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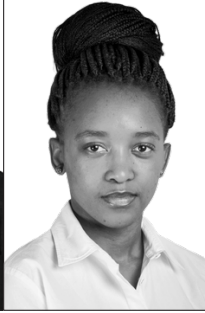
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Antitrust in Developing and Emerging Economies – 8th Edition

#1 Antitrust and Tech:
Impact on the Developing World

Webinar - 26 October 2021*



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Harry First



Harry First

Harry First pointed out that although the problem seems similar between developed and developing countries, each country has very different legal and economic contexts. If we take the example of Facebook, over 90% of its monthly users are outside the US and Canada. As its growth has slowed in the

developed economies, Facebook is looking to expand in developing economies. This shows that Facebook’s impact is global, but because of the different contexts, competition enforcers may face different issues in each country and may face difficult obstacles in enforcement.

Robert Mahini

Robert Mahini began the discussion. He stated that he agreed with most of what Hassan said. He assumes that not all Big Tech behavior is anti-competitive. Indeed, these platforms can promote many opportunities. In many parts of the world, these platforms have helped reshape the way business is conducted and how consumers essentially get the products and

services they want. In many countries, and particularly in Latin America, there is considerable growth in local fintech companies. This creates significant competition from these new entrants. In addition, Covid-19 has enabled the development of e-commerce, which has led to a rapid evolution of marketplaces and merchants that are reshaping the local space. Thus, companies

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*Marie de Monjour drafted the following synthesis for Concurrences. The views expressed in this presentation are those of the speakers and do not necessarily represent those of the institutions to which they are affiliated.

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Pamela Mondliwa



such as Facebook are trying to expand globally, and when they do, they have to compete with companies already present locally. However, Big Tech can also create competition problems. There is, however, a framework to deal with these potential competition problems. Competition authorities, in Latin America, for example, rely on a case-by-case approach that is effects-based, and they have

Viswanath Pingali

Viswanath Pingali raised sectoral issues as one of the problems in applying competition law, as used in developed countries and developing countries. Indeed, one of the confusions that we see as the law evolves is the way competition law is exercised in certain sectors where we see regulators clashing. Another problem is the copying of models that have been applied in the developed world. The ecosystems between these two categories of countries are different, the competition regimes are different, the economies have a different trajectory, etc. It is therefore difficult to imagine how to apply what happens in developed countries to developing countries. Thus, a more localized approach to the

Pamela Mondliwa

Pamela Mondliwa pointed out the heterogeneity of the platforms and therefore the influence or effect a particular platform could have, depending on which developing country you are in. There are two main categories of platforms. The first are platforms that we see in developing countries that are just as dependent on large technology companies as in developed countries. Within these platforms, the concerns of developing countries are about the ability of complementors to be able to add layers to these platforms. The second category concerns marketplaces, trading platforms, etc. In this category of platforms, developing countries have been successful in creating their own platforms. For example, some countries in Africa have marketplaces that rival Amazon in the domestic market; indeed, some developing countries have their own platforms that would be bigger than the global platforms. However, this has to be qualified because the

Angela Zhang

Angela Zhang argued that China is different from other developing countries. Indeed, although its GDP is lower than that of the US, China is still the second-largest economy in the world and,

sufficient competition tools to address concerns that may arise. In addition to this framework, there is also a need for due process. In this regard, many concerns can be raised about the basics such as ensuring that companies have access to the file, have the opportunity to understand the charges, etc., and all countries, developed and developing, have had to work on these elements.

conditions of competition is necessary, i.e. an approach that is rather apprehended through a case-by-case analysis. Finally, the startup ecosystem in developing countries such as India, for example, relies much more on Big Tech platforms for market access and survival. These companies can therefore have an impact on welfare in these countries.

Professor Pingali also suggested that innovation is not necessarily an objective of competition law; the encouragement of innovation by competition law is only a by-product. To consider that antitrust laws have a responsibility concerning innovation is, therefore, a bit restrictive.

business model that applies is not identical and the context of the country in which the platform operates can also be very different. Another issue facing developing countries is the overlap of platforms. The country wants to be sure that both vendors and developers can capture a fair share of the value creation for smaller players that would complement the large platforms. The final issue is the extent to which some developing countries already have tools that put them in a better position than some of their developed country counterparts to address some of these challenges.

Questions can be raised about the extent to which platforms or marketplaces can be considered biased as they facilitate transactions rather than buying goods for resale or using them as intermediate inputs. These provisions have not yet been tested.

in 10 years, is likely to become the largest economy in the world. Moreover, China has many technology companies that can compete with US companies. For several years now, it has

been possible to observe that China has been pursuing a policy aimed at preventing US tech giants from entering the Chinese market and that the companies that are already in their market are gradually exiting. China launched a massive crackdown on its own technology companies exactly one year ago. The Chinese government's main tool for this is antitrust. In particular, guidelines have been issued dealing specifically with antitrust problems in the platform economy. The Chinese Antitrust Agency has also re-examined all merger cases that have already taken place and have not been notified to the agency. From its point of view, the Chinese dynamics in the new technology market are different from other models, notably because of the types of products offered on the two large platforms, Alibaba and Tencent. So, like other countries in the world, China has good reason to go after the big tech companies.

George Paul

George Paul recalled that the various competition authorities around the world have worked to provide resources to regulators. However, the problem is that it is complicated for a company to comply with the regulations of more than 200 regulators. This raises several issues. The first difficulty, in the context of implementing the regulation for tech platforms, highlights the fact that each nation has different objectives than the international objective. For example, South Africa has non-competition objectives that are incorporated into its antitrust legislation. This same difficulty also raises with the question whether countries should be try to obtain advantageous trading conditions for their companies. In the US, there is a clause in the Constitution that protects domestic markets from overly restrictive state regulations and local cartels and the means to promote domestic trade. The second difficulty noted mainly in developing countries is whether regulators will take the economic analysis seriously or decide to take shortcuts. A recent poll by the U.S.-China Chamber of Commerce said that they

Hassan Qaqaya

Hassan Qaqaya, as a conclusion, added that for several years now, there has been a significant evolution of the young competition authorities. The Covid-19 crisis has shown that some authorities have been able to adapt, to reform their institution to adapt their laws and procedures to

Professor Zhang also pointed out that the main objective pursued by the governments of most countries in the world is to improve the social welfare of its citizens. The technological crackdown in China has had an immediate impact on improving social welfare. In line with this technological repression, China is also pursuing another objective, which is to encourage its technology companies to be more innovative. China's objective here is to remain competitive with the US. On the point about institutional change, in China enforcement campaigns tend to be short-lived, lasting a few years and having temporary effects on competition. However, this leads to lasting institutional changes. Indeed, many aggressive laws are passed in China that will have significant impacts on business activities. In addition, the Chinese Antitrust Authority is going to be upgraded to a vice-ministerial status, which means that it will have much greater decision-making and sanctioning capacity.

were extremely concerned about the level of competition authority enforcement by China as a means to disadvantage non-local firms.

Many other issues are being raised, including data collection by Chinese technology companies. The Chinese internet model is based on data localization, with data being made available to local government authorities. Countries are worried that it could constitute a National Security risk. This is a discussion that is ongoing within the Biden Administration and has been raised by President Obama with European authorities.

In response to what George Paul said about the problem of data surveillance by Chinese technology companies, Angela Zhang pointed out that this problem can also be raised concerning the actions of the US government. Indeed, the US government is conducting massive surveillance of its citizens. This is one of the reasons why the Chinese government, as well as the European Union, have decided to adopt regulations to remedy such a problem.

this new situation. Innovation is one of the major points that allow developing countries to develop and prosper. Young competition authorities face several challenges, such as for example: how to ensure a balance of net benefits/costs between a monopoly or some form of monopoly. ■

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