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DESIGNING COMPETITION POLICY IN DIGITAL MARKETS FOR DEVELOPING ECONOMIES: HOW THE EU CAN CONTRIBUTE WITH THE DIGITAL MARKETS ACT AND DIGITAL SERVICES ACT

Delineando política de concorrência em mercados digitais para economias em desenvolvimento: como a ue pode contribuir com a lei dos mercados digitais (digital markets act) e a lei dos serviços digitais (digital services act)

Vicente Bagnoli¹

ABSTRACT

The object of the paper is to investigate the competition in digital markets and the role of competition policy in developing economies for an inclusive growth and shared prosperity with innovative tools for a better competition law enforcement. Its methodology analyses international reports and surveys. Developing economies must strengthen their capacity to design competition policy in the digital markets according to their individual social and economic development particularities, observing what developed economies have been doing in their own market. EU has been driving the competition policy in digital markets evaluating mergers and acquisition and prosecuting abuse of dominance. The Digital Markets Act and the Digital Services Act are two more initiatives able to facilitate developing economies in designing their own regulation in digital markets. The result of the paper indicates that one size does not fit all and as a conclusion, experience and good standards should be evaluated and tailored.

¹ Professor da Faculdade de Direito da Universidade Presbiteriana Mackenzie nos programas de Graduação e Pós-Graduação (Mestrado e Doutorado). Doutor em Filosofia e Teoria Geral do Direito pela Faculdade de Direito da Universidade de São Paulo – USP. Pesquisador Visitante no Instituto Max Planck de Inovação e Concorrência – Munique (Pós-Doutorado). Mestre em Direito Político e Econômico e Bacharel em Direito pela Universidade Presbiteriana Mackenzie. Diretor para o Brasil da ASCOLA – Academic Society for Competition Law. Membro do Núcleo de Proteção de Dados no âmbito do Conselho Nacional de Defesa do Consumidor (CNDIC). Membro do Grupo de Estudos do Procon/SP de análise dos aspectos regulatórios e econômicos do Código de Defesa do Consumidor. Consultor não governamental da International Competition Network – ICN. Consultor Temporário do World Bank Group e da World Intellectual Property Organization. Participante da UNCTAD Research Partnership Platform on Competition and Consumer Protection Laws and Policies (RPP). Sócio de Vicente Bagnoli Advogados. E-mail: bagnoli@vicentebagnoli.com.br

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RESUMO

O objetivo do artigo é investigar a concorrência nos mercados digitais e o papel da política de concorrência nas economias em desenvolvimento para um crescimento inclusivo e prosperidade compartilhada com ferramentas inovadoras para uma melhor aplicação da lei. Sua metodologia analisa relatórios e pesquisas internacionais. As economias em desenvolvimento devem fortalecer sua capacidade de desenhar políticas de concorrência nos mercados digitais de acordo com suas particularidades sociais e econômicas de desenvolvimento, observando o que as economias desenvolvidas vêm fazendo em seu próprio mercado. A UE tem conduzido a política de concorrência nos mercados digitais, e o *Digital Markets Act* e o *Digital Services Act* são mais duas iniciativas capazes de facilitar as economias em desenvolvimento na concepção de sua própria regulamentação nos mercados digitais. O resultado do artigo indica que não existe um formato único e, como conclusão, a experiência e os bons padrões devem ser avaliados e ajustados.

Palavras-chaves: política de concorrência; economias em desenvolvimento; regulamentação; economia digital; *digital markets act*; *digital services act*.

Classificação JEL: K21.

Sumário: 1. Introduction; 2. Competition in Digital Market; 3. Competition Policy for Developing Economies; 4. Tools for a Better Competition Law Enforcement in Digital Markets; 5. The Digital Markets Act and Digital Services Act; 6. Conclusion; and 7. Bibliography.

1. INTRODUCTION

The development of the digital markets produces several economic opportunities by improving economic and social outcomes, contributing to innovation and productivity growth, and solving social problems with the use of digital data. In digital markets, platforms can facilitate transactions and networking as well as information exchange. The revolution of all sectors and markets through digitalization can improve the production of goods and services at reduced costs (UNCTAD, 2019, p. XVI).

Digital platforms have taken steps to consolidate their competitive positions globally, including the acquisition of potential competitors and expanding their business into complementary products or services. The new economic resource for creating and capturing value has become Data. The control over data it is strategically central to transform its application into digital intelligence (UNCTAD, 2019, p. XVI-XVII) and the cross-border flows of digital data are chief to all fast-evolving digital technologies, such as data analytics, artificial intelligence, internet of things, cloud computing, blockchain and many other internet-based services. (UNCTAD, 2021, p. XV)

Technology creates opportunities and challenges in digital markets which demands the definition of rules and regulation from governments as well as stakeholders. Policymakers need to make choices that can aid in reversing existing plight against inequalities and power imbalances in digital

markets.

Considering the network effects and the propensity to concentration in digital markets, competition policy has a significant role in creating and capturing value for sharing prosperity. The current frameworks must be adapted to provide competitive and contestable digital markets for developing economies.

The relationship of digital markets along with social and economic development bring together the differences between first and second order benefits. First-order benefits relate to direct and visible advantages of access and use of digital technologies by users, enterprises and governments, which can generate value in terms of increased competitiveness, productivity, wealth and wellbeing. Second-order benefits stem from the development, management and distribution of digital technologies and services that can produce better prospects for long term growth, job and wealth creation, and lasting positive effects on productivity and competitiveness (UNCTAD, 2019, p. 105).

But the year of 2020 has showed that the old normal life has changed and the life in pandemic times, and probably after that, attests how designing competition policy in the digital markets for developing economies is even more complex and necessary to the inclusive growth and shared prosperity achievement.

In times of quarantine, the digital market has strengthened its power and society's dependence on it. E-commerce has boomed, online classes and webinars have transformed the way people teach and learn, the amount of personal data circulating in the digital world has no precedents, digital platforms have confirmed their essentiality, and the big tech stock values have been performing as never before.

But can these benefits of digital markets be fully materialized in developing economies?

Of course not, and the deep gap between under-connected and hyper-digitalized countries will widen and intensify existing inequalities (UNCTAD, June 15, 2020, a) which also contribute to a lesser inclusive growth by reducing employment opportunities for the poor and entrepreneurial opportunities for companies to enter and compete in markets. For instance, 90% of the market capitalization value of the world's 70 largest digital platforms belongs to United States of America (68%) and China (22%). Europe represents 3.8%, Asia (excluding China) 5%, Africa 1.3% and Latin America 0.2%. (UNCTAD, 2019, p. 2)

Data have become a key strategic asset for the creation of both private and social value, for trade and economic development, but also for human rights, peace, and security. António Guterres states that how these data are managed will really affect the capability to undertake the United Nations Sustainable Development Goals. (UNCTAD, 2021, p. XV)

The evolving digital economy is fueled by data and closely associated with several technologies, such as Internet of Things (IoT) whose internet-connected devices send and receive various types of data. The market share of spending on IoT in 2019 was: United States of America 26%, China 24%, Japan 9%, Germany 5%, Republic of Korea 4%, France and United Kingdom 3% each, and the rest of the world 26% (UNCTAD, 2019, p. 7).

In developing economies, a tremendous gap can be observed between the richest and the poorest parts of society in a huge social contrast of opportunities also related to digitalization. The

percentage of population from developing countries which buys goods or services online the figure is well below 5% (UNCTAD, April 6, 2020, b). In the least developed economies only one in five people use the Internet, those the most vulnerable to the human and economic consequences of the pandemic.

This reality has swung wide open with the Covid-19, once digital solutions to survive during the lockdown imposed by the pandemic, such as telemedicine, telework, online education, shopping online and online entertainment are not available for everyone. The one simple reason is that half of the world population remains offline (UNCTAD, 2019, p. 2). António Guterres observes that the pandemic has enhanced the process of digital transformation and added urgency for governments to respond. (UNCTAD, 2021, p. XV)

Among the developing economies the use of internet in Brazil continues to grow, rising from 67% in 2017 to 70% of the population in 2018, which is equivalent to 126.9 million people, according to a survey published in 2019 done annually by the Regional Center for Studies for the Development of the Information Society (*Cetic - Centro Regional de Estudos para o Desenvolvimento da Sociedade da Informação, in Portuguese*) (G1, 2019). Despite the increased use of internet, the digital divide reflects the divisions in the Brazilian society. Education is the most significant subject affected by the use of internet. While the rates of the use of internet by highly educated is comparable to most OECD countries, the usage by the lower educated is considerably below the OECD average, which is 73% (OECD, 2020, p. 58).

Developed economies in North America and Europe have internet usage above 80%, while developing economies, such as Eastern Europe and Arab countries, are around 50% to 60%, which places Brazil in an intermediate position. Even so, Brazil still lags, in terms of its connected population, other countries in South America, such as Chile, Argentina and Uruguay (G1, 2019).

But even developed economies should take into consideration this digital divide. These economies have an internet usage above 80% despite a huge social contrast of opportunities also related to digitalization. For example, there is a serious gap between the richest and the poorest parts of society, such as in New York City, where “about 38 percent of Bronx residents don’t have home internet, even higher than the 29 percent for all of the city” (NYT, 2020). This figure showed its face with the pandemic and spotlighted the US pernicious gap between the citizens who can get online and the poorest who cannot. The internet lines simply does not reach the homes of the poorest or these citizens cannot afford internet access or computer, sometimes even both hypotheses apply.

The fast rise of digital technologies is transforming economic and social activities, which means that the digitalization challenges require a coordinated multilateral response, which can also help countries to build resilience and enable responses to other cutting-edge challenges, such as the current pandemic (UNCTAD, June 15, 2020, b).

If on one hand the world economy is changing rapid due the fast spread of new digital technologies, on the other superior levels of digitalization are creating new means for managing global development challenges. UNCTAD (2019, p.1) observes that risks from digital disruptions will favor mostly those that are already well prepared to create and capture value in the digital era, instead of contributing to more inclusive development.

Digitalization from the perspective of developing economies creates opportunities and chal-

lenges which were highlighted with the Covid-19 pandemic and can be turned into an opportunity for those countries to implement and explore the benefits of a digital market and became more resilience to future social and economic instability.

Brazil's E-Digital Strategy, for instance, has developed an encompassing plan for digital transformation and stresses central enablers of this transformation as well as providing specific investigations into the digital transformation for government and economy, especially in competitiveness and productivity. According to OECD (2020, p. 190), the strategy recognizes the changing market environment and highlights the rise of a data-driven economy and new business models, including for agriculture, industry, and services.

The level of development and digital readiness will determine the net impact of digital disruption, together with the policies adopted and enforced. Value chains are influenced by digitalization especially through platformization, modularization and servitization, which opens new means of value addition and structural change. (UNCTAD, 2019, p. 44)

Notwithstanding, developing economies should observe what developed economies have been doing in their own market, their experiences, and initiatives. To this end, EU has been driving the competition policy in digital markets evaluating mergers and acquisition and prosecuting abuse of dominance. Those cases have inspired other authorities around the world, not only the US, but also authorities from developing economies such as Brazil. The Digital Markets Act and the Digital Services Act are two more initiatives from EU able to facilitate developing economies in designing their own regulation in digital markets. The goal of the Digital Markets Act is to allow platforms to unlock their full potential, avoiding occurrences of unfair practices and weak contestability and allowing end users and business users likewise to obtain the full benefits of the digital economy. The Digital Services Act, for instance, advocates for rules to improve a competitive digital environment and foresees a standard-setter at the global level.

Designing competition policy in digital market for developing economies sounds mandatory for inclusive growth and shared prosperity.

2. COMPETITION IN DIGITAL MARKET

In times of digital markets, Competition should be at the center of governmental policies to shift companies to produce and offer better outcomes and services for consumers, facilitate entry of new competitors enters and to grow the markets. Ongoing innovation by incumbent companies will be the result.

Competition in digital market has its own characteristics, including trends such as "*winner takes all*", network effects, platforms, fast-paced innovation and high sums of investment (OECD, 2012, p. 5). In digital markets a successful platform tends to acquire significant market power, but it can be transitory. But not all markets in which online platforms operate have *winner takes all or winner takes most* characteristics (OECD, 2019, p. 7). To have these features, network effects need to be strong, switching costs must be high, and users must consider it difficult or undesirable to multi-home.

Well operating digital markets need to be supported with strong pro-competition policies that open up opportunities for innovation and counter the strengths that can promote a high con-

centration and even a sole winner. (DIGITAL COMPETITION EXPERT PANEL, 2019, p. 5)

The digital economy is also characterized by its essential dynamic competition based on continuous cycles of innovation, development and disruptions. The data-driven innovation (DDI) means the significant improvement of a product, process, organizational method or market, or the development of them, performed by Big Data. “The disruptive nature of DDI requires addressing major economic and societal challenges and calls for a whole-of-government and participatory approach to help maximise the benefits and mitigate associated risks and obstacles”. (OECD, 2015, p.17)

Digital platforms have brought efficiencies and improvements by matching buyers and sellers globally. Lowering geographical barriers and flawed information the digital platforms have allowed economic exchanges and the usage of individuals’ and companies’ assets as never before. This matching process has increased the value of economic activity through online services and leading to a more efficient use of resources which tends to benefit consumers.

A platform where different groups of customers match each other, becomes more attractive to sellers as more potential buyers are active on it. The contrary is also true; when sellers increase competition on the platform it becomes more attractive to buyers.

Bundeskartellamt (2013, p. 18) explains that a reciprocal positive externality which only affects one and the same market is called direct network effects. Meanwhile, the indirect networks effect interferes with the other market. But, as network effects are very prominent and manage mutual positive feedback, a “critical mass” is usually necessary.

To achieve a “critical mass” the net effect combined with economies of scale can lead to significant market power so strong that the platform can be characterized as a “natural” monopoly resulting in a winner-takes-most environment and discouraging market entry thereafter. Notwithstanding, network effects by themselves do not assure concentration. A digital platform can be surpassed by a competitor when users have the choice to either switch between services, or use multiple services at the same time, the so-called multi-homing.

As states the UK Digital Competition Expert Panel, as know as Furman Report, (2019, p. 8), the challenges to real competition in digital markets do not come about exclusively because of the platforms’ anti-competitive conduct and acquisition tactics. The network-based and data-driven business models of the platforms also tend to tilt markets to a single winner. “To make competition effective requires policy that changes that dynamic and creates space for businesses to start, compete and grow alongside and around the big platforms.”

Online platforms in exchange for the offer of apps/products/services tend to impose user terms and conditions that are merely amount to a simple delivery of the consumer’s personal data to whom rules the platform. This has led Competition authorities to start to analyze on a case-by-case basis the possible competition issues that may arise from the possession and use of data. However, the Autorité de la Concurrence and Bundeskartellamt (2016, p. 3) observe that while many internet services are provided for “free” to consumers, in practice they involve the collection of personal data.

As describes Unctad data are a special resource, with specific characteristics, such as intangibility and non-rivalry, but at the same time the access to data can be restricted by technical or legal reasons, which make data different from goods and services. For instance, “data collected by major

global platforms are not readily available for others to use, giving the platform owners a monopolistic position to benefit from the data.” (UNCTAD, 2021, p. XVI)

Although global digital platforms keep innovating and competing, according to the UK Digital Competition Expert Panel (2019, p. 38) “there is reason to be sceptical of the notion that they face serious threats to their dominant positions in the future” if changes to the current policy framework are not made.

Considering the above-mentioned network effects and, more broadly, the characteristics of the digital market, personal data as an asset can be comprehended in two perspectives: one from the consumer side; and other from the business side.

From a consumer perspective, the refusal by a consumer to accept the terms and conditions that are imposed may result in no longer being connected to other customers.

From a business perspective, mergers and acquisitions and market power, especially regarding platforms, directly affects competition of smaller players that can hardly compete with those that act in different stages of the market and process Big Data in their benefit. (BAGNOLI, 2015, p. 631)

In digital markets, personal data is a tremendous intangible asset and the currency normally used to access online services. Apparently, consumers do not need to pay for those online services, but “online services that have no monetary price are funded through commissions paid by business users of platforms, or through advertising.” (DIGITAL COMPETITION EXPERT PANEL, 2019, p. 22) There is no “free lunch”, and the payment is the personal data consumers have delivered.

Users of digital platforms rarely have an anonymous experience where someone can browse for free. Platforms are monitoring users and harvesting data in ways that nobody would recognize or understand. The UK Digital Competition Expert Panel (2019, p. 23) highlights that “access to data enables companies to engage in data-driven innovation which helps them improve their understanding of customers’ demands, habits and needs, thus cementing their advantage.”

Big Data is what makes platforms in digital market unique. Its usage promotes a *feedback loop*, allowing companies to create products and offer services which will attract present and new customers, assuring substantial economies of scale and driving the market in favor of the already dominant platforms.

In this context, Big Data represents the new frontier in competitive matters, and demands a close and a cautious look to comprehend the role of Competition Law to assure at the same time the development of markets and technologies and to avoid the restraint of competition.

Big Data can be extremely powerful as a competitive advantage through faster responses and more efficient results for businesses, but Big Data also can be used as an astute mechanism to restrict competition by practicing anti-competitive conducts, “including raising barriers to entry and foreclosing access to essential inputs” (GRUNES; STUCKE, 2015, p. 3), and consolidating market dominance.

The Big Data refers to a giant set of digital data held by companies, governments and organizations which analyzes extensively through algorithms. Technically, the operation to access and extract the potential value of Big Data is called analytics, which allows for the interpretation of Big Data.

Companies must constantly perform risk assessments to analyze how the use of Big Data can drive their decision-making power, which subsequently guides their activities in digital markets. Big Data can provide them with market power and also benefits consumers, “chief among them free user services (as a number of merger cases have noted), improved quality, and a rapid increase in innovation” (SOKOL; COMERFORD, 2016, p. 3). Big Data can also give rise to objections of competitors for anti-competitive or unfair competition practices.

Big Data inaugurates a new era, providing new advances, business relationships and consolidations of power. Competition Law is still valid and applicable though. It assures the free competition, the dynamic efficiency of markets, which brings consumers welfare, the innovation process and contributes to the social and economic development.

The digital platforms also perform an important role to provide services to the underprivileged population. They provide financial services in emerging market and developing economies where financial inclusion creates a source of demand for tech services. This is especially true amongst the lower-income population and in rural areas where in general there is a shortage of traditional financial institutions. People may also be attracted to the potentially lower cost of financial services provided by big techs and fintechs.

According to FSB – Financial Stability Board (2020, p. 1), “use of technology has increased the efficiency with which financial services are provided. It has also given rise to financial services that can be cheaper, more convenient, and tailored to users’ needs, thereby offering opportunities to improve consumer welfare and support financial stability”. The expansion of digital platforms activity also highlights the risks and vulnerabilities concerning consumer protection due to the population’s lower financial literacy and the use of their personal data to offer them additional services which could be unneeded and costly.

The impact of digital market on competition and consequently on social and economic development is a hot topic that deserves careful attention, especially for developing economies that aim to design their own competition policy and bridge current and evolving digital divides to take advantage of digitalization. (UNCTAD, April 6, 2020, a, p.7).

3. COMPETITION POLICY FOR DEVELOPING ECONOMIES

Competition policy as recognized by World Bank Group and OECD (2017, p. XI) is a powerful tool for bolstering efforts to reduce poverty and generate shared prosperity. Competitive markets work as drivers of economic growth and productivity and as conduits for consumer welfare with lower prices, better products and services, and innovation. The key factors to promote economic growth and shared prosperity are good governance, macroeconomic stability, access to infrastructure, investment in human development, and social policies to protect the poor.

Any competition policy through its policies and regulations will somehow affect the competitive environment and should be implemented on pro-competition market regulation basis which varies in degrees in each country. The enforcement of competition law generally demands that a law come into force and preferably be applied by a competition authority or even a multi tasked authority.

An effective competition policy involves measures that allow contestability by the consumers and entry and rivalry among competitors, while safeguarding the enforcement of competition laws. Governments of developing economies are progressively demanding pragmatic solutions for effective competition policy enactment and references for sectoral policies that are procompetitive.

The simple increase of the number of competitors in a market or the eradication of market power focusing on the theoretical model of perfect competition is not what competition policy aims for. Far from that, competition policy is designed to promote the proper incentives for companies to improve their economic performance in comparison with actual or potential competitors and therefore deliver the best results for consumers and the entire economy.

Competition policy seeks to protect the process of competition, once competitive markets lead to lower prices and to the development of better products and services: innovation. Competition also leads to economic efficiency and international competitiveness and gives consumers choice (WHISH, 2016).

World Bank Group and OECD (2017, p.5) state that the two pillars of competition policy are: (i) the promotion of measures to enable contestability along with competitor entry and rivalry; and (ii) the enforcement of competition laws: rules against abuse of dominance, anticompetitive agreements, merger control as well as control of state aid.

According to Whish (2016) competition law consists of three 'pillars': (i) prohibition of anti-competitive agreements; (ii) prohibition of the abuse of a dominant position; and (iii) control of mergers that could be harmful to competition. Competition authorities have increasingly been given an 'advocacy' role. Typically, it is left to them to argue the case for competition to government.

Regulators traditionally act on such markets where competition cannot work effectively by itself. A pro-competition market regulation implies in different reasons for government intervention in markets by adopting sectorial regulations. Regulated sectors usually demand public services or utilities that are essential to consumer welfare such as price and quality. However, regulation also contributes to a company's entrepreneurship allowing for profit and market entry. Through their actions regulators have the aim to promote competition among companies in oligopolistic markets or even in natural monopolistic markets acted in by the private sector, where competition in the market is not possible.

Regulators may act in several forms to defend the public interest against monopoly power, even if some measures could be seen as contradictory to the reach of competition law. They may include allowing price coordination in a specific market, preventing advertising or requiring territorial market division, replacing competition policy in case of natural monopolies, controlling the market power in a more direct form establishing price caps or controlling entry and access. (UNCTAD, 2010)

Stiglitz and Walsh (2003, p. 228) observe that to comprehend the service of public utility performed by the private sector, the purpose of regulation is to keep the price as low as possible, without threatening the monopolist's need to obtain a return on his investment. In other words, it aims to keep the price equal to the average cost - the average cost includes a 'normal return' on the capital that the companies' owners have invested. If the sector regulator is successful, the natural monopoly will not make monopolistic profits.

The rationale for economic regulation derives from market failure, that under specific situations the market system may not lead to desirable outcomes. Regulators should intervene to correct those failures by promoting competition. However, if regulators fail, they can bring about negative effects on the functioning of the markets by eliminating companies' incentives to compete.

What a Regulator must evaluate is if any regulatory decision to be taken could be done with a less restrictive policy option that could achieve the same objective. (WORLD BANK GROUP, 2015).

The cost and benefits impact of policy making can be verified by Regulatory Impact Assessment (RIA), a practical guide to assist policy makers in developing economies to identify and focus on the key barriers to competition.

As part of the RIA, "Competition Assessment" deals with the procedure of evaluating government regulations, rules and laws in respect to effects on the markets' dynamics which assists regulators or even competition authorities in identifying the standards that may unreasonably hinder competition, especially the competition law (OECD, 2019, b) (ICN, 2015). If the assessment concludes that there are competition problems in the sector that require correction, government regulations, rules and laws should be redesigned. (OECD, 2007)

The adoption of an effective competition law and policy reduces the uncertainty for companies regarding their investment decisions and consequently contributes to a competitive market permitting the entrance of new companies, efficient companies to compete and inefficient companies to fail and even leave the market.

Competition law and policy deal with the control or abolishment of collusion among competitors, risky mergers and acquisitions, and abuse of dominance. Those situations can restrain the access to markets and lessen competition, which may affect domestic and international trade and economic development. (UNCTAD, 2010)

Considering the best practices on competition law and policy recommended by OECD (2019, b), these laws and policies must be designed according to the level of economic development of the country. The core of the competition law should be the promoting of competition in markets. To enforce the law a competition authority must be gifted with governments budgets, have independence to prevent political interference in their decisions and have close relationship with regulators to promote open dialogue. An independent competition authority also needs a well-trained staff with a prospect of a long-term career path and commitment o are committed to public service all of which leads to high levels of staff retention. (WHISH, 2016)

Competition authorities also have an important educational function as described by Whish (2016): (i) educating the business community; (ii) educating the population – the person in the street; (iii) educating the media; (iv) interacting with relevant professional; and (v) the judiciary also needs to be educated.

Since 1990's the world has seen a transformation with the adoption of competition laws and the creation of competition authorities. Especially in the beginnings of 2000's it became a reality in most countries. A great part of this new competition era can be attributed to ICN - International Competition Network, which has been promoting the culture of competition advocacy as well as the efforts of World Bank Group, OECD and UNCTAD.

All countries have their own cultural, social and economic characteristics to be taken into account to design a competition policy, especially in digital market for developing economies. Despite this fact the so-called 'DNA' of competition policies has inspired a competition law framework from the same principles.

This can be accentuated once the differences in digital willingness and the high concentration of market power in digital economy underline the need for new policies and regulations designed to safeguard a fair distribution of the gains achieved from digital disruptions.

Fox (2012) highlights that developing economies must design their own competition law and resist pressures to copy international standards. Traditionally developing economies have inferior levels of competition in comparison with developed ones, especially when analyzing the existence and enforcement of competition law, barriers to competition, trade, and foreign investment. (WORLD BANK GROUP, 2016)

Whish (2016) observes that in some developing economies there will be a tendency for one company to dominate a particular market and to take steps to exclude new entrants, spurring the need for a law that prohibits the abuse of a dominant position. In some jurisdictions the law on abuse may be more important than the law on anti-competitive agreements.

In sum, "there is no one universal approach to competition law and that its design and enforcement need to take into account the political, economic, and social circumstances of the country concerned", as explains Cheng (2020, p. 1). This will demand developing economies to seek an enforcement of Competition Law that reflects the level of economic development and then its economic needs.

Competition Law and Policy is not a copy and paste from one country to another. To achieve inclusive growth and shared prosperity in developing economies through the benefits of competition it is necessary to individualize the stage of the social and economic development of a country and then apply the key elements for success that are: (i) effective market competition; (ii) efficient market regulation; and (iii) the adoption of competition policies. In digital markets, the inclusive growth and shared prosperity achievements also observe these cornerstones.

4. TOOLS FOR A BETTER COMPETITION LAW ENFORCEMENT IN DIGITAL MARKETS

The principles of competition policy are generally applicable to any type of market, however their employment can be affected by the challenging features of digital markets, such as the efficacy of the consumer welfare standard, multi-sided markets in which prices are dependent between sides, zero prices on one side of the platform, consumers paying for services through their personal data, extensive data collection, and loss of privacy due to incentives on treatment of personal data. (DIGITAL COMPETITION EXPERT PANEL, 2019, p. 86-89)

The effective enforcement of Competition Law on dominant players in digital markets can be implemented by properly defining the relevant market, assessing possible abuse of market power and updating the tools for merger reviews. Services provided by some digital platforms could also be compared to public utilities, making regulation a tool for ensuring open and fair access for all com-

petitors.

Entrepreneurs in developing economies can benefit from the use of global digital platforms by being connected with different parts of the country and even with other countries which can result in the improvement of efficiency and the increased access to domestic and international markets. “For developing countries to benefit fully from global platforms, their entrepreneurs and enterprises need to have easy access to them, both as buyers and sellers”. (UNCTAD, 2019, p. 107)

Once some services provided by digital platforms could be measured as public utilities, such as infrastructure of a public good nature that communities, consumers and users rely on, exclusion from this utility should not be decided upon by a single private company. Dominant digital platforms have to be neutral and to safeguard their neutrality is to apply the “essential facilities doctrine”.

Updating the tools used for reviewing mergers is an essential step in all jurisdictions to address potential competition concerns. Global digital platforms generally acquire local platforms around the world that rarely reach or exceed the threshold that subject those deals to a review. For a more detailed analysis of mergers and acquisitions in digital market, for example, Germany and Austria have inserted as a notification criterion based on the value of the deal, in addition to the criterion of threshold of companies’ revenue.

The description of the relevant market is the beginning of any competitive analysis. This identifies what product or service people are dealing with, which players are in this market, such as producers, distributors and even consumers, their interests, the total market size, the existence of barriers to entry and the possibility of market power and dominant position. “Competition Authorities’ experiences indicate that defining the relevant market and assessing market power become more nuanced when it comes to digital markets”. (BRICS, 2019, p. 11)

The definition of the Big Data Relevant Market (or simply BDRM) can explain the whole picture of this market in its different stages. (BAGNOLI, 2016) In addition, “the use of big data is becoming a key way for leading companies to outperform their peers”. (MCKINSEY, 2001, p. 6) It brings together some market power awareness and abuse of dominance as exclusionary practice since the issue is competition and goes beyond innovation and welfare. One must keep in mind that the information and knowledge originated from Big Data is not available to everyone in the same amount and quality. The accessibility to these technologies may give a competitive surplus to those who hold them.

Identifying and understanding the Big Data Relevant Market structure (*Big Data capture, Big Data storage and Big Data analytics*) from the Competition Law perspective may also lead to better comprehend the performance of companies in the digital markets and verify precise competition issues such as market power, barriers to entrance, stifling innovation and abuse of dominance.

The precise identification of the players and their respective shares in the capture, in the storage and the analysis of Big Data can better explain how the BDRM works and how concentrated a digital market is. It is important to consider that one player can perform its business in only one, several, or even in the three stages of the BDRM.

The BDRM indicates that the Big Data cycle not only deals with overlaps in horizontal bases but in vertical bases as well, which reveals existing or potential enhancements of market power and dominance. Moreover, considering digital platforms as multi-sided markets, conglomerate effects

can be better understood by applying the BDRM to investigate competition cases, both merger and acquisitions or anticompetitive conducts.

The world's largest digital platforms, Apple, Microsoft, Amazon, Alphabet (Google), Facebook, Tencent and Alibaba, for instance, are increasingly investing in all parts of the global data value chain as states Unctad (2021, p. XV): "data collection through the user-facing platform services; data transmissions through submarine cables and satellites; data storage (data centres); and data analysis, processing and use, for instance through AI [artificial intelligence]". These super digital platforms have a competitive data advantage and they have become worldwide digital corporations with global reach.

As stated by Unctad (2019, p. 140) some services provided by digital platforms could be considered similar to utilities. The dynamics of competition within the ecosystem of the platform are governed and controlled by who owns it and restriction or exclusion from this utility should not be decided by a single private company. Dominant digital platforms should have to do this with neutrality, and a means to safeguard the neutrality of dominant platforms is to apply the 'essential facilities doctrine' and regulation would be a tool to assure open and fair access in the market. (BAGNOLI, 2020) In this perspective, according to Unctad (2019, p. 141) "if regulations could clearly set the rules of the game for platforms, there might be less need for ex post enforcement of competition law by authorities."

Another subject pointed out by Unctad (2019, p 141) is the need for greater international collaboration. Competition authorities in developing economies tend to be relatively new, small and limited with resources, especially to face an even more concentrated global digital economy. Joining forces among developing regional economies within regional trade and economic frameworks could facilitate intraregional trade and safeguard larger markets for local companies to compete with global ones and would prevent their vulnerability from super digital platforms. This would go beyond the exchange of information and experiences, the so-called best practices, that in general take place in international forums such as ICN – International Competition Network.

Internally, it is also recommended that a competition authority cooperate with other regulators, such as data privacy and consumer authorities to exchange information and join efforts to achieve better results in the enforcement of competition standards.

Digitization also tends to contribute to enhance the performance of competition authorities by reducing bureaucracy and costs for administrators, as well as increasing efficiency. To this end, the Brazilian Competition Authority - CADE instituted the Digital Transformation Plan 2020/2021 (CADE, August 8, 2020) which aims to establish guidelines to enhance CADE's performance in offering digital solutions for services provided to society, as well as promoting the reduction of infrastructure costs.

Competition authorities should also create task forces with specialized professionals to deal with the challenges and specificities of digital economy. For instance, the Portuguese Competition Authority – AdC (Apdc, 2020) has instituted a task force to investigate the use of algorithms and big data in anti-competitive practices, with a particular focus on cartels.

Another example is provided by the Brazilian Competition Authority - CADE, which formed a team in early 2013 to evaluate the possibility of creating economic filters to detect cartels. In addition to

researching information technology to detect cartels adopted by other competition authorities, CADE has developed partnerships with other Brazilian public authorities with experience in the use of big data. Yet in 2014, CADE hired consultants with specialized knowledge in the areas of statistics, information technology and data mining to develop analytical tools. They have also implemented an interface called “The Brain Project” (*Projeto Cérebro*, in Portuguese) (MACEDO, p. 79-82; in BAGNOLI, 2018) incorporating data mining instruments and economic filters which CADE can employ to fight cartels.

Innovation and dynamic competition have also become omnipresent in the analysis of digital market. Dynamic competition is directly related to the idea that well-functioning, competitive markets bring about innovations, vis-à-vis product and process. Competition authorities constantly strive to keep innovation channels open. The evolution of businesses and technologies feed the debate on how dynamic competition should be incorporated into the competition analysis in anticompetitive behaviour investigations and merger control. (BRICS, 2019, p. 15-16)

There are many options that can be chosen, notwithstanding each developing economy needs to strengthen the capacity to design its own Competition Policy in digital markets while respecting social and economic development particularities.

5. THE DIGITAL MARKETS ACT AND DIGITAL SERVICES ACT

There are two initiatives from EU that can greatly contribute to enhance Competition Law and Policy and are able to assist developing economies in designing their own regulation in digital markets: the Digital Markets Act (DMA) and the Digital Services Act (DSA).

But before starting considerations about DMA and DSA, the background of EU on digital economy and certain contributions from EU deserve some comments.

Developing economies must strengthen their capacity to design competition policy in the digital markets according to their individual social and economic development particularities. Developing economies should, however, observe what developed economies have been doing in their own markets as well as learn from their experiences and initiatives.

The debate over data protection and its regulations is not new in Brazil, but the LGPD (*Lei Geral de Proteção de Dados*, in Portuguese, or Brazilian Data Protection Law), for instance, inaugurates in Brazil a legislation dealing exclusively and specifically with data protection. It was enacted in 2018 and entered into force in 2020. (BAGNOLI; ABRUSIO, 2021)

The LGPD is an innovative data protection regulation in Brazil and was greatly inspired by the European regulatory data protection framework, i.e., the General Data Protection Regulation (“GDPR”) and the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (“OECD Guidelines”).

Despite its solid link to the GDPR, the LGPD did introduce a different scenario when comparing to the GDPR. One among many would be the legal basis for the processing of credit history data which is in line with the amendments implemented with the Brazilian Positive Registration Law.

In that regard, LGPD article seven establishes measures foreseen in GDPR article one by listing if and only when possibilities for lawful data processing. However, among the accepted possibili-

ties are those in its item X in which the personal data processing may be performed “for the protection of credit, including as for what is specifically regulated by the pertinent legislation”. This “specific legislation” mentioned in article seven, X, is equivalent to both the Positive Registration Law and its regulating decree.

Therefore, the regulation in Brazil of the matter differs from Europe where through the GDPR the legitimate interest would apply, as foreseen in item 1(f) of the GDPR.

The LGPD follows similar parameters of the GDPR as it presents definitions for the most important terms used for data protection and the scope of LGPD throughout its text.

Article six of the LGPD establishes that the personal data processing activities must be performed in good faith and are subject to several principles, such as: purpose; adequacy, need, free access, quality of data, transparency, security, prevention, non-discrimination, liability, and accounting. Bioni and Mendes (2019) highlight that the LGPD foresees all the principles contained in the GDPR with three additions: security, prevention, and non-discrimination. This would evidence the “legislator’s concerns with contemporary features of data protection” and “addressing the discriminatory potential of data use generated by automated decision mechanisms, or even the principle of prevention - which can be used to develop privacy-related design measures such as the concepts of Privacy by Design and Security by Design”.

In comparison to the GDPR, LGPD foresees four additional possibilities listed for lawfulness data processing, which are, pursuant to article seven, IV, VI, VIII and X: (i) studies performed by research bodies (item IV); (ii) the regular exercise of rights in court proceedings (item VI); (iii) health protection (item VIII); and (iv) credit protection, including as for what is specifically regulated by the pertinent legislation.

As mentioned, this “specific legislation” in article seven X, is equivalent to both the Positive Registration Law and its regulating decree. Therefore, the regulation in Brazil of the matter is different in relation to what occurs in Europe through the GDPR, by which the legitimate interest would apply, as in item 1(f) of the GDPR.

As previously mentioned, the LGPD was inspired on the European regulations of data protection, such as the GDPR, and OECD Guidelines. However, it is important to notice that Brazil adopted a specific data protection system presenting some peculiarities regarding its own legal system and past or current Regulations / Laws.

The EU has been driving the competition policy in digital markets by skillfully evaluating mergers and acquisition and prosecuting abuse of dominance. These cases have inspired other authorities around the world to investigate and open cases in their own jurisdictions or to rethink competition law and big tech regulation, both in developed or developing economies.

In the US, for instance as a developed country, in October 2020, the Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary of the US House of the Representatives, issued the Investigation of Competition in Digital Markets Report, which was initiated in June 2019 and looks into the state of competition online.

As part of a top-to-bottom review of the market, the investigation examined the dominance of Amazon, Apple, Facebook, and Google, and their business practices to determine how their power

affects American democracy and the economy. The Subcommittee further performed a review of existing antitrust laws, competition policies, and current enforcement levels to assess whether they are adequate to market power and anticompetitive conduct in digital markets.

According to the Report: “(...) the totality of the evidence produced during this investigation demonstrates the pressing need for legislative action and reform. These firms have too much power, and that power must be reined in and subject to appropriate oversight and enforcement. Our economy and democracy are at stake” (US House of the Representatives, 2020, p. 7).

In 2021 Senator Amy Klobuchar introduced the Competition and Law Enforcement Reform Act (CALERA) aimed at reforming the antitrust laws to better protect competition in the American economy. It would amend the Clayton Act and modify the standard for an unlawful acquisition in an effort to deter anticompetitive exclusionary conduct that harms competition and consumers, enhance the ability of the Department of Justice and the Federal Trade Commission to enforce the antitrust laws, and for other purposes. (CALERA, 2021)

As states Coniglio (2021), “put simply, while validating the program of the progressive economists with respect to certain rules dealing with species of unilateral conduct, the antitrust framework CALERA endorses appears to be, for all practical purposes, the European one”.

On June 11, 2021, House lawmakers introduced wide-ranging antitrust bill of law designed to restrain the power of Big Tech and curb corporate consolidation.

The five bills² would be the most ambitious update to monopoly laws in decades and take direct aim at Amazon, Apple, Facebook and Google and their control over online commerce, information, and entertainment. “The legislation could reshape the way the companies operate”. (NYT, 2021) They would make it easier to break up businesses that used their dominance in one area or to get a stronghold in another. They would put in place new obstacles for acquisitions of blossoming rivals as well as empower regulators with more funds to police companies.

The basis for the proposed bills is the investigation carried out by the Antitrust Subcommittee 2020 Report that accused companies of charging high fees, forcing smaller customers into unfavorable contracts and of using “killer acquisitions” to hobble rivals. (BBC, 2021)

In Brazil, as an example of developing economy, CADE (the Brazilian Competition Authority) has been dealing with different competition cases in the digital economy and is aware of the occurrences in other jurisdictions.

CADE published in 2020 a working paper entitled Competition in Digital Markets: A Review of Expert Reports (*Concorrência em mercados digitais: uma revisão dos relatórios especializados*, in Portuguese). The working paper aimed at reviewing the main publications of authorities and important research centers on this topic. The working paper also aimed to summarize for Cade and society

2 The bills are: (i) The American Choice and Innovation Online Act, which prevents companies from manipulating marketplaces to promote their own products; (ii) The Platform Competition and Opportunity Act of 2021, which makes it harder for companies to buy and kill off competitors; (iii) The Ending Platform Monopolies Act, which prohibits Big Tech monopolies from selling products in marketplaces they control; (iv) The Augmenting Compatibility and Competition by Enabling Service Switching (ACCESS) Act of 2021, which makes it easier to leave a social media platform and take your data to a competitor; and (v) The Merger Filing Fee Modernization Act of 2021, which allows the Department of Justice and the Federal Trade Commission the resources they need to police monopoly power, at no cost to taxpayers

the vision of its international peers as to support the improvement of internal policy of CADE to ensure the technical and scientific update of its performance.

On the cases side, CADE has investigated digital platforms such as Booking.com, Decolar and Expedia. They came to an end with a settlement to suspend the investigation into the use of unfair parity clauses in contracts signed with hotel chains for the use of their internet sales platforms.

Google was also in the spotlight of CADE. In a decision handed down in 2019, CADE ordered the discontinuance of an administrative proceeding that determined whether Google allegedly placed its Google Shopping in a privileged position in the search engine results (Google Buscas). This would certainly infringe the neutrality of the algorithm to favor its service to the detriment of competitors. Another decision dated from 2019, CADE had discontinued an administrative proceeding that investigated the alleged adoption of unfair terms in Google's contracts to license its program for ad interoperability between its AdWords platform and other ad platforms. Also in 2019, CADE decided to file an open administrative proceeding against Google investigating an allegation that the company was practicing "scraping", which consists of copying competitively relevant content from rival theme sites for use in its theme search engines.

More recently CADE issued a working paper in 2021 entitled International Benchmarking on Competition Defense Institutions and Data Protection (*Benchmarking internacional sobre as instituições de Defesa da Concorrência e de Proteção de Dados*, in Portuguese). Benchmarking consists of a study of data protection and competition institutions in twelve jurisdictions, in addition to Brazil, with an analysis of the main interrelationships and general aspects of data protection laws. It presents a broad overview of the structure and functions of different authorities, such as the European Union. At the end, the working paper presents suggestions on possible interactions between the Brazilian competition authority (CADE) and data protection authority (ANPD) in the pursuit of the well-being of society.

As brought up at the beginning of this chapter, there are two other initiatives from EU that can contribute greatly to enhance Competition Law and Policy and are definitely able to assist developing economies in designing their own regulation in digital markets: the Digital Markets Act and the Digital Services Act.

A Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector, the so-called Digital Markets Act or DMA, took into account the enforcement experience under EU competition rules that shows that quite a few digital services have some common features, such as, "(i) highly concentrated multi-sided platform services, where usually one or very few large digital platforms set the commercial conditions with considerable autonomy; (ii) a few large digital platforms act as gateways for business users to reach their customers and vice-versa; and (iii) gatekeeper power of these large digital platforms is often misused by means of unfair behaviour vis-à-vis economically dependent business users and customers" (EUR-LEX, 2020, p. 2).

The DMA proposal is further limited to several core platform services, such as: (i) online intermediation services; (ii) online search engines; (iii) social networking; (iv) video sharing platform services; (v) number-independent interpersonal electronic communication services; (vi) operating systems; (vii) cloud services; and (viii) advertising services, where the notorious difficulties are most

evident and prominent. Indeed, the presence of a restricted number of large online platforms that serve as gateways for business users and end users promotes the weakness of contestability.

These concerns are especially strong when the core platform service is operated by a gatekeeper, which means the core platform providers have a significant effect on the internal market, operate at least one important gateway to clients and enjoy or probably will enjoy an entrenched and durable position in their operations.

The goal of the DMA proposal is therefore to let platforms unlock their full potential by addressing the most prominent occurrences of unfair practices and weak contestability at the EU level. This allows end users and business users alike to gain the full benefits of the platform economy and the digital economy in general, promoting a contestable and reasonable environment.

When and if approved by the Member States, the DMA proposal has some expected results and impacts³.

Interventions targeting the increase of contestability of the digital sector would have a significant positive and growing contribution by reducing prices and enlarging consumer choice, productivity gains and innovation. “Efficiency gains from the Digital Single Market, would contribute to a 1.5% increase in GDP per year until 2030 and create between 1 and 1.4 million jobs”. (EUR-LEX , 2020, p. 60) Smaller businesses would be more self-confident in engaging with gatekeepers, who in turn comply with mandatory and unambiguous fairness rules. A regulatory action would not only promote an increase of sales through smaller platforms but would also impact positively the market growth. It would strengthen confidence in the platform business environment. The benefits expected would enhance the potential of innovation amongst smaller businesses as well as improving the quality of service and therefore the consumer welfare. Once implemented, the foreseen interventions would reduce competitive asymmetries between gatekeepers and other platforms and “a consumer surplus could be estimated at 13 billion euros, i.e. around 6% increase as compared to the baseline”. (EUR-LEX , 2020, p. 60)

The proposal Digital Markets Act is a regulatory initiative that will have to be put in place at the EU level. Doing so would ensure that the regulation is implemented by the companies, ex-ante controls and monitoring, such as designate gatekeepers, monitor compliance by gatekeepers, adopt non-compliance decisions, assess exemption requests, conduct market investigations, and enforce the resulting decisions and implement acts. “The Commission will have to increase its presence in the Digital Markets, moreover, as the regulation foresees legal deadlines also means that resources must be allocated to these tasks without delays”. (EUR-LEX , 2020, p. 71)

Some DMA chapters or articles may be considered for developing economies to better design their own Competition Policy in digital markets.

Adapting article 1.2, a Regulation in digital markets for developing economies would be applied to core platform services provided or offered by gatekeepers to business users established in the Country or end users established or located in the Country. This would be irrespective of the place of establishment or residence of the gatekeepers and irrespective of the law otherwise applicable to

3 The proposal is pending for approval by the Council and the European Parliament awaiting committee decision: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/0374\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/0374(COD)&l=en) (accessed on 11-05-2021)

the provision of service.

Article 1.6, a Regulation in digital markets for developing economies is without prejudice to the application of the national Competition Law. It is also without prejudice to the application of national rules prohibiting anticompetitive agreements, decisions by associations of undertakings, concerted practices, and abuses of dominant positions. It also allows national competition rules prohibiting other forms of unilateral conduct insofar as they are applied to undertakings other than gatekeepers or amount to imposing additional obligations on gatekeepers and national rules concerning merger control.

Article 2 of the DMA brings definitions which can be copied by developing economies and adapted when and if necessary. For instance, for the purposes of a Regulation in digital markets for developing economies, 'Gatekeeper' means a provider of 'core platform service' which means: (i) online intermediation services; (ii) online search engines; (iii) online social networking services; (iv) video-sharing platform services; (v) number-independent interpersonal communication services; (vi) operating systems; (vii) cloud computing services; (viii) advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by a provider of any of the core platform services listed in points (i) to (vii).

Article 3.1 of the DMA brings the designation of gatekeepers which can be copied by developing economies. "A provider of core platform services shall be designated as gatekeeper if: (a) it has a significant impact on the internal market; (b) it operates a core platform service which serves as an important gateway for business users to reach end users; and (c) it possesses an entrenched and durable position in its operations or it is foreseeable that it will have such a position in the near future."

Adapting article 3.1, for a Regulation in digital markets for developing economies, a provider of core platform services would be presumed to satisfy: (i) where the undertaking to which it belongs achieves the cap of the threshold for merger and acquisitions according to national Competition Law; or (ii) it provides a core platform service that active end users established or located in the Country that reaches in the last financial year the percentage presumed of dominant position according to national Competition Law.

The national Competition Authority would be notified when a provider of core platform services meets one of the thresholds mentioned during a merger and acquisitions proceeding. The respective rules established in the national Competition Law would prevail regardless of whether the other party in the transaction fulfills the requirements set out in the Law. The notification would be updated and carried out whenever other individual core platform services meet the thresholds mentioned above.

Article 5 refers to obligations for gatekeepers and 6 refers to obligations for gatekeepers susceptible to being further specified of the DMA. Both articles have positive (allow) and negative (refrain) obligations directly applicable to digital gatekeepers. Together, article 5 and article 6 reflect the main EU competition investigations in digital platforms during the latest years. As illustrates Botta (2022, p. 5): "for instance, the obligation to keep 'data silos' mirrors the German Facebook case, while the prohibition of Most Favoured Nation (MFN) clauses resemble the Booking.com case. Similarly, the gatekeeper's obligation to allow final users to dis-install any pre-installed app is inspired by the Commission decision in Google Android. At the same time, the prohibition for self-preferencing

reflects the Google Shopping decision.”

They both (articles 5 and 6) bring definitions which can be copied by developing economies and adapted when and if necessary, according to each national Competition Law. In the same manner, the following articles until 13 should be copied and if so, adapted to each developing economy specificity.

For instance, under article 12 the gatekeeper should notify any new concentration prior to its implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest, irrespective of whether it is notifiable under either the Reg. 139/2004 or under the national rules of merger control. The notification would permit the EU Commission to monitor market concentration in the core platform services.

Chapter IV, Market investigation, and Chapter V, Investigative, enforcement and monitoring powers, of the DMA proposal should also be considered for developing economies. Those mechanisms are already foreseen in national Competition Laws, making the enforcement of Competition rules easier to be applied by respective competition authorities from developing economies in digital markets for gatekeepers.

The Digital Services Act (DSA) proposal, in general terms, defines duties and accountability for providers of intermediary services, especially to online platforms, such as social media and marketplaces. The DSA proposal seeks to improve users’ safety online across the entire EU and expand the protection of their fundamental rights by delimiting clear due-diligence commitments for determined intermediary services, such as notice-and-action procedures for prohibited content and the option to challenge the platforms’ content moderation choices.

Moreover, online platforms would be obligated to receive, store, and verify, even if partially, and publish information on vendors. The usage of their services will ensure a safer and more transparent online ecosystem for consumers. The DSA proposal sets a higher standard of transparency and accountability on how the providers moderate content, on advertising and on algorithmic processes, considering the unique impact of very large online platforms on the EU economy and society.

The DSA proposal is a Regulation which introduces a horizontal framework for all classes of content, products, services, and activities on intermediary services. It would be Independent to the EU General Data Protection Regulation and other EU rules on protection of personal data and privacy of communications and complemented by additional actions under the European Democracy Action Plan.

Each developing Country should consider the DSA as a guideline and analyze it according to each social and economic reality. They should then tailor it into their own laws such as data privacy, civil and criminal liability laws, as well as press and media laws.

Nevertheless, each developing Country should provide a scrutinized regulatory and competitive impact assessment (RCIA) to build its own Digital Services Act in accordance with its needs and current legal framework. This should foster a fair and inclusive digital ecosystem, which boost competitiveness, entrepreneurship, generation of wealth and shared prosperity.

The Digital Services Act (DSA) and the Digital Markets Act (DMA) proposals are designed to limit the power of big techs at the EU level and can undoubtedly play the role of the landmark regu-

lations for the digital economy. This would be able to contribute yet to a set of global standards.

DSA and DMA will both have a broad worldwide impact not only on the business practices of GAFA (Google, Apple, Facebook, and Amazon), and other primarily US-based giants such as Microsoft, but also on the Chinese big techs, such as Alibaba and Tencent. Collectively these platforms are considered the seven super digital platforms or the tech giants. “The European Union is expected to designate these companies as the ‘gatekeepers’ of the Internet, justifying a targeted regulatory push to rein in their outsize market power”. (PROJECT-SYNDICATE, 2020)

This could signify that the Brussels Effect also covers the big techs and “this notable de jure Brussels Effect has led to a situation where the majority of the global markets are covered, in practice, by a variant of EU competition law.” (BRADFORD, 2020, p. 99-100)

These anticompetition enhancements can be carried out as a more complex and ambitious agenda, particularly now with DMA and DSA. For a long time, the coined expression in 2012 by Anu Bradford (2020), the Brussels Effect, was a secondary and basically unplanned by-product of a regulatory agenda that was driven by internal motivations. But in recent times, a conscious external agenda has emerged beside this internal agenda. The emergence and prevalence of the Brussels Effect lays out the circumstances under which a sole jurisdiction puts forth global regulatory authority and shows why the EU can be considered to undertake the role of a global regulatory hegemon.

Notwithstanding, to become global the EU standards must persuade companies to adhere to its single standard. The benefits related to complying with them exceed the benefits of taking advantage of laxer standards in other markets and jurisdictions, such as in developing economies where the enforcement of Law for big companies demands more from authorities. DMA and DSA can both help authorities from developing economies to develop and enforce their own rules.

The goal of the Digital Markets Act is to allow platforms to unlock their full potential avoiding occurrences of unfair practices and weak contestability. This permits end users and business users likewise to obtain the full benefits of the digital economy. The Digital Services Act, for instance, advocates for rules to improve a competitive digital environment and foresees a standard-setter at global level.

Competition policy design in digital markets is not a copy and paste from one country to another. But experience and good standards should be evaluated and tailored. The Digital Markets and the Digital Services Acts are both important tools for developing economies to design competition policy in their own digital markets.

6. CONCLUSION

As presented in this paper the development of the digital markets can produce several economic opportunities by improving economic and social outcomes which could contribute to innovation and productivity growth and solve social problems with the use of digital data.

Covid-19 pandemic brought maleficence and a complete change in the digital behavior of people, businesses, and organizations. A greater reliance on digital solutions should only accentuate in a post crisis scenario and enable society to entirely engage in the digital economy.

The impact of digital markets on competition and consequently on social and economic development deserves careful attention, especially for developing economies that aim to design their own competition policy and bridge current and evolving digital divides to take advantage of digitalization.

Competition policy seeks to protect the process of competition. Competitive markets lead to lower prices, develop better products, foster innovation, and contribute to economic efficiency as well as international competitiveness.

Inclusive growth and shared prosperity can be achieved in developing economies through the benefits of competition. The first step would be to individualize the stage of the social and economic development of a country and then apply the key elements for success which are: (i) effective market competition; (ii) efficient market regulation; and (iii) the adoption of competition policies.

The enforcement of Competition Law in digital markets can mature more effectively by properly defining the relevant market, assessing possible abuse of market power, updating the tools for merger review, and increasing cooperation among competition authorities and regulators.

The Digital Markets Act and the Digital Services Act are both important tools to assist developing economies design competition policy in their own digital markets, allowing platforms to unlock their full potential, avoiding occurrences of unfair practices and weak contestability and allowing end users and business users likewise to obtain the full benefits of the digital economy, but also advocating for rules to improve a competitive digital environment and foresees a standard-setter at global level.

Competition Law and Policy is not a copy and paste from one country to another. One size does not fit all! But experience and good standards should be evaluated and tailored, such as the EU Digital Markets and Digital Services Acts. Developing economies must strengthen their capacity to design competition policy in the digital markets according to their individual social and economic development particularities.

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