yogiyo and Baedaltong in Korea) filed its merger notification to the Korea Fair Trade Commission (KFTC) to acquire Woowa Brothers, which operated Korea's No.1 delivery app Baedal Minjok. As the merger involved two food delivery platforms, the KFTC reviewed the case while taking full account of the characteristics of digital platforms and imposed remedies to address competitive concerns identified.

The KFTC applied the 1) multi-sided market approach in the process of defining relevant markets and considered factors such as 2) network effects, 3) possibility of non-price competition harm, and 4) concerns of platforms leveraging their market power during its analysis of competitive concerns.

Food ordering apps intermediate food orders between two sides: consumers and restaurants. Thus, the key issue was to determine whether the food ordering app market should be seen as either a one-sided or two-sided market. The KFTC defined the relevant market as the two-sided 'food ordering app market' by applying the two-sided market definition approach that had only been discussed as a theory. It took into account how 1) positive cross-side network effects occur between consumers and restaurants, 2) food ordering apps intermediate food orders, and 3) SSNIP tests which indicated that consumers and restaurants perceived substitutability in the same way.

Meanwhile, as the merging parties owned a vast amount of data on transactions between consumers and restaurants, the KFTC anticipated that the proposed merger could entail 'data concentration' and induce parties to pursue highly efficient marketing strategies by using the merged data they own. Such personalized marketing strategies could cause consumers to tip toward the merged platform, and network effects which create further "tipping" effects could enhance the possibility of competitors from being excluded from the market. In addition, the merging parties had been providing data such as food order-related statistics, know-hows and recipes for restaurants, and thus, the KFTC found that the merging parties could deteriorate the quality of such data as they would face less competitive pressure to attract restaurants to their platform.

The KFTC also focused on the possibility of the parties leveraging their market power onto adjacent markets. The Baedal Minjok-Yogiyo merger resulted in conglomerate mergers between food ordering app-food delivery service markets and food ordering app-sharing kitchen service markets. The KFTC found that the parties could exclude competitors in the food delivery and sharing kitchen service markets by giving preferential treatment to restaurants that use their services, and proved that such self-preferencing strategies could increase entry barriers in relevant markets.

Mexico

Federal Economic Competition Commission (COFECE or Commission)

Under the Mexican competition regime, there are no special principles or methods to analyze digital mergers. The elements that the Federal Economic Competition Law (LFCE) provides that must be considered when determining whether a merger should or should not be approved in traditional markets are also used by COFECE when analysing mergers in digital markets.

The contribution presents a summary of the challenges faced when analyzing mergers in digital markets, the theories of harm used to assess the effects of these transactions in the markets, and some examples of such analysis.

Federal Telecommunications Institute (IFT)

In this contribution, the IFT shares the legal framework for the assessment of mergers in Mexico; a description, according to IFT's experience, of the elements that would require an exhaustive analysis for the establishment of ToH in digital merger control, such as the Economic Interest Group (EIG), economic activities performed by the parties, and barriers to entry, and how some of those elements have been considered in the determination of ToHs in digital mergers.

The IFT has extensive experience analysing mergers in the Telecommunications and Broadcasting (T&B) sectors, which share several characteristics with digital markets, such as strong network effects, multi-sided markets, vertical integration, important economies of scale and scope, barriers to entry and expansion, the provision of zero price services for consumers, and fast evolving markets with substantial technological innovation. The fast pace of innovation makes it harder to establish and prove ToHs in digital markets, especially conglomerate ToH effects that consider the compounded effect of the merger.

The IFT has identified the prominence of analysing ToHs related to conglomerate effects due to the wide number of economic activities that T&B providers participate in, and that could give rise to competition concerns in mergers. The IFT stresses the relevance of barriers to entry in determining ToHs and whether or not to impose remedies to a certain merger, as they play an important role in the definition of ToHs and can become an entry barrier for potential competitors.

The capacity of digital ecosystems to leverage a substantial position across markets and the role of data would become more relevant and further present challenges for the definition of ToHs in merger control.

Finally, this contribution provides case examples of ToHs analysed in merger cases for digital markets: AT&T/Time Warner and Disney/Fox, where the main concerns in both cases were possible non-horizontal effects (conglomerate and vertical), such as capacity and incentives for the resulting entity for coordination, foreclosure, and setting barriers to entry.

Romania

In past years, there have been a series of important discussions surrounding the role and capability of current antitrust tools in regards to the analysis and regulation of digital markets. In the case of mergers, more specifically, killer acquisitions and zero price markets are particularly evocative of the issues surrounding digital markets. This paper will aim to contribute to the ongoing discussion via two different focuses:

- Merger analysis in a platform economy as opposed to traditional markets, and
- Theories of harm from two different perspectives – ex ante and ex post, with practical examples.

The present paper will focus on the Romanian Competition Council's ('RCC') experience in regards to digital mergers by reflecting upon the acquisition of Foodpanda by Glovo on the market for food delivery platforms. While not the most glamorous of markets, when compared to zero-price markets such as search engines or social media platforms, the Glovo merger (as it will hereon be referred to as) was an important step in the analysis of digital mergers, in the RCC's experience, from the point of view of, firstly, the definition of the relevant markets and, secondly, through the analysis of theory/theories of harm.

To this end, the paper will detail the approach of the Romanian Competition Council in its analysis of the relevant product and geographical market in the case and its focus on the supply side of the market rather than the demand side, analysis which informed RCC's final decision upon the case. Then, following this analysis, we will present two different theories of harm – a rather traditional theory of harm of exclusionary conduct, and another which is more specific to digital markets, of monopolization.

Spain

This contribution by the Spanish National Markets and Competition Commission (CNMC)² addresses the topic of the Roundtable on “Theories of Harm for Digital Mergers” to be hosted by the OECD in June 2023.

To that end it relies on the CNMC’s experience in assessing theories of harm in digital mergers, an area where the CNMC has been especially active. Even if merger control is horizontal in nature in Spain (and there are no specificities for merger control in digital markets as compared to other sectors), there is one singularity of the Spanish framework which helps to scrutinize digital mergers. Spain, apart from a turnover criterion for notification, has a market share merger notification threshold. This helps to analyse some potentially troublesome mergers in all sectors, especially in digital ones (since market share can be defined not only in terms of nominal revenue but also in terms of other indicators, like users, devices, downloads, clicks or visits, etc.). 70% mergers in digital markets assessed by the CNMC are notified due to the market share criterion (they would go under the radar otherwise). Some of the digital sectors recently analysed by the CNMC include food delivery, ride-hailing apps, classified websites, software and other platforms.

This has allowed the CNMC to gain knowledge and experience in assessing digital mergers, including regarding the different theories of harm. Some of the issues analysed by the CNMC include the role of multi-sidedness (with factors such as exclusivity clauses and the degree of multi-homing), the importance of ecosystems (regarding tied products, zero pricing and lock-in effects) or the innovation theories of harm. This has led to the introduction of remedies in some cases, trying to address these theories of harm.

² This contribution has been prepared by the staff of the CNMC and shall not be regarded as the official position of the CNMC unless it refers to CNMC approved documents.

Chinese Taipei

This paper outlines challenges facing the Chinese Taipei Fair Trade Commission (hereinafter referred to as the “CTFTC”) for merger review in digital markets. It also presents case studies with applicable theories of harm and key aspects of their assessments.

In a digital economy, competition occurs between ecosystems rather than between individual products. Through horizontal and non-horizontal mergers, technologies, goods and services that seem to be initially unrelated may be combined to facilitate businesses to provide more integrated products. When competition assessment switches its focus to a wider scope of market competition and dynamic competition among ecosystems, market power does not simply refer to a business’ ability to manipulate prices of individual products, but its impact on product diversity and differentiation. Unlike traditional merger assessment tools that rely on price effects, competition assessment in digital mergers will further account for businesses’ abilities to control resources critical to competition (e.g. data) and the likelihood of exclusionary practices, for example killer acquisitions or any conduct that may restrict or distort potential competition.

Until now, the CTFTC has not applied a specific theory of harm to assess a killer acquisition, but it has had some enforcement experience in assessing potential competition resulting from conglomerate mergers. In digital mergers, the CTFTC will identify how likely the data itself can be substituted and how the data might be used to confer competitive advantage. In doing so, the CTFTC will determine if merging parties can leverage acquired competitive advantages to prevent rival companies from competing. In respect of the interface between protection of personal data and competition law, the CTFTC has attempted to include privacy protection as an element of product quality in the assessment of mergers and has considered whether/how the assessment can be integrated with its current merger review process.

Competition in the digital economy is distinct from the traditional economy. Conventional analytical methods and approaches may not always be applicable when conducting competition assessment in data-driven markets. In either horizontal or non-horizontal digital mergers, non-price impacts carry more weight when assessing anti-competitive effects. The CTFTC currently adopts an issue-driven approach as its best enforcement principle. This approach allows the CTFTC to define and solve problems on a case-by-case basis, develop new analytical tools under its existing analytical framework, and further clarify legal criteria of anti-competitive practices as well as the application of theories of harm. The CTFTC will remain vigilant to keep up with the latest developments in domestic and international digital economies and periodically review its enforcement standards.

United Kingdom

Merger control is not static: as markets evolve, so too must competition authorities' assessment of competition. The growing prominence of digital firms has brought about substantial benefits for society but also novel challenges that require competition authorities to adapt their analytical approach and evidence gathering.

Merger control plays a crucial role in ensuring that digital markets work for consumers. Features such as dynamic competition, network effects from two-sided markets, economies of scale and scope, data advantages to incumbents and the development of ecosystems can, in certain circumstances, give rise to entrenched market power and a resulting lack of effective competition. The CMA's experience suggests that rather than attempting to rewrite the analytical approach for digital mergers, incorporating an understanding of these characteristics into a flexible approach around existing, well-understood analytical principles provides for a consistent and balanced merger control regime.

In 2021, the CMA updated its Merger Assessment Guidelines (the **Guidelines**) to reflect the CMA's approach to assessing digital mergers. The revised guidelines describe a set of tools that can be applied flexibly to reflect the competitive reality of the market under consideration. The updates made do not signal the introduction of new theories of harm or economic principles, but rather developments in the application of existing theories and principles, including in digital markets.

This paper discusses the CMA's approach to reviewing digital mergers and is structured as follows:

- Section 2 provides background on the CMA's process for merger assessment and the CMA's revised Guidelines, including the findings of the key research into digital markets in the UK;
- Section 3 outlines the CMA's approach to theories of harm for digital mergers;
- Section 4 describes how the CMA carries out its assessment of digital mergers;
- Section 5 provides case summaries of several digital mergers considered by the CMA;
- Section 6 discusses broader changes that have been made within the CMA to ensure it can identify and investigate potentially problematic digital mergers, this includes the introduction of specialist units within the CMA focused on digital markets and the expected implementation of new statutory powers specific to digital markets.

United States

Several aspects of contemporary digital technologies have resulted in market dynamics and business strategies that merit particular attention for antitrust enforcers. For example, low marginal production costs have enabled digital firms to grow larger and more quickly than many conventional businesses. Network effects and high entry barriers in some markets may lead certain markets to “tip” towards a few powerful firms while also serving to protect incumbents. Meanwhile, network effects stemming from the collection and use of large amounts of data provide advantages to early movers, which incentivize firms to prioritize expanding and quickly securing a large user base. Further, the ability to digitally track and surveil users has enabled firms to offer zero-price services to consumers while monetizing their data. Those firms can then deploy surveillance techniques to detect and insulate themselves against competitive threats.

While digital markets have the potential to yield great benefits, they are also susceptible to anticompetitive practices by incumbents that lock-in dominance, block rivals, and harm competition. Thus, it is especially important for enforcers to be vigilant about potentially anticompetitive mergers or conduct in digital markets. Moreover, a loss of competition at an early stage in a market’s development can both hamper and distort the path of future innovation. Thus, it is imperative that enforcers be prepared to act quickly to preserve open and fair competition *before* markets lose vitality due to harmful consolidation.

Mergers and acquisitions involving digital markets can lessen competition or tend to create, maintain, or entrench monopolies through a variety of mechanisms. Technology companies often operate across a variety of interrelated areas, and often maintain multi-sided platforms that provide different products or services to two or more different groups who benefit from each other’s participation. Moreover, dominant technology firms can use strategic acquisitions as part of an interrelated course of monopolistic conduct. For example, technology firms have engaged in “buy-or-bury” strategies against actual or potential rivals; they have also attempted to buy or control adjacent products or services that might be used to steer customers to their other products or exclude competing platforms. While a clearer picture has begun to emerge, continued learning remains essential to fully understanding the many ways that digital firms may use mergers to maintain their position and insulate themselves from competitive challenges.

This submission describes the application of United States antitrust laws to digital mergers, how existing legal doctrines can be used to pursue more robust enforcement in digital markets, the issues that digital mergers are more likely to raise, the federal antitrust enforcement agencies’ recent experiences with digital mergers, and how the agencies will address them going forward.

The Agencies will remain vigilant to prevent harm to competition resulting from digital mergers by engaging in robust merger enforcement. The Agencies are especially concerned about mergers that could entrench a dominant firm or allow such a firm to extend its dominance.

The Agencies are also especially concerned with any potential labor market harms when evaluating digital mergers. One concerning aspect of labor markets in digital sectors is the high proportion of non-competes in non-reportable big tech acquisitions.³ The Agencies

³ See, e.g., Non-HSR Technology Acquisitions Report, *supra* note 14, at 8-9, 21, 37 (discussing non-competes).

will continue to evaluate technology companies' use of non-compete clauses in employment agreements that prevent many skilled workers from working at competing firms or starting their own businesses. In addition, given their often close proximity and overlapping workforce needs, technology companies may be prone to enter into collusive agreements with one another that pose a harm to labor market competition. For example, technology companies have run afoul of the antitrust laws by entering into agreements not to hire each other's workers.⁴ The Agencies will continue to evaluate the effects of these types of restrictions on labor markets. Purported consumer benefits in digital product markets from a merger do not offset or neutralize harm to workers in labor markets.

The importance of preventing harm before it happens and the importance of preserving open and fair dynamic competition both underlie the Agencies' commitment to robust pre-consummation analysis—wherever possible—of digital mergers. But whether or not a digital merger is consummated, the Agencies are firmly committed to act swiftly and decisively to challenge illegal digital mergers. Enforcement action is essential to prevent critically important digital markets from becoming or remaining unduly concentrated or dominated by a monopolist.

⁴ See, e.g., *United States v. Adobe Systems Inc.*, No. 1:10-cv-01629, 2010 WL 11417874 (D.D.C. Sept. 24, 2010).