Turkish Competition Authority

REKABET KURUMU


# ISTANBUL COMPETITION FORUM

2020

ICF WORKSHOP
ICF WEBINAR
ICF ANNUAL WEBINAR

EXTERNAL RELATIONS AND COMPETITION ADVOCACY DEPARTMENT

# ISTANBUL COMPETITION FORUM

## ICF WORKSHOP 2020
## ICF WEBINAR 2020
## ICF ANNUAL WEBINAR 2020

External Relations and Competition Advocacy Department

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**Birol KÜLE**
**The President of the Competition Authority**

Digitalization in the global economy is not only leading to the emergence of new markets, but also to a serious transformation in existing traditional sectors. As a result, companies' activities go beyond national borders and thus the reach of national competition authorities. Within this framework, international cooperation is needed in the area of competition law. Turkish Competition Authority shares its knowledge and experience in appropriate contexts in order to support capacity-building efforts of competition authorities in neighboring countries as well as in different regions.

Having the capacity and the desire to be a pioneer in developing international cooperation with other competition authorities in our region, we organized, with our experience and knowledge of more than 20 years, İstanbul Competition Forum, with the participation of UNCTAD, on November 25-26, 2019. ICF aims to ensure trust among competition authorities, strengthen cooperation and common understanding, develop technical capacity and solve current problems

through a common platform. The first ICF meeting in Istanbul hosted high-ranking representatives of competition authorities from 25 countries, representatives of OECD and UNCTAD, academics and practitioners working in the area of competition law and economics. Important topics such as digitalization, the need for international cooperation and fight against cartels were discussed during the Forum. Moreover, there were also bilateral meetings between the representatives of Turkish Competition Authority and other competition authorities. Thus, the Forum played an important role in the development of regional relations and filled an important gap with respect to a platform for international cooperation in the area of competition law in our region.

The creation of a platform led by Turkish Competition Authority to develop and strengthen cooperation in competition law and policy and the institutionalization of the ICF are among our important priorities. The positive feedback from participants during and aftermath of ICF motivated us to organize workshops to this end. Hence, the first ICF Workshop was organized on March 9-10, 2020 in Istanbul. As a result of the discussions with our shareholders, the same theme as ICF 2019 was chosen: digitalization and international cooperation. Case handlers exchanged their valuable opinions and experiences in a friendly environment. The panels in the workshop dealt with current issues such as assessment of dominant position in digital platforms, consumer harm theory in digital platforms and handling cross border cases.

As you all know, we have been witnessing an unprecedented health crisis for a year. The Covid-19 outbreak has caused great losses both in our daily lives and in national economies. Governments have used bail out programs against shrinking GDPs and increasing unemployment rates. Naturally, competition authorities have been affected during this period. We are facing complaints related to sudden price increases, price gouging as a result of market failures such as supply deficiency. Besides, we are receiving exemption requests for cooperation agreements between competitors. Moreover, government interventions to support businesses and the loss of trust to global supply chain have triggered protectionism. To discuss the challenges faced by competition authorities during Covid-19 outbreak, online ICF workshop was organized on June 2, 2020. The workshop was followed by more than 400 participants, including representatives of national competition authorities and academia. The speakers shared their knowledge, experience and suggestions within the scope

of three questions: “How should competition authorities deal with the Covid-19 crisis? Will competition policy have a reduced scope? Will there be a tension between antitrust enforcement and industrial policy?”

Lastly, we organized annual ICF meeting on December 15-16, 2020. We wanted to hold the Forum in Istanbul again but unfortunately, due to Covid-19 crisis, we had to organize it online. There were speakers from international institutions, academia and private sector. The main topics of the Forum were competition issues in digital markets, competition law enforcement during Covid-19 and competition in labor markets. As known, business models based on platform, network effects and economies of scope have led to competition problems that are more complicated than and different from those of traditional markets. The intrinsic features of such markets require that competition authorities should adopt a more proactive approach. In the relevant session, speakers discussed the features of digital markets and proactive approaches to be taken by competition authorities. The growing market power of firms in labor markets are considered as one of the reasons for the decrease in growth rate and increase in income inequality. Thus, academics and competition authorities are paying more and more attention to this subject. The speakers in the session on competition in labor markets dealt with transaction cost approach as an alternative to consumer welfare and gig economy and its results from the perspective of antitrust enforcement.

Despite the unfavorable conditions created by the outbreak, we were able to exchange our knowledge and experience during fruitful discussions, which gives us hope for ICF’s future success and encourages us to prepare for new events. I would like to take this opportunity to thank all institutions which contributed to the organization of the workshop and online meetings and I would also like to thank my colleagues who made a great effort to organize the events successfully as well as those who contributed to the preparation of this book.

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| **10.00 – 10.50** | **Competition in Digital Platforms**<br>**Moderator**<br>**Gamze ÖZ,** Assoc. Prof. Middle East Technical University<br>**Speakers**<br>• **Ebru GÖKÇE DESSEMOND,** Legal Officer, Competition and Consumer Policies Branch – UNCTAD<br>• **Meltem BAĞIŞ AKKAYA,** Professional Coordinator, Turkish Competition Authority<br>• **Kirill KOROTKOV,** Head of Strategy Department, Uzbekistan Antimonopoly Committee |
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| **11.00 – 12.00** | **Free Time** |
| **12.00 – 14.00** | **Lunch** |


# Opening Speeches

**Recep GÜNDÜZ**
Head of External Relations, Training and Competition Advocacy Department, Turkish Competition Authority

**Hilmi BOLATOĞLU, Ph.D**
Chief Advisor, Turkish Competition Authority

9 MARCH 2020
09.30 – 10.00

**RECEP GÜNDÜZ**

Head of External Relations, Training and Competition Advocacy Department, Turkish Competition Authority

Distinguished representatives of national competition authorities and esteemed guests, good morning and welcome! On behalf of the Turkish Competition Authority (TCA) and myself, I would like to greet you all and express my sincere gratitude and excitement over your presence here.

Today we are holding the very first workshop of Istanbul Competition Forum (ICF). As you may all know, we organized the ICF for the first time in last October, and when we were organizing it, our initial aim was to strengthen cooperation and also create a joint platform in the need of international cooperation and also create a common understanding in the area of competition law and policy. In this regard, I believe ICF filled an important gap in our region. We observed and understood this from the feedback we received during and in the aftermath of the ICF. So, this encouraged and motivated us for organizing these kinds of workshops in order to institutionalize the ICF, rather than meeting only once in a year in this beautiful city of Istanbul.

So, in harmony with the targets at the beginning, I believe that today's workshop is of utmost importance for building trust among competition authorities in our region, and also strengthening technical cooperation as well as institutional capacity. And also, it is important for understanding and solving current competition law problems with collective wisdom. And also, I believe that we can take advantage of hitting up the topics and determine the agenda for the ICF annual in the coming months, till the end of the year, for this year. Why not? Right? Also, it is important for detecting the problems together and working jointly.

As a result of consultations with you, we have chosen the topics of this workshop as digitalization and international cooperation, like the ICF last year. However, this time we believe that we will have the chance to

exchange our experiences in detail in a friendly environment by meeting with valuable representatives from national competition authorities at the expert level.

Today, on the first day of our workshop, we are going to discuss digitalization in every detail because, as you know, it is the hot topic in the international arena, so it deserves to be discussed in detail about digitalization. Thankfully we have panels discussing competition in digital platforms, market definition, dominant position analyses and consumer harm theory. So, it is a well-covered issue, I believe. Also, in the second day of the workshop, we will be elaborating another important topic: handling cross-border cartels, which has almost turned out to be a necessity.

Unfortunately, today some of our esteemed guests are not able to be with us against their will, due to precautions regarding this famous virus. I am not going to tell the name for the sake of luck, right? As I said, they are not going to be with us but still we will try to have them with us via Skype connections, including OECD and UNCTAD representatives. We will do our best in this manner.

So, distinguished guests, I hope that this ICF March Workshop will be beneficial for all participants and enable fruitful discussions and exchange of views. Once again, I would like to thank all participants and greet everyone with my deepest respects.

Before diving into our panel discussion, I would like to invite Mr. Hilmi BOLATOĞLU, chief advisor to our President, for his opening remarks.

Thank you very much.

**HİLMİ BOLATOĞLU, Ph.D**
Chief Advisor, Turkish Competition Authority

Distinguished representatives of national competition authorities, esteemed academics and the hard-working staff making this organization possible, I would like to welcome you all on behalf of the Chairman of the TCA, Mr. Birol KÜLE.

Ladies and Gentlemen,

As you all know, there is a virus outbreak worldwide, which is an important barrier to travel. In this regard, I would like to thank each of you for your dedication to attend this meeting despite those difficult conditions. Furthermore, I would like to thank UNCTAD for its support in organizing this event. I am sure that our productive partnership will continue in the future.

Today we are here for the first workshop of the Istanbul Competition Forum, ICF. Last year, we organized the first ICF which attracted significant interest from both national and international communities. We welcomed esteemed presidents and high-level officials of national competition authorities. This has motivated us to advance our studies and cooperation. Hence, today, we will try to create and facilitate a platform for discussing hard topics and sharing experiences among those who are dealing with anti-trust cases. I hope this organization will be fruitful and will take us one step further.

Dear guests,

Before completing my words, let me share with you something that has taken my attention. When we look at the sessions, we see that most of the speakers and moderators are women. I believe this is a beautiful coincidence, because as you all know, yesterday, March 8, was International Women's Day. In this respect, I would like to congratulate all women in this hall for their invaluable achievements and wish you a happy International Women's Day.

Finally, I would like to thank all participants again, and greet everyone with my deepest regards.

Thank you.

**RECEP GÜNDÜZ**

Thank you, Mr. BOLATOĞLU.

I promise this is my last appearance today, because this is the most boring part of the opening sessions, but the fun part is over there and I am pretty sure that we are going to have lots of hot topics and fruitful discussions. So, I am going to just stop here and give the floor to our moderator for our opening panel.

Thank you very much.


# Competition in Digital Platforms

9 MARCH 2020
10.00-10.50

Moderator:

**Gamze ÖZ**
Assoc. Prof. Middle East Technical University

Speakers:

**Ebru GÖKÇE DESSEMOND**
Legal Officer, Competition and Consumer Policies Branch – UNCTAD

**Meltem BAĞIŞ AKKAYA**
Professional Coordinator, Turkish Competition Authority

**Kirill KOROTKOV**
Head of Strategy Department, Uzbekistan Antimonopoly Committee

**GAMZE ÖZ**
Assoc. Prof. Middle East Technical University

Ladies and Gentlemen,

I also would like to welcome you all this morning to this organization of the TCA with the participation of UNCTAD and the sponsorship of TİKA, as far as I know. I would also like to say a warm welcome to our guests coming from abroad, from different competition authorities despite the hard conditions that Dr. BOLATOĞLU has just expressed, and also to the distinguished competition experts and assistant experts here.

Today, we will have three speakers in this morning session: Ms. Ebru Gökçe DESSEMOND will be attending through Skype. She was also not able to attend due to the precautions of the international institutions she is working with. We will also have Meltem BAĞIŞ AKKAYA, a senior expert whom I know very well from very early days of the Competition Authority, whom I always admired for the things that she has been doing. And we also have Mr. Kirill KOROTKOV from Uzbekistan, Head of Strategy Department of the Uzbekistan Antimonopoly Committee. Thank you very much.

I would like to say just a few words, not occupying the whole morning session. I will give around 15 minutes to each speaker before we also have Ms. DESSEMOND here.

Competition law has been one of the common denominators of the world today, as far as the digital economies concerned. But I guess there is a broader question over competition law, which is how sufficient law itself will be in the digital era for regulating and for controlling the sensitivities or complexities of the digital world and the big data problem today. I think the TCA has been one of the very first authorities in Turkish bureaucracy who has given priority to the digital environment, not only by its decisions but also by initiating a new study on the digital environment and competition law just this year, which I think will be giving out very important outcomes not only to the people working in this area, in

practice, or in academia, or the bureaucracy itself, where the issue seems to be highly interdisciplinary – not only within competition law itself but generally speaking, covering all areas of law such as cyber-security, protection of fundamental rights and freedoms, data, etc. So, I guess this broad view of digital environment will be taken into care by the Competition Authority in the first place with this very pro-active study of the Competition Authority.

Having said that, let me keep my promise and not take so much time. Maybe I will try to contribute with some comments later on. I think we will take Ebru GÖKÇE as the first speaker, not to have her wait there on Skype. So, we are ready?

Okay, maybe I will say a few words. For a period of time in my courses I have been dealing with law and technology at the same time. How they interact with each other, how much technology and law can be together having different particulars. One of the issues that we have been talking with our students was that in the world history there had been assets which represented power, such as territory, and then such as intellectual property. Now it seems that it is time for data to represent power. As all the others have been subject to some sort of regulation, now it is time for data to have some sort of regulation. With the existence or non-existence – lack of this regulation, the role of competition law and policies, in fact changes, because sometimes competition policies and law, I think, act also in the role of regulatory tools. Whereas if there are regulatory tools, as we all know from fully regulated industries, the role of competition authorities and competition laws may have a different status. So, I think, these coming years – not as long as ten years, but a very short period of time – we will all together witness how much the regulation of data and digital environments will also affect competition law and how it is going to be applied, because it is one of the issues which is being discussed by all the competition authorities in the world today: whether or not conventional competition law tools will be sufficient for the control of all competition restrictions or competition law itself should reinvent and recreate itself with new tools to cope with all those sensitivities that come out from market dominance or algorithmic cartels, so on and so forth.

This is one of the issues, I think, which will be covered today – partially this morning and I guess within these two days. I think this would enable all of us to have some fruitful discussion and thoughts in our minds on the future of competition law, as well. I am expecting to have some good discussions from the floor as well – not only by the speakers here, but by the participants' comments and contributions. I get a sign that Ebru GÖKÇE is ready over there. So, if we can take her and say her a welcome, as well?

Ms. Ebru, Good Morning. Can you hear us?

**EBRU GÖKÇE DESSEMOND**
Legal Officer, Competition and Consumer Policies Branch-UNCTAD

Good morning. Yes, I can hear you. Professor ÖZ, right? I think we have met a couple of years ago in one of our meetings, I remember. It is a nice surprise to have you moderate this session.

**GAMZE ÖZ**

That is right. The same thing also applies for me. It is difficult to replace you with all of your experience in UNCTAD but just because you were unable to attend, I was asked to moderate the session this morning. So, in order not to make a short story long, let me quickly leave the floor to you. I think everyone in this room knows you very well from international competition issues that you are engaged in over there. We are looking forward to hearing

your comments and thoughts on the issue. Before you joined, we thought around fifteen minutes would be fine for each speaker, but if you would like to take the floor longer, we are happy to hear you. Also, I am planning to ask questions afterwards – after your session – in order not to make you wait over there. Straight away, after your presentation. And then we will move on with the second and third speakers here, if that is alright with you.

**EBRU GÖKÇE DESSEMOND**

Alright, yes. That is fine with me, it is a good idea. I am sure you will do a very good job so I am happy to be on this panel that you will moderate. Since this is the first time I address the participants, I would like to just say that I am happy to be here with you this morning online. I apologize for not being able to be in person in İstanbul.

As you know, this workshop is a follow-up of the joint initiative, especially of the TCA, which started in November with the ICF and it is very rewarding to see it continue with these workshops where experts can exchange their experiences and information. I think it is useful and it will contribute to the cooperation between the agencies in the competition law enforcement area.

I do not want to make it very long but as UNCTAD, we are very happy to be cooperating with the TCA and we will continue our collaboration to organize these events and be present.

Good morning again to all of you. As Prof. ÖZ mentioned, our topic is competition in digital economy in general today. But I would like to focus on competition specifically in the online platform market – so rather the unilateral conduct or abuse of dominance type of conduct in these markets. As she rightly mentioned, I will raise the same questions and try to see how to answer: whether competition law is sufficient, whether we need to adapt the law and competition law enforcement tools and analyses, whether there are new tools or there are new needs that appear in these new economies that we need to think about, to regulate,

to restore and promote competition in these markets. What is the future of competition, also.

I will try to address these subjects in my presentation and try to make it in fifteen minutes. Then I will be able to take your questions.

The presentation is about restoring competition in online platform markets. And I will be talking about the specific features of these markets: what kind of features distinguish them from traditional markets that we are familiar with. And then I will look at online platforms: their market power and implications for competition, and then implications for competition law and policy. How can we respond to these challenges in the competition area that they present?

Basically, as you know, the dominant platforms – Google, Apple, Facebook, Amazon, Microsoft – they are all dominant in one particular market, as you can see and we all know. Google in online internet search engine market and advertising. Apple in the mobile devices market, Facebook in social networking, Amazon in marketplace and cloud computing, and Microsoft in cloud computing.

To have an overall idea of the dominant platforms here and their specific features. They all rely on data. As Prof. ÖZ mentioned, data is giving them power in these new markets. So, access to data, control over data is very crucial for these platforms. So, they basically collect or analyze and monetize these data they collect, either by directly selling our data to advertisers or by providing them online advertising space. Their revenues come from advertising – "advertising-funded platforms," they are also called.

And they are multi-sided markets. Meaning that on the user side – on our side, as users – they seem to be free, whereas we provide a lot of data for them which they then use to make income, to make their revenue and profits. So, we can call it free services on one side and then revenue generation on the other side of the platform. In the Google search case this will be the advertising platform. As users we use the search, one of Google's businesses: the internet search engine.

And network effects. So, these platforms spread by these network effects. The more participants there are on an online platform, the more users they will attract because... the direct effect is that, if we take Facebook as an example, the more of your friends or your family are on Facebook, you will want to choose Facebook. Even if there is an alternative platform out there, you will go for Facebook because you want to link up with as many people as possible. This is how Facebook grew and this is the direct network effect in these markets.

For the indirect network effects, the more users a platform has, the more advertisers it attracts on its platform. So, on the other side of the platform, there is a positive effect of having a lot of users on one side of the platform. This increases the revenues of the platforms and it increases their ability to improve their capacity, improve their services because they have a lot of data they can analyze to improve their services. They can come up with new additional features, as we know.

And they have high initial costs – upfront costs – and very low marginal costs. So, the cost of providing these services for additional users is very low. Once they invest in the hardware and software, in the long run – I mean not even in the long run: in the very short term, they will reach low marginal costs. And there are economies of scale, basically, because of this, economies of scale and scope.

Switching cost for users... it needs time and effort and some understanding, some literacy – digital literacy, we can call it – to be able to switch. Sometimes there are default settings. For example, on our phones we have Google Search as default setting most of the time, either we are blocked so we cannot switch, or we need to make an effort to see how and what other platforms out are there to where we can switch. But it takes an effort and usually consumers are – we call it consumer inertia. They are not willing or they are not able to do this.

So, this reinforces their dominance in these markets and all these economies of scale and network effects and control over data gives them power and increase the barriers for entry into the market.

So, what are the implications of this for competition? First, as we mentioned with data, there are information asymmetries and control over data. Platforms have a lot of information about traders and consumers, contrary to the traders on their platform and to the users. We do not know what data they have about ourselves. Traders do not have access to the same data as the platforms have, for example Amazon. And this confers great market power, an enduring market power to those platforms. They can leverage this market power on one side.

Take Google Search, for example. It is dominant in this market. It can use this market power in the other side of the platform, on the advertising side, for example. It will have a strong negotiating power vis-à-vis the advertisers, and it can increase the prices for them because they know that platform is very attractive for advertisers, for instance.

They have, sometimes – as an example, Amazon, eBay – all those online marketplace platforms have a dual role as a platform for traders and then retailers competing with the traders on their platform. So, what they do is self-preferencing. We have seen this with Google, we have seen this with Amazon. When you do a search on Amazon for a product, you will see that on the first page there will be Amazon's own brands coming up first. So, they engage in these practices and this has an impact on competition in that market, apparently.

They have access to traders' data, and they can use this competitively relevant and commercially sensitive data to improve their own products or create their own brands looking at which markets work the best. In a way they are similar to essential facilities like telecoms and energy networks, electricity networks. Because they have become gatekeeper platforms where they are operating their platforms and they have market power and dominance, and they set the rules for the traders operating on their platform. So, they have some kind of intermediary or "gatekeeper" power, as it is called in these markets.

They have a tendency to expand into new markets. It is easier for them because they have enough revenue, enough reputation, so it is easier for them to access new markets compared to new entrants, new firms. They

have the capacity to offer very low prices at the beginning to attract end-users and then they can return even more revenues.

Another strategy they have with impact on competition is the acquisition of new entrants and potential competitors. Like Facebook did with WhatsApp and Instagram, they kill the rivals from the beginning. We cannot know that they will grow and become as big as Facebook, but they were – in my opinion – promising rivals to Facebook but now they cannot be because they were acquired already many years ago.

So, they compete for the market and not in the market. They compete to get control of the market. They are winner-take-all markets, so they have most of the market. Their market share is over 80-90%. So, once they get the market, their power continues. There is no entry, there is no meaningful competition, so the market power is very enduring.

So, what can we do? My apologies if I was very fast, but I want to talk more on the policy responses, that was the idea. How can we restore and promote competition in digital platform markets? We have our competition law as a tool in our hands. Competition law enforcement is one tool, continues to be one tool. But it might need adjustments. We can adjust the tools and analyses to the realities of these business models. They are rather new business models and, as we mentioned, they have some specific features different from other markets. It is difficult to define relevant markets as we will be discussing after this session. We can focus on the law itself, adjust the law and the tools and analyses. Then fair competition legislation, I will be talking about this as well as a new idea, and what other relevant complementary legislation countries need to have, and regulation.

If we start with competition law enforcement, first competition authorities will need to be flexible with the tools they have, in using the tools they have, and adapt their tools and analyses to the new realities. They need to look at markets with less focus on market shares and market definitions, and more on the competitive relationships in the markets, and the business strategies of these platforms across market spaces, not in one particular market. The analyses will be too narrow,

because they leverage their market power in one particular market into other markets. They have many various business lines that they are in control of, so another approach is required,  a wider analysis, to look at what is happening overall in these related market spaces.

There is need for new criteria for market power assessment of online platforms. We have seen this in law revisions in Germany and Austria. They wanted to be clearer with the rules. They wanted to put them in the law, revise the law, to include these new criteria for market power – maybe to make the law more transparent and clearer to businesses, and also for the judiciary in order not to have their decisions turned down later on. They made this clear in the law, that was their preference.

What did they include about market power in the market definition? Direct and indirect network effects, many features of these platforms parallel use of services from different providers – which is called multi-homing, you may know – switching costs for users, economies of scale based on network effects, access to data, and innovation-driven competitive pressure – whether there is this pressure or not – and abusive and exploitative terms of business practices. Sometimes these practices are not necessarily exclusionary, but they are exploitative. So, they are opening the way for dealing with these kinds of practices by their competition law, these two jurisdictions particularly.

What else? Of course, law enforcement needs to be bolder and faster. Very easily said than done. Here there is need for some adjustments. These are the proposals on the table. I just would like to mention that this presentation is based on a paper I wrote. It is an UNCTAD research paper which is available online. I can send it to those interested. But the paper is based on the review of all the proposals out there when I was writing it during November, December last year. So, these proposals are not our ideas, they are suggestions mentioned in many reports that have evoked interest in this issue, The Stigler Report, the BRICS Report. So, if you look at all those reports, you can find these kinds of suggestions.

We had a session in the IG last year, in Geneva – our Intergovernmental Group of Experts Meeting, some of you might know. We discussed this

topic particularly in the round table discussions. These were also the points that were brought out in that discussion by the panelists and also by some of the participants.

So, competition law enforcement needs to be bolder and faster. There is some adjustment needed to achieve this. The standard of proof now is mostly on competition authorities, so this should be reversed. The burden of proof needs to be reversed in favor of authorities and companies should be engaged more in improving the pro-competitive aspects of their practices or of the mergers.

So then, interim measures need to be used more often. We can see this with the European Commission. Investigations last very long as you all know better than us. In the meanwhile, there is need for interim measures to decrease the negative effects of these practices in the markets.

Then merger control regimes need a reform. Basically, the idea is for the competition authorities to be able to capture and analyze the acquisition by big platforms of small, new startups.

So, I was talking about mergers. In Austria and Germany, they issued guidelines on analyzing mergers on the basis of transaction value-based thresholds. They introduced new thresholds which are based on transaction values. Apparently, it is very complicated to calculate this transaction value, so they issued a whole Guidelines on it. This is one option. And the analysis itself, the merger analysis, should take into consideration the new business models' features and include the access to and control over data, this data-driven economies of scale and scope, the network effects, all of this in the merger analysis. And future competition and impact on innovation, not only on competition but a wider analysis is required.

One other important point is efficiencies from mergers. There was a tendency, especially in the United States, up to now to presume that there are efficiencies from mergers. We should let the merging parties prove this, that there will be efficiencies with supporting evidence and not just presume that there will be efficiencies from the merger in actuality.

Then some reports were proposing to have public interest criteria for data driven mergers. There was a report of a Parliamentary Committee in the UK which came out with this proposal, which is interesting. Some developing countries' competition laws have these kinds of public interest clauses. They were recommending the same thing for mergers in this digital economy.

I would like to talk a little bit about fair competition legislation. I think this is a new area which I thought would be practical, especially for developing countries and economies in transition, to have. Because it is sometimes difficult to use abuse of dominance provisions in the law to deal with the online platforms' anti-competitive practices. There are examples in the world who have these kinds of provisions in their laws. These are provisions like abuse of superior bargaining position, abuse of buyer power. So, their focus is not on free competition but on fair competition. They address most of the exploitative business practices. I think these provisions can help dealing with online exploitative business practices in a more practical and easier way because you do not need to prove dominance, you need to show that there is a superior bargaining power. For example, in the relationship between the platforms and users, platforms and traders on their platforms in the case of marketplace platforms like Amazon.

There are many unfair practices, unfair contract terms and unilateral revision of contracts. These types of practices could be dealt with fair competition legislation. There is need for a legal framework on this, either by guidelines and regulation or by provisions in the law, to regulate unfair trade practices and abuse of superior bargaining power. This would also help to deal with the practices of big platforms in markets where smaller businesses and traders operating on the platforms depend on these platforms. This is the case in many developing countries, also developed countries vis-à-vis the platforms like Amazon.

As I said, this is not a new tool. You can find these kinds of legislations and provisions in the competition laws of Japan and Korea. I find that interesting to explore.

There was a study done by the Japanese Fair Trade Commission on unfair trade practices by big platforms. So, platforms like Amazon – online marketplace platforms. I am not sure if it was Amazon, but it was online marketplace platforms and Apple Store type of platforms.

What they found was these dominant platforms engaged in unilateral revisions of contracts with marketplace sellers, and this was considered to be a violation of the Japanese Anti-Monopoly Act under the abuse of superior bargaining position provisions. That is very interesting. Digital platforms, as I mentioned, have a dual role where they operate as marketplace operators and traders competing with other traders at the same time, using their transaction data to improve or create their own brand or arbitrarily manipulate search algorithms. So, these particular practices, they found that these fall under interference with a competitor's transaction, which they have in their law. They found that this was also a violation of their competition law.

When we come to App Store kind of platforms, they were preventing consumers from downloading apps from their competitors. They found that this was a practice of App Store kind of platforms, and they concluded that this was an interference with a competitor's transactions and therefore violating the anti-monopoly act.

There were practices, for example, one was found to be trading on restrictive terms. App stores were unreasonably forcing app developers to adopt in-app payment methods and not accept any other payment options, in order to be able to charge them processing fee for the app on their app stores. This was found to be trading on restrictive terms. These kinds of unfair competition type of provisions provide more tools to competition authorities to deal with exploitative practices of big platforms. I think it is worth exploring.

As another example, JFTC again issued guidelines very recently on abuse of superior bargaining position in transactions between digital platform operators and consumers that provide personal information to these platforms. So, these guidelines cover the relationship between

users and the platforms, in the case of Facebook, for example. If you think you are facing an abuse of superior bargaining position, these guidelines cover that practice and will deal with these kinds of practices. The guidelines were issued in December 2019, and they describe what kind of conduct of a digital platform operator related to the acquisition for use of personal information would raise issues concerning abuse of a superior bargaining position under the anti-monopoly act. So, these are very interesting developments that can inspire other competition authorities and other jurisdictions. I think it is interesting to look at, so I wanted to introduce these to you.

Other relevant legislation, complementary legislation to promote competition in these markets is consumer protection laws. Some of the practices of platforms fall under consumer protection law scope and they can be dealt with there. Data protection laws, e-commerce laws... these are complementary laws dealing with platforms.

Regulation is the last part – I am sorry, I took longer than expected. In our discussions last year, many speakers raised the same point that there is need for and there is room for regulation in these markets to complement competition law enforcement. Competition law is not a panacea. We can complete and adopt some regulations to deal with other aspects of the issues raised by platforms. Competition law enforcement, as you know, is an ex-post intervention, so it might be better to have rules to prevent the anti-competitive conduct from occurring and harming competition. Ex-ante measures, ex-ante rules and regulations could be adopted to handle these situations later on.

This would provide greater transparency and ensure non-discrimination, fairness in platforms' dealings with business users. It would be a clearer and more transparent business environment for all sides. This would also facilitate – having regulations and rules set out clearly from the beginning – would also facilitate switching by consumers and it would allow entry of new firms. A lot of these practices also and the nature of these markets raise high barriers, as we said at the beginning. So, regulation could help deal with this. And it would help prevent practices

benefiting from consumer bias and inertia, like default settings. With a regulation, if this default setting practice is prohibited then it might be effective from the beginning. Then we would not have to deal with it in a competition law enforcement case, in an investigation.

So, what type of regulation or how can these markets be regulated? Out of the many proposals on the table, one is code of conduct for dominant platforms. We can define the platforms, the firms with strategic market status. This was, I think, in the Stigler Center for Competition Law Report. I think they proposed distinguishing these platforms from other markets by defining a strategic market status. Then firms and dominant platforms who fall under this strategic market status would be required to adopt a code of conduct. They also suggest using this in the merger reviews, for example requiring these firms having this strategic market status – which is defined in the regulation – to notify all mergers and acquisitions they would be engaged in to the competition authorities. So then, you do not need to deal with thresholds. All their actions in the market would be reviewed by the competition authorities. This is a way to guarantee that the competition law enforcement authorities have a hold on what is happening on the merger side and the acquisition side. And maybe to prevent some promising competitors to be acquired by these big platforms.

Another element that regulation could bring is data portability and mobility for consumers, so they can make it easier for them to switch, moving their data. This is similar to what is happening in the banking sector and the financial sector, or even the telecoms where we consumers do not need to change our bank accounts or our mobile telephone numbers. We can switch operators without changing these, which create complications for many people.

So, this is the idea and to adopt open standards and interoperability between platforms to facilitate entry of new firms and their remaining in the market.

So, to conclude, the idea is to promote open and accessible digital markets with fair and transparent terms for businesses by using competition law

enforcement, fair competition legislation and regulations. So, this was the summary of what I focused on in the presentation and of course cooperation – regional and international cooperation among competition agencies is becoming more and more needed and more and more necessary to deal with these markets. All these platforms are global. There is absolute need for international cooperation, which we will be discussing tomorrow.

And also internally, within the jurisdictions, there is more and more need to cooperate and coordinate between competition authorities, consumer protection authorities and data protection authorities. In a lot of these practices data is involved, so consumers are involved and businesses are involved. The authorities that cover all of these areas, parties need to cooperate for better enforcement and to be able to restore competition in these markets.

Thank you very much, and I apologize for the time I took.

**GAMZE ÖZ**

That is alright. Thank you very much, indeed.

I hope you will be sharing the slides with the audience. I do not know how it was scheduled but if that is the case, then we can catch up with the ones that we have missed.

Now I would like to leave the floor to the audience, to the participants. If they have any questions for you before we say bye to you... Are there any questions to Ms. DESSEMOND, here? Any comments? Yes please.

### HİLMİ BOLATOĞLU

Thank you. First of all, I would like to thank Ms. DESSEMOND for this enlightening presentation.

Since we are still seeing page 9, I would like to continue with page 9.

There is an interesting proposal that if we decrease the standard of proof, should we be concerned about over-enforcement or false positives, and does that over-enforcement discourage innovation?

Thank you.

### EBRU GÖKÇE DESSEMOND

Okay, so over-enforcement and whether it discourages innovation.

Well, in one of the reports, actually, the finding is that up to now – it is a report from the US and from the University of Chicago, interestingly. Their economic theories have a lot of influence on competition law enforcement in the US after late 1970s. So, after late 1970s in the US, they were worried about over-enforcement and they thought that the market would sort out everything and self-correct. Their enforcement approach is we should avoid false positives, right? In this report, for these particular markets, since we have seen that market power is enduring unlike in other traditional markets where you would say "Oh, there is lots of profits in this market, so there would be for sure entry, and this would sort out the problems and the market power of the existing firms will decrease." But this is not happening in digital platform markets. That report's findings – it is the Stigler Center's report, if you want to look at it in more detail, and I also refer to it in the paper. These worries about over-enforcement have more negative effects – out of the worries to be over-enforcing the law, you will not do anything, and it is more... it would harm competition more, actually. It would be more harmful for the market, in terms of competition. That is the finding of the report.

So, that is why these reports– and they explain them in detail – they propose to lower the standard of proof and to reverse the burden in favor of the competition authorities. Because most of the time, it is the

authority that needs to prove that a certain practice is anti-competitive. But they want to reverse this, saying that the companies– because they have the data, they can analyze better. They are in a better position to show pro-competition efficiencies, let us say, of their practices or their practices not being anti-competitive. Because these platforms have access to and control of the data, they can make this analysis better than the competition authorities. Also, to facilitate the enforcement, this is the idea: lowering and reversing the burden of proof.

When it comes to your question on whether this would cause over-enforcement, I do not think so. If over-enforcement happens and has an impact on innovation, I think that currently the dominance and market power of these platforms already stifle innovation. Because there is no prospect for a startup to enter and remain in the market. Actually, their objective has become to perform well in the beginning to be acquired by the big platforms. So, there will never be competition. But if there is competition, you may end up with a lot more innovative firms, innovative smaller firms. And there might be privacy-by-design type of platforms, search engines or other kinds of services offered on the market. But today, this is not the case.

I hope this answered your question.

**GAMZE ÖZ**

Okay, thank you. Other questions on the floor? If not can I just comment without abusing my position as a moderator here? Just a few sentences?

Taking Mr. Hilmi's point in the last question, I am a little bit worried on the burden of proof, being a lawyer, and the presumptions. Under Turkish law, we had some problems in the beginning, in the first years of the Competition Authority. I understand the information asymmetry between the data industry and the competition authorities, that is fine. But thinking about other areas of law, such as procedural law and constitutional principles and general

principles of law, I am a little bit worried on that suggestion. It might have been quite easier for some jurisdictions, but with the Turkish jurisdictions, I would be a little hesitant on raising my hand in favor of that proposal.

My question and comment would be rather related, too. The approach of different jurisdictions to the data economy, such as the US, European Union and China. They are approaching to the regulation of data industry in a different way. Although there are common denominators, we know that their approach is "slightly" different – slightly in quotation. So, I think, how would you react to this? The role of policy rather than law in the first place will be very important, that is what I see. The role of international cooperation and the role of international institutions – where you stand – will be much more important than it was before, I think, in order to get those different approaches into a kind of a standard if the world will be talking about a code of conduct globally. That is one of my questions or comments.

Also, how would you comment on the fact that– I think competition authorities should be innovative like the industries themselves and base their decisions on data. I think that is to be accepted by everyone. But on the other hand, unlike how we have until today described competition law's nature – being ex-post – I have an idea that competition law and competition authorities should maybe, for this time, act ex-ante rather than jump in in the first place and try to fill the regulatory gaps at the same time. So maybe that would be a complementary question or comment over the first question. I think the role of competition authorities in the lack of regulation and in the existence of regulation would be different. I think it would be in favor of the market if the competition authorities would try to avoid false positives and rather stay ex-ante with market researches and try to understand how these markets will develop.

Of course, this does not mean that they should be flexible and lie back, but I am trying to say that sometimes a quick and rapid intervention may result in some consequences which cannot be taken back afterwards.

How would you comment on that?

**EBRU GÖKÇE DESSEMOND**

Okay, I heard all the questions, Gamze. Thank you very much.

Just quickly on the last point with the role of authorities in the lack of regulation versus the role of competition authorities with regulation – I think even in a regulated environment the rules would be clear for everyone. So, the platforms would be able to know what kind of practices are prohibited or should not be engaged in. This would facilitate the job of the competition authorities. Sometimes, we can see that some decisions were very criticized, even of the European Commission. After seven years of investigation, they were criticized for not defining the market properly, there was no relevant market definition clear in their decision, or this cannot be dealt with by abuse of dominance... These are evolving markets and they are difficult to analyze and handle. So, I think regulation in that sense would make things easier for competition authorities. Because we cannot deal with all these things, all these practices under competition law. Sometimes the law is restrictive, there are criteria, there are rules to follow. Some of them should be dealt with by regulation.

When I said competition authorities should be bolder and faster, this was discussed– I mean, these investigations, first, we know that they last for at least five years. So, this is a very long time to analyze whether a practice has violated the law, the impact on competition, so by the time we reach the decision a lot of harm has happened. Maybe the market changed, also. There are new players or there are new forms of doing business, I do not know. There can be many changes in the markets as well. So, when I said "faster", I do not point to the fact that the authorities should go, in a few months they should collect and analyze the data and decide before they reach one year. No. Faster in the current environment. Investigations take like five years, six years so...

Bolder meaning... in the several discussions I had participated in Geneva we discussed that sometimes the authorities are concerned about the judiciary. When they are not sure that they can prove a practice anti-competitive solidly under competition law, they prefer under-enforcement. Because they think that the decision might not be upheld

by the judiciary, by the courts. So, they hold back their intervention. If they were sure about the judiciary's reaction, maybe they would go for investigating a certain practice. But they hesitate, because there is this judicial review – I mean, it should be there, but the idea is to be bolder so even if they know that the judiciary might have problems with the decision or might not uphold the decision, they still should go for investigating the cases. That is the idea. They should not hesitate, because that will develop some analysis, some skills on the way. And the judiciary might also evolve over time to understand better the issues in these markets. Because they are not very straightforward, usually, like in the other products and services markets, traditional markets, let us say.

On your point on the role of policy and international cooperation, let us say a few words on the role of policy, rather than the role of law, you said?

**GAMZE ÖZ**

Rather that the policy becomes a priority, to assign a policy beforehand.

**EBRU GÖKÇE DESSEMOND**

Yes. I actually agree because the policy will direct, will provide guidance on where there are areas for improvement, where there are areas that are not working well. It can also cover other related areas, like in a policy you can look at what is happening in the markets and say "Okay, in the competition area we can do this, A, B, C, D. Then we also need to strengthen our consumer protection law enforcement. We need to maybe think about a law, if the country does not have it. Maybe we need to think about an e-commerce law, a data protection law." So, the policy would give this wider perspective, and then under the policy you can always find solutions, whether it will be regulation, whether it will be revising the competition law. So, it will provide a wider analysis, I absolutely agree with that. We even need sometimes a digital industrial strategy, like the Single Digital Market of the EU is about digital industrialization strategy,

actually. We also need to complement it. What do we want to do as a country? Where do we want to place ourselves in this digital economy? Do we want to be always going for the global platforms, or do we want to have our own platforms? What is our objective and what should we do? Of course, this is a wider policy perspective. This is beyond the mandates, I am very well aware, of the competition and consumer authorities.

For international cooperation, yes, there is maybe a more pressing need than ever for international cooperation in competition law enforcement and UNCTAD is doing some work in this area that I will be presenting tomorrow. There is more and more to exchange, to share experiences even if international cooperation is maybe not progressing as fast as it ideally should be. But at least these international forums that we provide to exchange experiences and discuss issues between countries with different levels of development. I think countries can also learn from each other and we are very happy to provide that forum and facilitate this.

**GAMZE ÖZ**

Thank you so much, Ebru. I think there are no further questions. Thank you for being with us today and I hope to catch up sometime after all these restrictions on travels disappear hopefully.

**EBRU GÖKÇE DESSEMOND**

I would be happy to. Thank you very much for listening and for your attention. Apologies for the delay. Thank you and bye-bye.

**GAMZE ÖZ**

Thank you. So, I will quickly turn back to Meltem for her presentation.

**MELTEM BAĞIŞ AKKAYA**
Professional Coordinator, Turkish Competition Authority

Thank you, Ms. Chair.

It is a privilege and a big pleasure of mine to be sharing the same platform with you. For those of you coming from abroad, I would like to say a few words about Prof. ÖZ. She is one of the most prominent figures of the Turkish antitrust law. She has been with us from the very start, so we sort of grew up together. She is an excellent contributor in our area.

Once more good morning everyone. So, some years ago someone, a gentleman who calls himself a futurist – his name is Tom Goodman – he told us something very interesting is happening in the world. Frankly, he was quite right. Something interesting has already happened in the digital world. What is this? Now, have a look at these tables, please. On your left-hand side, you see last year's result of the top ten global companies, if you like, top ten most precious companies of the world. On your right-hand side, just a decade ago see how different it was. The only interesting one in our expertise area was Microsoft, right? In less than a decade, things have changed. We have far more newcomers in the list. In line with today's wording, we have six more multi-sided companies, which are Apple, Amazon, Alphabet – for those of you who are not familiar, that is the parent company of Google. Then you have Facebook, Alibaba and Tencent, which is the most interesting one. It is a Chinese online game company which has shattered all the lists.

So, things have already changed, as you see, in the world. Now we are trying to catch-up as competition enforcers, to see how to follow these companies and we are trying to understand how to apply the conventional rules. The challenge is: are the conventional rules enough, or are they outdated? Do we need an updating of the rules and how should we do it? Should we overdo it if we draft new rules, as in the case with the Germans and Austrians, even the French– I am going to

tell you in a minute. We will be in a new environment imposing rules on an innovative environment, where innovation is a key feature of growth. Should we scare them, or should we support them? How to strike the balance? That is the main question.

So back to where we started. Our competition agencies all around the world, with us being one of them, have four main issues stemming from the dominant tech platforms. The first one is their ability to control the data. The second one is their power to impose unfair terms on other competitors. The third is the chance that a merger could disturb a future market entrant, which is usually in this case a small but very eager startup. The fourth one is the potential use of algorithms for anti-competitive purposes. Easier said than done.

But as we have seen, the companies have changed, which means that these multi-sided platforms provide many benefits to the users because, all of us, we receive these products for free. We do not pay anything. For us, that is excellent. But then is it really the same scenario for the market players? They have gained a lot of significant control over our consumer data, which is then – as the definition tells you – transformed into market power. Competition agencies including ours have been studying the negative effects of these markets, of these platforms. This process has created many competition related concerns, and everything stems from the data.

Okay, so, here is just a brief look on how multi-sided platforms are defined. From many definitions, I prefer to use the one that the Commission suggested. So, it is an undertaking – that is, a company – operating in two most of the time, in multi-sided markets, it chooses the internet to enable interactions between two or more distinct but every time interdependent groups of users so as to generate value for at least one of the groups. So, the services provided vary from social networking (Facebook) to virtual marketplaces like Amazon, and these platforms have novel business models that were never seen before, which depend on collecting and processing data. Now, here is the most important, crucial part of the story: in the neo-classical approach, in the neo-classical economics, all we knew is that firms compete to maximize profit. So, the target is to maximize their profits. Instead, in these markets where you

have a multi-sided platform, they do not care about profits.

That is quite interesting. In the short run all they want to do is to collect as much data as possible. This means to collect, to gain as many users as possible. And once they gain these user numbers, when they hit the number, all they want to do is to transform these into market power, and then they become dominant and everything is over then. Here is where our problems start. Because the challenge lies in the definition of the multi-sided platforms. So, it is not the market that creates it, it is the company definition, it is the multi-sidedness, the interdependency of the groups that creates the problems that we enforcers have been seeing.

Since their business depends largely on data – indeed, solely on data – these services are often provided free of charge for one of the users, for consumers. The platform is indeed, in other terms, subsidizing your side. Since you are free-riding, then the other side has to pay something. This something is always a fluctuating number. It is not a fixed cost; it is relying on the dynamics of the market and platform itself and on the algorithm. It is always an interesting picture on the other side. What is behind the scenes is more important than what you receive for free, indeed. And this is not easy.

So, data, as you see, is crucial for the functioning of these new business models. A very good friend of mine, Ariel Ezrachi from the University of Oxford, had an excellent phrase. He says, "Data is the new currency." I think he is very, very right.

The more user-data the platform gets, the better and more personalized service it provides to the consumers. Is that so? We do not know. Because it means that you receive a personalized pricing as well. So, it is a very dynamic process, it is very difficult for us competition enforcers to see what levels of pricing is an infringement of competition. Which data are you going to rely on? Which data the platform sending over to you is the real one? Since they are on demand, since they change their prices constantly, there is the difficulty of "catching," if you like, the real pricing strategy of these platforms.

Then, another difficulty as Ebru has already said, is that this model, this novel business model is strengthened further by new mergers and acquisitions. Most of the time these acquisitions are called "killer

acquisitions." Why? Because they are always below notification thresholds and result in economies of not only scale, but also of scope and even in extreme returns to scale.

Here is what I have just found. When Ebru was speaking I was "Googling" to see the latest number of mergers and acquisitions. It is amazing, you will see the numbers now. Google, which was established as early as 1998, up to today has already made 240 mergers and acquisitions. It has acquired 240 tiny little startups. And these startups are so happy because they are paid super well. Now that they are out of the market and they do not try just because they are out of the market, they are happy. But are you happy, as an enforcer that these start-ups are no longer in the market?

Another example is Facebook. You would think Facebook as a social networking platform does not have any content. Well, that is not true. Facebook is one of the youngest ones in the market. It was established in 2004 and up to now, as of new numbers, it has acquired 82 start-ups, including WhatsApp.

Let us come to the WhatsApp merger now, which has shattered our understanding of merger review and anti-trust rules. It happened in 2014. Facebook became popular but then it was not popular enough because there were new social networks. So, it was trying to find a way to renew itself. Then it said "Okay, let us get new mergers". So, it merged with WhatsApp and many jurisdictions were unable to catch this huge merger. Why was that so? Because the models suggest that these platforms do not generate revenue enough as the transactions are. They are valuable, as you already saw here. They are valuable. Look at Facebook now: it is worth 476 billion dollars, but this does not necessarily mean that it has a revenue. I am sure, it is like one tenth, or something like that. This means that the mergers and acquisitions they are making are always below the thresholds of the jurisdictions. So very few jurisdictions were able to catch this merger. So, the WhatsApp merger is one of the most prominent, most interesting mergers that has shattered our understanding and we have come up with the idea that "Should we redraft new rules?"

Moving on from where Ebru had left, many countries, many jurisdictions

are already working on redrafting their merger reviews. Austria and Germany had a collaboration. They redrew and had a reform. They said "Okay, we are not going to look at the revenue levels now. The thresholds are over only for these digital companies. We have new rules." They said, "Transactions will be subject to merger control, with the consideration for the acquisitions that exceed 400 million Euros and if the purchase price and assumed liabilities attain more than this amount does."

What does this mean? Let me tell you, briefly. This means that if a transaction is valuable, they look at the price of the transaction itself. "How much is this company sold for?" rather than the total revenues of the merging parties. This is a new step forward in merger review and this is not the only one. There is another one, which is quite interesting.

The French Competition Authority is currently working on modernizing and updating its merger review. It says there is a draft now in the French parliament, which is going to be enacted, perhaps, because the French government is backing it. According to the new draft law, certain digital platforms will be required to notify all their mergers regardless of the revenue thresholds – whatever they are – or the transaction value – whatever they are. Any merger or acquisition done by a digital firm is to be notified to the French Competition Authority, and – here is the interesting thing – the French Competition Authority is the one to decide which ones are to be notified. So, they have a huge discretion now.

This is a little bit contributing to your comments or criticisms of over-enforcement, I agree totally with you. There must be some transparency and companies, even if they are high-tech or incumbent or whatever they are, we have to know and they have to know what is that safe heaven. So, in this scenario, in the French Competition Law, they would have to notify. This does not mean that the Authority is going to look at it in depth. It is just sort of a first-step procedure.

But then, since Facebook's purchase of Instagram... Facebook purchased Instagram in 2012 nobody notified it. That was one of the major pitfalls of our enforcement. And then Facebook/WhatsApp. Obviously, we have to do something, first of all, in our merger reviews. We, as the Turkish Competition Authority, are in the same state of redrafting – perhaps, if needed – our merger review. But we have not arrived at a decision,

we have not arrived at a conclusion yet. We just started our market study of digital companies and digital markets. In case we have the same feelings... but then we have a huge urge to always protect innovation. We always love to, you know, emphasize the need to protect innovation for the sake of growth. In case we need it, we may come up with new merger guidelines, as well.

This is one of the issues. Then there is another issue, of course: how to define relevant markets, then. This is going to be the next session's topic. I am going to skip this for the time being, and then next session we are going to be talking in depth. But that is another problem: do you define the relevant market as one of the sides of the platform? If it is a two-sided platform, excellent! But how do you define Google? Google is a huge example of economies of scope. It starts from mailing to YouTube, media streaming... Is it a media company? Perhaps for young people, yes. Is it a mailing service? Yes. Is it shopping? Yes, it has Google Shopping. What is more? It is everything. So, how do you define Google? Would it be fair if you say Google is a conglomerate that has economies of scope? But then, what if the infringement is only located in one of the functions it is carrying on? So, that is a huge problem now.

There is another problem, which is, of course, intertwined with the issues of... as Ebru also already said. Usually, these data problems stem from the fact that they are interlinked with the idea of consumer protection and data protection. For those of you, for those enforcers who are lucky enough to have consumer protection in their roles, there is no problem. But for us, it is a big problem as well, because we do not have the consumer protection side of the law. Then you have data protection. Since data is a key role-player here, data protection laws are also needed to be sort of incorporated or, at least, we need to have an official cooperation between these three regulators, if you like.

And then, one more thing, as I agree with Prof. ÖZ again. We should not be hurrying in, rushing to conclusions. Because the market is dynamic. What was yesterday quite trendy, may today be quite outdated, as we have seen in these mergers. If you draft something today, perhaps tomorrow it is going to be outdated, because the market changes constantly. In order to come up with a sound monitoring of the market, maybe policy is

more important than the law itself, or the legislation itself. So, you have to follow a path that is more lenient to the market and that covers every side of the market rather than drafting solid, set-in-stone rules.

Here is my conclusion. Well, this is just a wrap-up. These platforms do cause a challenge for competition policy analysis. Some have become large national or even global enterprises too quickly, in less than a decade. Competition authorities all around the world are quite vigilant about making sure that these innovative and dominant at the same time companies adhere to sound competition enforcement. The main issue to consider should be – and is, indeed – taking into account the interdependency of the sides of the platform. You cannot disregard one side of the platform when there is an infringement by the other side. Then, providing free services: that is a huge problem. Because the platform is always subsidizing the consumer side of the market. It is a free service. This should not be misleading. Because all our competition enforcement cases are based on pricing. We always look at the pricing strategies of the companies in order to conclude if there is an infringement or not. Or, even to define the relevant market. What do you do? You look at the pricing strategies of the company, dominant company, if it is sort of free enough to price itself above the others, then you say it is a dominant company. But when one of the services is free – Google is free for you, Gmail is free, YouTube is totally free, unless of course you go for the Premium.

That means the emphasis should be placed on the fact that free participation based on one side is important in making the platform attractive for the other, paid side. So, you should always consider the other paid side. Market power analysis needs to consider the constraints imposed by dynamic competition and, of course, indirect network effects. Which means that the platform is attractive if it has enough users on both sides. And this is a chicken-and-egg problem. How a new start-up is able to find a way to jump into this market if there is this chicken-and-egg problem? With the indirect network effects, a platform is valuable and attractive for consumers in both sides if it has enough users and enough providers. Why do we all use the Google search engine? There are good ones like Yandex, we have Bing, all of them are free. Why do

we use Google? Because it comes as the default, it is a default setting. Secondly, it is an economies of scope issue: when you log on the Google, you have your Gmail on the right-hand side, you just click on that one. You do not have to log out and find a new search. Since it is based on artificial intelligence, YouTube is already embedded in it, before you start writing "Andrea Bocelli," your favorite artist, it knows that you are going to listen to him, so it is there. It is quite useful.

What does this mean? It means that the other search engines are out of your scope. So, you are unable to use them. No one is urging you, all of them are free. This is a challenge for both the consumer and the enforcer.

Okay, let us then leave the second part to define the relevant market and let me wrap-up by saying that our task is not an easy task. Before we end up drafting new roles and new rules for these dynamic businesses, we have to – this is my humble suggestion – first look at the market and make a market study like the one that we are doing or like the one that the Germans have done, the French or everyone has done. The situation is so tough that even the Germans have worked with the French authority. Both authorities had a collaboration on algorithms, they had a common report on algorithms. Germans and Austrians had another common report on merger draft rules. So, there is a need for international and regional cooperation for sure.

Thank you for your attention.

**GAMZE ÖZ**

We thank Meltem BAĞIŞ AKKAYA for her very broad and challenging – and also realistic at the last point – presentation. I will very quickly turn to Mr. Kirill KOROTKOV from Uzbekistan for his contribution too. We will take the questions afterwards for both of the speakers.

**KIRILL KOROTKOV**

Head of Strategy Department,
Uzbekistan Antimonopoly Committee

Hi, everyone. Thank you very much for inviting me here to be one of the speakers. I would like to say the global challenges that you have posted and the solutions that your colleague has posted to go to local challenges that our country, Uzbekistan – a little known country, maybe you have not heard about this country before– is challenging in relation to digital markets. It is not about global solutions that we have, but it is the challenges that we started to face when we started to deal with this problem, because, basically, we cannot escape it. Digital regulation is there, and we have to do something. So we started to develop, a little bit, our agenda on this.

What I want to do is, I will go quickly and talk about our country and our Committee and show you the legislation that we have and show you the challenges that we are facing. Because we discovered a lot of challenges while trying to approach digital market regulation.

I hope you can see well. Uzbekistan is located in Central Asia. We are 33 million people; we have six nationalities. Our GDP is not so large. We have the distinction of being the second double land-locked country, together with Liechtenstein. It means you have to pass through two countries before reaching the sea.

Our competition authority has quite the history. It was established back in 1996, but it went through a lot of changes: we were merged, we were dissolved, we are appearing again. We emerged as an independent committee last year, in 2019. This is where we really started the process of, basically, creation of the strategy for competition development, creation of the strategy for digital market development, drafting the new law, and a lot of activities started last year.

This is a little bit of an introduction to what we have done so far, during the last year. All these figures, I will not go into them in detail. It is just to mention that we are doing M&A, we are doing state aids, we are doing anti-monopoly compliance, market analyses and so forth.

A little bit information on digital market development: Uzbekistan has embarked on this digital journey, so to say. That means we see what the world is doing, our government is accepting the changes and we are trying to go to a new, so to say, level. There are lots of different programs being adopted in Uzbekistan, like One Million Uzbek Coders we took over from United Arab Emirates; like Digital Uzbekistan 2030 – basically this is the special state program which is focusing on digital development; creation of different IT parks within the country. So, I would say this agenda is taking more and more pace in the country, it is getting more and more important.

This is just a little bit on Digital Uzbekistan 2030. Before explaining this to you, you have to understand the nature of the country. You have to understand the nature of the system, the infrastructure really needed. By far, it is recovered from the Soviet system, so a lot is still coming from the government. So, the initiatives are not coming from the state enterprises. We, as a competition authority, have to deal with that and try to adapt these challenges to the new reality.

The Digital Platform, what is it supposed to do? Our government understood that digital market is there and there is a lot of digitalization coming. So, the digital program assumes that every commission or committee or ministry would now have a chief digital officer who is responsible for the digitalization of their related authority, basically. Then we realized they are creating a lot of platforms which are to be regulated by our authority, so to say. We have to somehow adapt to this challenge because, automatically, this poses a lot of challenges in the sense that they automatically become dominant position. We automatically think about competition. Why this or that company is being selected for implementation of this agenda. It also assumes, basically, innovation companies and... well, all the theoretical things you probably heard about so many times.

Now about the law: there is quite a vast number of regulations in the IT sphere, but they are all somehow related to e-commerce, because e-commerce is relatively weak in Uzbekistan – well, it is small, but it is developing. Out of these laws, as you see so far there is no law regulating digital platforms. I have to say, as a competition authority, we have

introduced these concepts last year to the competition law. So, it is something still new to the country and it is something new that we have to teach the other people how to deal with this, basically. We have to explain and run workshops on explaining the digital regulation.

This is how it looks now in our new law; it is now being discussed in our parliament. We hope it will be adopted this year. Of course, we have introduced the digital markets, network effects and price algorithms, to name a few, in the competition legislation. Of course, it is being modernized; it is a living thing and we hope to adopt more new concepts there as long as we evolve, let us say. But this is what has been done so far.

All in all, I think in Central Asia that is the first competition law essentially to have this concept. We are sort of pioneers here, but we are also the pioneers in the country. The good news is, now there is a Ministry of Telecommunications in the country, which is now being transformed into the Ministry of Digital Development. So, it has been taken very seriously at the government level, we just have to find the right, so to say, levers to do this work.

Now, what we have in the competition law in Uzbekistan is that we added digital markets to every single concept. Of course, you might argue and say that this is something that we have to move from gradually, but all the basic definitions such as mergers, prohibition of state actions limiting competition, excessive pricing, dominant position: they all have digital markets in them. So, we should also judge these developments from this perspective, from the digital market perspective.

Now, this is a little bit of information on e-commerce size. Why am I putting emphasis on it? Because as an authority we decided to look into our own market first. Of course, we know about Google and Yandex and I will show it later. But there are some digital local platforms which exist in the country and which no one cared about before. So, we decided to give it a closer look to see how it works and if there is a breach of competition there. You see the potential is high. It is not being used yet that much, but we are hopeful.

I do not know if you can see this very well, it is just a list of the biggest Uzbek platforms in digital markets. You can see by the market size that there is

one that is called olx.uz, which has the dominant position. Basically, 86% of the users are using that. This is online multi-sided platform for trading. Sort of Alibaba, but Uzbek-style.

I will go into this a little bit later, but these are just some payment systems that we have in Uzbekistan. The specifics of the market is... it is not exactly digital platforms, right? But we gave it a little bit of a wider glance. We wanted to see all the value chains, let us say, upstream value chains surrounding digital platforms and how they work. And what we found out... I will talk about this later, but there are two dominant firms, Uzcard and Paynet, in the market for the payment systems.

Facebook is big, Yandex is big, Google is big, Huawei is big. They are creating their own online platforms in Uzbekistan. Also, there was the government of Uzbekistan for promoting different activities. Google has the share of preinstalled applications on phones: 70%. The rest is something else, basically iPhones or the other Chinese digital systems. And Yandex is expanding rapidly. Basically, they already have 27 applications that are active for Uzbekistan but Yandex is a Russian company. So, we have to live with this reality and also somehow accommodate what they ask us. I will show it later.

These are the main digital market challenges that we face in Uzbekistan. We researched a little bit and made some analyses. But what we discovered is that, as I said before, all the digital innovation or digital development in Uzbekistan happens through state support. You probably could not allay that, because that is how the system works, but it also creates a lot of distortions. Maybe for some of you, this is the case in your countries because you also come from this inheritance of Soviet times. But, basically, the main challenge, as I see it, is to accommodate somehow state support and the will to have digital pioneer in the economy into the competition rules. Because it is not always easy to distinguish between what is fair and what is unfair in this situation. We understand pluses and minuses of having the local pioneer companies because everyone wants to support local production, but at the end of the day, is it the correct approach, the right approach to create companies like that?

The other problems are: digital marketplaces are very often in the grey area. I will show it later in the slide. So, establishing clearer monopoly

practice and cooperation. Our colleagues talked about it extensively before. And archaic legislation. As I said, we did not have so much of digital definition. We did not have IP rights; we did not have data privacy. We still do not have them. We are just basically introducing the digital concepts. This newly created Digital Ministry should follow the competition organ in creating and adapting the legislation for competition rules. Because if we do not have the changes in the rest of the law or legislative acts, we cannot really manage this sphere.

Now, to grey zone... Well, some of you of course heard of the Telegram app. This is very popular in the Russian speaking world. It replaces WhatsApp in our community and a lot of e-commerce transactions happen through Telegram, unofficially. It is also subject to our definition in the law of what is e-commerce and if falls to digital markets. Basically, e-commerce is defined as anything, any transaction that happens through information systems. If you send a request in WhatsApp, in Telegram and get an okay for purchasing of goods, that is already a digital transaction. There is no official invoice, basically. There is no official contract. Sometimes they pay with cash, because that card mentality is still, so to say, to develop in the country. We need to find an approach to accommodate that, as well.

Also, Instagram. Basically, you send a message, you get a message back and that is a digital transaction. But it goes out of the scope of our Authority.

When we talk about those players who are hosted outside of Uzbekistan, Yandex is a very good example, because they came to Uzbekistan last year and they are expanding very, very fast. So, the problem here with Yandex is that they do not establish an office in our country. They act from Russia. In this sense, it is very hard to track them. Basically, there is no call center, there is no office, there is nothing. From a consumer point of view, you cannot really protect consumer acts, because you do not even have a number to call in case you lose your phone in the car, or in case you lose your wallet, or in case a taxi driver is not friendly to you. What they do is, basically, Yandex makes contracts with taxi parks. Then taxi parks hire taxi drivers. So Yandex provides only this platform to connect them to each other. But legally, it is very hard for us to make a case against them.

As of January 1, Uzbekistan adopted the so-called Google law, which means that every transnational corporation like Google or Yandex should be now registered in Uzbekistan. It does not mean that they have to have an office in the country. It is enough to have a value-added tax registration online. So they are given six months for this, but we hope that with this initiative, we can make a better track of what is going on about the complaint: they actually came to our office, the Yandex guys and we made an official complaint to them and an official request to establish a call center. So, they are now processing this request. I think they have one month for that.

Now, it is not directly related to digital platforms, it is rather the whole value chain that we analyzed. We found out– this is exactly what I was talking about: the local champions. These are two national systems in Uzbekistan, processing systems the cards of which you can accept, basically. And we started thinking: "Yes, you can pay with those cards in online platforms, you can pay with them for your mobile bills, your gas bills, but you still cannot use Visa and Mastercard. So, you still cannot get salary on a Visa or a Mastercard. You still cannot pay in local currency with Visa and Mastercard." We started thinking: "Why is this happening? Is it that they abuse their dominant position? What is the mechanism that prevents those players from entering the market?"

This is the balance that we have to keep. Of course, we make a plea to the government, let us say. The response we get is "Yes, but we have to have national card processing and if Visa comes or Mastercard comes then we will lose jobs and there is no more national protection." So, we have to very carefully approach these situations and to make our recommendations from a competition standpoint not to compromise the agenda they have in terms of branch development. I do not know if it is the same case... Obviously not in the developed European countries or the USA, but I guess the old countries in the Soviet space face the same issues.

Now, this is not an example of the same situation that I described. Uzbekistan is living through big reforms, at the moment. We are accessing WTO, we are making agreements with the EU, etc., etc. The pace of reforms is really, really high. Here we have to be in line with

the competition rules. But again, let us say we are creating national platforms for IMEI code registration. I do not know if you know it. It is a mobile phone code that every user now has to register online. Or we create online platforms for product labeling. Basically, every producer in Uzbekistan has to enter the system and acquire this digital label and there are only two platforms providing for IMEI code registration and for product labeling. Of course, they are all state created. Of course, they are supported by the state and we did not have the right transparency in the creation of these enterprises. We might argue and say "Yes, but this is a very technologically complex project and process; this is how you do things, especially in a developing economy like Uzbekistan. You cannot afford having a tender and select someone with no skills and capabilities." But then again, I think we need to provide more of a transparency in this process and see why this or that company was selected. In a nutshell, more and more online platforms are being created, but the nature of this creation – do they comply with the competition rules or not – is yet to be discovered.

The last slide is the famous Google case. I do not know if it is famous or notorious. Yandex came to us last month with a complaint that Google was abusing its dominant position. Basically, of course you all know well, in the Android system they were pre-installing their applications there and Yandex required us to make a case against them for abuse of dominant position, basically, and to give an option of selecting the pre-installed application. So, the end-user – like they did in Russia – does not have any more the Google Play Store pre-installed. When he buys the phone and opens it, there is a window which gives him several options of which app, of which store to install: Yandex, Mail.ru I think, or Google.

Again, we do not have the opinion yet. I know the Turkish Competition Authority was also analyzing this case and it was a pro-Yandex decision, as well as in Russia. But we do not know yet. We have to see in more detail what is going on with the contracts of Google with the producers. We think there are three types of contracts: those that basically oblige producers to pre-install its apps on their smartphones and the second one basically prohibiting producers from pre-installing the competitors' applications. So, it is two different cases and we have to see how we approach that.

So, in a nutshell, I think suddenly we discovered there are a lot of challenges ahead of us and we have to find a good solution, keeping in mind the state policies, keeping in mind the development of the country, yet we have to comply with the competition laws.

I think that is all.

**GAMZE ÖZ**

I thank to both of the speakers here and leave the floor again to the participants. If you have any questions to Ms. BAĞIŞ AKKAYA or to Mr. KOROTKOV? Any questions, any comments, contributions? It does not necessarily have to be questions, but you might have some contributions or comments?

Go ahead.

**RECEP GÜNDÜZ**

Generally what I'll do is, when there is a lack of questions and comments, I will just jump in and take the floor.

I think there were two excellent questions raised by the presenters here. The first one was by Mr. KOROTKOV. I mean, the question is very important to answer: Is it correct to support local tech firms against global giants, maybe, rather than leaving it to the markets to decide. We can handle this question together with the issue that was raised during Ms. Ebru's presentation of whether it is correct to lower the thresholds for standards of proof. I think competition agencies do not have clear answers for this yet, but I sometimes feel like we have this feeling of being too late to intervene for this very big technological companies and try to figure out whether competition law tools are enough or should we consider regulation as a new chapter. This is a tension, I would say, because at the end of the day maybe these are going to exclude each other to some extent. But these are two important questions that we have from this session and I am pretty sure that in the following sessions

we are going to have some detailed answers when we discuss, for example, what is the consumer harm theory that we actually start from.

So, thank you very much for your presentations.

I think for the opening session we laid out all the important aspects of the discussions and hopefully in the next sessions we are going to figure out some answers for them. Thank you again.

**GAMZE ÖZ**

Thank you, Mr. Recep, for your comments. Let me quickly wrap-up with two sentences again – promise, with two sentences.

If I may paraphrase your question on "Is it correct to protect the national champions?" so to say, I think the right question in light of the technology would be "Is it possible to protect?" rather than "Is it correct?" That would be my question. Is it possible to protect, first things first?

Secondly, we have learned a lot. I think I read in a paper in a different discipline that 80% of what we learn comes not from professors, definitely not from parents, but 80% comes from peer-to-peer learning. If I can adopt this to institutions, I think there are a lot of things that we would learn from other institutions, different institutions. One of the things that I was surprised and happy to hear was that state acts are taken under guarantee and to be controlled under Uzbekistan's competition law, which we should also learn a lot of things, I think, looking at other legal systems.

And let me take all the responsibility for the delay, for depriving you of a cup of coffee, not the technology.

And thank you very much for attending this session this morning. I hope the rest of the forum will be as fruitful as this morning.

Thank you very much.


# Market Definition in Digital Platforms

9 MARCH 2020
11.00 - 12.00

Moderator:

**Meltem BAĞIŞ AKKAYA**
Professional Coordinator, Turkish Competition Authority

Speakers:

**Ebru İNCE**
Chief Competition Expert, Turkish Competition Authority

**Theodora ANTONIADOU**
Case Handler-Statistician, Hellenic Competition Commission

**Judit BURÁNSZKI**
Head of the Merger Section, Hungarian Competition Authority (GVH)

**MELTEM BAĞIŞ AKKAYA**
Professional Coordinator, Turkish Competition Authority

Hello everyone, again. I hope you enjoyed your coffee break. Now we are back to where we left off. We are going to be speaking on market definition, which is one of the toughest areas of digital platforms. We have three distinguished speakers in this session. We have a speaker from the TCA whom I had a lot of fun working with. She is Ms. Ebru İNCE. And we have a Greek colleague, Theodora ANTONIADOU. And we have Judit BURÁNSZKI from the Hungarian Competition Authority. They are going to share their experiences in how they designed and how they defined their relevant markets in digital markets.

We are going to be starting with Ebru, but before we start, I want to add a few words just to remind you where we left off. It is one of the toughest areas, as we have already seen in the first session: How do you define relevant markets in two- or multi-sided platforms? Do you take one side, or do you take two sides? Or, in economies of scope, like if you have in Google, do you take all these ecosystems as one market? Is that fair?

So, in order to start with, this is the starting point. But then, there is another dimension which needs to be introduced. All of our data analysis is based on pricing and monetary transactions. But in digital platforms there is this data. A lot of concentrations are now based on non-monetary transactions, which also constitute a market now. That is German way of looking into market definitions, that is the German reform. Last December, in a meeting which outlined the agenda of the EU Commission's upcoming year, Ms. Vestager said "It is very difficult to define the relevant markets now depending on the current law." She suggested that European Union reform its legislation on relevant markets and she posed a question; she said "The problem of big digital businesses is that they do not just provide one or two kinds of services. They are often active in a whole range of different areas, providing consumers with an ecosystem of services that

are all designed to work well together. And it can be difficult," she said, "but the proper term should be costly for consumers to switch from one ecosystem to another."

So, in designing a new policy, a new approach to relevant market, the difficulty still stands. If you take two-sided or multi-sided transactions or if you take non-monetary transactions as also, again, relevant markets, would that be working efficiently for all types of digital markets?

We are going to listen to examples from how our neighboring countries are doing. So, I give the floor to Ms. İNCE now.

The floor is yours.


**EBRU İNCE**

Chief Competition Expert, Turkish Competition Authority

Thank you, chair. It is a great pleasure to take part in this organization. My presentation's title is "Market Definition Dilemma Regarding Platforms". It is actually based on the article that I and my colleague Cihan DOĞAN wrote for CUTS International, which discusses the market definition process on online platforms.

First, I will provide a little bit theoretical background information, then briefly mention some Turkish cases regarding platforms. Finally, I will conclude with whether this platform reality could render our perspective regarding market definition.

Why do we need a market definition? The underlying reason for this need actually stems from the very fact that market power matters for the restriction to create, affect harm in almost all cases, except for ones concerning hardcore or per se restrictions. So, there is this market power assessment need, this affects harm to market requirement, so we need to define the relevant market in the first place. And we need it just right, because if we define a narrower market than it is supposed to be, then the Type I risk increases, implying that an undue or excessive

intervention taking place. If it is too wide, then Type II risk increases, implying an insufficient intervention on the authority's side.

So, what has been the story so far regarding market definition for platforms? Let us begin with definition. Platforms can be called multi-sided markets, as well. Are the markets where the platform serves are seemingly distinct but connected consumer groups as shown in the image? Let us say the platform is a media company: Side I is the readers and Side II is the advertisers. The platform provides advertisement slots to advertisers and content to the readers. These two consumer groups are seemingly distinct, they are offered with different services and products and they are looking for different services as well, from the platform. But they are interrelated via indirect network effects, that is, the demand on one side affects the demand on the other side and vice versa. This is called indirect network externality or effect.

When we talk about platforms, we usually come across with network effects. The main one, especially, is the indirect network effect which interrelates these demands on both sides. These are actually called externalities, meaning that it cannot be internalized by the user who creates it. It is rather the platform which internalizes this indirect network effect. So, it gives rise to this business model, actually, as a platform.

The main challenge regarding platforms is related to this internalization. Due to this externality, profit opportunity for the platform rises, and the platform exploits this profit opportunity by constructing a price structure, rather than price level on demand sides. The price structure enables the platform to cross-subsidize between the demand groups, so that thereby it can affect demand effectively.

When we talk about a price structure rather than price levels, market definitions really become problematic since traditional tools become problematic. The problem is partly due to these tools being price-centered, and partly due to the uncertainty regarding the allocation of this price increase on which side and by how much. Type of questions for instance, there are uncertainties regarding whether the SSNIP test can be used in zero-price markets; or if both sides are paying, then this non-

transitory price allocation to those sides is also not very clear. So, this makes these tools not convenient in multi-sided markets.

Even though these characteristics make the process tough, there are certain factors that could be decisive such as indirect network effects being unilateral or bilateral; if the demand on Side I affects the demand on Side II, but the demand on Side II has no effect on Side I, then we say that the indirect network externality is unilateral: one directional. It can be the case, for instance, in media markets, where the number of readers affects the number of advertisers on that platform, but the number of advertisers may not affect, or increase the number of readers – in fact, may well decrease it.

Whereas if demand on both sides affect each other, then the effect is said to be bilateral, like in the case of payment cards market in which the number of cardholders affect the number of shoppers and vice versa.

Or there is another decisive characteristic for defining the markets, that is the market being a transaction or a non-transaction market. Transactions like e-commerce sites or marketplaces like Amazon; and non-transactions like social networks. Another characteristic is the market being an audience or a matching platform. Another one is whether the consumer demand can be met by a single-sided competitor.

All these factors sum up to some, let us say, framework for market definition. These features I mentioned can be used by the authorities to decide whether to define a single market or separate markets. For instance, if indirect network effects are unilateral, implying that the demand on one side can be met by non-platforms, then defining two separate but related markets is reasonable. The other one is, if it is a transaction market, like e-commerce platforms, transaction platforms are the ones when the transaction is observed or taken part via the platform, then defining a single market is reasonable and preferable. If there is a non-transaction market, like in the case of newspapers or media, the transaction does not take place via the platform – we know that, it is non-transactional – then defining distinct but related markets can also be the case. But this is not the rule, because non-transaction markets can be further classified by matching or audience, as well. So

in matching, the platform provides the opportunity to find a match to the users, and then a single market is reasonable. If it is an audience, like search engines, then whether the platforms are funded by the advertisers, separate markets can be defined.

I am going to mention three cases from Turkish case-law. The first one is Yemeksepeti. Yemeksepeti is the leading online food and drink platform in Turkey; its function is described in the image. There are these consumers who give orders through the Yemeksepeti online platform and Yemeksepeti provides this information to the restaurants and the restaurants provide food to the consumers. But there is this fee charged for this information. And it is the leading online food and drink platform in Turkey. The allegation in the case was that Yemeksepeti was using MFC clauses to foreclose rival platforms. The MFC coverage extended not only to price but also to menu contents, delivery region, payment options, and delivery time. The investigation was conducted under Article 6 of the Turkish Competition Act, which governs abuse of dominance.

Here, with regards to the relevant market definition, Yemeksepeti argued that offline channels, restaurants, call-centers or webpages also exert competitive pressure on it, which implies that separate markets should be identified, like, I do not know, food ordering services, so that its market power diminishes and its dominance will be at stake, in that case. This would call for a wider scope for the market. But this claim was not found to be realistic by the Board.

Although there are no extensive theoretical explanations in the decisions, when we consider the features, we see that Yemeksepeti is a transaction platform, and as the literature suggested, a single market is preferable. So, we see that this definition, even though made intuitively by the Board, is in line with the literature.

Another similar case is the Booking.com investigation. It is the leading online accommodation booking platform. The allegation was similar: MFC to foreclose rival platforms. But this time the investigation was based on Article 4, which is the provision regarding anti-competitive agreements. With respect to the Article 4 analysis, it is stated that these agreements

were vertical agreements, so we needed to find out whether the market share was below 40% so that a group exemption may be optional. So, they need this market defined. Here, again, the Booking.com side said that the offline channels and webpages also exert some competitive pressure on the Booking.com so there should be a separate market defined for the case. But it was overruled.

We see that Booking.com is a transaction platform, again. So, a single market was defined in line with the literature.

Another one is Sahibinden.com. It is the leading online classified ads platform – maybe e-commerce is not the right term here. It is an online classified ads platform, and the allegation was about excessive pricing in the online automotive and real estate listings market. Here, the investigation was conducted under Article 6.

Here the relevant market is, again, defined as a single market, and again, we do not have extensive theoretical explanations. But intuitively, it is found to be a single market. When we check it, we see it is a non-transaction market. It is a matching market, actually, meaning that the transaction is not observed via the platform. The platform provides the matching opportunity between buyers and sellers. So, a single market should be defined, also in line with the literature.

Here is the conclusion: the Turkish cases that I have mentioned are relatively clear-cut cases but actually we know that there is no perfect fit, no clear-cut rules regarding how to define relevant markets. All classifications are controversial and getting complicated, even one within each other, leading us to conclude that multi-sided markets are not that straightforward as surfaced by the Google cases worldwide. Regarding Google as a search engine, a group of scholars argue that it is a matching platform. Some argue that a single market should be defined. Some argue it is audience, so separate markets can be defined. Some even argue that it is even not two-sided, claiming it is like a retailer buying upstream and selling downstream.

So, all in all, it is really very complicated, which leads us to the question whether there is an alternative to this market definition dilemma

regarding platforms. To find out, we need to recall why we need market definition: it is mainly for assessing market power and the harm to the market. So, the next question should be: can we assess market power and harm without defining a precise market? We know that the main contributor to the market power of the platforms are not market shares anymore, but it is rather the network effects and feedback loops and whether there are multihoming opportunities for the consumers. So, to assess those effects, whether they are available and how much they add to this market power, we think we do not need to define precise markets. All we need to do is to identify demand sources and evaluate these effects considering these demand sources. Similarly, effect can be on any demand source and we can identify the effects one by one, and also overall. So, demand sources can be defined, and we may not need precise market definition regarding complex cases. Thank you.

**MELTEM BAĞIŞ AKKAYA**

Thank you, Ebru.

So, I also thank Ebru for making this very honest inference that the Turkish Competition Authority lately, when dealing with platforms, what we are doing is, we are employing intuition instead of economic analysis.

**EBRU İNCE**

It is a very common practice.

**MELTEM BAĞIŞ AKKAYA**

Right, thank you.

This is a very good start to understand the upcoming talks, the first one of which will be our colleague from the neighboring country, Ms. Theodora ANTONIADOU.

The floor is yours, please.

**THEODORA ANTONIADOU**

Case Handler-Statistician,
Hellenic Competition Commission

I would like, first, to thank to the organizers, Rekabet Kurumu, on behalf of the Hellenic Competition Commission, for hosting.

Concerning digital platforms, I have to say that the Hellenic Competition Commission has handled very, very few cases. So today I will present a hypothetical case involving a two-sided price comparison platform, and how we would proceed if we were to define the relevant market.

The hypothetical case I want to present is about the Scrood platform. It is a Greek firm, and it is a price comparison platform. In general, price comparison tools are websites that allow customers to search for products and compare their prices. Also, they provide some links that lead to the products offered. Scrood platform provides a lot of different product categories, such as clothing, shoes, electronic goods, cosmetics.

Suppose, for example, that we want to search for an eye cream of a specific brand. We enter the Scrood website, scrood.gr, and we search for that specific cream. The search results are given in a list view. It is a listing of all participating retailers that offer the product, the item, ranked according to the selling price. Scrood does not offer the possibility of buying the product from its website, but it offers links directly to the retailer's online shop where the product can be purchased.

This price comparison tool is not exactly a marketplace in the strict sense of the word. Because no transaction takes place on the platform. But Scrood is a two-sided market, a matching market, we think, because it links retailers on one side to possible shoppers on the other. It has no control over the products, it cannot dictate a product's price, and the retailer simply has to register on the platform in order to participate.

One of the most important benefits for retailers is offering access to the wider market. Scrood and such platforms are offering a wider market to

those retailers than they could otherwise reach from their own websites. For that, Scrood charges the retailers a fee which is a percentage of the sale price of each item sold plus a monthly listing fee. This means that despite the fact that no transaction takes place on Scrood, Scrood has the ability to observe the transaction. On the other hand, shoppers do not pay in order to use Scrood.

We have here the presence of positive cross-network effects because retailers benefit from participation depends on the extent of shoppers' participation and vice versa, all effects are positive. Also, we have the presence of feedback effects. Suppose for example that Scrood begins charging shoppers a fee for the use of the platform. Well, the first order effect will be that fewer shoppers will use the platforms. With fewer shoppers, fewer retailers will find the platform appealing, so their demand will fall and then the shoppers' demand will fall, and so on.

So, a little change in the price structure, in the price distribution can lead to a change on the participation levels on both sides.

And now consider the problem of defining the market. When there is a merger or abuse case involving Scrood, one needs to resolve an exercise. The exercise consists of identifying the substitutable products to Scrood. As a first step, we need to define the relevant services offered by Scrood on each side, and then assess substitution possibilities. In other words, we seek to define the boundaries of competition between firms providing an alternative to Scrood's products.

We find four difficulties associated with this exercise. The first one, of course, concerns the number of relevant markets. The question is whether there are two inter-related markets to be defined – the services to the retailers and the services to the shoppers – or if there is one market encompassing both sides.

It turns out that the answer to this question depends crucially on the type of the platform. More precisely, recent theory – as Ebru said – states that a two-sided non-transaction but matching market, when all networks effects are positive, one should define only one market. Here, we suggest defining the market of price comparison services, possibly

leading to a match and possibly leading to a transaction between a retailer and a shopper.

Finding the candidate substitute products is another difficulty of the case. Scrood's registered retailers as well as Scrood's shoppers may use one or more platforms for the same purpose – we say that they are multi-homing. They multi-home because there are no significant costs required before a retailer can start using another platform, nor any exclusivity contracts that prohibit users from multi-homing. All else being equal, if there is more multi-homing on both sides, we have more competition from rival platforms. Rival platforms will compete more aggressively.

This is one type of competition that Scrood faces. We call it "inter-platform competition". But another strand of competition occurs among the retailers. The retailers compete with each other because some of them sell the same product, so they try to attract the shoppers. In the hypothetical case that Scrood wants to enter that market, wants to be a retailer as well as a provider of price comparison services for example, one should consider also one-sided businesses as Scrood's competitors. For example, the retailers, the online shops of retailers or offline shops.

We understand that candidate substitute businesses constraining the ability of Scrood to raise prices are not some two-sided platforms like, for example, Amazon, or the Greek analog to Amazon, or Bestprice, which is another price comparison tool. We should consider one-sided models and also different distribution channels, different business models.

Well, another trap to avoid is the risk of neglecting one side of a two-sided market, especially when the product of the overlooked side is priced at zero. Well, here, it is important to examine both sides, because in order to do business, in order to make money, the platform needs retailers but needs shoppers, too. Because, for example, if Scrood experiences a drop in the number of shoppers, it is likely that this would lead to a drop in the demand on the retailers' side. That is something that Scrood does not want. So, even though shoppers do not pay, we should analyze that side too.

And the last difficulty is associated with the application of the SSNIP test. The SSNIP test is designed for one-sided markets. Now we find it difficult to apply SSNIP to two-sided markets. Increasing one price without modifying the price of the other side does not make much sense, and the problem is more complicated when a zero price is charged on the other side, like in Scrood's case. Recent theory says that in order to apply the SSNIP test in two-sided platforms, one should check the profitability of an increase in the overall price level, which is the sum of the prices paid by both sides. Furthermore, the theory says that the test should also take into account all feedback effects between the two sides of the market when judging the profitability of the price increase. This is quite difficult, and we need to predict the likely reactions of non-paying customers to a price increase. This can usually be done by designing an appropriate survey of existing customers in order to draw out their willingness to pay.

Well, recent theory has done a lot in order to address all these problems, all these difficulties by introducing new economic features and other concepts, but still it is difficult.

Yes, I will also show the summary of platform classifications issued by the BRICS countries. It is a very helpful tool. It is exactly the same things that Ebru said. This tool will help us do the competition analysis and find the market delineation according to the type of the platform that we have. Having all this in mind, however, we propose to use the old theory. Following the traditional path of assessing demand and supply substitutability, in the same way that the European Commission proceeded in the Google Shopping case in 2017. We propose to use a qualitative approach – I mean the design of an appropriate survey – in order to interview shoppers, but also retailers and potential competitors; collect data on their preferences, their possible reactions to price increases, but also other things about multi-homing, single-homing, contract terms, durations, etc.

Well, from the demand-side perspective, we would like to ask shoppers and retailers if from their point of view, services provided by, for example, Amazon or Bestprice, are interchangeable with those of Scrood's. For

example, we would ask: “if prices are raised in Scrood’s model, then how would you respond? Would you switch to another model, another platform, to another market? What would you do?” And we would include markets that consumers would substitute and exclude markets they would not.

In the same way, when exploring supply substitutability, we would like to ask suppliers of services that are not demand-side substitutes to Scrood’s services. For example, Airtickets, which is a price-comparison tool but for plane tickets. “If prices are raised in Scrood’s market, how would you respond? Would you enter the market? Could you enter Scrood’s market immediately and without additional costs? Would you think it will be profitable for you to switch your services to another or not?”

Well, this is our approach. Having said all this, our conclusion is that traditional methods for market definition in two-sided platforms still work. We think that they are safe to use in theory, but we have to have a holistic view, and holistic look at the market circumstances and look at both sides in order to not neglect effects and other constants.

Thank you.

Oh, I just to show some graphics of new theories.

**MELTEM BAĞIŞ AKKAYA**

Thank you, Theodora, for your valuable contribution. Now we move on to our last speaker of this session: Ms. Judit BURÁNSZKI from the Hungarian Competition Authority.

Judit, the floor is yours.

**JUDIT BURÁNSZKI**
Head of the Merger Section,
Hungarian Competition Authority
(GVH)

Thank you.

So, first, I would like to thank the organizers for inviting me. I would like to present our experiences in this topic.

This is the outline of the presentation, but I think I will skip the first two slides, because Ms. İNCE and Ms. ANTONIADOU made some great presentation of these topics. So, I will skip to the Hungarian cases, because they are a lot more interesting, I think.

So, the first case is – all cases I will talk about are merger cases. The first case is the acquisition of certain companies by szalas.hu. These are Hungarian players in the online booking platform market. They have the same platform, like booking.com, as you know well. But they are in the domestic travel markets, most of their partners are Hungarian and they are mostly based in Hungary and they are not known to foreign guests, they are mostly used by Hungarians. So, in this case it was not an impression that it is a separate market for online booking services because there are many differences between offline services and online booking services. As mentioned earlier, this is a two-sided transaction market, so we defined a single market and the users of both used multi-homing so that was a problem.

The question that was very interesting in this case was should we further fragment the market depending on the nationality of the consumer? Because five years ago we had a sector inquiry in this market related to MFN clauses, and the consumer survey showed that time that the Hungarian language was really important in the market for the customers. So, the international market for booking hadn't had a Hungarian version and usually the customers used the Hungarian ones because they did not speak English very well. That is why the Hungarians

preferred this one because Hungarians were looking for Hungarian sites and it is quite an interesting thing because domestic tourism mainly focus on countryside in Hungary but the foreign guests usually visit Budapest. So, only the larger importers used booking at that time. Small ones were the szalas.hu the others, the Hungarian sites.

So, the conclusion at that time was that there is no substitutability between international and national sites because of different demands and the companies focusing on two different sides. But the market has changed because booking.com launched a Hungarian version and now booking.com has more Hungarian partners than szallas.hu and the Hungarian guests also used those platforms simultaneously so they really put strong competitive pressure on each other. We think that now there is really a substitutability between these two platforms.

Because it was a merger case, we left the question of when because it would not have an effect on the outcome, but I think it clearly shows how it changed the market and the substitutability of one side can affect the other side, especially in two-sided markets.

The next case was about online insurance broker platforms. It is also a two-sided transactional market and we defined a single market. The difference between the cases was that the competitive pressure from the other channels of the insurance companies was really higher than the competitive pressure that came from their own websites. There was a difficulty whether the online or offline insurance intermediary services had the same effect. We ran a market investigation, but the answers were really really few. The reason was because the role of online purchasing was significantly different in each insurance segment. Online sales have a high proportion in travel insurances and liability insurances, which is a simple insurance product market and they are lower in the retail property insurances or car insurances. It has an insignificant role in life insurance because it is more difficult to show something else and compare it.

We saw that increasingly I am going to be forced to use online insurance platforms just to compare products and prices and then use other channels, mostly the insurance companies' own websites, because usually they gave out some discounts if you use their own websites. The difference between two sites trying to act is really broad and many brokers have used this strategy at times, but finally be left also open to pressure. Also, we segmented the market by insurance types, but regarding the data from the insurance mediation company, some data is not shown because regarding the products, those from the insurance companies are more interesting.

The last case was the eMAG/Extreme Digital case. They operate online stores, mostly selling electronic products. Interesting question was, should we include online retail of goods in the same market. In the previous years we had not decided that question. We analyzed some differences between online and offline stores, but we had not decided the question. This time we saw that online and offline retail of goods belong to the exact same market because they have a quite strong competitive pressure on each other. The range of products between the online and offline stores are quite similar, the physical goods sold on the stores are also similar. We took account of the evolution of the retailer businesses in these two segments. We saw that traditional offline players have entered the online market and they use the same prices on their websites and their stores. In Hungary, the customers like to see the products physically and touch it. A few online sellers opened physical stores; Extreme Digital was among these online sellers in the beginning but now they have 16 shops in Hungary already.

We saw that considering the uniformization of online and offline stores and the changing consumer habits the product market is a single market so we defined it as a single market, these are all the same product markets. We considered the distinct types of goods for electronic products, but we stood by our previous decision that it is in the same market.

Our conclusion is quite the same as the Turkish one. We do not need precise market definitions. We have more emphasis on understanding

how the market works and which are more dynamic in the market and the competition pressure, how it affects the market.

Thank you very much.

**MELTEM BAĞIŞ AKKAYA**

Thank you, Judit. Are there any questions from the room to the three presenters? Or contributions? Please go ahead.

**QUESTION**

First of all, thank you for your presentations.

I am Berkay KURDOĞLU, I am an assistant competition expert at the TCA.

I am willing to say some words about the non-transaction and transaction two-sided markets. So, as Ms. Ebru said, in the Yemeksepeti decision we defined the market from a single market approach because this was a two-sided transaction market. But can we overlook the possibility that for each side there is a differentiated substitution option. For example: if I am the restaurant, I have different possibilities for substitution, and as a consumer or a hungry man, I have different substitutions. In the Amazon decision of the Bundeskartellamt, they employed a two-sided market approach. Can we overlook the possibility of substitutes if we define the market – if it is a non-transaction two-sided market, let us say, the single market approach is okay. Are there any problems with this?

I can give an example – I do not know if this is inappropriate or suitable but – matchmaking platforms. As a man, I prefer platforms with more women, because this is more attractive for me; but as a woman, I would think differently. So, can we say that it is different for each side in terms of the possibility of substitutes. What do you think about that?

**EBRU İNCE**

Thank you. Actually, there is nothing clear-cut as I mentioned in the presentation. But it is generally accepted for the transaction markets nowadays, actually, if there is an observable transaction taking place

via the platform, then the market should be one single market. Not many controversies there. But I agree. For instance, in Yemeksepeti and booking.com decisions, the case-handlers also checked for substitutability and substitution effects from offline channels, whether there are any competitive constraints there. But as a consumer, the consumers using Yemeksepeti will probably not use Burgerking if they are not a fan of Burgerking. So, in general, that is the platform. I think for transactions, there is not much debate about how to define it. Okay? But for non-transaction, yes. I mean, in my presentation I mentioned that non-transactions can be matching audience but some scholars it is the matching and audience and matching has transaction and non-transaction under it. So, it is all upside down and one within each other so there is nothing clear-cut as the services are getting complicated. But in the Yemeksepeti case, it is a clear cut one, I think.

**MELTEM BAĞIŞ AKKAYA**

So, Berkay, my contribution to Ebru's introduction is that whatever the type of the platform, you have interdependencies on both sides, be it transaction or non-transaction. There is an interdependency between both sides. You need enough contributors or users on both sides. This is an assumption; this is how the market works. As a rule of thumb, for the time being unless someone comes up with a new idea or theory as Ebru suggested, unless someone says we do not need to define relevant market at all, we are all following Dr. Filistrucchi's assumption, rule of thumb, that in essence in two-sided non-transaction markets, one should define two interrelated markets and instead, in two-sided transaction markets, one should define only one market. That is the assumption we are all following for the time being. If you have more creative ideas, of course, we are open to it in our studies. We are going to listen to them.

Any more ideas or questions to our distinguished speakers?

Then I want to conclude by thanking them all for their valuable contributions and the interesting cases from three different countries.

Thank you very much.


# Assessment Of Dominance In Digital Platforms

14.00 - 14.50

Moderator/Speaker

**Meltem BAĞIŞ AKKAYA**
Professional Coordinator, Turkish Competition Authority

Speakers:

**Esra KÜÇÜKİKİZ**
Competition Expert, Turkish Competition Authority

**Florian OPRAN**
Competition Inspector, Romanian Competition Council

**MELTEM BAĞIŞ AKKAYA**
Professional Coordinator, Turkish Competition Authority

Hello, welcome back. I hope you enjoyed lunch. Now it is time to talk about how we assess dominance in digital platforms. In previous sessions, we discussed the challenges posed by digital platforms in competition enforcement, the first one – the most challenging one – being market definition. Now that we sort of agreed on how to define markets – that in two-sided non-transaction markets one should define two interrelated markets and instead in two-sided transaction markets one should define only one market, as a rule of thumb... Imagine we have agreed on this, and now we have dominance in these markets: How do you assess dominance then? What makes a company dominant in these markets and then what is the main outcome of the dominance?

So, we have two distinguished speakers in this session. One is from our Authority, Esra KÜÇÜKİKİZ, and I am quite happy to introduce her to you. She is a young expert, she has just passed her test and she is fresh in the market. She is going to talk about the Google case, she is going to tell us a little bit on that, one of the most important cases we have had up until now. Then we have an international speaker from the Romanian Competition Council, Florian OPRAN. He is going to talk about the market study they have done in the Romanian Authority.

Before my colleagues start, I want to give you just a very brief theoretical background on how to assess dominance in digital markets, if you'll allow me. So, here is what we see. The picture is, one of the main challenges for competition policy in the digital era is the assessment of dominance by platforms. The persistent dominance of digital platforms relates to strategies that can be justified, of course, on efficiency grounds on principle. However, these strategies, at the same time, also offset competition and have ambiguous welfare effects. Overall, the economic literature, unfortunately, does not provide us a clear theoretical ground

for a systematic regulation of their dominance, rather it advocates a targeting of specific unlawful anti-competitive practices.

So, market power assessment in digital markets requires analyzing very different criteria than conventional markets. Access to and control of data is crucial, as we have already seen in the morning sessions, and the control of data confers market power, rather than pricing strategies. This feature is further strengthened by network effects, as you have seen between the two-sidedness and the interdependency of the groups of the platform, which then leads us, the competition enforcers, to face a new phenomenon. Firms in this case compete for the market instead of competing in the market, which leads us to a winner-takes-all outcome. When a platform is in the market then it becomes dominant quickly and then it takes all the outcomes and there is no space for new-comers, startups, etc. As we have seen in the mergers and acquisitions, they are already taken in by the dominant company. We usually end up with only one firm in the relevant market.

Thus, when assessing the market power of a platform, additional assessment criteria are highly needed for us, which could, in the case of multi-sided platforms, take into account direct and indirect network effects, the parallel use of services from different providers and the switching costs of the users, the companies' economies of scale – in this scenario, it is usually extremely dependent on scale – in connection with network effects, then the dominant tech companies' access to data relevant for competition, innovation driven competitive pressure. So, these platforms function on algorithms, which are designed to collect and process big data, with decisions made based on that data. Moreover, these digital platforms show data-driven network effects. Data-driven network effects, economies of scale and scope and control of data create high barriers to entry, which means that there is huge market power.

Thus, these platforms require high upfront sunk costs and have low marginal costs. This cost structure expedite the high economies of scale and scope further and facilitates market concentration of big data in the hands of a few players, and most of the time only one player. This is why digital platforms might become dominant easily.

The current approach to assess dominance relates to consumer welfare

standard. The standard measures the benefits or harm to consumers in the form of lower or higher prices respectively, but the difficulty this time is that consumer welfare standard in digital economy is not feasible to conduct price analysis of online platforms because rapid price fluctuations and personalized pricing facilitated by the companies makes it impossible to make a comparison. Further, as we have seen, price is not the most appropriate criterion for competition analysis involving online platforms, as many services are offered for free to end-users. Although, in fact, consumers pay through the provision of their data being transferred to the other side.

So here is where we can add: again, dominance starts not from the market, but from the structure of the companies, which is indirect network externalities, single-homing or multi-homing. One needs to also consider the possibility of single-homing. Then the price structure, tipping. So when measuring the market power held by a multi-sided platform, it is important to recognize that cross-platform network effects can magnify the competitive constraints that exist, while also raising a barrier to entry that is already there by potential rivals and restricting the emergence of new competitive constraints.

We need tools that seek to measure market power or change the market by looking at consumer responsiveness, meaning to capture and estimate of all the relevant elasticities of – I want to skip these parts since they are too theoretical, I do not want to bore you after lunch. But then, you have to look at different criteria as we have seen. You have to check whether there is price structure, there is tipping, single-homing or multi-homing or indirect network externalities that is by default there.

In any case, interrelation of pricing across the platform and the need to reflect this in whichever tools are used means that it is not possible for a multi-sided platform to have market power on only one side of the platform. Either it has a degree of market power as a platform, or it does not. So, it is therefore not meaningful to conclude that a platform has market power only on one side of the platform. There are various versions to say this. And then, there are ways that I do not want to bore you with. My colleagues are going to talk about the specific cases rather than the theory itself.

Here is what we can do: some scholars suggest amending the competition laws to prohibit actions that encourage tipping in markets with sufficient network effects before any player becomes dominant. For example, flat rates, exclusivity requirements or long cancellation periods increase the cost of multi-home inverse switching. Such actions would be considered anti-competitive if undertaken by certain types of player, such as a large and growing platform or several similarly sized firms. The key benefit of this approach – or policy, if you like – would be to maintain competition before a dominant player emerges. As we have seen in the morning, ex ante would be better than ex post in this scenario. That would be a good policy such that a potentially more onerous intervention at a later stage would be unnecessary, then.

Then we have two questions of course, that is the major problem here: at what point is a market sufficiently in danger of tipping to allow for intervention below the threshold of dominance. Not easy to say. Then: how can actions that favor tipping be distinguished from desirable competitive aspects such as quality or price. There are examples such as Amazon's prime servers.

So, my understanding, my summary is: on the assessment of market power, there are two main paths to follow. First, the more sophisticated tools need to be adjusted to estimate the impact that a price rise on side A, one side of the platform, would have on the demand from users on side A, the demand from users on side B, and the price that is set on side B – this is all too theoretical, I do not want to go too much into that. Then there is a less sophisticated tool, again for measuring the market power of a platform. This reflects the existence of a second or third side. For example, shares of volume on one side can only be interpreted in parallel to the shares on the other side and profitability must be taken at a platform level and not on sales to just one side of the market. Again, due to the interdependency of the sides.

Then we have vertical integration. In a multi-sided platform, market power is further stabilized through vertical integration. These platforms do employ vertical integration as well, so they are not just players, they are also vertically integrated. For example, take the dominant platform Google. Google has engaged in expanding its business vertically into

upstream and downstream markets and has become competitor to traders or application developers that use its platform. So, it is a player, it is a service provider, so it is on both levels of the market. This expansion further improves its ability to obtain more data. As we have already talked about, data is the crucial thing here. The more data a platform gets, the more powerful it gets. It is then converted into market power, and then market power into market share and so it becomes dominant. So goes the scenario.

This expansion through vertical integration further improves its ability to obtain more data, increases its competitiveness, and confers on it the role of gatekeeper of online sources and application markets which it owns and uses at the same time. Over time, you will see that it not only becomes dominant, but it employs abusive and exclusionary conduct. And here our struggle starts: how do we assess these abusive strategies.

I will leave the floor now to Esra. She will talk about a few Turkish cases we have had until now, and later on Florian is going to talk and then we will receive questions.The floor is yours, Esra.

**ESRA KÜÇÜKİKİZ**

Competition Expert, Turkish Competition Authority

Good afternoon, everyone.

First of all, I want to thank the TCA for giving me a chance to be a speaker today.

I am going to talk to you about five important decisions of the TCA on platform markets. The first one is the Google Android decision. Like the European Commission and other national competition authorities, Google is also under investigation by the TCA and this case investigated whether Google abused its dominant position via exclusive agreements and tying some of its applications to its mobile operating system.

As you all know, it is not easy to develop an operating system for device manufacturers, so every device manufacturer

needs an operating system to produce functional devices. Operating systems developed by device manufacturers for their own devices are not accessible to other device manufacturers, like Apple iOS. They are not licensable by device manufacturers. Google saw this requirement and developed under open-source licensing by bringing various device manufacturers together, and as a part of this project, open source Android, which is available on the internet without any charge, has been developed. But, open-source Android does not contain an application store, so to commercialize it, in other words to make inclusive application stores, there are two ways for a device manufacturer. The first one is to sign various contracts with Google, and the other one is integrating open-source Android applications and application stores other than Google's. But it is not easily applicable because this second option requires the existence of powerful application stores like Google and Apple. So, it is not easily applicable and almost all device manufacturers have to sign various contracts with Google.

Based on Google's operations, the Board defined the relevant product markets in this case as providing internet search services on mobile devices, mobile online advertising, licensable mobile operating systems, mobile search engines, each function performed by each application in Google's mobile services. The relevant geographic market is Turkey.

After that, the Board assessed Google's position in the market and Google is the only mobile operating system provider in Turkey. Of course, there are network effects leading to buyer power. So, the Board reached the conclusion that Google held dominant position in licensable mobile operating systems market.

Then, the Board investigated Google's operations and contracts signed with the device manufacturers. The first contract is the anti-fragmentation agreement, which prevents mobile device manufacturers from distributing devices which include Android forks. The second one is Mobile Application Distribution Agreement, which requires that mobile device manufacturers pre-install some Google applications and the Google Play Store. These are specific Google applications like Gmail, YouTube, Google Search, and Google Search has to be assigned as the default search engine. The Google Search widget has to be located on

the home screen of the device. Also, Google Webview, which is an internet browser, has to be assigned as the default.

The third agreement is the revenue sharing agreement. This is signed with device manufacturers on the request of them as an optional agreement. With this agreement, Google shares some of its revenues with the device manufacturers, but in return requires that Google Search be the only search engine on the device. So, with this agreement Google Search becomes the exclusive search engine on the device. Google also requires non-installation of competing search applications on the device.

After that, the Board decided that Google's actions should be investigated in terms of tying agreements and exclusive agreements. For tying, the Board gave detailed information in the context of EU case-law and Turkish case-law. It saw tying abuses in software markets specifically. First of all, as all of you know, for tying there must be two separate products: the tying product and the tied product. The Board stated that mobile operating systems and mobile search services and search engines were two separate products. The requirement of assigning Google Search and Google Webview as default and locating Google Search on the home screen... every device manufacturer needs to do these to have a mobile operating system. So, these products are sold together, it is not possible for a device manufacturer to have a mobile operating system without assigning Google Search and Google Webview as default.

The third condition for tying is that the undertaking concerned must be dominant in the relevant market, which Google is dominant in licensable mobile operating systems market. Assigning Google Search as default creates a foreclosure effect against alternative search services on the market.

The Board evaluated the existence of consumer harm in the context of consumer data. Through its applications and its search engine, Google has access to important user data, and uses them to generate revenue for its advertising business. So, from the context of consumer data, Google is also becoming dominant and consumers are increasingly becoming dependent on a single price. For tying, there must not be any objective justifications for the company, and the Board stated that Google did not

have an objective justification for these actions. So, all conditions of tying were present.

Then the Board evaluated the revenue sharing agreement. It stated that it was complementary to the mobile application distribution agreements and that Google was already the default in the devices. With the revenue sharing agreements, Google became the only search engine because pre-installation of competing applications were forbidden with revenue sharing agreements. So, it also gave financial incentives to the device manufacturers. So, these exclusive agreements also strengthened the anti-competitive effects of tying.

Consequently, the Board imposed a fine of approximately 13.5 million Euros in today's rates and introduced some requirements for the end of the infringement and the establishment of effective competition. The Board said that Google had to remove all contract terms concerning the infringement and to fulfill this obligation in six months from the notification of the reasoned decision. However, Google failed to meet these obligations in time, so for some time the Board imposed periodic fines on Google. As far as I know, in the current situation, Google has fulfilled its obligations and nearly one month ago the Board also imposed a fine on Google for activities in shopping comparison market but I cannot give detailed information on this because the reasoned decision has not been published yet. There are two more ongoing investigations on Google. One is about its pricing and the other is about its general services.

The second case I want to talk about is the sahibinden.com case. This case is really interesting because it is about fining a dominant digital platform for abusing its dominant position to set excessive pricing. Sahibinden.com acts as an intermediary between buyers and sellers. Its business model is to gather the sellers who want to sell their products over the website – by the way, sahibinden.com is the name of the website of the company. Its business model is to gather the sellers who want to sell their products over the website and the buyers who want to buy these products. Buyers do not have to pay any fees to the undertaking, but the sellers, based on their identity – whether they are corporate customers, like a real estate agency or an auto gallery – they have to pay

a membership fee. Neither sellers nor buyers have to pay any commission to the undertaking for the sales made through the platform.

The case is about the membership fees for corporate customers, like real estate agencies and auto galleries. I am not going to go into detail on the relevant product market, because Ms. Ebru İNCE has talked about this part of the case in the previous session. Although the undertaking's activities are on ten different categories like real estate, vehicles, construction equipment, but the claims about the infringement was on real-estate sales and rental market and the vehicle market. The Board states that the relevant product market is online platform services for vehicle sales and online platform service for real-estate sales and activities. The relevant geographic market is Turkey.

When investigating dominance, the Board based on three parameters: number of visits, number of corporate members and revenue obtained from these corporate members. But the Board evaluated other factors: network effects, the first-mover advantage of sahibinden.com, and sunk costs and multi-homing costs, and the domain name of sahibinden.com. This evaluation could be interesting because sahibinden.com, in Turkish, means "sales directly from the owners." So, during the investigation other market players have said that this domain name gives the undertaking an advantage because it gives an impression to consumers that when they buy something from the website, they do not have to pay any fee to any intermediaries. While this is not the case, it gives an impression like that. So, the domain name has given an advantage to the undertaking and, as I mentioned before, activities vary in ten different categories. This portfolio moves a number of business to the website and also increases value.

Based on these parameters, the Board states that sahibinden.com is dominant in both markets, and afterwards the Board evaluated excessive pricing. First of all, the Board gave detailed information about the current case-law. Economic value test, also known as the united brand test, as most of you know, compares in two stages: in the first, the prices of goods and services are compared with their costs and in the second stage, the price of the undertaking is compared with those of the competitors. But in this case, the Board could not compare the prices and costs, because

of the company's business model. The undertaking stated that it was not possible to separate total costs for each relevant market. Based on this claim, the Board skipped the first stage and compared sahibinden.com's prices with its competitors' pricing for the period between 2014 and 2017. Also, the Board compared sahibinden.com's return and profitability on those sales with the other online platforms operating in different areas. The Board stated that in 2014 there were slightly higher prices compared to its competitors, but after that despite higher prices sahibinden.com continued to increase its sales and market share and the revenue obtained from its corporate members. Competitors were not able to implement competitive pressure to balance its excessive price increases.

The Board also stated that entry barriers because of network effects, sunk costs and multi-homing costs prevent competitive pressure and in the mid- and short-term it is not possible for the market to correct itself. So, the Board stated that sahibinden.com abused its dominant position through excessive pricing and imposed approximately 1.5 million Euros in administrative fines at today's rates.

But the decision of the Board was annulled by the Ankara Administrative Court nearly three months ago. I want to draw attention to some key points in the court decision. The court said that intervention to excessive pricing should be an exception. Instead of intervention for excessive pricing, competition authorities firstly focus on eliminating entry barriers in the market, and that infringement should have been proven in a certain way, yet the TCA did not satisfy sufficient standards of proof. As I mentioned before, price/cost analysis could not be done in the case because of the company's business model. The TCA did not compare the prices of the undertaking and those of the global players which operate in different countries. The TCA only considered the welfare effects, the welfare level of the corporate members, and did not take into consideration the individual consumers.

The other case I want to talk about is the Yemeksepeti case. It is an online platform that allows consumers to order food from restaurants and it is the largest food ordering platform in Turkey. Similar to sahibinden.com, consumers do not have to pay any fees, but the restaurants pay a

membership fee in return for the services they use. The relevant product market was defined as the online food order delivery platform services, and as for the relevant geographical market is as follows: yemeksepeti.com operates in 62 cities of Turkey. In 50 of them it has no competitors, but in 12 of them it has at least one competitor. Also, in light of the brand awareness and financial strength of yemeksepeti.com, another geographical market should be Turkey.

After that, the Board assessed its dominant position. First of all, it looked at order quantities, order amounts and the number of restaurants of yemeksepeti.com and its competitors. Yemeksepeti.com controls almost all of the markets according to these calculations. The other factor that the Board took into account is the identity of its customers. It had contracts with many chain restaurants, like BurgerKing, McDonald's and KFC, so these restaurants were the most preferred ones by the consumers. That gave an advantage.

Afterwards, the Board evaluated the number of consumers who have ordered at least once from yemeksepeti.com, number of visits, and the first-mover advantage of yemeksepeti.com. After that, the Board evaluated the claims about whether yemeksepeti.com's most favored customer clauses had exclusionary effects in the market. The Board looked at the contracts signed with the restaurants and found that at the beginning, yemeksepeti.com had narrow MFC clauses, such as restaurants offering same terms to yemeksepeti.com as their own delivery services. But later, they were wider and included rival platforms. In time, narrow MFC clauses were widened to become wide MFC clauses. Documents obtained during dawn-raids showed that wide MFC clauses were applied to the restaurants.

The Board also studied the five-year situation of the market and saw that there were entries into the market, but very few companies were permanent. With the help of the documents obtained during dawn-raids, the Board evaluated that yemeksepeti.com abused its dominant position because, from the documents, the Board saw that even if the rival platforms bore the cost of this risk, yemeksepeti.com intervened with the restaurants and wanted the same conditions to applied to itself as well.

In consequence, approximately 6000 Euros administrative fines at the current rates were imposed. Before the investigation, yemeksepeti.com had offered some changes to its contracts about the removal of wide MFC clauses. The Board welcomed this change, and its decision also stated that wide MFC clauses should be removed from the contracts.

The other decision I want to talk about is Pasolig. This is not an infringement decision, but it is about granting individual exemption to a dominant digital platform. First of all, I would like to tell you about the relevant parties of the case. The case is about selling football game tickets through a platform. The related parties are the Turkish Football Federation, responsible for carrying out, organizing and providing all football activities in Turkey, and Aktifbank, which is a bank operating in the fields of retail banking and investment banking. The other related party is E-Kent/Netaş. It is responsible for the development of the necessary software infrastructure and the turnstiles and camera systems installed in the stadiums.

The basis of this case is the Act on the Prevention of Violence and Disorder in Sports. This Act requires that the central sales of tickets should be carried out by the Turkish Football Federation, and the printing, selling and distribution of the football game tickets should be carried out by the football clubs. Also, football clubs are responsible for the necessary software installed in the stadiums and camera systems.

Since all these imposed a financial burden on sports clubs and the Turkish Football Federation, the Federation decided to open two tenders. At the end of the two tenders, E-Kent/Netaş became the system integrator of the electronic ticket system and Pasolig – which is the name of the electronic card. Audiences who wish to watch the football game at the stadium must first of all buy a Pasolig card to enter the stadium. The Pasolig card includes the name, last name, ID number and a photo of the fans.

After the tenders, Aktifbank became the sponsor of the system and also intermediary for printing and distributing the Pasolig cards. It is also the intermediary for the sales of the football game tickets. A number of contracts were signed between the related parties. The key point in these contracts is that Aktifbank became the exclusive intermediary

for the printing and distribution of Pasolig, and the intermediary for the sales of game tickets for 10 seasons.

The Board stated that the relevant product market was the use of electronic cards for the sale of football game tickets, intermediary services for the sales of football game tickets and banking services, with the relevant geographical market defined as Turkey. Since the contracts included exclusivity, the Board followed the steps of individual exemption. Similar to the EU Commission, we have two negative and two positive conditions that need to be satisfied for an agreement to be granted individual exemption. For the first condition, the Board stated for the safe provision of services, this system would prevent violent acts. For the second condition, the safe delivery of services would also prevent fictive increases in football game tickets. Although it is not at the desired level, there would be positive developments in the prevention of violence. For the third condition, the Board first looked at the tender process. The tenders were held in a competitive environment, so the first step for competition was enabled. The football clubs were generally satisfied with the system. By the way, this system came into force in 2014, so this is the second individual exemption for this case. Exclusivity is required for Aktifbank, because Aktifbank is currently operating at a loss. This system will become profitable at the end of 2020. Although, it has 10 seasons of exclusivity, this is restrictive but necessary for the return of the investment made by Aktifbank.

For the last condition, the Board stated that Aktifbank was dominant in both markets, but the operation of the system by only one company eliminated technical and financial obstacles related to the system because otherwise there would have to be a more complex organizational system. So, exclusivity was found to be required in this case and the four conditions were satisfied, and individual exemption was granted until the end of the 2023-2024 football season.

During the review of the case, there were also claims that Aktifbank was abusing its dominant position with tying Pasolig cards to its credit and debit cards. The Board stated that Pasolig and credit or debit cards were separate products, because a consumer could buy a Pasolig card without getting a credit card or debit card from Aktifbank. So, there was

no forcing, and consumers could buy Pasolig as a pre-paid card. Although the Board made the abovementioned statements, it also looked at the market share of Aktifbank, which was very low ranking 23rd among its competitors, so there were no foreclosure effects. Therefore, Aktifbank did not infringe the Turkish competition law.

The last case I want to talk about concerns Biletix. This is the last case. Biletix is controlled by Ticketmaster – as I am sure most of you know, Ticketmaster provides entertainment services worldwide. Biletix is an online platform that delivers various event tickets to customers. It is a meeting point for event organizers and consumers. The Board defined the relevant product market as intermediary services for the electronic sales of event tickets through a platform, and the relevant geographical market as Turkey.

Biletix has operations based on its exclusive contracts signed with event organizers. In this case, the Board investigated whether it infringed Turkish competition law via its exclusive contracts signed with event organizers. First of all, the Board stated that although exclusive contracts could be evaluated under the agreement clause or the abuse of dominance clause, the Board preferred in this case to evaluate them under the agreement clause; in other words, Article 101 of the Treaty on the Functioning of the European Union, but it also evaluated Biletix's market power. The Board compared the revenues of Biletix with its competitors' – there were five competitors of Biletix at that time – and also the Board took into account brand awareness, relationship with event organizers, market experience of Biletix, and event portfolio. The Board decided that Biletix had dominant position in the relevant market. The average exclusivity period for its contracts was 20.6 months – by the way, Biletix makes advance payments to the event organizers, who use this payment to organize their events, like making payments to the artists, etc. So Biletix made this payment in return for exclusivity. The market foreclosure rate for that period is 48%.

The Board assessed that although Biletix held dominant position, these advanced payments enabled event organizers to fund significant expenses related to the event and exclusivity was required for the proper functioning of the market. There were competitors to Biletix and

low legal and financial barriers to entry into the market. So, foreclosure effect was low, but if the exclusive agreements were longer than necessary, it would result in the foreclosure of the market. Therefore, the duration of the agreements should be limited to two years.

That is all for my presentation. Thanks for your attention.

**MELTEM BAĞIŞ AKKAYA**

Thank you, Esra. Esra is one of the members of the team who is now writing the Biletix investigation report, they have not finalized it. So, we are looking forward to reading the results of the case by the end of this year.

Thank you, Esra, once more, for the excellent summary of the cases we have handled so far. I will now go to our colleague from the Romanian Authority: Florian OPRAN. The floor is yours.

**FLORIAN OPRAN**
Competition Inspector, Romanian Competition Council

Thank you for organizing this event. It is an honor for me to talk about this topic, dominance in digital platforms.

I based my presentation on our sector inquiry on e-commerce we concluded in 2018. It was targeted especially to pricing and marketing strategies, but we also tried to see what is a dominant player and how the market moves and what the strategies that the big players are demanding. We only looked at the big players with business in e-commerce. Some of our indicators were market share or the Herfindahl-Hirschman Index (HHI), but we realized that we must analyze this sector also from the specific indicators in front of you. So, we looked at the traffic of the website, number of visitors to the websites, and also we tried to see the quality of this traffic. I mean, conversion rate, bounce rate, visited pages per visitor, time on website, links to the website, and so on.

Also, we tried to understand the main business models that we can find in our market. We looked, especially on the diversification of channels, of vertical integration. The dominant company is very well integrated. And the online/brick-and-mortar orientation. In dominant companies' cases, we also see a multi-channel strategy, or even an only-channel strategy.

This is a very animated picture. We tried to present in this slide all the Romanian e-commerce and how it functions. We represented the big players in our e-commerce sector as snakes because they are trying to have a direct connection to the client, to establish an almost hypnotic relation. The big player is a market leader. The expert from Hungary talked about emag, which is a main player in our e-commerce sector. So, the market leader tries to establish a direct connection to the clients. The clients try to search through as many offers as they can, but often they do not have enough time or patience to explore the options, and even though sometimes they do that, they still tend to buy from the big player to which they feel connected and trust the connection.

So, the winner tends to take it all in this market, and it does that by using a marketplace. If you are the dominant player in some market and you make a marketplace, the smaller competitors have to sell on your marketplace. That is how you gather all that client database, and yes, data is vital in this sector. Because their clients become your clients. Their one-time clients from your marketplace become your permanent clients.

And also, emag has invested a lot of money and resources in after-sales and during-sales services, which also gives it access to sensitive or commercial information of these competitors. But because it has access, for instance, to payment data – emag has the biggest payment processor in Romania, it also is a very important service company. It also has the Romanian supplier of electro-IP products in the market. So it obtains information from all levels of business from its competitors, which gives it a very strong position and leverage point to act at all levels in this sector.

I talked about channel diversification. This is a very important aspect in this sector. At the beginning every company had a single channel strategy. Let us say you had a brick-and-mortar store or a website, you had one-

shot opportunity. If you did not do this, you probably did not get any other chance. That is why the offline players... or the online players had to face a heavy free-riding effect. Visitors of your website later could buy through your competitors' offline channels. So, many of them understood that they had to diversify their business and try a multi-channel strategy. But this strategy also has a severe limitation, because you're using more channels, but those channels are not working together. That is why in the cross-channel strategy, the channels are connected together: if you have a visitor on your website, you also get his data and maybe you can now offer him a 20% off coupon if he goes to your brick-and-mortar store. So, you make all of your channels work together, and you start to orient your business towards your clients.

In the only channel model of business, all the instruments are starting to work almost for free and you almost break the barrier between online and offline. That is why it is important in the market definition that we no longer have a pure offline market or a pure online market. We have inefficient single-channel competitors, we have almost-competitive multi-channel competitors, we have some cross-channel competitors and some dominant companies are trying to go to an omni-channel strategy that is implementing all the most interesting options like virtual reality shopping where you can have a persona that tries all kinds of clothing, or other interesting technological supporting stuff.

Barriers to entry are tragically very low, but the truth is that there are very high development barriers in this sector because they are very high skill economies. The bargaining power is very important because when you have a discount campaign, we saw that big players are financing those campaigns by negotiating with the suppliers. This enhances their position. Also, integration of services and... one characteristic of this sector is that there are very low margins, you must make high profits from selling a lot. That is why a big player is greatly at advantage in comparison to small players.

Our leader has great financial resources, because it is sustained by investment funds. It has enough vision to invest in logistics, in showrooms, in its marketplace, in delivering the clients as many options of payment and delivery as it can. They have this almost omni-channel

strategy, combining of this channels and options that they have. And, of course, there is a visibility factor. You cannot earn visibility in just one year, it is something that you earn in time. You are using your reputation, your marketplace, your showroom and client database, emag also has an affiliate system that leads to their website. So, there are many ways to tackle the visibility problem. And in this sector more than in other sectors, there is a synergy effect that combines some of these barriers.

To sum, emag has a great market share, it is around 60% in direct retail segment, which gives it greater visibility. It has a lot of financial resources and a lot of vision. It then used those resources to make good logistics choices, to invest in its marketplace, in showrooms and delivery pickup points and other options, which give their clients more trust and more comfort in buying from them.

One more slide I would like to talk a little about. The title is "Winds of Change" because you can find that a company is dominant in the present market, but it wants to see the future to try to predict what will happen and also what will be the market. Because if we have a single-channel market today, this market might develop and an omni-channel might become not a plus, but a must.

So, in 2005, Amazon's turnover was smaller than Walmart's profits. These days Walmart decided to reshape its business and to rebrand itself to try a multi-channel or cross-channel strategy and to invest in its online sales because there was a very great gap. In 2019 Amazon had around 50% of US e-commerce while Walmart managed to rise its market share, especially in the last years to 4.6%. So, Walmart started from a single-channel strategy. It saw a competitor in the online market and failed to predict that it needed to diversify itself because at that moment probably it was only a competition under a single channel model.

Another interesting case is the operating systems case on the desktop and smartphones. In 2013, Microsoft had a 90% market share in desktop operating systems. The runner-up was the Mac operating system with only 8%. Meanwhile, the smartphone market developed, and as mobile operating systems became a market by itself Android became a market leader in mobile operating systems. iOS remained in the same position with around 25%, but it managed to leverage its position on mobile

operating systems to desktop operating systems, where it grew its market share. Also, a very important related market is the app-store market, in which the Apple Store is the dominant company by sales: 14.2 billion.

So, we have a market that developed: mobile operating systems, app-stores. The main loser in this market was Microsoft, which had maybe the best starting point in 2013, and even earlier, to enter this market. That is why Bill Gates called this lack of vision at that moment his "biggest mistake ever."

I was talking about online presence indicators. We looked at the most visited and most powerful websites in Romania and emag, the first one has the seventh ranking in Romania by topic. Most relevant is pages per visitor and times on website, which show that they too have a relation with their clients, the traffic of their visitors is a quality indicator.

The diversification model. We tried four models in this criterion. In the first one, the diversified retailers have a very balanced distribution of themselves. They sell more different type of products, which gives them more stability, makes them more balanced. If there is a problem in the market – or once smartphones appear – they are not having problems to switch their sales because they are already selling all kinds of things.

Versus targeted model, which is more vulnerable to market, to events that change the paradigm in the market. In marketing costs, emag invested a lot of resources in this area. They brought in Romania's Black Friday. But most relevant in this picture is not this situation. Player 8 is an inefficient player that left the market because this shows the level of marketing costs of their online sales. So, the inefficient player in this picture, Player 8, makes a lot marketing investments and obtain very low online sales.

In this slide, we are showing that the discount from supplier a main source of discount to consumers, that gives great advantages to the players that dominate the market.

Okay, what are the most important things? What I want to say is that it is very hard to predict when you have a merger to analyze, it is very hard to predict what is the real reason why the big player wants to buy the smaller player. Because it is not always obvious. One of the reasons

is that this is not because of the market share. It is not the market share that counts. It is innovation, new blood of the competitors. The players that are staying in the market for a while lose some of their innovative power. They are not that fresh anymore. They need the new innovative player. They see the potential there; they see the potential in those ideas – maybe they see a new market and they want to grow in that market. It is like Facebook with WhatsApp, let us say.

Thank you.

**MELTEM BAĞIŞ AKKAYA**

Thank you, Florian. I thank both of the presenters and now are there any questions to ask?

Can you introduce yourself, first?

**QUESTION**

Hello, everyone. My name is Saida, I am from Kazakhstan. I would like to ask Esra about your cases. Your presentation, first of all, was very interesting. Could you please explain about Google? Google is a foreign company which does not have any officials here. So, after your investigation, you found that Google abused its dominant position. My question is how you obliged Google to pay administrative fines, because Google is a foreign company. Google infringed the competition law in Turkey, so this is my question.

**ESRA KÜÇÜKİKİZ**

According to Article 2 of our Act on the Protection of Competition, if an infringement has an effect in Turkish Republic, we have the authority. In the event that an act of a company – whether it is domestic or international, it does not matter. If it has operations in Turkey and its activities has effects in Turkey, we have the authority to impose a fine.

**MELTEM BAĞIŞ AKKAYA**

Any other questions or contributions? Yes, please. Are you adding something?

**RECEP GÜNDÜZ**

I think your question was about how we made them obey the rules and also pay the fine maybe? One aspect of that is in Turkey Google does have offices. Its functions are limited of course; they are not powering the advertisement or base its search activities from Turkey but–

**MELTEM BAĞIŞ AKKAYA**

It does have a subsidiary, though, right?

**RECEP GÜNDÜZ**

Yes.

**MELTEM BAĞIŞ AKKAYA**

It does have a Turkish subsidiary.

**RECEP GÜNDÜZ**

They have a subsidiary but they are basically limited to only advertisement issues.

**MELTEM BAĞIŞ AKKAYA**

That is how it works all around the world.

**RECEP GÜNDÜZ**

Exactly. So, their headquarters is in Europe, in Ireland I think. Yes, exactly. But on the other hand, Google has an important share of users in Turkey as well. When you are that much important for a company – Turkey –

you matter for that also. The TCA is also taking it seriously and pushing the limits for every single company that are in Turkey to obey. They took this seriously as well and sent their representatives here. We had some discussions with them during the investigations process and also in the aftermath of the investigation, as well. So, as I said, they have a subsidiary in Turkey, but also they have to obey the rules and we push for that. Thank you.

### QUESTION

I also have a question about the Google case, Esra. Basically, you mentioned two types of contracts: This MADA and RSA. Basically, you based your decision on both types of contracts, and I was wondering which one is more present. Is it RSA for producers, or MADA?

### ESRA KÜÇÜKİKİZ

MADA, especially.

### QUESTION

So, they are not complementing? It is either MADA or RSA, right? Or can there sometimes be both? I do not think so, right?

### ESRA KÜÇÜKİKİZ

It is complementary to MADA. Their revenue sharing agreement is signed on the request of the device manufacturers. It is a complementary contract, but the device manufacturer does not have to sign it. There are two types of infringement, one is for tying and the other is for exclusive agreements.

### QUESTION

Just out of curiosity: how many RSA contracts were there? Do you know?

**MELTEM BAĞIŞ AKKAYA**

Do you want to answer it, or do you want to keep it confidential?

**ESRA KÜÇÜKİKİZ**

It is confidential.

**MELTEM BAĞIŞ AKKAYA**

That is confidential information. We can have one more question. Anyone? Okay, I would like to conclude this session and I thank you all for your attention. I would like to thank our two presenters for their excellent presentation of the cases we have done in Turkey and the e-commerce market study in Romania. I would also like to congratulate Florian for his animated slides. I always envy people who are able to do this kind of joyful slides. Really, congratulations. So now we end this session. I guess it is coffee time. Thank you so much.


# Consumer Harm Theory in Digital Platforms

15.00 - 15.50

Moderator/Speaker

**Hatice YAVUZ**

Chief Competition Expert, Turkish Competition Authority

Speakers:

**Habib ESSID**

General Director and Case Handler, Tunisian Competition Council

**HATİCE YAVUZ**

Chief Competition Expert, Turkish Competition Authority

Dear distinguished members of the antitrust world, I am honored and humbled to speak in this conference and thank you for making this Workshop a great experience.

So, in this session, we are going to explain the potential consumer harm theories in digital markets with my colleague from the Tunisian Competition Council, Habib ESSID. So, I think I can start with my presentation.

So today, I will make a brief introduction to the subject and I will cover the ways that consumers are making payments to the platforms. The other subject is how can consumers be harmed in this digital environment and the need for redesigning the tools for evaluation and intervention.

Actually, we are not in a digital world yet. I think we are just in a more digital world. This picture is trying to nicely illustrate the world before social media. I think this belongs not to a century ago, just less than a meager two decades ago. Technology is really fast, and we are now communicating in totally different ways. These are the subjects that we are now trying to make progress on.

Technology is really fast, and we do not know actually what is next. Can you imagine the world after 20-30 years? It is not easy, I think. With these improvements, a new phenomenon has emerged and entered into our lives, which is called digital platforms. All of a sudden, as the antitrust authorities, we have started to think about how to deal with the platform issues, which have very unique and new characteristics.

In this structure, the consumers are the main pillars and all the story begins with the consumers. They demand a product or service and providers or producers are trying to satisfy this demand. The platforms match these two sides or produce themselves, and other parties are trying to integrate with the platforms with ads, payment systems and data analytics. So, consumers are the main pillars, and if there are no

consumers and no demand, there will be no producers. If there are no producers, we do not need platforms. This makes consumer side of the issue very critical.

When digital platforms touch the antitrust laws... The platforms argue generally that they are providing innovation, high quality, low or zero prices and customized services. Do you think that these are viable justifications, and should we stop investigating digital platforms? When we turn the other side of the medallion, we face some important issues. These conducts can end in high platform prices for suppliers, self-preferencing practices of the platforms and foreclosure of the digital services to the suppliers. Consumers are very vulnerable in this world; they are subject to very high direct or indirect network effects and more prone to manipulation and addiction. They are also under the risk of loss of privacy, and they are generally underinformed.

So, the competition authorities are facing these difficulties. The main justifications in digital cases are related to creating benefit for the consumers. This makes consumer welfare analysis very critical in competition cases in digital markets.

What is new in the digital markets is also that the exploitation, exclusion, and privacy issues can emerge simultaneously in one case. This makes the issue more complicated than in traditional markets.

So, what are consumers paying to the digital platforms? Zero price does not mean paying nothing, actually. Because there is the payment system of attention and data in the exchange of services. In monetary terms, generally one party is subsidizing the other parties because of the network effects. As I mentioned, the consumers are the main pillars of this structure, so they are the ones who are generally subsidized by the other parties.

How can the consumer be defended? The first harm theory I want to mention is a very classical one and we are very familiar with it. This is the restriction of the consumer preferences and it can emerge also in traditional competition cases. But what is new in this issue is the way consumers' preferences are restricted. They are very new and unique in digital markets.

As you may know, Xbox is the video game brand of Microsoft. When

you start a query in Google starting with "Xbox One is", Google is trying to complete the query with very negative words. But when you enter the same query to Bing, Bing is very positive in its suggestions. So, consumers can be directed in the interest of the digital platforms and this is really very dangerous.

The other risk is the manipulation of the rankings. Actually, we have three Google Search cases that are being conducted in our Authority. We are also trying to deal with this issue, this is also getting more and more importance in these digital cases. The consumers' preferences can be restricted in exploitative ways and exclusionary ways. This make the issue more complicated. I think the Google Android case is a very good example for this harm theory, which is dealing with the pre-installation of Google Search and Home to the mobile devices.

Costly multi-homing is another case in which consumer can be harmed in digital markets. It can be a factor that lead to tipping in a digital environment with the other factors that are listed in the slides. This tipping factors into a vicious cycle, actually, in which high networks effects generally leads to high switching costs and they generally end up with more network effects, which means very limited freedom of movement for the consumers. They also lead to less multi-homing opportunities, which will end up in multiple markets and more networks effects, so we are in a vicious cycle. If we do not interrupt this cycle, they will just keep each other, and it will become a mountain effect. The Google AdSense Decision, I think, is a very good example of this consumer harm theory, which is dealing with the premium placing condition of Google as the online advertising platform.

The other theory can be related to the quality of goods and services or the pace of innovation. Do you know how to measure quality in digital markets? We have an idea about that. It is not a new question. According to one of the OECD reports, the new quality measures in this world are privacy, data security, less ads, more information, quality of digital services and price. These are our new measures that we should take into consideration and we can see that there is a strong correlation between quality and innovation in this world.

So, the widely accepted view is that the more competitors, the more

and faster the innovation. The level and speed of innovation, actually, is affected by the number of competitors. This is reflected in some of the EU decisions that I tried to mention here, and also within the literature.

The final study in this slide is an empirical analysis which is trying to prove this relationship between the number of competitors and the level of innovation.

Another concern is the increasing online ad costs. There is a continuous transition to and increasing use of online advertising, and there are many new tools in online advertising. I think everyday we are seeing some new methods. The question that should be asked is "Who is paying this cost?" The concern is that all the costs incurred by the platform and the other parties of the platform is currently paid by the consumers. This point is also reflected in the EU's Google Shopping decision as well as in the literature.

Are we ready for potential price increases in online ads market? This is another issue because the market is getting bigger and bigger. I am sure that someone will compare them.

And the other problematic issue is the increase of the exposure to online ads. As I stated the platforms show online ads and collect enormous amounts of data for this service. The question is, are consumers happy with the service? There are some studies showing that almost 55% of the users do not know which links on Google are paid links. So, we can say that this is more than half who do not know which links are paid for by third parties on Google. The lack of awareness increases with age. So, we can see that if the age is above 65, many people do not know which are paid links. There is also another study according to which you can see that most people do not know which are paid results in Google. Even if they know that some results are paid, they still think that these results are the most relevant ones or the most preferred ones. So, "paid" does not mean "ads" for some people.

As you know, duckduckgo is a new brand search engine which does not trace user data or serve personalized results. As you can see in the graphic, duckduckgo is being demanded more and more by the users. So, there is a trend not to see ads anymore. And there is some news from the other side of the Atlantic. I think the FTC is going to make an

investigation in online ads markets regarding Google's practices.

The other concern in the consumer harm theory is the misuse of behavioral mistakes and the addiction of consumers. Digital platforms generally say that "We are increasing consumer welfare, since consumers are using us more and more." But I think the right question that should be asked is "Why? Why are the consumers using the platforms more and more?" And I think we should also ask if it is because the quality and the preferences of the users or is it something related to the addiction or the lack of self-control. How do you feel about the increasing use of social media or a child's buying a game character or a teenager's buying a diet product which may have very serious results, like anorexia?

So, we should also care about why. Why are the consumers using digital platforms more and more? There is a statement in this particular report that the number of tweets and/or ads may not correlate with greater welfare if the high volume of tweets is obtained by exploiting the lack of self-control and addictive behaviors. So, there are some people in the world who care about it.

The misuse of personal or big data is another topic. I think this can be the subject of a separate workshop, actually. Maybe Mr. GÜNDÜZ can think about it. So, I will just cover a few things briefly on this issue. I can say that the data can be used in exploitative ways like the excessive use of data and under-information to the consumers, abuse of data for other services without taking consent. The data can also be used in exclusionary ways and can drive the exclusion of the rivals by preventing access to the data and the discriminatory practices of the digital giants and exclusivity agreements for the use of the data. The use of data also complicates the merger and acquisition cases. We should ask in these cases "What is the data and how much value should we attribute to the data and the vertical effects of having data?"

When it comes to data, we have one additional topic about the delegation of authority to different institutions. My personal opinion is that competition and data protection rules and authorities can complement each other, because they have separate grounds for intervention. This is very usual, as you know, in other regulated markets. There is not much conflict about who will intervene with what because the grounds are

different. The Facebook case is a really good case. As you may know, the Düsseldorf court has suspended the execution of the case, but there are good implications to get from this case.

Finally, I can say that there is clearly a need to design tools for evaluation and intervention. There is a spectrum of proposals dealing with this issue, from very moderate ones to very strict ones. Some of them are very reformist, also. But I want to emphasize that the self-correction mechanism do not work in this market because the structure and features of digital platforms do not give any ground for self-correction. When we decide not to intervene in the market, it will be too late in a very short time because the market is changing very fast, the strong is getting stronger and the weak is getting weaker. The main determination is that traditional price-based methods are not sufficient for detecting antitrust effects in this digital world and there should be more focus on consumer harm theories. The moderate one is to make more resources and more transparent rules to review the issue. And the other option is – actually, these are not options, we can do all of them at the same time. We have to increase the analytical capacities of the consumer authorities. And we have to think about the moral use behavioral economics and data instead of traditional price-based methods.

There is also another proposal, which proposes the creation of a digital authority. There are some questions about this digital authority, about whether it should be an authority to complement the competition authority or it should also cover and deal with competition issues and there should be no further need for competition authorities in the digital markets. There is also another view that there is a need to create a competition force because this issue is really technical and I do not think that our force is ready for dealing with these issues, because we are not ready also. We are trying to improve ourselves. I think some digital force may be in the agenda in the future.

So, thank you. This is the end of my presentation. Now I want to give the floor to my colleague from Tunisia.

We are looking forward to hearing your presentation, Mr. ESSID.

**HABIB ESSID**

General Director and Case Handler,
Tunisian Competition Council

So, good evening everybody. I am so glad to be here, and I thank the Turkish Competition Authority for this occasion to share, to be here, to take part in this event. In my presentation I will talk about consumer harm and digital platforms and antitrust concerns.

In this morning session, we saw that digital companies are now well ranked in global business. Of course, the technological development has provided consumers with new services, often provided free of charge. Digital platforms are at the center of such developments. Digital platforms, including marketplaces like Amazon, application stores – we can say Google Store or Apple Store – social network sites like Facebook, and search giants like Google... well, these digital platforms have many benefits to consumers, but of course show many harms to consumers' well being.

I will begin with a rapid review of the legal framework of the Tunisian consumer protection. We have a lot of laws and decrees, mainly the decree of 1992 related to consumer protection, the Law Related to Competition and Prices, and also we have the Law of 2008 Relating to Retail Trade and the Law of 2000 Related to E-commerce.

Consumer protection is the business of different ministries in Tunisia. We have the Ministry of Trade, the Ministry of Agriculture and Water Resources, the Ministry of Public Health, the Ministry of Interior. Also, it is the business of many authorities, mainly the Tunisian Competition Council, National Institute of Consumption, the National Authority of Personal Data Protection. Also, civil society is well-presented to defend consumers, mainly the Tunisian Consumer Protection Organization.

So, under the new Tunisian Law, consumer welfare is the main goal of our law enforcement. In the new Council Board, we found two new members who are chosen for their competence in the field of consumer protection and consumption.

Let us take a look at digital platforms in Tunisia. We have a population of around 11.5 million in 2018. We have more than 7 million Facebook accounts, more than 7 million Messenger users. We have about 2 million Instagram accounts, one million Tunisian LinkedIn users. More than 100.000 Twitter accounts. You can see that Tunisians are very dependent on Google, 96% of Tunisians use Google Search. About 6 million Tunisians watch YouTube every day, with more than 25 million viewers per day. We have a peak of 150 million views in the holy month of Ramadan. This is due to sellers' effect.

Also, e-commerce sales in Tunisia reach 1.5 billion dollars, according to the National Institute of Consumption. The Tunisian e-commerce market include a total of 1,423 sites, with 1 million visitors per day. This is an average. In marketing events like Black Friday and religious feasts, we can double this number or more.

We move now to deal with consumer harm. Digital platforms may show many failures. These failures are market power, barriers to switch, information asymmetry and imperfect information, behavioral biases and externalities. When digital platforms exhibit one or several market failures, this can harm consumers in different ways. These harms are competition harm, fraudulent or unfair business practices, harm to privacy, data breaches, security issues, and content and conduct harms.

Competition harms can harm the consumer welfare when digital platforms abuse their market power by pricing their product excessively, limit their range of services, when there is a lack of quality or otherwise exploitative terms such as data collection. Also, consumer concerns can arise when digital platforms entrench their market power by foreclosing their rivals, by imposing terms limiting multi-homing by users. Also, when platforms extend their market power by using self-preferencing, prioritizing their vertically integrated services and therefore foreclosing rivals. Also, when digital platforms limit consumer switching by exploiting behavioral biases and the information asymmetry.

The second harm is unfair business practices. Unfair business practices arise from the use of different knowledge to direct consumers to make decisions that are not necessarily to the best of their interests. Also, when there are high priced or sophisticated services, unfair practices

may include pressure selling, misleading discount claims, hidden charges, using data to target prices.

Fraudulent businesses are different. Fraudulent business practices involve unlawful and dishonest conduct that can imply financial harm to consumers and also imply harm for health and well-being. We know that lack of competition, the higher prices and asymmetry may possibly facilitate this harm.

The third harm is the harm to privacy. So, these harms include those of privacy and also include those stemming from targeted services structurally rely on personal data –the famous ads– use of data to personalize and target harmful content, shift in the balance of economic power from consumer to provider, under-utilization of online services if people misuse services because of privacy fears.

We should also note that behavioral prices are imperfect information and are likely to influence agreements with consumers with data collection and use to their benefit. Market power and switching barriers can also lead to privacy harms as digital platforms may under-invest in consumer privacy protection where they have market power and where the market power is characterized by barriers to switch so the consumer cannot switch between the platforms because of fears of data loss. That is why, essentially.

The fourth harm is data breach. Data breach outcomes are cybercrimes, financial crimes, identity theft and blackmail. It is costly to prevent cybercrimes. Where we are afraid of cybercrimes, we take costly measures like banking sites. Data breaches may arise when externalities lead to under-investment in guarding against these, as their cost fall entirely on businesses. Consumer information asymmetry is behavioral, which may limit the incentives for digital platforms to compete on this feature. Also, data breaches may arise when digital platforms with market power under-invest in data security due to the weak threat that the consumer may switch to alternative providers offering greater security.

The harms of conduct and content are very important because they affect the consumer directly. Conduct harms are abuse, controlling, intimidating behavior or harassment. Content harms may include illegal

content like sexual abuse for children, material advocating self-harm, violence or similar ideologies, and use of age-sensitive content. Also, this harm may consist of disinformation, including facially manipulated content intentionally created and shared to deceive citizens and consumers, and to cause harm. We should note that providing these harms could increase the cost of engaging with online platforms, for example using parental controls and fact-checker websites.

The last harm is the harm of security and resilience issues. Consumer harm can arise if cybercrimes, malpractice or negligence discourages this access. Harms from security and resilience vulnerabilities may arise from externalities if business or governments do not successfully internalize the cost of breaches of cybersecurity to society. This could be particularly the case when consumer decision-making is subject to behavioral biases or information asymmetry, which may limit consumer ability to recognize and penalize such under-investment.

Thank you for your attention.

**HATİCE YAVUZ**

Thank you for this excellent presentation. I think you touched the heart of the issue, so many thanks.

I know this is at the very end of today's session, but if you still have some patience, we can take some questions.

Yes, please.

## QUESTION

Berkay KURDOĞLU, Turkish Competition Authority, assistant competition expert. I have two questions but before that I will also thank you for your presentation. It was very valuable.

My first question is: as we know consumer welfare standards can be understood in the broad sense and in digital markets it can become more and more difficult to calculate or compute. So, my question is, even if there is no consumer harm, or even if we cannot calculate or compute it, can we just skip this part and focus on the dominant position behavior

which may restrict or distort competition? This is my first question. Second: in your presentation, you showed that more than half of the users in the Google case click on the advertisement links. So, people can get confused by the lack of information sometimes. But should this harm be seen as a competition issue, or another issue, maybe, I do not know, a law issue? If it is a competition problem, what is the interaction with competition law and economics? Similarly, to this question, should competition authorities take a role about the privacy of the consumer data or malfunctioning or cybercrimes? What do you think about that?

Thank you very much.

**HATİCE YAVUZ**

I think I can answer the first two questions, and maybe you can help with the final one.

For the first one, yes, it depends on the authority and it depends on the case. If you are clear that there is a competition problem and there are anti-competitive effects, you can prefer not to look at consumer harm but increasingly you have to look at it because there are some issues touching consumers. Also, there are some justifications made by the platforms stating that they are providing better outcomes, or they are providing higher quality, better services to consumers. To determine if consumers are increasing their welfare, you have to check something else. I think it is getting more and more important to look at consumer harm.

The second one is, yes, it is related to competition issues. If 55% of the users do not know which are the paid links, this means that Google can present some search results as more relevant than they should be. So, it can directly affect the consumers in exploitative ways because the consumers are losing welfare, and indirectly by excluding the rivals which are ranked lower than they are actually. This can lead to consumer harm also in indirect ways. I think this is very relevant to competition issues.

For this final question... Please, go ahead.

### HABIB ESSID

I have a comment for your first question. You say that it could be better to focus on the treatment of the abuse of dominant position. But consumer harms are the result of the dominant position. So, when platforms or digital firms are in dominant position, then they will lead to consumer harm. I think there is a causal relationship between competition concerns and consumer harm.

For the second question, of course, these harms are not all competition issues. But it is related to the theory of consumer harm. There are social harms, competitive harms, economic harms. So, the consumer harm theory covers many fields. That is why I mentioned the other harms in addition to the competition harms.

### HATİCE YAVUZ

Thank you. Is there another question?

Okay, thank you. I think you are going to make some announcements?

### RECEP GÜNDÜZ

Yeah, sure. So, good news: it is over for today. The Istanbul Competition Forum has two main aims: the first one is to share our experiences and ideas. I think we have done enough in competition in digital markets today. Actually, we have covered a really wide range of issues, but we still have some things to consider or discuss. That is why I believe that we are going to have some other sessions maybe in the near future still about these issues. But is seems like we are going to discuss more about whether it is going to be about regulation or are competition rules enough for fighting these kinds of violations, if there are any.

The second aim of the Istanbul Competition Forum is to make friends and enjoy the city of Istanbul. We still have time for that, and this is also vital, especially for panel discussions for tomorrow. We are going to see that in order to have international cooperation, we need to know each other very well. So, we still have time for that. We are going to have dinner at 7.00 p.m.

Thank you very much for all the presentations and your participation.


# Handling of Cross Border Cases

10 MARCH 2020
10.00 — 10.50

Moderator:

**Recep GÜNDÜZ**
Head of External Relations, Training and Competition Advocacy Department, Turkish Competition Authority

Speakers:

**Ebru GÖKÇE DESSEMOND**
Legal Officer, Competition and Consumer Policies Branch, UNCTAD

**Osman Tan ÇATALCALI**
Professional Coordinator, Turkish Competition Authority

**Nefla Ben ACHOUR**
General Director and Case Handler, Tunisian Competition Council

**RECEP GÜNDÜZ**

Head of External Relations, Training and Competition Advocacy Department, Turkish Competition Authority

Hello again. Good morning. Welcome to the second day of our workshop. We are going to handle another trendy topic today: cross-border cooperation. We have already started to discuss this topic yesterday, when we were talking about Big Techs and how we should intervene in the ongoing processes we have touched a little bit on the topics that will be covered today. Further contributions and questions were raised by our colleagues from Uzbekistan and Kazakhstan on how to implement the measures that we take or how to start the process on international companies, cross-border companies that are acting in our jurisdictions. So, I think this is at the heart of the discussions that we are going to have today.

When we step back a little bit and look through the history, we see that thirty years ago there were only twenty countries that used to have competition laws, but right now it is more than 120. At the same time, the economy has globalized enormously since then. And also, many competition cases right now involve cross-border dimensions and include more than two or three companies. In this even environment, international cooperation is more than a necessity. It is vital, it is at the heart of our daily activities. That is why we are observing increasing national and international efforts to ensure that there is an effective, working and ongoing effort with regard to international cooperation.

Actually, this meeting for the Istanbul Competition Forum itself is an understanding and response to this kind of requirement. We have already mentioned this in the very first round of the Istanbul Competition Forum last year and that is why we have tried to institutionalize our efforts on international cooperation. Because we had to do that. There is no other alternative better than doing this. Because we cannot hide from global phenomena by ourselves.

Thankfully, there are lots of ongoing efforts on this area as well. These are not limited to only national authorities. Thankfully, international organizations like UNCTAD and OECD are putting lots of effort in this area. There are also multilateral agreements and memorandums of understanding among national authorities that are contributing into these kinds of efforts as well.

So, basically, we are going to discuss these issues in this session. It is going to be a shorter one, I would say. We have three respected speakers with us, although you can see only two of them here in the room. But we also have Ebru Gökçe DESSEMOND with us through Skype again today. I think she can hear me now, right? So, here is how it is going to work: I am planning to start with Ebru again and then turn to our other speakers, Nefla BEN ACHOUR from the Tunisian Competition Authority, and Osman Tan ÇATALCALI from the Turkish Competition Authority. I will try to give around 15 minutes to each speaker in the first round, and if they need any extra time for the second round, we are going to consider that.

With your permission, I will start with Ebru Gökçe DESSEMOND. You already know Ebru Gökçe from her contribution yesterday. UNCTAD is a very important ally and partner for us in organizing all these Istanbul Competition Forum events, and we owe them thanks. But also, I would like to thank Ebru Gökçe DESSEMOND personally, because she has personally given so much time and put so much effort in organizing all our ICF events. It could not be that much convenient and perfect without her contribution.

Thank you very much, for being with us today, as well. It is great to have you here.

So, I would like to wrap up the issue as much as I could. I am going to give the floor to you for your contribution. As I said, every speaker will have fifteen to, let us say, at most twenty minutes in the first round, but if you need extra time, we can consider a second round.

The floor is yours.

**EBRU GÖKÇE DESSEMOND**
Legal Officer, Competition and Consumer Policies Branch – UNCTAD

Alright. Thank you very much.

Good morning, everyone. Thank you for the opportunity to connect with you again this morning through Skype. We thank the technology and we thank the Turkish Competition Authority for putting this event together. UNCTAD is very committed to working with various competition authorities around the world. You are all our partners. But of course, this cooperation with the Turkish Competition Authority, being Turkish myself, is a personal pleasure for me. It is quite rewarding to connect with them on this occasion and facilitate these meetings in collaboration with the Authority.

So, thank you for the introduction, Recep. I would like to start. I think the raison d'être of these events is to promote international cooperation. So, I will be talking about what UNCTAD has to offer and what work we have done in this area to promote international cooperation, cooperation between competition authorities, and I will be presenting you the tools we have developed here at our intergovernmental meetings together with all the member states who have participated in this effort, the guiding policies and procedures under Section F of the UN Set on Competition.

I will start with the slides. This is the outline. I will present briefly what is the UN Set on Principles and Rules on Competition and UNCTAD's work in this area, as I mentioned. What are the obstacles to international cooperation? Why do we need these guiding policies and procedures and what is in there for us, for the competition authorities, especially?

So, I will start with the UN Set on Competition. The long name, you can see in the title. It is a multilateral document, which was agreed upon by all the members states of UNCTAD back in 1980. It has not been revised since then. Every five years since the adoption of the UN Set, a review

conference has been held. I think the fifth review conference in 2005 was held in Turkey, in Antalya. I was not with UNCTAD then, so I did not attend, I missed that conference, unfortunately. But this year, we are going to organize the eighth review conference from July 6-10, in Geneva. So, it is an opportunity for me to announce that to all of you and invite you all to come to Geneva in July. Hopefully the corona virus outbreak will have been over, so we can enjoy bringing together all the member states and the competition authority representatives here.

So, what happens in the review conference? The conference reviews and renews our mandates on competition traditionally, but this year, for the first time, it will also review our mandate on consumer protection for the next five years. What UNCTAD should be working on for the next five years we look at and discuss and the member states agree. There is a resolution outcome document, it is called Resolution from the Conference and it is reported to the General Assembly, and adopted by the General Assembly of the United Nations, in New York.

Apart from the review conference, as many of you know, we hold annual meetings of the Intergovernmental Group of Experts on Competition Law and Policy to discuss particular issues in this area. Last year, we discussed, for example, competition issues in the digital economy. So, every year member states decide which topics should be discussed for the following year. This coming year, during the conference we will continue with the same topics: strengthening competition and consumer protection in digital economy – that will be one of the roundtable topics.

After this, after announcing our upcoming events for this year, I will present briefly the UN Set on Competition, which gives us, the UNCTAD mandate on competition law and policy. The key features of the UN Set is that it sets out some principles and rules for enterprises, including transnational corporations – that is the language used in the UN Set – and states clearly that enterprises should refrain from anticompetitive practices. Then principles and rules for states at both national, regional, and sub-regional levels encouraging them or urging them to adopt competition laws and enforce them against anticompetitive practices. And there is a section, Section F, on international measures, which talks about international cooperation and exchange of information. That is why

we are talking about the UN Set today: there is a section on international cooperation.

Back in 1980, the need for international cooperation was clear for member states and they drafted a separate section in the UN Set on this issue. So, what does the Section F say? Collaboration at the international level should aim at eliminating or effectively dealing with restrictive business practices, including those of transnational corporations, through strengthening and improving controls over restrictive business practices adversely affecting international trade, particularly that of developing countries and the economic development of these countries.

You can even see that they have established the link between anticompetitive practices and their negative effects on economic development, particularly in developing countries. It is still the same, and that was clear back in 1980, when they were negotiating this document. So, what does it say? Actions should include work aimed at achieving common approaches, consultations among states, in paragraph four, and continued work by UNCTAD on the elaboration of a model law – we have a model law. If you go to our website, you can find the model law as well as explanations for each chapter of it, which gives examples from various jurisdictions and which is updated every few years. The explanation part of each chapter, not the model law itself. Technical assistance and advisory and training programs. As many of you know, we offer technical assistance and capacity building, especially to developing countries and to economies in transition in this area: both competition and consumer protection.

So, what have we done at UNCTAD to facilitate international cooperation under Section F of the UN Set? So, in the fifteenth session of the IGE – IGE is the acronym for our Intergovernmental Group of Experts on Competition Law and Policy, which gathers every year, normally in July. But in 2016, it was in October. So, when they met, the member states requested the UNCTAD Secretariat to prepare a study on enhancing international cooperation in the investigation of cross-border competition cases, tools and procedures. This is a background note to this, and it was discussed in a roundtable in 2017, and UNCTAD had prepared that background note, which is available on our website again.

You can find it there.

During the 16th Session, in July 2017, member states requested the UNCTAD Secretariat to establish a discussion group on international cooperation. That is when our work, particularly on these guiding principles started – with the establishment of this discussion group. Participation was voluntary, so some member states participated, like the United States, some member states of the European Union, Russia...

What happened after that? So, in the 17th Session of the IGE in July 2018, the mandate of the Discussion Group on International Cooperation, DGIC, was renewed for another year. Actually, they continued to work until 2019, until the meeting of the 18th Session last year to draft the guiding principles and procedures. The discussions were quite advanced. In April 2019, we organized an ad hoc expert group meeting on competition law and policy, and they discussed some kind of draft principles. These were agreed last year, in July 2019, as Guiding Policies and Procedures, they were adopted by the IGE. But the IGE does not have a mechanism to adopt it as a document, so it will be presented to the Conference and we will try to get it as an outcome document from the Conference this year.

But UNCTAD already disseminated these Guiding Policies and Procedures at the OECD meetings and at several other regional competition conferences around the world. A lot of colleagues were engaged in this dissemination process.

What are the obstacles to international cooperation? Why do we want to promote it? Lack of awareness on the possibilities of cooperation because cooperation can be very basic: just an exchange of information. It can also go deeper, into parallel investigations, for instance. Sometimes there are legal restrictions preventing authorities from cooperating with their peers around the world. Sometimes there is lack of mutual understanding and trust between the authorities. Trust is crucial to cooperation. So, these were found to be the obstacles to international cooperation during these discussions.

Why do we need them? The Guiding Policies and Principles aim to promote mutual trust and understanding, and facilitate contact between competition authorities, and to clarify what is possible in their existing

conditions, even their domestic laws. Especially for younger authorities with little experience in enforcement. They are not binding but voluntary, and they can provide some guidance on how competition authorities can cooperate and how to initiate such cooperation.

So, what is in these Guiding Policies and Procedures? It has three sections: one, guiding policies; second, there is a toolkit for cooperation in competition cases, which is a bit more concrete. The first section provides some principles, and the second toolkit provides some more concrete efforts on how to initiate, how to cooperate. The third section includes the role of UNCTAD in facilitating cooperation under Section F of the UN Set. And in the Annex, there is a list of relevant papers and guiding documents prepared by all these three organizations' initiatives, I will say – by UNCTAD, OECD and ICN – developed so far on international cooperation, which is a good reference. You can go and check it if you are looking for cooperation in a particular area like mergers or cartels.

If we start introducing what the guiding principles are in this document: cooperation can benefit competition authorities, especially in handling cross-border competition cases. That is why all this effort, and everybody acknowledges this. Also, they have acknowledged that it is important to provide tools and methods of cooperation for developing countries, and cooperation is based on mutual trust. And there, I think, our annual gatherings provide an occasion for competition authorities to meet each other, representatives to meet up with each other and then network and to start establishing some kind of relationship, cooperation maybe, towards mutual trust.

Authorities have full discretion to decide whether to cooperate and to determine the level of cooperation. Significant flexibility exists in the way the authorities may seek to cooperate with each other. The key requisite for successful cooperation in competition cases is the ability to provide effective and credible assurances that shared information will be maintained in confidence and will be used only for purposes that the sharing authorities have permitted. This is very crucial to meaningful cooperation in the cases.

Effective cooperation between authorities is supported by mutual trust

and an understanding of each other's legal frameworks, confidentiality rules and investigative processes. It is very important to understand these to be able to see how much you can cooperate with another authority. And authorities that engage in cooperation may find it useful to develop their own authority-to-authority protocols for cooperation. Many authorities have signed memoranda of understanding with each other, others have cooperation agreements which go deeper, which allow them to exchange even confidential information. So, there are different ways of cooperating.

Now, in the second section, toolkit for cooperation in competition cases, first there is flexibility between authorities in initiating cooperation based on each other's relevant domestic law and policy, or mutual understanding and agreement. This is important, first. Then the tools of cooperation among authorities include the following: first, initial contact. So, formal or informal notifications may allow for a more meaningful discussion among authorities at key stages of their respective investigations. Initial contacts may be used to discuss the potential scope and depth of cooperation as well as the need for and the frequency of additional contact. So, it is important. We start with initial contacts. You experience these in your daily routine when you are trying to approach another authority. That is quite straightforward.

Second, further communication among authorities depends on the nature of cooperation. When ongoing cooperation is mutually beneficial to both authorities, periodic communication by the cooperating authorities can be helpful to avoid conflicting outcomes. So, periodically, you exchange information if you are carrying out an investigation at the same time.

Timing alignment. At key decision making stages, timing alignment can allow for more efficient cooperation and more meaningful discussions between authorities. So, if you follow more-or-less the same timing in a, for example, merger case, it can be more beneficial. But also, cooperation in different phases of each authority's investigation may still be beneficial to discuss theories of harm, to benefit from the experience of the other maybe more advanced competition authority in terms of the stage of the investigation. If the other one is starting an investigation on the same

case, it can benefit from the experience, how the theories of harm were established, the factual findings and merger case remedies. So, timing alignment can be important but is not necessarily a pre-condition for cooperation.

Exchange of information, confidentiality, and waivers of confidentiality. So, information sharing between authorities occurs in a manner consistent with each authority's legal obligations to maintain confidentiality, of course. Commitment to protect the confidentiality of the information of the other, cooperating authority is a critical factor. Secondly, while the exchange of non-confidential information can lead to effective cooperation, a waiver of confidentiality may enable more extensive cooperation. So, if the parties to the case give a waiver of confidentiality, then the authority can also share confidential information, which will of course deepen the cooperation and may be more meaningful and effective.

Fifth, discussions on substance and case resolution. Discussions on substantive issues relevant to the investigation might include discussions on market definition, market dynamics, theories of competitive harm, economic theories and empirical evidence that are needed to test those theories, potential competitive effects and efficiencies of the conduct, as well as the potential remedies. So, this can be discussed during cooperation on a particular case.

This is what is in the toolkit part of the Guiding Policies and Procedures. And then, there is the last section on the role of UNCTAD.

So, the role of UNCTAD. UNCTAD can assist authorities by developing confidentiality provisions and promote mutual trust among authorities that will support more effective cooperation. We can assist them in even initiating first contacts in approaching another authority by providing contacts of the relevant persons.

Secondly, we can assist by providing publicly available legal texts and guidelines that are relevant to cooperation, such as confidentiality rules, rules concerning the investigations, legislation of the other authority, data protection rules in other jurisdictions.

Thirdly, we maintain a list of contact persons from each authority. This

may also facilitate international cooperation. When you approach us, we can provide you with these contacts.

And in case of consultation under Section F of the UN Set, the requesting authority may ask the UNCTAD Secretariat for assistance with preparing the request for consultation, for advice on procedural matters within the scope of the consultation, and the provision of mutually agreed conference facilities by the Secretary General of UNCTAD. So, there is a section in the Guiding Principles, in the third section on this in more detail.

Guidance, especially for authorities from developing countries and countries with economies in transition, with regard to confidentiality assurances and any use of information shared in the course of such consultation, if necessary, based on work products listed in the Annex. We can provide some guidance, and in the Annex, you can also see references to a lot of relevant documents in this area. And interpretation of the UN Set provisions. And, upon specific request and consent by all authorities involved, participation in the consultation.

So, these are sections from the Section F of the UN Set on Competition and there is a reference to it in the Guiding Principles, as I mentioned. In case assistance of the UNCTAD Secretariat is needed to facilitate consultations, the scope of the assistance needs to be determined before the consultation officially begins. It is possible that the Secretariat facilitates, but this has to be decided by both parties and the scope of our, let us say, facilitation should be decided and agreed upon by both parties in advance.

Consultations should be in compliance with the laws and rules of confidentiality applicable in the jurisdictions involved in the cooperation.

So, this is basically what I wanted to present. If there are questions, I will be happy to receive them. Thank you very much.

**RECEP GÜNDÜZ**

Thank you very much, Ebru. Excellent contribution, as always. If there are any questions, I will be happy to give the floor. Let us see. There are not any questions, it seems. Oh yes, there is one question for you, Ebru, I think.

**QUESTION**

Thank you for the presentation. Let me ask you about the waiver of confidentiality you mentioned in your presentation. How does it work? Should it be signed or how can we collaborate in this case?

**EBRU GÖKÇE DESSEMOND**

Actually, it should be provided by the parties to the competition case. So, if they provide the authority in their jurisdiction, if the companies provide the waiver of confidentiality to the competition authority, then the competition authority can exchange that information in a cooperation on that same case with another competition authority. So, the authority requesting the cooperation cannot actually– it is in the hands of the competition authority which receives the request for cooperation to talk to the parties engaged in the case and try to explain them what the waiver is, and maybe explain to them that it would be beneficial for them to provide this favor and that cooperation could also, I mean, facilitate things for the company that is being investigated in another jurisdiction. So that it will not need to provide the same information to other authorities. So, it can be beneficial also to the parties involved, but the competition authority who is requesting such favor should be transparent about the rules and procedures on how the confidential information will be handled, and to reassure the parties that such information will be kept confidential. If there is a greater understanding about this process, then the parties may be more willing to provide such a favor.

**OSMAN TAN ÇATALCALI**

Hi, Ebru, this is Tan. Can we just explain with an example? Let us say two companies are merging in Kazakhstan and they have business in

Turkey. So, the Kazakhstan Competition Authority requests our help, but in order for us to help them with the merger case, we talk with the representatives, advocates of the firms and ask them if we can do this. We do this with a waiver, we get a signed copy from the parties saying that "You can share all of my information with the other authority." We do this often, like two or three times a year. Generally, when we talk with the other competition agency, it is on the phone. So, they just ask, "What is the situation in Turkey, we have this or that problem," and our experts working on the case talk to each other with the help of the waiver. The waivers can be found on the ICN website as well, or you can write down on your own it does not matter. But the ICN has a lot of experience with that and you can download the same waiver from the ICN website. That is how you have a legal document about sharing the information with another competition agency. It works like this because when two competition agencies talk with each other, they generally come to similar conclusions and the cases, especially merger cases, resolve rapidly.

**RECEP GÜNDÜZ**

Thank you very much.

So, if there are no other questions? Alright.

In Ebru's presentation we saw that we need a strong international structural framework to initiate international cooperation, especially for younger agencies because we have seen that sometimes it is not even possible to send a notification for initiating an investigation by the younger competition agencies, let alone for imposing fines or making the companies obey the rules. Right? So, this is a real, serious issue for younger competition authorities. That is why international organizations' and UNCTAD's, to be specific, structured framework is quite important and can help us with our daily business at our authorities.

I want to thank Ebru once again for her contribution. And now I would like to move our focus from international organizations to national authorities' level and I would like to give the floor to Nefla BEN ACHOUR from the Tunisian Competition Authority, to share their experiences at a national level.


**NEFLA BEN ACHOUR**

General Director and Case Handler,
Tunisian Competition Council

Thank you.

Good morning. At the beginning, I would like to thank all organizers and especially Rekabet Kurumu for this invitation, and for the opportunity to expose some aspects of the work of the Tunisian Competition Council.

The Tunisian Competition Council is a jurisdictional and consultative authority, founded as a commission in 1991, and transformed into a council in 1995. It is competent to advise the government on matters relating to the economic markets, to examine mergers and exemptions, to decide on anti-competitive practices such as illegal cartels, abuse of dominance and unilateral conduct.

In the Tunisian Act concerning Competition and the Prices, the Article 76 provides that in respect of the principles of reciprocity and within the framework of cooperation agreements, the Competition Council may, within the limits of its power and after notification to the Ministry of Trade, exchange with its foreign counterparts experience, information and documents related to the investigation of competition cases, provided that the information exchanged is kept confidential.

The Tunisian Competition Council is active in some international networks, like ICN, UNCTAD, OECD, and some regional networks: informal ones like African Forum of Competition, Euro-Mediterranean Forum of Competition and formal ones like the COMESA Competition Commission, about which I focused my presentation. I would like to note that in Tunisia, in 2016, we have created the first training in competition center for UNCTAD member countries.

The most important role of the regional regimes or institutions is to enforce cross-border competition within their jurisdictions through

initiating and enhancing cooperation among member states, assisting the adoption and harmonization of the competition law, assisting in establishing and strengthening domestic competition regimes, providing technical assistance through consultations and expertise, and enhancing detection and investigation of anti-competitive conduct. The end result is an enhanced regional integration, trade revitalization, liberalization and economic development within the regional market. Also, consumers benefit through increased consumer protection against the effects of anti-competitive conduct in the market.

So, regional competition regimes present a number of opportunities and challenges. The question is, how to enhance cooperation between the regional and domestic competition regimes? For example, the relation between Tunisia and the COMESA Competition Commission. The announcement of the Tunisia's accession to the COMESA, the Common Market for Eastern and Southern Africa, was made in 2017 and entered into force with the ratification of the agreement by the Assembly of People's Representatives of Tunisia in March 2019.

What is the COMESA? The Common Market for Eastern and Southern Africa was created in December 1994 to replace the former Preferential Trade Area from the early 1980s in eastern and southern Africa. It is a free-trade area with 21 member states. It was created to serve as an organization of free, independent, sovereign states that have agreed to cooperate in developing their natural and human resources for the good of all their citizens. In this context, the main focus of COMESA has been on the formation of a large economic and trade unit to overcome trade barriers faced by individual states.

The COMESA has established a number of institutions to support the private sector. That includes COMESA Regional Investment Agency, COMESA Business Council, and COMESA Competition Commission, created in 2003 by COMESA Competition Regulation to regulate competition in the common market, to promote and encourage competition by preventing restrictive business practices and other restrictions that deter the efficient operation of markets, thereby enhancing the welfare of the consumers in the common market and

protecting consumers against offensive conduct by market actors.

In Tunisia, we work about how we can cooperate with the COMESA Competition Commission. Some countries such as Egypt and Madagascar signed with this Commission a cooperation framework agreement for the implementation of competition rules and capacity building to cooperate closely concerning, in particular, merger notifications, exchange of information, coordination of actions, and encouragement of exchange and consultation between member states.

Our priority in the Tunisian Competition Council for hunting cross-border cases relating to the commiseration is to prepare and sign a cooperation framework agreement allowing the coordination, harmonization and implementation of legal texts. To ensure active cooperation between the two parties it is necessary for us to provide real and continuous technical assistance and capacity building, reliable exchange of information and expertise, a good coordination in activities such as investigation, execution and follow-up decisions. For this, the Tunisian Competition Council revised its organization chart and created new units for cooperation, communication and providing them with the necessary human and logistical resources. We should prepare a clear cooperation strategy for the short-, medium- and long-term, set target groupings and teams' priorities.

Finally, these are some web references like the website of the Tunisian Competition Council and the COMESA Competition Commission's website.

Thank you for your attention.

**RECEP GÜNDÜZ**

Thank you very much for your presentation, as well. It was a clarification of regional cooperation's importance with regard to competition issues.

So, considering the limited time, I will turn to Tan and ask a very specific question: we have seen the international framework,

structure, we have listened the details from Ebru and on regional cooperation from the Tunisian Competition Authority's perspective. But I would like to ask you how it applies in the daily lives, routines of competition agencies. What do we do? For example, as the Turkish Competition Authority, what did we achieve so far in terms of international cooperation with other authorities, and what were the shortcomings that we faced during this process? Thank you.

**OSMAN TAN ÇATALCALI**

Professional Coordinator,
Turkish Competition Authority

The Turkish Competition Authority's experience with international cooperation has just started a few years ago. We did not have many cooperation back then with any other jurisdictions. But for the last four-five years, we are talking with the other competition agencies six or seven times a year, exchanging information with them, positive or negative – sometimes we do not get an answer, sometimes we cannot give answers. There will be failures, of course. But still we are trying our best to improve international cooperation.

For example, one way of doing is signing Memorandum of Understandings. Last week, we signed one with the Azerbaijan Competition Agency. So, there are now 22 MoU agreements with different competition agencies. Also, we are invited to participate in free trade agreements by the Ministry of Trade, and in those agreements there is a competition chapter and we negotiate the competition chapter with other competition agencies. Last year we negotiated with Japan, for example. It is a simple text, but we need to change it according to the needs of the countries.

To be honest, the most effective way of cooperation for me is informal communication, like receiving e-mails from other agencies. For example, we received an e-mail from the North Macedonian Competition Agency,

but we could not respond to it because it was a very specific case. We had no experience regarding those specific agreements between television companies... television rights?... something like that.

So, this is what happens: they send an e-mail, I receive it and will convey it to the related department. I talk with the department. They either say we have experience; we can talk and give information. In that case I connect them, and they speak on the phone or exchange e-mails directly between our case-handlers and the case-handlers of the other authority. But if there is no experience for us, we do not want to provide false information, to be honest. For example, we received another information request from the Georgian Competition Agency – they are not here today, they were supposed to come but, you know, they could not make it. The Georgian Competition Agency requested the prices of drugs sold in Turkey. We do not have that information, so we asked the Ministry of Health and told them that we received an information request from the Georgian Competition Agency, that we thought the Ministry would have the information, and if they would be willing to share it with the Georgian Authority. After five months of intense telephone calling, we could not get an answer and we still do not have an answer, officially. But they said on the phone that they would not be able to give the pricing information. We did everything we could, believe me. Now they know my name, they know my phone number, sometimes they do not answer my calls.

Let me talk briefly about the last information request from the Hellenic Competition Authority. We received an information request from the President of the Hellenic Competition Authority, Mr. Ioannis Lianos. He asked whether the Turkish Competition Authority could send questionnaires to the firms operating in Turkey on their behalf. So, let me rephrase: the Hellenic Competition Authority wanted the Turkish Competition Authority to send questionnaires about a certain market in Turkey – let me not give you the name of the market, but you can learn this from your peers on the break. They said, "Can you do it?" We said we would try our best and the information that they wanted had some confidential parts, as well, or sensitive information may be a better way to put it. So, we had to ask the Ministry of Foreign Affairs if we could do it. They said, "Yes, you can do it, but the information request should come from the Ministry of Foreign Affairs of Greece." So, we talked with our

counterparts in the Hellenic Competition Authority, and told them they should send it through their Ministry of Foreign Affairs, which would then forward it to our Ministry of Foreign Affairs, which would then send it to us. And they did it. And we received information from our Ministry of Foreign Affairs, they said "Okay, you can do this." We found the addresses of the companies concerned. Some of the addresses were already on the information request, but some of the addresses had changed. So, we found the new ones and sent it to them. There were four companies. We told them that they should reply until March 10. But of course, it was voluntary. They could prefer not to send it. There was no legal obligation, there were no fines. So, we are excited about this opportunity and we will see what happens. We are still waiting for the results.

Thank you.

**RECEP GÜNDÜZ**

Thank you very much. It was very brief, indeed.

So, as you see, there are lots of obstacles in this process as well. First of all, we have to deal with sensitive information of undertakings which we have to protect. On the other hand, as Tan has summarized very successfully, there are also some bureaucratic obstacles in the process. You are receiving some kind of information request from some other, foreign countries, according to your jurisdiction and you have to interact the same process with your own jurisdiction. So, you have to take into account several things in this process. But in either case, it is worth trying. That is the spirit of being here as well.

But I think another important aspect of international cooperation is not only limited to sending notifications, which is a real problem for our cases most of the time. Right? For example, we had this case. There was this ongoing investigation in Turkey with regard to this company, but unfortunately, they did not have an office in Turkey. We had to send a notification to the Netherlands. It is not an easy task. There are some international regulations governing this

area, but in other cases we cannot force the company to receive the notification that you are sending. So, what happens is that you continue with your internal process, going all the way down to your final decision. There is this decision let us say, or there are some measures needed to be taken, but how are you going to inform the company? This is a big problem for us from time to time, and that is why international cooperation is useful, because this is a good example, I think. Because we could not have the chance to notify the company via official routes, but a personal contact at the Netherland Competition Authority was very useful for us to find the address and to send the notification to the officials of the company. This is important.

So, this is, I think, one aspect of international cooperation and how it can contribute to competition agencies at the national level, but another aspect of international cooperation that also works for companies is that we need to sometimes harmonize the way we understand how competition should work in certain markets, and maybe harmonize our understanding of mergers and acquisitions and even remedies. Why? Because consider that one company is active in several jurisdictions and each jurisdiction is putting different remedies for that company. This is not a business-friendly environment, right? So, we have to come to a common understanding. That is why international cooperation matters also.

It was a long closing speech for this session. If there are any contributions or questions, I can happily direct it or... Tan, has something to add, I think?

### OSMAN TAN ÇATALCALI

Is Ebru still on the line? Hello there. For international cooperation to be successful, I think we need a leader in this area, like an international organization: UNCTAD or OECD. So, we are waiting for expertise and if you can lead the way, it would be much easier for us to cooperate.

### EBRU GÖKÇE DESSEMOND

Thank you, Tan, for stressing the importance of the international organizations, in this case UNCTAD. Actually, I think already the process we have initiated to come up with this document, the Guiding Policies and Procedures, the process itself needs to have some connecting representatives from the competition authorities in a room to discuss how they can cooperate, what they would need, what the principles are... So, this process has helped, and then the forum we provide... UNCTAD provides an international forum. Actually, it is the only formal international forum which brings all the countries together in our annual intergovernmental meetings I mentioned and this year, the Conference. I think it is a very good opportunity for competition authorities to meet each other, to discuss the same issues, to present their challenges and to look for solutions and talk to other competition authorities, to network among themselves. I think this is the first step, because as I mentioned several times, mutual understanding and trust is crucial to international cooperation. You would only call somebody... As an initial contact, you would feel comfortable calling a colleague in an authority that you have met in a conference or you have already had some contact before. So, these kinds of forums that we provide, I think, opens the way for this informal contact and networking first, and then the authorities can engage in cooperation, take further steps. We are happy to lead.

Thank you.

**RECEP GÜNDÜZ**

Thank you very much. Hopefully, we have also contributed to that process at the regional level with this. So, if there are no other questions, I would like to thank you all for your patience at this seminar, and also, I would like to thank here to our esteemed speakers in this panel for their contribution. Thank you.

Dear participants, it is over. We are done. Thank you very much for participating, for being here. We are now closing the first Workshop of the Istanbul Competition Forum. We have hosted more than 20 colleagues from different national authorities here. The number was supposed to be higher but for the outbreak issue. But still, you are here, thank you very much especially for being here under these incredibly special circumstances. During these two days, I believe that we had quite fruitful discussions regarding the trending topics in the competition law agenda, including digitalization and every aspect of it, including international cooperation. I think for everyone this face-to-face and intimate discussion proved productive and conducive to sharing experiences and opinions.

This meeting also strengthened our hopes for the future of the ICF. We are ready to have one more workshop in the near future, but I think depending on the latest developments we will have to figure out where this outbreak is going first, maybe, before planning the next workshop, which was originally scheduled for June. But, in any case even if we do not have the chance to organize another workshop in June, we are very eager to organize our annual ICF meeting at the end of the year, because this is the promise that we have given in the first Conference. We are going to make it an institutionalized platform for this kind of information sharing, experience sharing, and a joint platform for reaching a common understanding on certain issues.

So, I would like to thank everyone who contributed to organizing this beautiful event, including UNCTAD and Ebru Gökçe DESSEMOND in person. Also, TİKA was an important contributor to this process. I would also like to thank especially my colleagues who worked very hard for organizing this event, in my department, in my Authority. There are several of them, but especially Osman Tan ÇATALCALI and Beyza. They are here with us today. I would like to thank them for organizing the context of this meeting. There are some other colleagues here: Mr. Akın and Mr. Alper. They also put lots of effort in arranging all the technical stuff here.

I would like to end my words with my sincere wishes to meet you again in the future ICF events that will reach many more people. I would like to also emphasize that we are open to any contributions and offers coming from you. We can cooperate on every aspect of the ICF, it is not only our organization. We want it to be your organization, as well. We can cooperate or arrange some meetings in other jurisdictions as well, or coordinate the organization of one specific session of the ICF in the coming months. I think, as I said, this hopefully contributed to several issues that we had questions in our minds. I would like to thank you once again for participating and coming together in Istanbul. I wish you a safe trip to your homes, and just be careful in the coming days.

Thank you very much.


# ICF WEBINAR 2020

2 JUNE 2020
15.00 — 17.00

Moderator:

**Recep GÜNDÜZ**
Head of External Relations and Competition Advocacy Department Turkish Competition Authority

Speakers:

**Ebru GÖKÇE DESSEMOND**
Legal Officer of UNCTAD

**Antonio CAPOBIANCO**
Acting Head of the OECD Competition Committee

**William KOVACIC**
Professor at George Washington University Law School

**Anatoly GOLOMOLZIN**
Deputy Head of FAS Russia

**Farrukh KARABAYEV**
Deputy Head of Antimonopoly Committee of the Republic of Uzbekistan

**Fathia HAMMED**
Second President of the Tunisian Competition Authority

**Katerina MANTZOU**
Economist and Head of the Hellenic Competition Authority Covid-19 Task Force

**Mimoza KODHELAJ**
Director of Albanian Competition Authority

**Nathalie KHALED**
UNESCWA

**RECEP GÜNDÜZ**
Head of External Relations and Competition Advocacy Department, Turkish Competition Authority

In his introductory remarks, Mr. Gündüz said that the focus of the webinar would be competition law and policy as well as challenges for competition authorities during and in the aftermath of Covid-19 crisis.

Highlights from his speech:

•At the beginning of the crisis, immediate concern for people and economies was to survive. Due to the strict measures taken by governments, GDPs have shrunk and unemployment increased.

•Competition agencies were inevitably affected by the results of the Covid-19 crisis. Information exchange agreements, cooperation agreements and mergers with competitiors, some of which were problematic, were brought before competition agencies. In addition, it may be predicted that failing firm arguments, crisis cartel defenses, problematic mergers and exemption cases may gain frequency in the future.

After explaining the current environment for competition law and policy briefly, Mr. Gündüz finished his speech by raising three questions:

• How should CAs deal with this?

• Will competition policy have a reduced scope?

• Will there be a tension between antitrust implementation and industrial policy?

**EBRU GÖKÇE DESSEMOND**
Legal Officer of UNCTAD

Ms. Dessemond was asked about her general assessment of competition policy during Covid-19 crisis. Her speech was mainly about how the outbreak affected markets, economies and competition authorities (CAs).

Highlights from her speech:

•With the crisis, we witnessed a disruption in supply chain in markets. Consumers are affected by the crisis at the most due to not only the fear of catching the virus but also unfair trading practices such as price gauging and false claims in advertising related to hygiene and essential consumer products. Many agencies received such complaints. Some agencies such as UK, France, Russia and Italy announced that they would monitor pricing behaviors. Other agencies such as France and Nigeria implemented price control for highly demanded products. Kenya and China competition authorities sanctioned retailers for engaging in excessive pricing.

• Meanwhile, many CAs temporarily allowed cooperation coordination agreements between competitors on sectors affected by the Covid-19 such as the retail sector. Some countries exempted certain sectors from antitrust rules such as the healthcare sector in South Africa and air transport in Norway. In the EU and the US, joint R&D in pharmaceutical sector for developing vaccine against Covid-19 were exempted from European competition rules.

• Covid-19 crisis tested the limits and powers of CAs: some CAs have sufficient powers to address price gauging in cooperation with consumer agencies while some others seek additional powers to deal formally with price gauging. In some jurisdictions, consumer protection laws allow dealing with price gauging. The outbreak showed that many agencies were not prepared to tackle with such disruption in markets and with challenges which they never faced before.

• Governments took measures like state aid and bailout packages provided to big firms like those in the airline industry. Also, economic measures are taken to support SMEs which had to close their business during lockdowns.

• We also witnessed the revival of interest in industrial policy after decades of advocating free market and laissez-faire economic policies. The implication of these for competition agencies may be that they might be under pressures to ease their law enforcement efforts and to relax their merger review. The environment of increasing protection already exists but it may strengthen after Covid-19 crisis.

Finally, Ms. Dessemond briefly talked about what UNCTAD did during these times. UNCTAD contacted CAs and collected information on measures taken and published documents about competition policy initiatives around the world, calling for action for enforcing competition law even in times of crisis. In addition, UNCTAD did a podcast and held two webinars, responded to Covid-19 related technical cooperation requests from four member countries and attended five international webinars around the world (All these documents are available on UNCTAD's website).

**ANTONIO CAPOBIANCO**

Acting Head of the OECD Competition Committee

Mr. Gündüz asked Mr. Capobianco about the reaction of OECD members to Covid-19 from competition policy perspective and his assessment about the current situation. Mr. Capobianco elaborated on the challenges that CAs faced during the crisis.

Highlights from his speech:

•OECD has been observing the responses of CAs around the world. Challenges are rising on different levels. First challenge is related to operation as the staff started to work remotely. Offices and courts closed down; thus, CAs have to face with the challenge of how to handle ongoing investigations in the time of lockdown. The responses to this challenge were different. Larger authorities have well equipped IT systems that are ready to use whereas smaller agencies have bigger problems.

• Second, authorities have started to think about focusing on priorities and how they can help overcoming the crisis and rebuilding economies. There are also activities in areas such as how to deal with cooperation between competitors. CAs provided guidance about what competitors can and cannot do.

• In general, authorities did not soften competition law and policy enforcement and hardcore restrictions remained under scrutiny. CAs started to consider how the business can respond to immediate needs and efficiencies specific to the crisis. In some cases, prices went up significantly. Some authorities thought that it was a normal reaction to the disruption in the market in the supply side and demand side. Some authorities are aware that some of the behavior may be strategic; companies might have abused the situation to increase prices. Agencies sent signals that such behavior will be under scrutiny. The discussion at this point is how to intervene to check on how businesses are pricing goods that are high in demand.

• Third area is merger control. The health crisis is turning into an economic crisis and in times of depression, markets have a natural tendency to concentration because firms having difficulty may leave the market. Thus, merger control is very important. There are three challenges in this area. First, how to assess mergers when uncertainty about future development of the market is higher. The second is related to failing firm defenses and firms in difficulty. Third is paradigm shift. Governments may take measures such as bailouts which may be restrictive of competition in the long run. Therefore, advocating competition-neutral measures is important.

Finally, Mr. Capobianco briefly mentioned OECD's activities during the pandemic. OECD has published policy notes which are available on OECD's website, and organized webinars.

**WILLIAM KOVACIC**

Professor at George Washington University Law School

Mr. Kovacic talked about the possible beneficial results of the crisis for CAs and he suggested that the crisis is a stress test for the systems of CAs to assess how well they worked.

Highlights from his speech:

• The crisis provided an opportunity to take stock of existing powers and operations and how they could be better in the future. There are three focal points, the first of which is the mandate. Are the substantial powers sufficient? Are partnerships with other public institutions adequate? If there are gaps in those areas, it is an opportunity to fix them. The second point is the adequacy of the organization of the agency regarding the mechanism for collecting and analyzing complaints from consumers or companies. Whether the data analysis team inside is adequate to do this in real time is a question in this regard. Another issue is giving quick advice to business decision makers since they can ask when or how they can cooperate. Third point is the strength of

the mechanism to communicate with public to identify their needs to identify how they can reach the agency and to assure that the agency is working. The last operational question is whether the organization is flexible enough to move people to areas with the most urgent need.

• Crisis inspires innovation. An agency can ask "What do we do that's new?" either in cooperation with other public institutions or in the working methodology of the agency.

• Regarding international cooperation, it is good to see what the counterparts are doing and how they are responding in real time. An agency may ask, "What did we learn from our counterparts around the world?" Discussions between agencies will be useful and informative.

• Another question to ask for the future is "What did we do that's new and do we want to keep on?" For instance, whether remote working could be done more broadly in some instances for the satisfaction of the employees.

Mr. Kovacic finished his speech by emphasizing that the crisis is an occasion for an agency to think about the mandate, the organization, the operations as well as the new things to keep on and the old things that worked well.

**ANATOLY GOLOMOLZIN**
Deputy Head of FAS Russia

Mr. Golomolzin talked about the practices and international cooperation activities of FAS Russia during Covid-19 crisis.

Highlights from his speech:

•The government of the Russian Federation is taking measures to combat the pandemic and to ensure sustainable development and to support citizens. The government's plan to overcome the economic consequences of the outbreak includes supporting population, supporting SME's and developing system-forming enterprises and infrastructures.

•Protection of competition is especially important when the economy is affected as a whole and markets operate in exceptional circumstances. To this end, FAS Russia daily monitors the prices in markets for important consumer goods and takes measures when signs of violation are detected. The agency holds meetings with major retail chains to discuss measures to reduce prices, conducts anti-cartel inspections and has a hotline for product prices on the website of the FAS Russia and its regional offices. The Agency also closely monitors the advertising market to prevent false information. FAS Russia also provides guidance to SMEs on various issues.

• The emergence of new sectors and significant changes in geographic distribution of goods and technologies have led to new characteristics and incentives for the activities of economic entities. For instance, distance education and work have increased the demand for digital services. Thus, FAS Russia monitors the load on mobile networks and changes in the prices of communication services. Previously established system has provided non-discriminatory conditions for the development of services and made a wide range of digital services available to consumers.

FAS Russia observes the experiences of foreign counterparts and global antimonopoly practices during the pandemic.

Mr. Golomolzin concluded his speech by giving information about the international meetings where FAS Russia has taken and will take a part in.

**FARRUKH KARABAYEV**
Deputy Head of Antimonopoly Committee of the Republic of Uzbekistan

Mr. Karabayev gave detailed information about the current activities and plans of the Antimonopoly Committee. He first explained the measures taken by the government against the pandemic, such as support for business, consumers and regions.

Highlights from his speech:

•The measures taken by the Antimonopoly Committee during the pandemic can be grouped under three titles: support for business, support for consumers and support for regions. The Committee formed information infrastructures to create a map for SMEs to stand against negative effects of the pandemic. For consumers, the Committee created a comprehensive advocacy program and resolved the complaints of consumers. Regarding regional support, the committee drafted programs for regional competition development and consumer welfare.

• The presentation included detailed figures about the actions of the Antimonopoly Committee including actions against price gauging, cancelling draft legal acts and local government decisions that have anticompetitive effects, tenders cancelled due to collusions and complaints resolved.

• Related to the pandemic, the committee analyzed the existing barriers and problems in the production of drugs and medical products. Besides, the committee daily monitors the supply of personal protective equipment.

Finally, Mr. Karabayev talked about the recent meeting with the President which was devoted to to competition. Important directions were agreed such as creating a new system of “smart” antitrust regulation and digital markets regulation and competition law enforcement tools, development of educational programs on competition and decrease of the extent of state intervention to economy. Mr. Karabayev emphasized that the Committee continues international cooperation and mentioned specifically two big projects with the World Bank and EBRD.

**FATHIA HAMMED and HABIB ESSID**
Second President of the Tunisian Competition Authority
General Director and Case Handler

Ms. Hammed talked about the effects of the pandemic on economy in Tunisia in general. She said that the disruption caused by the pandemic led to difficulties in production and distribution of essential products, which sometimes resulted in shortages because of increased demand and difficulties in distribution due to confinement measures. She told that all institutions and citizens were asked to apply the new procedures and they showed willingness to react on time. Regarding Tunisia Competition Council's activities, she emphasized that the Competition Council had an approach towards ensuring the continuity of supply of first need goods and protection of consumer welfare.

Mr. Essid provided detailed information about the activities of Tunisia Competition Council during the Covid-19 crisis.

Highlights from Mr. Essid's speech:

• During the lockdown period, the Council was asked for advisory opinions on many decrees mainly aiming to fight against monopolistic practices, predatory acts, to control the prices of highly demanded products and to allow temporary flexibility to mitigate the economic effects of Covid-19.

• The Council suggested and imposed heavier sanctions on producers and retailers engaged in excessive pricing of health-related products.

• Public administration had to slow down its work due to the measures taken. Official deadlines were suspended. As the Council is determinant to protect litigants' rights, legal deadlines such as those for merger control and those given to lawyers and representatives for defense responding to final research conclusions were suspended.

• Currently, the Council is reviewing whether full or partial relaxation of rules have adverse effects on industries, business and consumers by resulting in anticompetitive practices.

• The Council has announced that it is looking into anticompetitive activities in different sectors affected by Covid-19 and has already sent information requests to companies.

Mr. Essid concluded his speech by underlining that the crisis is an opportunity to develop international cooperation and Tunisia Competition Council is ready to share experience and best practices.

**KATERINA MANTZOU**

Economist and Head of the Hellenic Competition Authority Covid-19 Task Force

Mr. Gündüz asked Ms. Mantzou whether competition authorities should consider wider public interests rather than focusing on economic efficiency in competition law and enforcement. Ms. Mantzou started her speech by talking about the activities of Hellenic Competition Authority and the lessons learnt during the crisis. Then she answered the question asked before her presentation.

Highlights from her speech:

• Hellenic Competition Authority has been proactive and has launched ex-officio investigations into essential goods and services for final consumers. A task force was formed to provide guidance to companies on what is and is not allowed. The Authority was clear that they would intervene harshly in anticompetitive practices.

• In times of crisis, CAs should have tools and means to grant exemption to specific agreements when there should be cooperation in order to supply basic goods.

• Authorities should monitor such agreements so that they are temporary and implemented in a transparent way. They should not form a basis for hidden cooperation in the future.

• Regarding the public interest issues, first, Ms. Mantzou referred to

Article 35 and 37 of the EU Charter of Fundamental Rights. The Charter allows competition authorities to accommodate public interest principles into competition policy. One way is to grant exemptions under article 101(3) of TFEU in case the conditions set there are met, which can be used only ad hoc. Another way is to refer to Horizontal Block Exemption Regulations and corresponding Guidelines.

• To accommodate public interest issues in competition policy, there are three ways followed in the case law. First, regarding less tangible public interest issues, a rather intuitive balancing analysis is used. Public interest objectives outweigh the restriction of competition and they are seen as ancillary to regulatory objectives. When more tangible public interest issues are at stake, a cost-benefit analysis may be carried out under article 101(3) TFEU, where economic incentives are taken into account and economic efficiency is pursued. The third way is to take a more proactive approach and interpret Articles 101 and 102 in a way that does not jeopardize the public interests pursued.

• Before making an analysis of to what extent public interests can be accommodated in the competition policy or case law, the nature of the public interest should be seen. The Charter of Fundamental Rights refer to general public interest goals that should be addressed under other laws; however, such legislation may be considered as an umbrella for competition policy. There are other public policy concerns that can be accommodated through regulation. Some markets require regulation and regulation may lead to concentration. In this case, conditions may be set to enhance competition at different levels.

Ms. Mantzou finished her speech by noting that there are many facets of public interests such as competition, environment and health and there are institutions that deal with one or more public interest goals. Thus, a polycentric analysis is needed to accommodate those to decision making procedure. Besides, a trade-off must be made upfront and economic incentives have to be preserved in the medium and long term.

**MIMOZA KODHELAJ**
Director of Albanian Competition Authority

Ms. Kodhelaj talked about the Albanian Competition Authority's activities and the challenges they faced during the pandemic.

Highlights from her speech:

• The Albanian Competition Authority started to work remotely at the beginning of the pandemic and then worked in reduced time. All ongoing investigations except merger assessments, Competition Commission meetings and session hearings with undertakings under investigation were postponed. Complaints and other documentations were received electronically. Mergers and acquisitiond assessments continued.

• The Albanian Competition Authority published a Newsletter Covid-19 on its website describing what it did and looking through what other CAs were doing.

• The challenges during Covid-19 were: the increases in prices that raised doubts of abuse of dominant position or collusive behavior, the increase in complaints sent by consumers electronically, remote working which blocked the opportunity to make dawn raids and delayed preliminary inquiries and investigations.

• A temporary measure regarding pre-medical supplies was taken (relevant decisions are available on the Authority's website).

• The Albanian Competition Authority collaborated with other institutions and sent information requests. A task force for Covid-19 was created to check the price increases under the body of Inspectorate of Market Surveillance.

• The Albanian Competition Authority monitored the basic food basket market because the prices of those goods increased during the pandemic.

• During Covid-19, CAs should take into account consumer interest as well as protecting competition. It should also be noted that companies may act aggressively and raise prices; therefore, CAs should consider

whether such practices constitute abuse of dominance or collusive behavior. Mergers and acquisitions might increase because undertakings may be reorganizing.

At the end of her speech, Ms. Kodhelaj stressed that at these times collaboration is important and mentioned the international organizations where the Albanian Competition Authority is engaged in.

## OVERALL EVALUATIONS

Mr. Kovacic told that he found the case studies in the presentations very interesting and beneficial. His observations about the role of the competition law and policy as well as what the future holds for competition authorities in the post pandemic period are as follows:

- It is an opportunity for authorities to assess their experience. Some authorities may continue without additional powers. Some authorities can think about categories of reforms, think more carefully about how to organize their activities and how to work with other institutions. A possible use of this experience is to resort to the legislator and inform about the gaps and upgrades needed related to structure, resources, mandate, etc. showing the data and the real evidence collected.
- Data collection and data analysis capacity are important. Ability to collect data such as complaint statistics and analyze it in real time points to a desired enhancement, which is to treat data collection as a support for the entire institution in making presentations to the public and policy makers.
- CAs need a strategy about how they can respond to individual consumers showing that each of them may not be answered individually. While dealing with affected consumers and business, it is important to keep their expectations in the right place.
- Explaining what the agency is doing during the crisis, for instance by making the data collected available, provides benefits to the agency. First, this shows that the agency is responsive and using its ability to

respond to problems. Second, it is an opportunity to raise the profile and recognition of the agency. Third, it is a vivid way to make clear what the agency does.

- There are dangers caused by the crisis. First, the crisis may inspire protectionism. Individual jurisdictions may pursue self-sufficiency at the cost of international engagement. The perception that international supply chain is fragile tends to discourage international cooperation. There may be nationalist measures focusing on domestic resilience. Besides, if international trade is disrupted, rivalry will diminish. Governments spend a lot of money on subsidies and assistance programs. Public procurement systems are pumping money to the purchase of goods and services but those are attractive targets for corruption and collusion. Procurement authorities should be encouraged to integrate their functions with competition and consumer protection. Public procurement should provide the anticipated benefits at the minimum disruption of the competitive process.
- During the crisis, SMEs may be wiped out from the market; thus, good merger control is important. CAs should closely examine the markets.
- CAs may make a diagnosis about how the crisis affected and will affect competition in the country, economic units and case handlers may work together to this end. CAs should have their independent analysis about what happened to competition during the crisis, the challenges ahead and thoughts about enhancements needed.
- Taking collective experience and cooperation is valuable to address such crisis.
- Telling that he found the presentations very informative, Mr. Capobianco drew attention to two points from the lessons learned. One is the importance of a flexible system and flexibility of tools in adjusting enforcement to how markets will evolve. The second point is that CAs are providing more advice to the private sector. After the crisis, the private sector might appreciate more advice on specific initiatives.

Regarding the question whether we should integrate other policy objectives to competition enforcement or it should have a narrower scope; Mr. Capobianco told that competition authorities and policy makers are now thinking about whether CAs can contribute to achieving other policy objectives than a narrow efficiency objective.

Lastly, Mr. Capobianco shared his considerations about the role of the state in the framework of the possibility that the state may be engaged more in planning the economy. He emphasized that countries should not close themselves to national fortresses but rely on trade, diversify the supply chain so that in case of such crisis, the disruption will be less.

In her concluding remarks, Ms. Dessemond listed seven points for future perspectives:

1. Expectations that market concentration will increase and the dominant firms will be more dominant in the post Covid-19 period. Thus, CAs should keep up the good initiatives they started before the crisis.
2. Increase in merger activity.
3. Return for industrial debate and the need for more competition advocacy due to protectionist tendencies, implicating a greater role for CAs to advocate for pro-competitive measures and policies for achieving a level playing field, especially for SMEs.
4. The need for forward-looking competition law and policy. CAs can take this crisis as an opportunity to identify the gaps and to ask for more powers and tools.
5. The need for more cooperation with other public bodies, especially with consumer protection agencies.
6. The need for more international cooperation.
7. The need to support regional cooperation.
8. Ms. Dessemond concluded her final evaluations by announcing the international events that UNCTAD will organize in the near future.

## THE ROLE OF INTERNATIONAL COOPERATION DURING AND IN THE AFTERMATH OF COVID-19

Mr. Gündüz gave a brief information about the ICF's aim and role before giving the floor to Ms. Khaled. ICF is an initiative to enhance cooperation among competition authorities with the support of UNCTAD. Underlining that economic, institutional and policy challenges by the pandemic are similar everywhere, "We need the support and guidance of each other more than ever", said Mr. Gündüz. He added that as the pandemic would be reflected in competition cases, CAs would look for deeper forms of cooperation; especially when CAs handle common transactions.

**NATHALIE KHALED**
UNESCWA

Ms. Khaled talked about the importance of international cooperation and ESCWA's activities during the Covid-19 pandemic.

Highlights from her speech:

•As the Covid-19 pandemic continues to impact economies and societies, governments around the world are taking different approaches to deal with the crisis at the national level, however international cooperation unfortunately is weakening. (United Nations Global Compact - Global Cooperation for Crisis Response https://unglobalcompact.org/academy/global-cooperation-for-crisis-response)

•International cooperation is critically needed in three main areas: sharing information and research across borders, manufacturing of and access to health products, and financing measures to ensure that resources are equally distributed especially reaching to those in the less developed countries.

- International cooperation is needed to regulate trade across borders and ensure responsible production and fair competition and diverse global value chains.

- Governments around the world should exchange information, data, and research results as quickly as possible to understand what upcoming measures the world should take in the fight with the global crisis. Also, this information sharing should play a major role in the next steps toward the attainment of the sustainable development goals as international cooperation is essential in formulating plans to help countries and communities rebuild their economies and societies.

Pointing out that UNESCWA started working from the start of the outbreak in supporting its member countries to address the impact of Covid-19 pandemic, Ms. Khaled gave detailed information about the steps taken during the pandemic. She concluded her speech by touching on the collaboration with OECD and UNCTAD on the joint initiative for improving competition, competition policy, and consumer behavior in the Arab region.

## CONCLUDING REMARKS

At the end of the webinar, Ms. Dessemond underlined the cooperation between UNESCWA, OECD and UNCTAD. Mr. Karabayev made an addition to the information about the current activities in Uzbekistan and said that they were designing non-regulatory public policy solutions for effective functioning of the product markets to create further conditions for SMEs. Ms. Mantzou referred to Mr. Kovacic's presentation and told that they made use of data analytics, sent electronic surveys to companies to observe prices and had an expert to watch the trend of the prices during the crisis. She added that they were strengthening their tools for data collection and analysis.

Mr. Gündüz concluded the webinar by extending his thanks to the participants and expressing his hope to find new specific topics to continue international cooperation efforts.


# ICF ANNUAL WEBINAR 2020

15-16 DECEMBER 2020

| HISTORY | SUBJECT |
|---|---|
| **15.12.2020**<br><br>**08.00 Washington DC, USA**<br><br>**14 .00 Geneva, Switzerland**<br>**15.00 Bucharest, Romania**<br><br>**16.00 Istanbul Turkey**<br><br>**17.00 Baku, Azerbaijan**<br><br>**18.00 Islamabad, Pakistan** | **Day 1**<br>**"Competition Issues in Digital Markets"**<br>**Opening Speech**<br>• **Birol KÜLE,** President, Turkish Competition Authority<br>• **Ruhsar PEKCAN,** Minister of Trade<br>**Keynote Speech**<br>• **Lina KHAN, Associate Professor of Law, Columbia Law School**<br>**Moderator:**<br>• **Meltem BAĞIŞ AKKAYA,** Acting Head of External Relations and Advocacy Department, Turkish Competition Authority<br>**Speakers:**<br>• **Teresa Moreira,** Head, Competition and Consumer Branch, UNCTAD<br>• **Bogdan M. CHIRITOIU,** President, Romanian Competition Council<br>• **Driss GUERRAOUI,** President, Competition Council of Morocco<br>• **Elena ZAEVA,** Department Head, Department for Regulation of Telecommunications and Information Technology-Federal Antimonopoly Service of the Russian Federation<br>• **Prof. Juliana LATIFI,** Chairwoman, Albanian Competition Authority<br>• **Ahmed QADIR,** Director General, Competition Commission of Pakistan<br>• **Ridha Ben MAHMOUD,** President, Tunisian Competition Council<br>• **Shahin NAGIYEV,** Head, Azerbaijan State Service for Antimonopoly Policy and Consumer |
| **16.12.2020**<br><br>**13.00 Geneva, Switzerland**<br><br>**15.00 Istanbul, Turkey**<br><br>**17.00 Tashkent, Uzbekistan**<br><br>•<br><br>**07.00 Salt Lake City, USA**<br><br>**15.00 Geneva, Switzerland**<br><br>**17.00 Istanbul, Turkey** | **"Competition Issues in Labor Markets" and Competition Enforcement in Times of Covid 19"**<br>**Day 2**<br>**Session 1 Competition Enforcement in Times of Covid 19**<br>**Moderator:**<br>• **Faik Metin TİRYAKİ,** Vice President, Turkish Competition Authority<br>• **Ayşe ERGEZEN,** Board Member, Turkish Competition Authority<br>• **Ebru GÖKÇE DESSEMOND,** Legal Officer, Competition and Consumer Policies Branch, UNCTAD<br>• **Farrukh KARABAYEV,** Deputy Head, Antimonopoly Committee of the Republic of Uzbekistan<br>• **Kübra Erman KARACA,** President, TÜBİSAD (Information and Communications Association)<br>• **Valon PRESTRESHI,** President, Kosovo Competition Authority<br>**Session 2 Competition Issues in Labor Markets**<br>**Moderator:**<br>• **Ebru GÖKÇE DESSEMOND,** Legal Officer, Competition and Consumer Policies Branch, UNCTAD<br>**Speakers:**<br>• **Alberto HEIMLER,** Head of Working Party No 2, OECD<br>• **Marshall STEINBAUM,** Assistant Professor, University of UTAH<br>• **Meltem BAĞIŞ AKKAYA,** Acting Head of External Relations and Competition Advocacy Department, Turkish Competition Authority |


# Opening Speeches

**Birol KÜLE**
President, Turkish Competition Authority

**Ruhsar PEKCAN**
Minister of Trade

# Keynote Speech

**Lina KHAN**
Associate Professor of Law, Columbia Law School

**MELTEM BAĞIŞ AKKAYA**
Acting Head of External Relations and Competition Advocacy Department, Turkish Competition Authority

Good morning, good afternoon, good evening, Madam Minister, Mister Chairman, honorable representatives of competition authorities, UNCTAD and OECD, distinguished speakers and dear colleagues, it is my pleasure to welcome you all to İstanbul Competition Forum 2020, a truly unique platform for sharing ideas, experiences and enhancing mutual understanding and cooperation. Thank you for being online this morning and this afternoon. We would like to extend our sincere thanks to Madam Minister, Ms. Ruhsar Pekcan for not declining our invitation despite her hectic schedule.

As you all know, ICF provides us an opportunity to get in touch with our counterparts from other jurisdictions, share ideas and learn from each other. In this context, ICF aims at addressing hot topics of competition law and policy from both practical and theoretical perspectives. Unfortunately this year ICF is designed as an online event due to travel restrictions. In upcoming years we hope that we will meet in person just like we did last year in the first ICF. Before moving on to the keynote speech and the agency enforcement panel on competition issues in digital markets, now let me invite the Chairman of Turkish Competition Authority Mr. Birol Küle for the first opening speech.

**BİROL KÜLE**
President, Turkish Competition Authority

Madam Minister, dear colleagues and shareholders, first of all, I would like to say that I am very pleased to host our distinguished speakers who will present their ideas and experiences in Istanbul Competition Forum, which we have designed and organized for the second time with UNCTAD, to steer both regional and global competition law discussions.

This year we have designed our Forum around three main issues, each of which may be discussed for one week: the effects of digitalization on markets and economies, competition issues in labor markets and of course competition law enforcement during the times of Covid-19. The need for reforms in competition policy was recognized by all shareholders before Covid-19. However, this unprecedented health crisis has reminded us, once more time, how important the capacity of our authorities, our rules and of us, the enforcers, to respond to continuous crisis and pressures. In this period, markets are now characterized as being complicated and the boundaries between the protection of consumers and the protection of competition have blurred and well known prescriptions and existing arguments are insufficient, competition authorities are being reborn. As a matter of fact, crises are blessings. They accelerate reforms and create opportunities. We, as competition authorities, have to intensify our efforts and work for consumers so that they can have truly fair markets. When we look at global developments, the best evidence for the need to reform is that all competition authorities and the academia are beginning to attach importance to many intervention tools, especially excessive pricing, that are doubted before.

Distinguished participants, as you will agree, digitalization started with big words but is now disappointing. Today, almost all competition authorities have digitalization in their agenda. Unfortunately, we are witnessing that incumbent companies, each of which was a story of innovation, are now following strategies to eliminate innovation. On the

other hand, competition infringements are not limited to markets for goods and services. Consumer welfare has been harmed twice because of monopsony and cartelization in labor markets in recent years. The Covid period, when we undeniably observe inequalities and the gap in the connection between morality, economics and law, has accentuated those issues. We, as competition authorities, have to reflect our reforms to our enforcement quickly on paper as well as mentally and actually. In this context, we are responding to those issues, focusing on consumer welfare with new theories of harm, new rules, new sanctions, better arguments and of course better decisions to those related issues.

Although technology and society are indispensible to each other, it is necessary that technology should have a structure recovering inequalities not intensifying them. Platforms should act as a part of innovation competition but not as actors growing excessively by neutralizing or buying out potential competitors. It is necessary to ensure that consumers and entrepreneurs are not dependent on undertakings but benefit from the market order in every sense.

Esteemed guests, I would like to conclude by quoting from Johns Stuart Mill. Mill asked whether we would be happier if all reforms - technical, economic, environmental, etc. - were made. My answer is that as market order and democracy are each per se reforms, reform and progress will continue as long as human intelligence and skills exist. However, today we are very far from asking Mill's question unfortunately because markets are facing excessive consolidation and digital dependency and consumers are rapidly being deprived of access to the market which will increase their welfare in every sense.

I would like to extend my gratitude for joining us today to all our shareholders who make invaluable contributions with their ideas and criticisms in our work as the institutions in the center of political economy. I sincerely hope that the outcomes of our Forum will provide guidance for solving the issues. I wish you happy and healthy days.

**MELTEM BAĞIŞ AKKAYA**

Thank you Mr. Chairman. Now, I am honored to invite Ms. Ruhsar Pekcan, Madam Minister of Trade for her opening remarks. Madam Minister, you have the floor.

**RUHSAR PEKCAN**

Minister of Trade

President of the Competition Authority, esteemed participants, as the Minister of Trade of the Republic of Turkey, I welcome all participants to the Istanbul Competition Forum. It is a great pleasure for me to address such a distinguished group, including competition authority executives, professionals, academics, and practitioners. I am also happy that the Istanbul Competition Forum is being organized for the second time by the Turkish Competition Authority with the active participation of UNCTAD. I think this Forum is a very beneficial event, since it will provide an opportunity for sharing ideas and best practices among competition authorities from different countries. Without doubt, such opportunities of critical reflection on competition law enforcement towards efficient markets are very valuable for both companies and consumers.

As you know, the Forum will address the issues of 'digitalization', 'labor markets' and 'antitrust enforcement during the Covid-19 pandemic'. Especially the issue of digitalization is one of the most significant factors that affect today's international economy and trade environment, as Mr. Chairman also highlighted. Digitalization has changed many aspects of our lives for the better. At the same time, it has posed many new challenges that we have to discuss and understand. Competition authorities have to face with new issues to be regulated and analyzed. In this framework, we should continue considering thoroughly what

digitalization has brought and will bring in the future.

On the other hand, competition in labor markets, another focus of the Forum, is crucial with respect to ensuring sustainable growth and dealing with income inequalities. The discussions on increasing market power of firms in labor markets are beneficial, not only for antitrust purposes, but also for the welfare of our citizens.

Beside those issues, given the current international environment, any discussion without examining the effects of the current pandemic would be incomplete and incoherent in all aspects. Indeed, there have been important shocks on both demand and supply side due to the pandemic.

During these extraordinary times, it is especially important for competition authorities to continue working on identifying competition issues and make sure markets operate as efficiently as possible.

Within this framework, I believe that all sessions of the Istanbul Competition Forum will provide an opportunity to exchange valuable views and to gain new perspectives in response to recent challenges. I hope we will continue our dialogue and cooperation in the face of such challenges in the future. I wish you a fruitful Forum and thank you for your participation and contributions. I wish you a healthy and happy day. Thank you.

**MELTEM BAĞIŞ AKKAYA**

Thank you Madam Minister. We will continue with our keynote speech by Professor Lina Khan. Professor Lina Khan teaches antitrust law at Columbia University. Her work has been published by top law journals. The New York Times describes her scholarship "as having reframed decades of monopoly law". Politico calls her "a leader of new school of antitrust thought". Her article Amazon's Antitrust Paradox was awarded 2018 Antitrust Writing Award for "Best Academic Unilateral Conduct Article". She is graduated from Yale Law School. Professor, I would like to express my gratitude to you for the opportunity to have you today. The floor is yours.

**LINA KHAN**
Associate Professor of Law,
Columbia Law School

Great. Thank you so much for having me. It is a real honor to be able to join you for this event. It is a remarkable time for discussing competition in digital markets. Last week we saw the US Government and 46 states sued Facebook for monopoly maintenance and illegal acquisitions. This was the most significant antitrust action in the United States since the Microsoft case in 1998. Today the European Commission is expected to reveal its Digital Services Act, set of policies for the digital sector. Just last month, I understand Turkey concluded its third enforcement action against Google. I think these enforcement actions and policy efforts reveal a striking shift in public understanding for Amazon, Apple, Facebook and Google as well as growing learning by antitrust officials and policy makers. With the the time I have I think I would briefly share the overview of the recent congressional investigation in the United States and then share a few thoughts on recommendations for areas of focus going forward.

The House of Antitrust Committee, which I had the honor of serving as a counsel, spent 18 months investigating Apple, Amazon, Facebook and Google. The final report identifies a framework for the conduct of these companies. Noting that while each of these firms differs in important ways, they have different business models, studying their business practices revealed that they have common set of acts. First, these companies are gatekeepers. They control access, the key channels of distribution, which gives them enormous power to set the terms of commerce. There are certain commonalities at how these gatekeepers have used their power.

There are three areas focused. First, they engaged in extortion, exploitation. The second is they engaged in maintenance of their power. The third is they engaged in extension of their market power. First, extortion and exploitation. Think that these firms wielded their gatekeeper power by charging extortionate fees, by imposing oppressive

contractual terms and by extracting valuable data from individuals and businesses that are depending on them. So once a platform becomes dominant and is injuring its gatekeeper position, it is able to significantly hike fees that third party businesses, partners are forced to pay. Google Maps, just one example, after became dominant and acquired ways eliminating its main competitor was able to hike fees for developers by over 14 %. We have a situation because there is no competitor discipline, the gatekeeper is able to charge extortionate fees. They are also able to impose oppressive contractual terms. So in the US, what we've seen is the use of something known as forced arbitration clauses, which basically force business partners to surrender their rights to bring legal cases and the platforms have been able to impose these on their trading partners because they have so much bargaining leverage. The key being here is that dependent trading partners will not agree to these increasing fees or degraded services but the platforms use their gatekeeper power to engage in extortionate conduct.

Second, each of these platforms has used their gatekeeper power in a way that they maintain their monopoly position. So by controlling the key infrastructure, on which digital commerce and communication is done, these gatekeepers are able to surveille other businesses to identify potential rivals and then they use this surveillance data to ultimately buy out, copy or cut off competitors. Facebook famously used the data to track which rival apps were diverting attention from Facebook and then Facebook would use these data to select and buy out competitors or cut them off from Facebook's network. In total, those four platforms made over 700 acquisitions over the last two decades. This has been the key strategy they relied on to maintain their dominance and some of those transactions were defensive actions. They were trying to protect their power from emerging competitors. The case that the United States filed last week against Facebook is focused on the way which Facebook was able to use its gatekeeper position and the surveillance data that this position gave access to maintain its monopoly to buy out its competitors.

The last category is that these firms used their gatekeeper power to further entrench and expand their dominance. Although these platforms enjoy their gatekeeper power in a particular market, we have been seeing how they are engaging in a set of business practices to extend

their power from their primary market to secondary markets. These are practices like tying, predatory pricing, or other types of exclusionary conduct. The key being is that the dominant platform can exploit its existing power to gain power in adjacent markets. One example we encountered while we were investigating these platforms is that these platforms often integrate across markets by using their dominance in one market as the leverage in negotiations in a totally unrelated line of business. So we have heard from businesses that were negotiating with Amazon in voice assistant market. Amazon is not necessarily dominant. Amazon would try to get its way by saying "OK, if you don't surrender to our terms, we will get you out from our retail platform. This shows how Amazon is able to use its dominance in the online retail market to gain a favorable position even in markets where Amazon is not yet dominant. So, the vast majority of the House's findings fell into one of these categories. Our report then is concluded by making a set of recommendations which included significantly revamping antitrust laws and antitrust enforcement in the United States as well as adopting ex-ante rules including non discrimination and line of business restrictions.

Looking forward, where do we need to focus? I think there are three particular areas we need to keep in mind. The first is that we need to be attentive to the markets where the platforms' dominance is still emerging. So we know from experience that for platform businesses the most dangerous moment is when the underlying platform technology is evolving as this is the moment when the incumbent platform is most vulnerable to being disintermediated by new firms. For example, when internet usage was shifting from desktop to mobile, that is one example, Google and Facebook engaged in a variety of anticompetitive tactics designed to maintain the monopoly they achieved in the desktop when the traffic also moved to mobile services. Similarly today, as commerce and business activity are shifting from mobile to voice assistance and from local storage to cloud, some of these dominant firms are again engaging in tactics designed to maintain their monopolies. I think it will be critical for enforcers to be vigilant and take swift action in any sign of anticompetitive practice in these markets, voice assistance, cloud computing. I think enforcement activity that is backwards looking designed to remedy monopolization in markets like online search and

online commerce and social network and enforcement activity that is also forward looking namely that will prevent monopolization in emerging technologies to begin with will be critical.

Second, I think we need to keep an open mind about methodologies and honestly grapple with the ways which the exclusive dominance of industrial organization economics and antitrust has failed us. I think it is clear from looking at the last two decades of enforcement in the United States, traditional antitrust models have not serviced well. Specifically these heavy models have missed the reality how market power is a must of exercise in the digital age. What we need is a more methodological pluralism. We should use industrial organization economics where it is useful but we also need to make room for other economics like labor economics, public finance economics and macroeconomics. We also should be deriving from greater range of disciplines including accounting, financial analysis and also making use of technologists and their industry expertise which will also provide important land for assessing market power. Each methodology has its blind spot and we need to be ensuring that we are using an extensive tool kit in favor of greater record in empirical learning.

Lastly, I will say that break ups need to be on the table. I think our global experience for the remedies over the last decade has shown that monetary penalties alone are not guaranteeing to work at least unless they are quite sizeable. Otherwise, these firms which are sitting on huge piles of cash treat these monetary fines just as a cost of business. This is especially true when their underlying conduct is designed to amass data in ways that are violating privacy because often times value of this data to these firms even if that value is law breaking, is going to be worth more than any monetary penalty. We've also seen that remedies when enforcers allow market power to stay intact and just ask the company not to use that market power in particular ways, those kind of remedies also have been extremely difficult for enforcers to administer and oversee. Often times these firms are able to engage in arbitrary strategies. So in theory, on paper they are not engaged in the underlying conduct but they are still violating the spirit of the conduct remedies. I'll say break ups and line of business restrictions and structural separations in the United States have traditionally been very key tool

for regulating dominant intermediaries whether the railroads, whether telecom, communications firms, whether dominant banks. There's been a recognition in the United States that when you have these dominant intermediaries they are playing such a critical role for the rest of the economy that there are certain rules and regulations that apply to them that may be more restrictive than what we apply to other firms. I think line of business restrictions which can eliminate conflicts of interest and prevent these firms from using their infrastructure in ways that are disfavoring other businesses that are depending on them will be a really important step-forward.

Lastly, I note that these are extremely powerful firms. They enjoy economic power, with economic power of course comes political power. I think we are going to see an enormous amount of backlash continue in the coming years. These firms are going to continue try to use their economic power in political ways to try to affect political officials and try to affect decisions that really should instead be left to our democracy and people. I recommend you for taking this issue seriously and I think it will take important courage and more power to ensure that decisions and rules about the digital economy are made by the people and in ways that ensure these markets are working for all of us and not just being set in ways that are enriching these platforms at the expense of everyone else. Thank you so much again. It is a real pleasure to be here.


# Competition Issues in Digital Markets

15 DECEMBER 2020

08.00 Washington, USA
14.00 Geneva, Switzerland
15.00 Bucharest, Romania
16.00 Istanbul, Turkey
17.00 Baku, Azerbaijan
18.00 Islamabad, Pakistan

**Moderator:**

**Meltem BAĞIŞ AKKAYA**
Acting Head of External Relations and Competition Advocacy Department, Turkish Competition Authority

**Speakers:**

**Teresa MOREIRA**
Head, Competition and Consumer Policies Branch UNCTAD

**Bogdan M. CHIRITOIU**
President, Romanian Competition Council

**Driss GUERRAOUI**
President, Competition Council of Morocco

**Elena ZAEVA**
Department Head, Department for Regulation of Telecommunications and Information Technology - Federal Antimonopoly Service of the Russian Federation

**Prof. Juliana LATIFI**
Chairwoman, Albanian Competition Authority

**Ahmed QADIR**
Director General, Competition Commission of Pakistan

**Ridha Ben MAHMOUD**
President, Tunisian Competition Council

**Shahin NAGIYEV**
Head, Azerbaijan State Service for Antimonopoly Policy and Consumer Rights Protection under Ministry of Economy

**MELTEM BAĞIŞ AKKAYA**
Acting Head of External Relations and Competition Advocacy Department

Thank you Professor Khan for your comprehensive and valuable contribution. Now let us start the panel discussion. In this session, we will discuss special features of digital markets and proactive mechanisms that can be enforced by competition authorities.

As you all know, digital markets pose unique challenges to competition authorities around the world due to existence of platform based business models, network effects, multi-sided markets and economies of scale. The rapid rate of technological innovation in digital markets paves the way for market disruption to new entrance and new products to the benefit of consumers. Thus, encouraging and facilitating innovation through new entry may be one of the most important responsibilities of competition authorities with respect to digital markets. Along the same line, in digital markets concentrations are high compared to conventional markets. This is in part due to economic features of these markets such as first mover and product development advantages from data accumulation. However, it may be the result of deliberate strategies to retain the leadership by acquiring rivals and leveraging dominance in some areas to exclude competitors as Professor Khan already mentioned. That's why in digital markets a proactive approach from competition authorities is urgently needed. This is why we are working, all of us around the world, are working on market studies and we are trying to come up with new tools to deal with digital market issues. In this panel session, we will discuss the issues faced by competition authorities in these markets and possible proactive actions to prevent these problems.

Let us now move on to the panel. Since we have eight distinguished speakers today, I will ask our speakers to limit their talks by five minutes each please. And a quick reminder please mute your microphones while you are not speaking. Our first speaker is Ms. Teresa Moreira from UNCTAD. Ms. Moreira is serving as the Head of Competition and

Consumer Policies Branch of UNCTAD since 2016. She previously served as Consumer Director General of Portugal and as a member of Board of Portuguese Competition Authority when it was first established. She also served as Portugal's Director General and Deputy Director General for International Economic Relations and held senior positions at the Former Directorate General for Competition. She worked for 20 years as a teaching assistant at the Faculty of Law, University of Lisbon in the areas of international economic law and European law as well as European competition law and European economic law. Ms. Moreira you have the floor.

**TERESA MOREIRA**
Head, Competition and Consumer Policies Branch, UNCTAD

Good afternoon. Greetings from Geneva. First of all, allow me to thank the President of the Turkish Competition Authority and the whole team for one year of cooperation, and life so to speak, of the Istanbul Competition Forum, very interesting initiative launched by the Turkish Competition Authority in a timely manner in cooperation with UNCTAD.

I know that we don't have much time so I will try to briefly go over a number of slides which I hope you are now seeing. Just to say that well we know how the rise of digital economy has taken place. I just use some statistics from another UN sister agency which is the International Telecommunications Unit, which you are seeing now. I would like to also briefly show one of the latest data that we gather in UNCTAD Covid-19 issue on of course the rising fortunes of the leading technological companies that are already mentioned by our keynote speaker. To underline that not only digital platforms have a number of particular features as they raise specific competition concerns that were very appropriately already mentioned. So what can we do about especially from UNCTAD point of view with 195 member states gathers very useful knowledge and information from developed and developing countries.

Our analysis and our recommendations have been focusing on three main points that I'm sure all of you have heard us talk about and probably you would agree with. First the need for legal and policy frameworks that are adjusted to these new challenges, especially when considering the framework of competition authorities and their powers to act. I would underline the consideration of fair competition provisions that allow somehow to cover an area that is a little bit lacking in most competition legal frameworks. Then enforcement, a very important second point where we of course recommend for faster and bolder action namely making use of existing but also new tools, data analysis and interacting with other agencies where a number of important information is gathered that can be useful for the definition of commitments and remedies. And finally the regulation role as a complementary tool but increasingly necessary through ex-ante procompetitive measures that will provide for transparency, non-discrimination, treatment and fairness.

I would like to underline, since of course most of the following speakers are from partner developing countries, that for instance Germany recently this year adopted a draft law that provides more tools to the Bundeskartellamt, the German competition authority, to tackle effectively this abusive market behavior by big technology companies. And also I'd like to mention a recent regulation by the European Union that came into force last year to promote fairness and transparency for business users of online platforms as well as the upcoming new digital markets act which is expected to set new rules regarding the responsibility of digital platforms, also propose what we would consider ex-ante regulation rules because of course as Lina Khan mentioned they act as gatekeepers. Now you know that UNCTAD has this double mandate on competition and consumer policies and we are keen to make the most out of this synergy between these two policies to make online markets work for consumers and businesses worldwide. So we have been recommending in a consistent way a number of policy options that I believe very much encompass a number of references already made and probably others from the following speakers. I mention already some adaptation of competition tools, reform of merger control regimes, new regulation guidelines, ex-ante regulation, platform neutrality and frankly I would like to underline the last tool, the need for a holistic approach

including not only consumer policies but also data protection, electronic communications, financial regulation if necessary and of course to enhance international cooperation for which UNCTAD serves as a very good platform.

I'll just leave for reference our recent research on the issue and I would like to take this opportunity to thank my colleague Ms. Ebru Gökçe Dessemond for liaising with Turkish Competition Authority and she is actually the author of these two important researches. To remind all of you that next year's intergovernmental group of experts meeting of UNCTAD in July 2021, one of the substantive topics will be competition law and policy and regulation in the digital era. So we look forward to your contributions to this discussion. Thank you very much.

**MELTEM BAĞIŞ AKKAYA**

Thank you Ms. Moreira for your presentation and thank you for UNCTAD for the cooperation provided which made this forum happen for the second time. Thanks very much indeed. Now if Mr. Chiritoiu does not mind we would like to switch the places between Mr. Chiritoiu and Driss Guerraoui, the Chairman of Morocco Competition Council because Mr. Guerraoui has to leave early. So I give the floor to Chairman of the Competition Council of Morocco Mr. Guerraoui. Mr. Guerraoui was appointed as the Chairman of the Moroccan Competition Council in 2018. He obtained a state doctorate in economics from the University of Lyon and served as a visitor professor at several foreign universities. Mr. Guerraoui served at General Secretary of the Economic Social and Environmental Council for seven years. Mr. Guerraoui was an advisor to the Prime Minister from 1998 to 2011 and has many publications in economic and social field. He was elected as a member of the academy of sciences of Portugal. Mr. Chairman, you have the floor.

**DRISS GUERRAOUI**
President, Competition Council of Morocco

Thank you very much. Excellency, Ladies and Gentlemen, I want first to thank his Excellency the President Birol Küle for his kind invitation and to tell him how I am very happy to promote together a special partnership between our national authorities of competition.

In my speech I am going to talk about some findings, commerce challenges, some guidelines for the future and one conclusion. Considering the findings, first e-commerce is becoming an increasingly essential ingredient of international trade. The United Nations estimate that the value of trade worldwide is 60 billion dollars. This value, which is achieved by around four billion and 30 million cyber purchases, is in the guarding at four rapid acceleration including entry of new stakeholders from emerging economy to the market, strengthening dominant market position of already existing leaders, refinement of upstream and downstream segment of the field due to breakthrough the main attempts of digitalization and emergence and development of new generation of anticompetitive practices driven and intensified by complex management method and fueled by digital sophistication. The third finding is that apart from our countries and the regional group this development occurs because of a legal vacuum beyond any control of a binding legal framework of trade partners. In doing so there are essentially a set of national legal rules and practices as well as case laws that govern this type of commerce. However the lack of coordination between the level of institutions and stakeholders makes these rules scattered, fragmented and inconsistent. This happens while the multilateral moral improvement under the auspices of World Trade Organization is still at nearly stage and continues early a few countries.

As far as e-commerce structuring is concerned, b2b trade extent represents 85% of overall transactions whereas business to consumer extent represents 50%. Even if these estimations seem to experience a rapid improvement.

First guidance, it is noted that local commerce and large shopping hubs undergo a progressive destabilization in countries where e-commerce is becoming important thus affecting the demography of traditional commerce business and planning. And finally, this is the risk of growing trade digital dividend nationwide and worldwide in favor of new national and multinational digital platforms.

Considering our country even if 62% of Moroccans use the internet while 34% of the African population don't have access to it. Only 29% of Moroccans have a bank account which account for an average of 50% in Africa and 60 percent around the world. 68% of internet users in the European Union shopped online compared to an average of only 30% of African Users. In 2018, Morocco is ranked 81 among 152 countries stated by UNCTAD in terms of business to consumer electronic commerce index. The latter is measured by the number of individuals shopping online, the security of internet service and payment and delivery facility.

All these facts pose several challenges for our country. First challenge is the knowledge level. We have to know more what's the reality and what's the transformation and impact of e-commerce in our economy. A legal upgrade, e-governance including unified industrial guidance fighting anticompetitive practices, fiscal equality, consumer protection, personal data protection and management of risks produced by the banking system knowing that banks and accountants do not yet master e-commerce techniques to defend their consumers business better.

Another challenge is digital confidence. The access to defending e-commerce, job training and strategic challenges permitting to national digital security and national commercial sovereignty a digital power to have Morocco to achieve its economic ambition worldwide.

According to these considerations what are the guidelines for the future? First, strongly raising awareness to the strategic matter of e-commerce to accelerate the future economic development in my country. Second, developing a national vision of what is expected to do to promote this field. Third, drawing up a concerned national strategy shared by all stakeholders involving in e-commerce. This early awareness campaign will be translated into relevant appropriate public policy to promote e-commerce.

What is the conclusion according to this situation? Our country shouldn't be left behind. Therefore, national e-commerce operators much urgently predict the changes that the field will undergo to better understand the realities and transformation that prospectively affect markets which undergo. Second, to promote vital conditions to create essential technological and managerial short cuts to meet these objectives. This approach aims at safeguarding our country's economic, financial and digital sovereignty in this strategical field. It will also serve as impetus to launch commercial activities to boost national market and promote exchange with the rest of the world. Giving these facts, challenges and guidelines our competition council has had initiated a national debate which took place on April 3, 2019. It aims at analyzing the way Morocco can use in the context to ensure competitive capacity in e-commerce in line with its strategic objective and ambition. Thank you for your attention.

**MELTEM BAĞIŞ AKKAYA**

Thank you Mr. Chairman for providing us quite interesting noble and domestic data as well as the challenges you have encountered in Morocco. Thank you. Now I get back to Mr. Chiritoiu again. Thank you for your understanding Mr. Chiritoiu. Mr. Chiritoiu is the Romanian Competition Council Chairman. He's going to contribute to our panel discussion. Mr. Chairman serves as the President of the Romanian Competition Council since 2009. He has a PhD in economics and master's degree from LSE. He is a member of some of the most important Romanian and European think tanks. To give a name Romanian Society of Political Science, the Network of Institutes and Schools of Public Administration in Central and Eastern Europe, Romanian Academic Society. Dr. Chiritoiu is a lecturer on Economics and European Studies at the University of Bucharest. Mr. Chairman, the floor is yours.

**BOGDAN CHIRITOIU**
President, Romanian
Competition Council

Thank you very much first of all for the invitation to take part in this debate. Hopefully, the next one will allow us to have closer meetings maybe next year. We will have some of the meetings in the physical format not just online one. Again many thanks for the invitation to take part in this debate, to you to Turkish colleagues and other speakers.

I have a pretty long presentation so I'll just zip speedily. If of course anybody is interested, there will be follow-up questions or we could be engaged separately. Some of the themes that we had from Teresa or from Ms. Khan, from Chairman Guerraoui, some equals will be in my presentation.

First of all, as was being said, there is a lot of legislation being prepared at the EU level and we, the member states, will shape it, adapt it to our national realities. Most of this legislation is ex-ante, is giving powers to authorities to shape the digital markets ex-ante. It's new. It means that data perception in Europe and I think in US as we follow, that traditional competition tools are too slow for fast moving digital markets. That's why we complement our traditional ex-post tools with this new fancy ex-ante rules the drafts of which are going to be presented pretty soon by the European Commission. The one exception, I said most of them are ex-ante, is the new competition tool, the European Commission does not have the possibility to break up companies, to unmerge companies. Americans used to have it. They used to use it now they are trying to use it on Facebook. That's a tool that the commission feels the need to have it.

So far there has not been that much legislation. The only one that is already enforced is platform to business regulation which gives again ex-ante and gives some rules about the relationship between the

platforms and people who use them to sell to their clients. There is the one we already, we have closed the transposing in Romania to start implementing it. It can be in force this year so we have draft legislation in Romania to make it work. We, the Competition Authority, are going to be entrusted to make it work. As you might know, we had an election in Romania, once we have a functioning government in Romania, I think the legislation will be passed.

Also, we want to look at unfair competition, assessing generally the balance of power between large companies, non dominant large companies and smaller companies in their environment. It's the larger picture where I see these platform to business coming into. For me, platform to business is the digital version of unfair competition. Waiting for the legislation, preparing to enforce it, we have done a lot of studies on digitals. Since we have less time, I am not going into details. We looked at the way platforms work. We looked at e-commerce. We looked at the sharing economy and currently getting into more details about ride hailing services. We have just finished the big data platform study, the results of which are under public consultation. We have just finalized couple of weeks ago an abuse investigation against our largest domestic platform. We will close it with the European Commission. There is no coincidence that there may be many similarities between the investigation of the Commission in Google and the thing we've done in our investigation. I think it is interesting. It is one of the few investigations finalized in Europe. Also the fact that we combine relatively limited fine against the company with rather intrusive measures. Especially we wanted to make sure that we got the company to agree with a settlement. They accepted the fine and they accepted the measures imposed on them. They should separate their businesses. They will have a structural separation between their platform business and their direct sales business. Also, data generated from these businesses should be offered in an aggregated form to their sellers.

Finally, we decided that the need to emphasize digital markets has to have a structural form. We created a new task force inside the organization. It is not a completely different unit. It gets people from our

sectoral divisions. Why? Because we think that it doesn't make sense to completely separate digital from other markets because probably all markets are going to be digitalized up to some extent. As the European Commission say, there are two kinds of industries, ones that have been digitalized and the ones that are going to be digitalized. So we thought we need expertise in all industry sectors. People should focus on the digital but we should not isolate digital market analysis from the rest of industry analysis.

Next year, we are going to finish the big project on big data. It will give us tools to look especially bid rigging. I have hopes that when we process the database the government has, the government has a large database on public procurement. When we are going to use big data tools we get more suspicious behavior. We could have more bid rigging investigations.

I am going to say something about the telecom market. Let's think about a country like Romania or many countries present here. We are not US. It is not important. Of course, we want big digital companies not to abuse their dominant position. We want as much competition as possible. On the other hand, we want online trading. We want digitalization. So my concern is not just not to have bad behavior but also I want these industries strive in Romania. I want a higher penetration of digital tools. For this, I need a  well functioning internet. I want good penetration of internet. Romania has good speed and good prices. But I also want to make sure that we keep diversity, many number of supplies, as I said good penetration, good prices, so we have the infrastructure that can support digital services. I am concerned about abuse of digital players but I want them there. I don't want to shut door to them. And when the physical infrastructure for these industries strive in Romania. Thank you.

**MELTEM BAĞIŞ AKKAYA**

Thank you Mr. Chairman. Thank you for this frankly speaking. We all understand and admit that innovation is quite important in providing our societies with digital worlds. We all understand that all of the participant countries as well as the US and the European countries are making market inquiries in order to better understand what's going on in digital markets we are all at the dawn of redrafting our laws or we are at the dawn of whether or not to include other tools like the European Union has just worked on it, a new competition tool in the form of a market investigation. We seem to be at the same level whatever the development stages are. Thank you again.

Now, I move to the representative of Federal Antimonopoly Service of the Russian Federation Ms. Elena Zaeva. Ms. Zaeva graduated from Moscow State Institute of Fine Chemical Technology, major in Biotechnology and from the Academy of National Economy under the Government of the Russian Federation majoring in Marketing. She has been working in the antimonopoly bodies since 2000, starting her career as an expert at the Electric Power Industry Division of the Department of Regulation of Fuel and Energy Complex Transport and Communications, Ministry of Antimonopoly Policy of Russia. Since 2015 she has been serving as the Head of the Department for Regulation of Telecommunications and Information Technology of the Federal Antimonopoly Service of the Russian Federation. Ms. Zaeva, you have the floor.

**ELENA ZAEVA**
Department Head, Department for Regulation of Telecommunications and Information Technology - Federal Antimonopoly Service of the Russian Federation

Thank you. Thank you so much for the opportunity to participate in Istanbul Competition Forum. This opportunity is due to technologies.

My presentation is about access to digital markets. What is the difference between digital markets and traditional markets in terms of their functioning? First, digital markets are multilateral markets, large participants are trying to create digital ecosystems. Second, creation of systems is often implemented by binding digital goods and this can often be considered unfair practice. An interesting feature of digital markets is a new type of broader data. Data on consumer behavior, consumers' attention, data on processes, personal data and others. In this regard, this is a question about the limits of reasonableness of using such data.

I would like to tell you about the assessment of the reasonableness of access to the database which we conducted when considering a case against a job search aggregator headhunter.ru. As a rule, platform users fill at databases of information systems thereby creating the value of each platform. You can't apply a single approach to all platforms but you can note a number of characteristics that unite all digital platforms.

1. Digital platforms bring together so many participants that the data they create, collect, and process can create the platform's market power,
2. Digital platforms operate in multilateral commodity markets with cross-platform network effects,
3. Digital platforms require special promotion as they are subject to numerous effects and data can be used improperly.

In the headhunter case, we considered the activities of digital platforms that provide interaction between employers, job seekers and employment agencies. By posting personal data and CVs on the platforms, users fill the

databases. This makes the platforms attractive for potential employers and they will be able to find suitable candidates for the vacancies. The database becomes the main source of profit for platforms. They try to develop and fill it further as well as protect it from third party attacks. The FAS Russia found that platform's user agreement of headhunter contained prohibition for users of this platform from using third party software. At the same time headhunter blocked users for using third party software and offered users to switch to their own software products. This behavior leads to restriction of competition in the product market, software market for automated selection of personnel. So headhunter has issues related to the provision of access to the platform for third party developers. However, we took into account the need to protect the platform from unauthorized access, from unfair copying of data and took into account that any access must ensure the technical stability and performance of the platform.

Software interacts with the platform database via an API, application programming interface. At the same time, FAS Russia has established that the interaction of market participants using API tools is a good business practice which will allow the parties to control the process of obtaining the necessary information from the platform databases as well as to provide conditions for the proper and secure operation of databases.

This behavior is dictated by the commercial interests of platforms and by concerns about technologies and personal data of consumers since the platform doesn't control their processing by third parties. The issue of ensuring competition, the security of consumers' personal data becomes really important. According to FAS Russia this goal can be achieved including by opening platforms to access their database via API. At the same time the issue of developing API standards is a vast field as well as the issue of access conditions to such API remain open and should be discussed within all interested parties. Thank you for your attention.

**MELTEM BAĞIŞ AKKAYA**

Thank you for your presentation. Our next speaker is the Chairperson of Albanian Competition Authority Professor Juliana Latifi. Professor Latifi was elected as the chairperson of the Competition Authority in 2016. She has an extensive academic background as a professor of private law and commercial law including the author of a number of books and scientific articles both in Albania and internationally. Prof. Latifi has held the position of Dean of the Faculty of Business Law at Tirana Business University. Having a long career in the Albanian public administration the previous three years as the legal advisor to the parliamentary group of the socialist party Ms. Latifi also led one of the working groups within the legal reform in Albania in the framework of the approximation of Albanian legislation with that of the EU. Madame Chair the floor is yours.

**JULIANA LATIFI**
Chairwoman, Albanian Competition Authority

Thank you. It's a pleasure for me to join you in this forum and thank you very much for the President Küle to create a possibility to be part of this Forum. Bringing the Albania experience competition issues in digital economy, there has been a government approval "Digital Agenda - Crosscutting Strategy" for the period 2015-2020. I'll mention three main focus points of this strategy. First, to promote the electronic services for citizens, business and administration. Secondly, to use ICT in education to overcome the digital gap and educate the youth. In addition, job creation for young people who can be employed in Albania region in dual markets. Thirdly to consolidate the digital sector across the territory of Albania and respecting the principle of effective competition in the market.

During the last ten years the necessary legal framework was adopted in order to provide an appropriate environment for business communication, to promote the growth of broadband infrastructure, to promote the improvement and delivery of electronic services for businesses and the individual in the framework of e-government.

The competition issues in the digital economy are present in not only in the big economies but also in the small economy like Albania economy. I want to bring our experience during these years. Albanian Competition Authority has faced issues related to the digital economy and related sectors. First is the banking sector. An investigation was launched in the banking sector in 2018 and closed in November this year. From the analysis made in this sector, the Competition Authority concluded that this market in Albania has the characteristics of market with monopolistic tendencies with stable market shares in terms of loan and deposit portfolio. There are no barriers to entry but no new entrants in the market, transparent and homogeneous product. Banks have provided a long term relationship through the provision of related product and using loyalty of the customer to the bank. Providing services through plastic card and e-banking platforms has brought competitive advantage for banks which invest in expensive technical infrastructure especially ATM and POS by offering competitive rates for online transactions through the use of plastic card and e- banking. The analysis concluded that the banks don't apply transaction fees for services through this platform or where applicable, fees are lower than the fees applied at the bank premises. The use of electronic platforms has brought benefits for the consumers in the terms of geographical expansion of providing banking services in areas not covered by traditional banking services. Transactions are performed with low costs and consumers save time. However, the use of banking platform is a challenge for banks in Albania which in their expansions should take initiative for financial education of consumers on the advantages of using the electronic platform, creating more automatic financial ground and less dependence on physical cash.

The measures taken by the government for the situation created by Covid-19 significantly increased the use of e-banking platform, their download on mobile devices.

This is our experience in the banking sector. Another sector, another market under investigation during 2020 is the mobile telecommunication market. Albania has over 75% of internet user population and more than 95% of enterprises that have internet access. The national broadband development plan has defined as a vision the progress of infrastructure and the broadband services to gain access to electronic services in various fields as e-education, e- commerce, e-government to promote country's economic and social development. In Albania, in relation to mobile broadband there are mobile 3G and 4G internet services. 5G technology is the next step to offer better quality internet to consumers.

Based on the decision of the Competition Commission closed in August of this year on the closure of the investigation procedure in the retail market of mobile services approval of binding commitment in the form of condition and obligation for the companies that operate in this field, Vodafone Albania, Telecom Albania and Albetelecom, operators have commitment in the context increasing the possibility of access and more internet data on mobiles.

Another market, it was an analysis under investigation for two years. The decision was taken this year in the insurance market. The insurance market also presents issues related to digital economy and data exchange such as a purchase of insurance policies through application or exchange of information, sale of policies through integrated systems. The market of compulsory insurance of means of transport has been the object of continuous monitoring and investigations for restrictions of competition where there have been sanctions against companies that have violated the law on protection of competition as well as recommendations were given to the Financial Supervisory Authority to increase competition in this market. The competition decision taken in November requested from the insurance companies to apply the conditions and obligation in order that the exchange of information for the realization of joint calculations, there is no anticompetitive purpose. Furthermore, parties are forbidden to give information about any elements which may serve to damage competition in the market and the company that manages the system is forbidden from using algorithms which can predetermine sales and market shares.

I am bringing your attention to the cases that we succeeded to close this year, also the orders of importance for the digital economy. The Competition Authority will give more and more to high technology. Thank you.

**MELTEM BAĞIŞ AKKAYA**

Thank you Madame Chair for your valuable contribution which included a compilation of Albanian cases. Our next contributor is the Competition Commission of Pakistan. Madam Chair of the Competition Commission Ms. Rahad Hassan is appointed as the chairperson of the Competition Commission last July. She has over 25 years of experience in private and public sector. Unfortunately she can't make it today due to last minute engagements. Mr. Ahmet Qadir, Director General of the Competition Commission will replace her. Mr. Qadir you have the floor.

**AHMED QADIR**
Director General, Competition Commission of Pakistan

Thank you so much to all of our colleagues, especially UNCTAD and the Turkish Competition Authority. All the presentations that have done before let me just believe that regardless of where we are coming from and where we are looking on this planet, we are all in the pursuit of something fair and just for the sake of economic development. I just have a few slides. I would like to share with you. I'd like to take it forward from here.

Competition issues in digital markets, Pakistan's experience. Just quick look at the numbers. There are 169 million cellular subscribers. Our population is estimated 212 million. Around 40% of 3G/4G penetration and 40% broadband penetration, 80% teledensity, the access to internet grows an average of 23% every year. So given these numbers, Pakistan has been moving towards putting in a legal framework that encourages the digital markets

and digital concepts. The digital policy was released in 2017 to help move or accelerate digitalization ecosystem especially focusing on e-sectors such as agriculture, health, energy, e-commerce especially and justice and moving Pakistan towards artificial intelligence, FinTech regimes and in the long term robotics.

Last year in October 2019, the National e-Commerce Policy Framework was passed. That envisions empowering stakeholders with the reliable infrastructure to undertake e-commerce transactions and more importantly in order to allow and help SMEs and disadvantaged groups, disadvantaged in the sense of they are located in the areas that are very rural and they do not have access to big markets in major urban centers, to allow them to transact and acquire products and services at affordable prices. And the policy aims to promote a culture of e-commerce in the country that also looks at electronic business transactions especially in the financial sector.

Today's economic environment in Pakistan is quite different from what it was when the Commission started to work 13 years ago. Technology is different. Everything is happening on mobile phones. Marketing channels have shifted to Facebook, Instagram, Amazon and business models are also reflecting the change incorporating more of a digital aspect in how they operate.

Much of this is the issue but the growth of 3G and 4G telecom services that were launched in 2013 and 2014. Apps and algorithms are playing a substantive role in the market. Terminology such as multi-sided markets, platforms, sharing economy, now they are coming in, rather than moving from passwords and jargon, they are becoming substandard terminology these days. Although slowly, payment mechanisms are also reflecting the change. If you look at the figures of the last three or four years, we see e-commerce sales have really bounced especially this year because of Covid-19 because markets and shops were closed under lockdown restrictions. So a lot of business activities shifted to the online environment. Reflecting e-commerce sales increase, the digital payment mechanism also has seen an uptake. It is still very much driven by cash on delivery but we are seeing a change as moving towards branchless banking, mobile wallets and other electronic ways of transactions and

FinTech provided services.

So slowly and gradually change is happening. This change is not just related to business modes. For example the nature of competition itself is changing so banks are not only competing with other banks but telecom companies are providing similar services as banks. So who is the competitor now? Another bank or a telecom company? Ride sharing services are competing with established forms of transportation. Retail versus online competition. The new aspect of the collaborative economy in which the definition of consumer is changing. Implications for having sensible regulation, as President Chiritoiu said, you know we want to have tech companies we want the services that they provide but we do want them to be regulated carefully in a manner that allows consumer protection and competition issues not to be violated. So that's a critical challenge for Pakistan also.

In the Collaborative economy, there is a fluid definition of consumers. They both purchase and provide services. Thus, a consumer either could be a victim of competition or consumer protection violation or could be the cause. In this case you know how do you define an undertaking in ride-sharing? Or AirBnB. Does the individual fall under the normal definition of undertaking? These are the questions that Pakistan started to look at. How can business models and consumer protection regimes incorporate the collaborative economy? Where does the responsibility lie? What are the best practices that we can refer to? How does international cooperation help Pakistan and other countries adapt to these changes?

Challenges for the Competition Commission of Pakistan. There are more transactions moving online. We are seeing data driven mergers and acquisitions and in such acquisitions and mergers what is the relevant market? Is it the market for attention, is it the market for consumer data, etc. The existing legal framework does not really look at and incorporate the changing virtual and online market places and the role they play in people's lives. The role of tech giants, Apple Facebook, Amazon, Google. These are all global giants and they have substantial footprint in Pakistan also. Recent antitrust action against Facebook and Google in America and in Europe, of course they will have substantial and serious local implication as to how these companies operate in Pakistan. We have

been monitoring and observing what's happening internationally and the guidelines as to how regulation will be driven from the findings of western jurisdictions.

Competition concerns. Now, we have competition law that is aimed at more physical competition but is it really designed to look at things that happen with clicks and online portals and platforms? Competitors are moving online, will this allow sensitive information to be exchanged between competitors? For example we have heard about price comparison websites and algorithms can reflect prices and change and adapt according to these. That could be cartel behavior but it is very difficult to cover what happens automatically. In terms of abuse of dominance, can individual companies be excluded from virtual marketplaces? Can concentration of buyer or seller power result in competition distortion, sort of exclusionary or exploitive conduct?

In 2017, the EU sector study on e-commerce was quite informative as it gives us some ideas as to some of the things that we should look at. The study found that algorithms help more than half of competitors track their prices vis a vis other e-commerce undertakings. Almost 80% of retailers track and adjust their own prices with those of their competitors. That's pretty much a lot of market facilitation or capture or you know sort of collusive behavior happening all automatically and happening in real time.

Second, manufacturers can control online distribution of their products and some of this control can border on anticompetitive conduct so when does it require rule of reason and when is it per se violation of competition law? These are things that have to be evaluated very very carefully.

Abuse of dominance against consumers can happen much more easily in digital markets. For example based on geo-location or the nature of individual buyers and big data collected on purchase histories that might result in different prices according to different buyers based on the information that these big tech companies and e-commerce platforms have acquired. They can use it to distort or impose unfair terms and conditions on different categories of buyers. There is an interesting case from 2012. One of the online travel websites, I think it was charging

higher prices to those who log into the website using Mac computers because Mac computer users have much higher level of income than those who use windows. That was an interesting form of discrimination in 2012.

Pakistan also has seen a rising number of consumer protection concerns especially this year because of Covid-19. We have four provinces; they have different consumer protection laws. But despite these provincial laws, consumers do not know their rights in terms of consumer protection. These rights all differ in these acts and laws we have.

Process of getting relief from a consumer complaint is very time consuming and expensive in terms of taking to court and legal recourse, etc. The critical shortage or lack is that in Pakistan there is no federal agency that is designated for consumer protection. And this is something we are trying to lobby our government for. We feel that a thorough revamp of consumer protection laws is very very important now to encompass the accruing role of digital economy especially, as in 2020 we have seen a lot of transactions move online.

Consumer protection powers of the Commission are beyond looking at several market practices. Any misrepresentation of information that can result in commercial transaction. Part of that includes looking at intellectual property infringements of false use of trademarks, labeling or packaging that can encourage wrong transactions. The Commission has acted in the past and continues to do so.

Coming to data concerns, I think Pakistan is no different to the concept of data protection. Now with a lot of people shifting to online due to Covid, personal data protection has become imperative. Looking at the EU's General Data Protection Regulation that came out in 2018, it is not just the EU, the States in America, they are passing their own versions of consumer privacy acts and one of the implications for a country like mine, our own Ministry of Information Technology and Telecommunication has introduced personal data protection bill in July 2018. This is going to the Council and I believe the last draft is now being sent to our federal cabinet for final approval. We hope that in January 2021 Pakistan puts into place strong personal data protection landmark.

Data Protection bill is necessary in fact for a better digital economy

because it protects our citizens from unnecessary data collection and misuse. Not having a data protection regime could act as a barrier to entry because companies have to know of the cost of GDPR requirements in order to have e-commerce transactions in Pakistan or with a country that does not have a legal framework that provides their consumers with the same level of protection.

A lack of data protection could lead to insecurity for example in contacting e-commerce transactions. If there is a hesitation, innovation and competition could be stifled. Careem, which is our equivalent of Uber, has suffered a data hack in 2018, which affected 14 million users because there was no data protection bill. No kind of action or no legal recourse was available to any one of these 14 million people who were affected. So that's a major gap that we find in our legal ecosystem.

To quickly conclude, global e-commerce platforms that now we are seeing happening all over the world require that we must exchange experiences. And once again, I want to thank Turkish Competition Authority for putting together this peer review and exchange of information session, we hope that this will continue. Market entry barriers, how they will be eliminated, what is the role of personal data protection, what is the role of regulation and etc, how do we provide an adequate level of security and trust to customers? As we are going through next year, it is very important to look at convergence of regulations and regulatory bodies, most of countries have different regulators; competition, consumer protection and data protection. So how do we manage different regulatory bodies together and work for common cause of promoting competition and promoting trust in digital markets?

As I close, I was just looking at as the session began last week the OECD's global forum on competition, one of the first sessions on competition reset. They were having online survey, 70% of people, I looked at the results, 70% of the people responded that new tech regulations are necessary if we are to have strong trust in our digital economy. So I hope that this forum and other forums with the assistance of UNCTAD, EU, etc. we can put together very good regulatory forums that protect competition, protect consumers and address these issues of data protection.

I close with my thanks to Turkish Competition Authority and UNCTAD and everybody else who spoke before me and my thanks to all of you.

**MELTEM BAĞIŞ AKKAYA**

Thank you Mr. Qadir for your valuable presentation which gave us insights from Pakistan economy not only from the competition perspective but also as a picture of what's going on in Pakistan and the legal framework. Thank you very much. We look forward to work with you in the peer review in the upcoming months. Now I move to Mr. Rida Ben Mahmoud, chairperson of the Tunisian Competition Council. Mr. Chairman, you have the floor.

**RIDA BEN MAHMOUD**
President,
Tunisian Competition Council

Thank you. Ladies and Gentlemen good afternoon. First of all, I want to thank Mr. Birol Küle for this kind Forum. I would like to start by saying that technological advancement has paved the way for digitalization and ensuring the revolutionary change. Traditional markets have been transcended by the digital ones. It has revamped our lives and societies with unprecedented speed and scale together with the pool of opportunities and challenges. For instance, digital platforms can be analyzed as e-commerce platforms, digital media platforms, sharing economy platforms and online free-lance platforms. Tunisia is well connected with the world with a strong infrastructure. Thus the digital economy, according to the National Institute of Statistics, contribute to 7.5% of GDP. It employs around a hundred thousand people in 2020. Statistics show that there were 7.5 million internet users in Tunisia in January 2020. Also with 7.3 million social media users in January 2020. Social media penetration rate in Tunisia stood at 62 percent in January 2020. As far as search engines are concerned, Google dominates the market. Its share is close to its African average 93.5% for Tunisia and 94.9% for Africa. Yahoo has a relatively high share

in Tunisia, 5.3 % compared to the global and African average. Besides there were 17.7 million mobile connection in Tunisia in January 2020. Tunisian e-commerce is growing. E-commerce sales reached a global turnover of 140 billion dollars in 2020. Such e-commerce accounts for 1% trade in goods and services. There are 1650 citizens connected to SMT, Tunisian POS payment platform. Jumia is the largest e-commerce platform across Africa. Vongo, Affariyet, Bazaar, Coucou Tunisia, Joker and MyTek are also among major online retailers in the country.

My next point, antitrust issues coming from digitalization of markets. In general we consider four main issues. First, the tools to analyze market dominance are insufficient in the field of data driven digital platforms. Such platforms can achieve market dominance because of the network effects unlike the traditional markets. Therefore, conventional criteria of assessing market power does not address this issue. As we all know, market definition is based on substitutability test held to identify irrelevant antitrust product market. These tests were established against the background of static markets. The dynamic characteristics of digital markets make the delineation of relevant market particularly demanding. Digital markets have a number of characteristics that are markedly different from traditionally static markets. They include the fast moving nature of digital markets, the existence of zero price markets, the winner takes all nature of digital markets, the network effects and competition for the market as a particular feature to competition in digital markets. The third major issue is that the current approach in antitrust is customer welfare oriented in concerns over practices such as predatory pricing which is the major element of the business strategy of dominant firms providing online marketplace is quite difficult to regulate due to rapid fluctuations and personalized pricing facilitated by algorithms. Hence, it may not be easy to conduct pricing analysis of such online platforms. When it comes to mergers in digital markets, two particular issues have come to the forefront of debate: data concentration and rival acquisition.

After briefly presenting mainly these issues, I would like now to shift the focus on measures and remedies that can be taken to deal with these issues. It is important to keep in mind that it is crucial to speed up time

of investigation and see faster outcomes. Interim measures should be imposed when there is a risk of the market tightening while the case is pending. Competition authorities should have greater power to impose remedies effectively in an abuse. When a platform both controls access with their own products as well as third party products enforcers should consider ambitious remedies such as structural and functional separation. Only such remedies will remove platforms' incentives to discriminate or leverage their market power. In cases where abusive behavior has significantly benefited a major digital platform in improving its market position vis a vis competitors, the authorities should impose restorative remedies to enable formerly disadvantaged competitors to regain strength.

I come to the end of my presentation. I hope that this has been informative and useful for you. I would like to thank you all for your attention.

**MELTEM BAĞIŞ AKKAYA**

It was Mr. Chairman. Thank you very much for your contribution. Our last speaker today is Shahin Nagiyev, Head of Azerbaijan State Service for Antimonopoly Policy and Consumer Rights Protection under Ministry of Economy. Mr. Nagiyev graduated from Azerbaijan State University of Economics and has been working in state service for Antimonopoly and Consumer Market Control since 1998. Mr. Nagiyev, you have the floor.

**SHAHIN NAGIYEV**
Head, Azerbaijan State Service for Antimonopoly Policy and Consumer Rights Protection under Ministry of Economy

Good evening to all participants. Thank you for this opportunity and thank you for the organization of such a good event. Meltem Hanım, especially thanks to you. I would like to give some information on development of digital economy in the Republic of Azerbaijan.

Development of the digital economy in the Republic of Azerbaijan. Special importance is attached to the development of ICT in the Republic of Azerbaijan and application of achievements in these areas to economy and management systems. Since 2003, a number of legislative acts and state programs related to the transition to the digital economy have been adopted in the Republic of Azerbaijan such as

- National Strategy on information and communication technologies for the development of the Republic of Azerbaijan
- The state program on the development of communication and information technologies in the Republic of Azerbaijan for 2005-2008 (electronic Azerbaijan) was approved by the Order No. 1055 of the president of the Republic of Azerbaijan dated October 21, 2005,
- State program on development of communication and information technologies in the Republic of Azerbaijan for 2010-2012 (electronic Azerbaijan).

Adopted legislative documents accelerate the application of ICT technologies, the introduction of new technologies in the economy and management, the restructuring of the communication, management, production and service sectors using the achievements of digital technologies, the strengthening of the institutional and legal framework of the digital payment service in the country. By covering short, medium and long term periods in the strategic roadmaps, the strategic review and action plan for 2020, the long-term review for the period up to 2025

and the period after 2025 have been identified.

The legal normative acts, state programs and plans adopted for the establishment of digital society and economy in the Republic of Azerbaijan formalize the ground for the establishment and development of a competitive economy based on information and knowledge by ensuring the transition of the Republic to information society, ensuring the development and wide application of ICT, increasing the efficiency of Public Administration, it envisages the achievement of objectives such as full satisfaction of the demand of the Society for information products and services.

In order to ensure the development of the digital economy, the following measures are planned to be taken in the Republic of Azerbaijan:

- Development of ICT technologies and creation of a unified and comprehensive information base on the basis of digital technologies,
- Achieving dynamic development, production growth, high efficiency and productivity as a result of the use of ICT technologies in all sectors of the economy,
- Establishment of a state Information System covering administrative procedures and relations with legal entities and individual entrepreneurs and allowing to carry out administrative procedures in electronic form and ensuring the disclosure and accessibility of non-confidential information.

The following directions of ensuring the transition to digital society have been identified:

- Modernization and development of ICT based on new technologies in the country;
- Application of ICT in state and self-government bodies and development of e-services;
- Creation and development of appropriate material base, communication systems based on new technologies and experience of advanced countries on all factors necessary for the transition to the information society, taking consistent measures in the field of human resource formation and achieving the required levels;

- Strengthening the competitive and export-oriented ICT potential.

To achieve these goals, it is planned to achieve the following three strategic goals by 2020:

- Improving management structures and strengthening ICT,
- Increasing productivity and operational efficiency through the application of digital technologies in the activities of business entities,
- Digitization of government and the social environment.

At the same time, in order to develop communications, form a sustainable telecommunications infrastructure, expand the use of the Internet and promote private sector participation, improve the regulatory framework, conduct a transparent and efficient national frequency distribution, effective management of the national frequency spectrum, effective organization of relations between market participants and further development of competitive relations are envisaged.

As an integral part of the reforms to be implemented in Azerbaijan in the direction of economic transformation, it is planned to fully support measures to ensure continuity in the development of human capital, increase labor productivity and increase the role of knowledge in economic development. This will be ensured at two levels:

1. Improving the quality of education at all levels for the formation and development of human capital,
2. Stimulation of continuous development of human capital, investment in research and development to ensure increased labor productivity.

It is planned to continue important reforms that create conditions for further development of competition legislation and policy in the country in connection with the transition to the digital economy and to provide a favorable business environment that supports the development of the private sector in the Republic of Azerbaijan in the Strategic Roadmap for the production of consumer goods at the level of small and medium enterprises.

The implementation of measures aimed at improving the competitive environment, creating healthy and fully developed competition legislation, achieving effective and independent implementation of this legislation

by the competition authority and implementing the economic policy, which adheres to the principles of competition in general, eliminates the obstacles in the development of competition and does not lead to monopoly, has been set as a priority.

Increasing the competitiveness of the country's economy and the creation of the production areas of the economy have been recognized as one of the main priorities. In order to achieve this goal, it will be ensured to create a healthy and perfect competitive environment within the country and increase its export potential by achieving the production of highly competitive goods in domestic production.

In this regard, based on the experience of advanced countries, it is envisaged to adopt legislative acts in a single Competition Code, to take necessary measures to ensure the legitimacy and validity of decisions made by the competition authority during the investigation of violations of competition legislation and the adoption of relevant decisions in accordance with best international practice.

In order to increase the effectiveness of protection of competition in the digital economy in the draft Competition Code, business entities using contracts in the field of expanding the powers of the Competition Authority, other people acting as sellers and buyers of certain goods in the information and telecommunications network, it is envisaged to take serious measures of responsibility for non-compliance with the decision and instructions of the competition authority on the violation of competition legislation and the elimination of related violations.

Thank you for your attention.

**MELTEM BAĞIŞ AKKAYA**

Thank you for your contribution and this was the last contribution from our speakers today. Since Professor Khan is still with us today, I would like to ask her a question before she leaves before closing today's session. Professor Khan as we all know there has been an increasing move on the European side to update

its legislation to answer the needs of the digital economy and challenges posed by platforms and Big Tech. They have just worked on a new competition tool in the form of a market investigation and today they have announced the New Digital Services Act which targets gatekeepers regardless of their size. Could you please tell us from the other side of the Atlantic whether there is a need or move to amend or update the existing legislation for digital markets the way EU has done?

**LINA KHAN**
Associate Professor of Law,
Columbia Law School

Great, thanks so much. I think this is an area of rich discussion in the United States. One outcome of the legislative, the congressional investigation was a report with a series of recommendations on how to amend and update antitrust legislations. Broadly, I would say these recommendations fell into three categories. So the first was a set of ex-ante remedies. This would include non discrimination rules, structural separation, interoperability. The set of tools are acknowledging that there are certain benefits to scale and that we may not want to break up firms horizontally in all instances. Instead there are going to be a set of tools that we can use to ensure that we preserve the benefits of horizontal economies of scale while limiting the ability of these gatekeepers to abuse their power. The second category would be reforms to the antitrust laws. In the United States in particular, monopolization laws and merger laws have been dramatically at the core of debate in the last decades both through price centric model that focuses on consumer welfare defined very narrowly because the current law is governed by a set of neo-classical economic theories that do not correspond to the reality. I heard one of the commissioners mention predatory pricing. So in the US embedded in the legal analysis this idea

that predatory pricing is irrational. Immediately, there is a presumption against the view that predatory pricing ever happen. There are also sort of instances in which the law is currently stuck against actually policing monopolization. The set of recommendations for that category would basically update a lot to ensure that it is actually easier to bring remedies cases, that the burdens of proof are not so high. Under merger fine, one of the recommendations was to shift the burden. So right now if the government wants to challenge a merger the burden is on the government to show why the transaction is anticompetitive. But this reform idea would basically switch that burden so that when gatekeepers, when dominant firms are trying to engage in mergers and acquisitions that the burden is instead on them to show why the merger is good for the public. There will be presumptions. And the last category is reforms that would really boost private enforcement in the United States. Here we have not just the government able to enforce antitrust laws but also private parties which was traditionally an important part of our legal regime because there was an understanding. Sometimes, for various reasons, public enforcers are reluctant to bring cases. They may be captured. There are also other issues. Allowing actual businesses, actual consumers that are victims of monopolization to bring cases would be important. That's another area where the courts in the United States have become very hostile to antitrust plaintiffs in that area of law, much more difficult. Set of reforms would be focused on allowing private plaintiffs to bring cases more easily. Those are kind of the overall reforms that are being discussed. I will say there is a discussion right now particularly about whether remedies reforms need to be speed up in part because what we are seeing with the coronavirus economy is that existing inequalities in the economy are in the risk of becoming even more exasperating and being locked in. In particular because these tech platforms are sitting on huge piles of cash so as they look around and see all of other businesses and industries reform, it is a good opportunity for them to go on a buy up this trust assets. Our US enforcement agencies may be faced with some serious questions about whether they would challenge even those mergers that in other times they wouldn't challenge because of the economic situation. We are in the US about to get a new

president, President Biden from the Democratic Party. In congress, the House of the Representatives is back with the democratic majority. We are still waiting to see what happens with the senate. There are going to be a couple of races in January that are are going to determine whether democrats or republicans will capture the senate. If it ends up being republicans you have split government. I think there is going to be some interest in reform but it is going to be narrower so the republicans are interested in things like merger enforcement but are not interested in things like functional break ups or structural separation. In some areas of agreement we may see some progress but limited. If the democrats win the senate, everything is on the table. You have the both houses and the president controlled by the democrats so it will be easier to govern that way. I think we are waiting to see what happens but there is going to be a lot of learning. The European Commission is in a situation where they had these big cases against Google, these three remedies none of which ended up in restoring competition. That's what that led them to think about these ex-ante measures and the Digital Services Act. I think in the US we have not done any actions. The ones we are seeing are the first ones. I think there is some interest in seeing how those play out. There is also a broader understanding as several people today mention. Antitrust enforcement is just too slow. It can take years to get the judgment. We need some tools that can be really in play at the get-go.

**MELTEM BAĞIŞ AKKAYA**

Thank you Prof. Khan. It was a really honor to host you today. We thank all our speakers for their comprehensive talks and it is fair to conclude that wherever we are, we have been facing the same challenges post by the digital economy especially by the platforms. So we seem to be all working on a new way either in the form of legislative reform or to speed up the process in order to tackle the problems posed by these digital companies. So we thank all our speakers. We also thank UNCTAD for their collaboration in organizing ICF for the second time. Last but not the least, we thank you the audience for their patience and listening. Please join us tomorrow at 13.00 Geneva time for the second session of our forum on competition enforcement in times of Covid-19. Tomorrow's last session will be on competition issues in labor markets. That will start at 15.00 Rome time. Many thanks for joining us today. See you tomorrow. Thank you.


# SESSION 1
# Competition Enforcement in Times of Covid-19

16 DECEMBER 2020

13.00 Geneva, Switzerland
15.00 Istanbul, Turkey
17.00 Tashkent, Uzbekistan

Moderator:

**Faik Metin TİRYAKİ, Ph.D.**
Vice President, Turkish Competition Authority

Speakers:

**Ayşe ERGEZEN**
Board Member, Turkish Competition Authority

**Kübra Erman KARACA**
President, TÜBİSAD (Information and Communications Association)

**Farrukh KARABAYEV**
Deputy Head, Antimonopoly Committee of the Republic of Uzbekistan

**Ebru GÖKÇE DESSEMOND**
Legal Officer, Competition and Consumer Policies Branch, UNCTAD

**Valon PRESTRESHI**
President, Kosovo Competition Authority

**FAİK METİN TİRYAKİ, Ph.D.**
Vice President,
Turkish Competition Authority

Dear participants, welcome to the first session of the ICF Annual Webinar's second day. As you all know, this session's topic covers one of the most discussed topics maybe the most discussed one of 2020: "Competition Enforcement in Times of Covid-19".

COVID-19 pandemic has been a major shock to both our daily lives and economies and although it has been almost a year since it started, people and the governments still struggle with its consequences. Competition law enforcement is inevitably affected from the consequences of the COVID-19 crisis. Challenges faced by the competition law enforcers have been on many different levels from remote-working conditions to how to handle on-going and new investigations at the times of lock-down, from changing policy priorities to deciding on which priorities to focus on helping to overcome the crisis.

We have witnessed that in these extraordinary circumstances caused by the Covid-19 pandemic, the demand and supply shocks especially in the essential products markets led the competing firms to look for cooperation and collaboration arrangements with one another. Although these may be beneficial to the consumers in terms of accessing to essential goods and services, these initiatives might have anti-competitive effects in the medium to longer term.

Moreover, supply and demand changes have also led some firms to engage in exploitative pricing strategies such as price gouging. Regarding pricing behavior, there are a number of questions in terms of competition law enforcement since it might be difficult to differentiate between legal and illegal practices. Other than that, tools of competition agencies for intervening to excessive prices and potential intersection with consumer protection laws and agencies is another challenge faced in this period.

Last but not the least, shrinking economies created stress on some sectors, which resulted in firm failures and related mergers. The risk of higher market concentration and power in some markets together with the ongoing economic uncertainty, merger reviews have been more challenging for the agencies.

In this webinar, we expect to find answers to the question of what changes and challenges the competition agencies have faced and do face in their competition law enforcement during Covid-19 pandemic. To discuss this topic, we have very distinguished speakers in this session and I cannot wait to hear their views and experiences on this hot topic.

Before turning to our speakers, I would like to give a short info about the flow of our session. We have Ms. Ayşe Ergezen today, member of the Turkish Competition Board. We also have Ms. Ebru Gökçe Dessemond who I can say is also the host of our webinar since UNCTAD has been of great support for ICF events. Ms. Kübra Erman Karaca of TUBİSAD is going to share with us the experiences from the private sector. We will also hear from our fellow competition agencies on what they have been facing during the pandemic. Mr. Farrukh Karabayev from Antimonopoly Committee of the Republic of Uzbekistan and Mr. Valon Prestreshi from Kosovo Competition Authority will be making contributions to our discussion today. I will introduce all of our panelists as they speak.

We have total of 70 minutes for this session, which I want to use as effective as possible. Hence, each speaker will have 10 minutes and after that, I hope 10 minutes will be left for a Q&A session.

I'd like to turn to Ms. Ayşe Ergezen now.

Ms. Ergezen started her career in the finance sector and later she started her own business. She has also taken an active role in many non-governmental organizations. In March 2016, she was appointed as the Deputy Undersecretary of the Ministry of Family and Social Policies and continued as the Deputy Minister of Family, Labor and Social Services, where she was appointed in July 2018. As of December 2019, she is a Board Member of the Turkish Competition Authority.

Ms. Ergezen will talk about the Turkish Competition Authority's enforcement activities during the Covid-19 period. Ms. Ergezen you have 10 minutes and the floor is yours. Thank you.

**AYŞE ERGEZEN**
Board Member,
Turkish Competition Authority

Hello everyone. First of all I want to thank you for giving us the chance for this webinar. I hope this meeting will be fruitful for all the attendants. I will start my presentation now. In this session I'll talk about how TCA worked during Covid-19 outbreak, what are the outstanding cases and cooperation between TCA and other public authorities regarding the price increases during Covid-19 outbreak. Then I will tell about other developments and what TCA did in terms of competition advocacy.

We can start by telling how TCA worked during Covid-19 outbreak since March 2020. TCA took actions against pandemic both during remote working, which was between 15 March 2020 and 1 June 2020, the normalization periods that started on the first of June 2020. During the remote working period, TCA operated with minimal office staff most of the competition experts and non-essential staff worked remotely and postponed majority of its plans, dawn raids until mid-June 2020.

With the outbreak of Covid-19 period in Turkey, on March 25, TCA has released a statement to the public that all excessive price increases in all sectors especially in fresh fruits and vegetables will be monitored by TCA. Moreover the Authority started inquiries about price increases and certain market failures in the supply chain with the beginning of Covid-19 outbreak.

After the normalization period started on the first of June, postponed and other dawn raids has been conducted. However during both periods Turkish Competition Board continued to meet up regularly once a week to discuss merger applications and other antitrust issues. We never gave a break. In contrary to court proceedings the statutory period by which TCA should abide did not extend. Besides, all oral hearings have been postponed from June 2020 to November 2020. During both periods, complains could be notified through e-application as well. Still most of

the meetings with the undertakings are being held via teleconference tools.

Now, I want to talk about outstanding TCA cases which started during Covid-19 outbreak. An investigation on lemon industry was initiated by TCA at the beginning of June 2020 in response to the claims that lemon prices have excessively increased. Besides, according to the Board decision taken in May 2020, an investigation has been initiated concerning 29 undertakings including supermarket chains. It should also be noted that the Board initiated an investigation concerning several undertakings engaged in the production of medical and protective masks in order to determine whether they violated the Act no 4054 on the protection of competition. In addition to these investigations, another investigation process was initiated against six undertakings operating in the production of mask fabric. Each of these investigations is at different stages and are expected to be resulted in the following year. In the ongoing inquiries, in addition to article 6, article 4 of the Act is also taken into account whether an agreement, concerted practice exists is analyzed with respect to practices between undertakings concerning the violation claims since in the cases there are many parties under investigation. During this process regulations by other public institutions regarding product supply or pricing are also being taken into account.

When we look at the responsibility sharing of TCA and other public institutions regarding the price increases during covid-19 outbreak, it is possible to infer the followings:

- TCA's scope of authority covers protection of competition in the markets. In this regard, the Board has a legal power to impose fines following an investigation concerning exploitative prices by means of agreements between competitors or abuse of dominant position according to respectively article 4 or article 6 of the Act.
- However, consumer protection and unfair trade practices are overseen by other public authorities. In that sense, some specific forms of exploitative pricing practices such as price gouging, deceptive pricing and unfair pricing cannot be addressed by TCA.
- Nevertheless, TCA collaborates with consumer protection agency and Unfair Price Assessment Board for consumer protection issues

raised by the coronavirus such as price gouging and deceptive pricing.

- In Turkey in May 2020, Unfair Price Assessment Board was established to operate during the states of emergency, disasters and other emergency conditions.
- In case another regulatory authority is also in charge for the case submitted to the Board, referral may be made or the solution of the subject may be left to the regulatory authority. In this framework, relevant agency's regulations may be taken into account and/or opinion may be sent to the agency.

Now, I would like to share with you the details about the investigations conducted by TCA concerning pricing practices during Covid-19 outbreak and other related developments performed by TCA and other public authorities.

Mask investigation has been initiated following the claim that undertakings operating in the area of manufacturing and selling medical and protective masks applied steep prices during Covid-19 outbreak. The investigation looks into whether there is an agreement, concerted practice between undertakings and takes into account article 4 of the act. The investigation is in oral hearing stage which will be held on December 22.

A preliminary inquiry was conducted about the claim that the prices charged by undertakings operating in the area of non-woven fabrics increased significantly at the beginning of Covid-19 outbreak. This preliminary inquiry turned into investigation process initiated against six enterprises operating in the production of mask fabric and is still ongoing. The investigation report is planned to be completed and included in the Board's agenda in February 2021.

In response to the increasing demand for medical and protective facial masks, measures are taken in our country like other countries regarding the production, supply and use of medical and protective facial masks. The export of medical and protective masks became subject to the prior authorization of Turkish Medicines and Medical Devices Agency. In addition, a measure was taken to enable the sale of surgical masks in retail sale points. It was decided that the maximum price of surgical masks would be one TL including VAT in markets, pharmacies, medical

forums selling medical devices and e-trade platforms.

Regarding the increases in prices of automobiles and real estates, several complaints were submitted concerning excessive price increases in the automotive sector both in first hand and second hand automobile sales and real estate market but unfortunately no further inquiry commenced related to these complaints.

As we get our focus to the sector inquiries we see that Competition Board launched a sector inquiry regarding e-marketplace platforms after Covid-19 outbreak period. The concern that e-marketplaces may engage in extortionate or exploitative practices by means of pricing, platform services, supply activities is often stated in competition law literature. Within this framework the sector inquiry is an important step for understanding competitive and anticompetitive effects created by e-marketplaces forming effective policies based on those for the new economy to have a sound competitive order.

Regarding legislation for Covid-19 pandemic we can shortly say that TCA did not issue any legislation including regulations, advice or guidelines in view of the pandemic. Nevertheless, TCA has tried to shorten the period of some investigations to quickly intervene against price increases during Covid-19 outbreak.

In terms of competition advocacy, our Authority's competition advocacy efforts are continuing with the help of online technology. For example, at the beginning of June 2020, an ICF webinar is held by Istanbul Competition Forum with the participation of OECD and UNCTAD. However, with respect to competition advocacy, a port of TCA, internship programs have been postponed due to Covid-19 pandemic gathering restrictions. Yet in order to make awareness for the protection of competition and safeguard a better dialogue with the public, TCA has created its YouTube channel where videos on general competition issues are shared.

I am coming to the end of my presentation. Thank you very much for your attention. I can take the questions at the end of the session. Thank you again.

**FAİK METİN TİRYAKİ**

Thank you very much for your detailed presentation and I think our participants have taken a good understanding of what the Turkish Competition Authority has been during this health crisis. Now I want to give the floor to the only private sector representative of our session today Ms. Kübra Erman KARACA.

Between 1983-1984, Ms. KARACA worked as a Research Assistant in Ege University Computer Engineering Department. Later on she started to work in finance and banking sector following their breakthrough in Information Technologies starting from mid-80s. She held several positions in different firms in the banking sector. Currently she is the Chief Technology Officer of TFI (Tab Food Investments). She is also the Chairman of the Board of TÜBİSAD, Informatics Industry Association, Board Member of TBV, Turkish Informatics Foundation and Founding Member and Advisory Board Member of Wtech, Women in Technology Association. The floor is yours.

**KÜBRA ERMAN KARACA**
President, TÜBİSAD (Information and Communications Association)

Thank you very much. I greet you all on behalf of TÜBISAD Board of Directors. I will share my presentations. I would like to express my great pleasure to participate as a speaker in the second year of Istanbul Competition Forum organized by the Turkish Competition Authority with UNCTAD's contributions. By taking into consideration our foreign participants I would like to give a brief information on the institution I am representing. Our association is a non-governmental organization constituted by the companies within the fields of information technologies, telecommunications, new media, internet

and consumer electronics. Around 200 TÜBİSAD member companies manage 152.7 billion TL trade volume annually with the market share of more than 95% within the ICT industry. For the next four year, our primary social responsibility shall be working to lead Turkey's transmission to digital economy as an NGO embracing Turkey's transmission to digital economy. We closely follow our country's performance via our relevant works.

Here today, I wish to present you my opinions especially with regard to digitalization. As known by all expert participants here, competition simply means the race of price quality and speed among competitors. The term race here shows that being cheap, of good quality and fast is not sufficient. You should be cheaper or better quality and faster than your competitors. With this respect, I would like to discuss competition as a dynamic process where competitors are the reference.

Considering the benefits of digitalization, those who are not digitalizing shall not be successful against the digitalized companies where the economic boundaries of countries are becoming transparent. Therefore, I would like to underline that as an association, our primary focus is to contribute to the digitalization of our country in order to be successful in the global economy.

I see Covid-19 pandemic as one of the difficulties faced and overcame by the human kind throughout the history. The unavoidable truth revealed with the covid is that it is a very efficient catalyst with respect to digitalization. Today, to a year ago, we live in a world called new normal, which is very different than the old one that we can't even remember and we are trying to adapt. Digitalization and digital tools allow us adapt fastest way. We see the adaptation in the very limited cut-off. Human's most fundamental needs such as food, health, vacation, recreation, production and education against the lockdown and many other restrictions. Similar to the low damage faced by countries, companies who have used technology well during the pandemic same countries and companies shall still be in a more advantageous position by using the technology in an efficient way even after the pandemic.

Our behaviors, habits are changing and therefore we are becoming different people and we evolve during this adaptation process. With the

natural fear of change, it is even possible to have an existential crisis in a way where we deny existing in a digitalized world by firmly clinging to our traditional side. I believe that this is also in question with respect to the corporate and sectorial aspects not just only to individuals. It seems that consumers will be living in a world with less physical contact than before along with our changing behaviors in the near future. They will be searching for more digital more innovative and easily accessible experience within all retail and service categories. In line with such demand, the digitalization of all sectors, the social investments focus on sustainability and enhancing community involvement to the economy by prioritizing social gender equality shall have crucial importance.

There are many concerned about such fast technological transformation, others are excited for sure. Some may say that this transformation is a total disengagement from the past and this reality should be accepted while the others resist such transformation by stating that this new technology shall deprive a lot of person from their jobs  etc. I believe that this transformation has a significant difference of the past industrial revolution. We are experiencing a transformation that focuses on human and aims at the efficient use of resources. Digital transformation does not necessitate totally giving up the past. It requires making the past sacrifices meaningful by embracing the future. For this reason, I believe that we should not renounce innovation and we should aim the future at all times with the inspiration we hear from our values with the mission adopted by the whole ICT industry.

I don't want to repeat here the things that you already know by listing the benefits of digital transformation to the economy and society. We all know that technology companies producing digital experiences have the opportunity to present important contribution to employment and education in addition to reaching to a larger fraction and providing products and services with better qualities.

I would like to emphasize something. Especially, e-commerce's opportunities are highly important with regard to the inclusion of those who are not as productive of the society into the economy. In this respect, digitalization is an important mean to reach sustainability, social gender equality.

The speed of digitalization and its extension to all fields necessitated a holistic evaluation within this area. To this end, we have initiated a mission which takes into consideration all different aspects of the digital transformation which aims to summarize the current state. We have prepared a study called Turkey's digital transformation index. The digital transformation index calculated with many subcomponents shows that Turkey's digital transformation performance with respect to 139 countries is average by the year 2019. Also, we see that the capacity to benefit from new technologies within the country varies based on the regions, sectors and company types. The critical issue for Turkey's economy is transforming the leading conventional companies. The transformation of the backbone is highly important. The digitalization of a limited number of companies or the intensification of digitalization in a certain geographical region is not enough for our vision. The rapid spread of the benefits provided by technology to the society and the economy is another target to be followed. We believe public institutions such as the Turkish Competition Authority have an important role for reaching this goal. We believe that we can go further in a short period of time with the participation and cooperation of all shareholders. As to the digitalization of public sector, our country's progress with the e-government services and its technology usage ability are at world class. E-government provides services to more than 51 million citizens where there are more than five thousand services of 91 institutions. It is foreseen that almost all citizens shall be benefiting from digital services within three years. Our country's public institutions' digital transformation is noteworthy. For a similar breakthrough for the private sector coordinating and encouraging public policies are needed. As to our duties, to contribute to the healthy communication and opinion sharing between regulatory institutions and ICT sector. No doubt the role of competition legislation and competition authority shall be crucial in order to reach strategic goals within this field and will be enlightening with respect to other relevant public authorities. Since the information and communication technologies are playing a key role for getting over the damages caused by the pandemic, it is obvious that we should be trying to enhance our performance within this scope as soon as possible with the fact that ICT sector is the engine of economic growth. It is certain that our country's

growth rate and global competitive capacity will increase when supported by rational investments and policies that enable entrepreneurship. The need for entrepreneurship ecosystem development is an important component of digitalization. For this end, it shall be beneficial to enhance the competition environment and support the projects having high impact for developing high tech products and services. SMEs are often most affected by the digital transformation. They should be trained and supported in order to digitalize traditional business models. SMEs should also be encouraged to bring together or adapt new types of business models suitable for collaboration in order to benefit from scale economy. The enhancement of our country's digital infrastructure is also critical for the growth. And proliferation of digital services within the scope of fiber infrastructure shall transform the whole economy. Our prominent recommendation is to include government's facilitating and accelerating role on the common infrastructure and enhancing of competition environment in order to develop the infrastructure.

Skilled labor deficiency is one of the five main constraints for our companies. Therefore raising digital literacy, developing digital competence, cooperation of universities and industry and changing the teaching program of high schools and universities in order to meet sectors' needs shall be of great importance. Some of the e-commerce sectors' main problems to be urgently resolved are restriction introduced for credit cards regarding information security issues, taxes related to advertisement expenses, inadequate e-expert incentives, problems arising from e-import regulations and negative consequences of consumers' right of withdrawal which are all extremely important for the digital transformation. It is also critical that relevant regulations are brought to the agenda evaluated in a framework that focuses not only on the present but also on the future of the sector and through consultation on the future of the sector with broad participation. Within this context, I would like to kindly express that the Turkish Competition Authority's consultation process with a high level of participation is worthy of admiration. Accordingly, we can say that the Turkish Competition Authority's intense sector analyses reforming the competition policy to be applied to the digital economy are model studies where relevant shareholders participate. The Turkish Competition Authority has well

comprehended the importance of digital economy and is maybe one of the leading public institutions in the world where it also makes necessary organizational chances with respect to the said importance. I 'd like to underline once more that the Turkish Competition Authority's initiations within this field are well appreciated by the private sector. We are willing to provide all kinds of support as TÜBİSAD. I believe that our country has the potential to be among the countries that are leading this new era with the strength of retail and e-commerce ecosystems with a solid infrastructure and population eager for digitalization and the young generations who have innovation passion. I also believe that our country's performance constitutes an example for many other countries trying to develop in this field. Turkey's experience, methodology, especially Turkish Competition Authority's experience with digital economy are worth sharing with other countries.

Before ending my words, I thank esteemed president of Turkish Competition Authority, Mr. Birol Küle, Ms. Meltem Bağış Akkaya and Ebru Gökçe Dessemond for their contribution to this event and salute you all with respect.

**FAİK METİN TİRYAKİ**

Thank you very much Ms. Karaca for your presentation and for your kind comments about Turkish Competition Authority. We understand that COVID-19 push companies to focus on more digitalization.

Our next speaker is Mr. Farrukh Karabayev, the Deputy Head, Antimonopoly Committee of the Republic of Uzbekistan. Mr. Karabayev has rejoined to the newly established Antimonopoly Committee of the Republic of Uzbekistan as Deputy Chairman with 14 years of progressive work experience in government agencies and global development organizations. He has held various mid- and senior management positions at State Competition Authority, National Agency for Project Management under the

President of the Republic of Uzbekistan, and UNDP. Beside these, he was a member of government working group responsible for the implementation of reforms for enhancement of business environment and investment climate, scrutinizing annual Doing Business Survey results, assessing business regulations and their enforcement across the country, and developing measures to reduce regulatory burden on business.

We are very glad to have you here today Mr. Karabayev and are eager to listen to your country's enforcement actions during the COVID-19 pandemic. Thank you.

**FARRUKH KARABAYEV**

Deputy Head, Antimonopoly Committee of the Republic of Uzbekistan

Thank you Mr. TİRYAKİ. Good afternoon distinguished participants of ICF annual webinar. I am very pleased and it gives me great honor to speak in this very important event.

Today, as many of speakers have mentioned, COVID-19 changed our lifestyles and all plans of many governments' reforms and the actions for economic growth. That is why it is very important today to find universal and practical solutions to soften the negative effects of COVID-19. So let me present my presentation on the very brief information regarding the competition policy framework of Uzbekistan and actions against the negative effects of COVID-19.

So, this year there was a new impulse for competition policy in Uzbekistan and I want to quickly mention that our Committee is re-established in early 2019. It is a quite young agency but with great history, as in various forms the competition authority existed since 1992, just after getting independence in 1991. In the new era a new impulse was given

by the President of Uzbekistan in 2019 and in 2020, new impulse for competition policy by the decree of the President in July where competitive environment and reduction of state intervention in economy was the most important parts of this decree. This decree sets new and very crucial institutional reforms.

First, the Antimonopoly Committee began reporting and is accountable directly to the Parliament and the President to ensure more independence in decision-making and to avoid conflicts of interest with ministries under the government.

The second important issue was the decrees, the extent of state intervention a so-called yellow pages rule was implemented. The mechanisms that set the prohibition on establishing of SOEs, certain conditions on the establishing of SOEs.

The third one was the introduction of a competition compliance mechanism for state owned enterprises. Also state aid control was enhanced, and total revision and cancelling of privileges and tax benefits distorting competition were initiated.

Another important action was to eliminate the conflict of interest during public procurements to make them more transparent and more effective. A prohibition to participate in procurement procedures for affiliated entities of SOEs and a mandatory beneficiary disclosure obligation was implemented. Also, our Committee is very closely involved in various structural reforms that is ongoing since the last three-four years. A new era, as you are aware, started in Uzbekistan and one of the actions to enhance this reform was the initiation of the mandatory conducting of competition impact assessment and regulatory guillotine.

A new draft law is now under review in the President's office, the main focus of which is to create a new system of smart antitrust regulation, digital market regulation and enhancement of competition law enforcement. A quite comprehensive competition advocacy policy has started with the development of educational programs on competition at universities and judges' trainings. The most important is the strategy for development of competition for the next five years was approved. You can see here the main objectives: simplifying licenses, restrictions

on unjustified price increases, reduction of state participation and so on.

The key indicators of this strategy is reducing the number of monopolies, eliminating distortive legal norms, reducing the share of state intervention, growth in the number of market players and reducing state aid share.

If we turn to the main topic: competition law and policy during COVID-19 pandemic. The leadership of the country and the government have initiated a comprehensive package of anti-crisis measures during pandemic by 15 Presidential decrees. The total support program is worth more than six billion USD and it covers about 500.000 business entities and 15 million consumers.

Mostly these actions are tax vacations and reliefs, credit deferrals, interest subsidies and guarantees for businesses, transport subsidies for exporters, funds for wages of employed workers, etc. Support for consumers consists of credit deferrals and guarantees, cancellations of credit fines. Also, support for regions was covered by this very important package of support which includes the infrastructure project, suspension of rental payments for the use of state property.

In addition, our Committee, the Antimonopoly Committee of Uzbekistan is very closely involved in these anti-crisis actions. It covers more than 100 product markets and affects more than 15.000 business entities and 2 million consumers.

The main actions taken by the Antimonopoly Committee were focused on support for businesses in the form of competition and business rights protection against unfair practices and government bodies' actions, creating information infrastructures for SMEs and digital platforms. It also covered support for consumers through consumer rights protection and advocacy, as well as support for regions by drafting regional competition development and consumer welfare programs.

On this slide are the main figures and results of actions taken by the Committee. Since the start of the pandemic, the Antimonopoly Committee has been monitoring the markets against price gouging for 35 types of significant consumer goods, mainly FMCG. Since February of this year, more than 5800 anticompetitive and abusive actions,

including price gouging, were suppressed and 25 million USD were reimbursed to business. We have adopted and introduced competition impact assessment and since this period, we have reviewed about more than nine hundred draft legal acts including local government decisions and we annulled 50% of these legal acts because of the anticompetitive effects and distortive norms.

Also, we have proposed intervention and private storage aid mechanisms for 15 types of socially significant products to prevent price shocks during the pandemic. Also, in the field of public procurement, more than 3.700 anticompetitive actions including bid rigging and collusion were detected during public procurements worth 500 million. Measures were taken to reimburse about 95 million USD to two million consumers during the pandemic. We have conducted a competition diagnostics on more than 100 product markets, revealed 33 companies with dominant position, and in the field of mergers and acquisitions we granted about 294 prior consents for transactions worth more than 500 million USD.

On this slide are response actions examples: first, in February, we analyzed existing barriers and problems in the production of drugs and medical products against viral infections. As a result, by our proposal licensing requirements were cancelled because they were excessive, and they were acting as barriers to new entry into the markets. Daily monitoring of supplying the population with personal protective equipment at more than 6.000 retail outlets and pharmacies was conducted to date. We are also monitoring the prices of 52 main and most wanted drugs and medical products' prices against excessive practices. We launched a Telegram messenger bot on the prices of drugs and medical products, which includes the prices of more than 2.000 medical products. Since this period, we have issued about 1.400 advocacy information materials and guidelines for consumers.

This slide shows the response actions. We have drafted competitive environment diagnosis and road maps in five regions, and in four economy sectors including heavy metal, automotive, railways and airways industries to enhance of sectoral competitiveness.

Here are the main challenges for competition policy enforcement during

COVID-19. First is the dilemma of competitive neutrality. There is a huge issue regarding this because maintaining competitive neutrality in distribution of state aid to bail out sectors and enterprises is quite challenging due to the enormous damaging effect of the pandemic. The provision of state aid should be based on objective criteria.

Should so-called crisis cartels be exempted? I mean, in some countries there were exemptions for such new forms of conduct, the crisis cartels. This really is a dilemma because in some sectors where the damage is very huge, it is very crucial to see and to assess whether they should be exempted or not.

The third challenge is adapting public procurement rules to the challenges of the crisis. The most important challenge is how to combat effectively with price gouging, without the risk of distortion of free market principles. These are the main challenges.

We can see the Committee following possible solutions to prevent competition distortions during COVID-19. First competition authorities should advice governments while implementing state support strategies to maximize ensuring competitive neutrality. But of course, there should be transparent rules for that. Support measures should be limited in time and in a manner that is reasonable, transparent, and foreseeable. Anti-price gouging measures should be focused on making market intervention to increase supply rather than price control and regulations. Joint actions are very important. We find them very effective. Joint actions with industry associations to issue specific guidelines which are then voluntarily implemented by companies and resulting in coordination of conduct as we call crisis cartels. The last one is competition authorities should coordinate actions with consumer protection agencies. For example, in our case, we have the Consumer Protection Agency under our Committee. This makes things easier in the issues of consumer protection. It is very important to use consumer protection powers to protect consumers from unfair pricing practices through vast use of advocacy tools.

This was my brief presentation. I would be happy to answer any questions. Thank you very much for your attention.

**FAİK METİN TİRYAKİ**

Thank you very much Mr. Karabayev. We have learned from your presentation that Uzbekistan is trying to help both customers and business entities during the COVID-19 pandemic.

Now we are turning to Ms. Ebru Gökçe Dessemond from UNCTAD. Ms. Dessemond is an economist at the Competition and Consumer Policies Branch of UNCTAD since 2006. She is responsible for preparing and servicing the annual sessions of the Intergovernmental Group of Experts (IGE) on Competition Law and Policy, and IGE on Consumer Protection Law and Policy. She develops and implements technical assistance and capacity building projects for developing countries. In the past she worked as a project officer for UNCTAD projects for Zimbabwe, Ethiopia and Tanzania and the Middle East and North Africa Region. She conducts research in competition and consumer protection areas, and coordinates UNCTAD research partnership platform. Prior to joining UNCTAD, she worked at the current Ministry of Trade of Turkey. The floor is yours, Ms. Dessemond. Thank you.

**EBRU GÖKÇE DESSEMOND**
Legal Officer, Competition and Consumer Policies Branch, UNCTAD

Thank you very much, Mr. Vice-President.

First of all, I would like to congratulate the Turkish Competition Authority for the excellent organization of the ICF. At UNCTAD, I should say that we really appreciate our cooperation in this area.

Thank you to the previous speakers who summarized their competition law frameworks and also the actions taken during the COVID-19 pandemic. I would like to give a rather more general and global overview of the impact of COVID-19 on our economies. We have recently published this report at UNCTAD on the impact of the COVID-19 pandemic on trade and development. All the information I will provide is based on the statistics and information in this report, which also has a section on competition and consumer protection laws and policies.

First of all, let us look at the impact of the crisis on economic growth. UNCTAD expects gross domestic product (GDP) to fall by around 4.3% in 2020, to be recovered expectedly by 4% in 2021. Developed economies are expected to be more affected in 2020 than developing countries. You can see the figures of contraction of economies by over 5% for developed economies, whereas 2% for developing economies. Recovery, likewise, will be slower for developed economies. An estimated additional 130 million people will be living in extreme poverty if the crisis persists.

If we look at the impact on international trade, according to UNCTAD's latest nowcasts, the value of global merchandise trade is estimated to fall by 5.6% in 2020, compared to last year. This will be the biggest fall in merchandise trade since 2009 when we had a global financial crisis, when trade fell by 22%.

The expected decline in services trade is much greater, with services likely to fall by 15.4% in 2020 compared to last years, and this will be the biggest decline in services trade since 1990. Even after the global

financial crisis, services trade had fallen by 9.5%. Due to COVID-19 induced lockdown measures, we have not benefited as much from the services. So, this is reflected in the services trade, services statistics, I think.

If we look at the impact on investment, globally, Global FDI (foreign direct investment) flows dropped by 49% in the first half of 2020 compared to last year. In the same period, FDI flows to developing countries decreased by 16%, which was less than expected. And you can see the figures by region: smallest decrease being for Asia due to the resilient investment in China, and the biggest being in the transition economies due to the strong decline in flows to the Russian Federation.

FDI flows to developed countries declined more than to developing countries as you can see. In the case of developed countries, this is by 75% compared to 2019 and recovery is expected in 2022.

If we focus our attention on mergers and acquisitions, we can see that the number of cross-border mergers and acquisitions dropped by 15% in the first three quarters of 2020 compared to last year. Also, due to the adaptation of competition authorities' actions and investigations to the crisis-related challenges, which were reported by some of our speakers today. In developed economies, M&As fell by 21%. In developing economies, the M&A value rose by 12%. This being due to the large increase in Asia: the decrease in Africa and Latin America was more than offset by the increase in M&As value in Asia.

If we look at global production, global manufacturing output fell by almost 6% in the first quarter of 2020. This was followed by a deeper decline in the second quarter of 2020, more than 11%. This was the biggest fall in world manufacturing output since the global financial crisis, when output had declined by 14%. This affected almost all industrial sectors, except for the pharmaceutical industry. Most notably, the significant declines in output were experienced by the motor vehicles, machinery and equipment, and apparel industry – textiles.

If you look at global employment – this is important, because in the next session we will be looking at competition issues in labor markets. So, there is additional challenges arising from COVID-19 in the area of employment.

So, rising unemployment, working time reductions, temporary layoffs and job-search discouragement have led to a fall in aggregate working hours globally. An estimated 14% decrease in global working hours in the second quarter of 2020, compared to the last quarter of the last year. This is equivalent to 400 million full-time jobs, which is a big number globally.

According to ILO (International Labor Organization based in Geneva), female employment is at greater risk for disruption, and there is an increased burden of unpaid work on women compared to men. ILO estimates suggest that workers in developing countries, especially those working in the informal sector, will be affected more than in previous crises.

If we look at remittances, which is an important source of revenue for developing countries, but especially for least-developed countries, the World Bank projects that remittances to low- and middle-income countries will decline by almost 20%, to $445 billion in 2020. The estimated fall, which would be the sharpest decline in recent history, is due to a fall in the wages and employment of migrant workers who are the most vulnerable to job and wage losses during economic crisis in their host countries.

If we look at the policy responses to mitigate COVID-19 impact, as summarized especially by the last speaker from Uzbekistan, Mr. Karabayev, many governments, many countries provided financial support and economic stimulus measures to mitigate the impact of the crisis. These include state aid and support SMEs and even to consumers. Secondly, we have seen some trade measures – export restrictions, mainly – and mostly in the form of export prohibitions and restrictions, especially on medical supplies which were most needed during the crisis (like face masks and shields), pharmaceuticals and medical equipment like ventilators. These were imposed by 80 countries and territories according to WTO statistics, including the world's largest suppliers of medical goods, such as Germany, India, Switzerland and the United States.

Export restricting measures included export bans, export licensing requirements and quantitative restrictions, according to ITC, and

the impact was upward pressure on international prices and harm in countries, especially which do not have the production capacity for these essential goods during the crisis.

As of mid-September 2020, 141 countries and territories were using 330 emergency trade measures. Among these measures, 75% did not have termination dates, so not a very stable trade environment for some products at least.

Thirdly, if we continue to look at policy responses, were disruptions to cross-border trade. Actually, this was as a result of the measures taken to prevent the spread of the coronavirus. These have been seen in East Africa, through land exports by trucks.

Countries have started to reconsider global supply chains and industrial policies. We are seeing the need to reconsider how global supply chains operate and consider regionalization of supply chains and diversification in many regions and countries of the world.

This crisis also led to adapting manufacturing facilities in many countries to start producing some of the essential products like personal protective equipment, masks, hand-sanitizers nationally like in the case of South Africa and Nigeria, but also in many other countries.

In the fifth place are exemptions from competition law. Some of them were mentioned by the previous speaker. We have seen that South Africa exempted the whole healthcare sector from the competition law. It was a COVID-19 block exemption for the healthcare sector. In Norway, the airline industry was exempted from competition law. In the UK, cooperation agreements between rival retail businesses were exempted from the law to ensure access of consumer to essential products. Likewise, horizontal agreements in R&D for pharmaceutical companies were authorized in order to facilitate the development of vaccines against COVID-19.

We have seen adjustments in competition law enforcement. Some of these were summarized by Ms. Ergezen and Mr. Karabayev. The timelines for investigations and moving to virtual meetings were among the measures that the competition agencies have taken.

If we look at the implications of COVID-19 for competition, there was a study on business failures among SMEs covering 17 countries, which estimates an average SME bankruptcy rate of 12% in the absence of any policy intervention, compared to a baseline of 4.5% without COVID-19 impact. This is a huge increase, and it points to firm exits in the future. Markets were disrupted, bankruptcies and firm exits are expected, and unemployment is expected to increase, of course.

There is an expected increase in mergers and acquisitions in the medium to long run, although we have seen that in 2020 there was a 15% decrease in cross-border M&As. But during the crisis, I think in the long-term we will see these M&As increasing. This will increase the market concentration and weaken competition further.

According to a recent UNCTAD research, the share of surplus profits in total profits at the global level has increased from an average of 4% in the 1995-2000 period to 21% in the 2009-2015 period, which is a huge increase of 17 percentage points. This rise in the magnitude of surplus profits, mostly driven by top corporations, multi-nationals, rising markups and increasing market concentration points to reinforced market power. There were already these concerns before the COVID-19 crisis, and now the crisis has reinforced the market power of already dominant firms in all sectors globally. The impact, of course, will be higher prices for consumers, fewer choice, less privacy when we look at the digital economy and lower wages.

If we focus a little bit on the digital economy digital platforms, you can see that they are the winners of this crisis, actually. You can see their rising fortunes in the graph. If you look at the period between March and April, mid-March they were at their lowest point. And then you can see the rise towards the end of the year. This shows the stock prices of the leading tech companies, including Apple, Amazon, Microsoft, Alibaba, Facebook, Google, Tencent, eBay, JD.com.

So, if we talk more about the implications of the COVID crisis for competition in digital markets, as I said big tech companies have grown out of the crisis bigger and stronger, because we have all used and we are still using these technologies. E-commerce has increased because people were shopping online rather than going to shops. The shops

were closed, even. So, we see rising fortunes of the leading technology companies and their market values have increased. If you look at their stock prices, they increased by more than 40%.

So, what is role for competition law and policy for a fair and more inclusive economic recovery? The countries, of course, have the need for policies. So, adopting strategic trade and industrial policies are well-recognized to support essential sectors and preserve jobs. In pursuing these policies, countries need to maintain a competitive business environment at the national or regional level, at least.

Governments need to engage more with their competition authorities in the design of economic stimulus measures. These measures should be clear, transparent, proportionate, non-discriminatory and temporary in nature. Some of these have also been mentioned by Mr. Karabayev. There is need for strong competition law enforcement and robust merger control regimes. There is need for new competition tools and complementary ex-ante regulations to deal with dominant, gatekeeper digital platforms. The best example is the European Commission's proposal for regulation of digital platforms, which was submitted yesterday to the European Parliament as a proposal. Once adopted, it will affect all the digital players in the market, which can be a good example or inspiration for other countries in this sector.

Of course, international cooperation is crucial between competition authorities throughout the world. It is key and it is necessary in addressing cross-border anti-competitive practices and global mergers and fighting cross-border unfair commercial practices of digital platforms in a more efficient and effective way. In the UN Conference we had in October this year – it was a virtual conference, of course – member states adopted the Guiding Policies and Procedures on International Cooperation. So, this is a good international tool that hopefully will facilitate international cooperation between competition authorities.

Of course, there are regional frameworks in place in some regions, in some continents. Regional economic cooperation frameworks can be a good tool to facilitate international regional cooperation, even regional competition law enforcement. They might prove to be more effective.

We can see a lot of examples in Africa, but other regions are, I think, also developing similar frameworks.

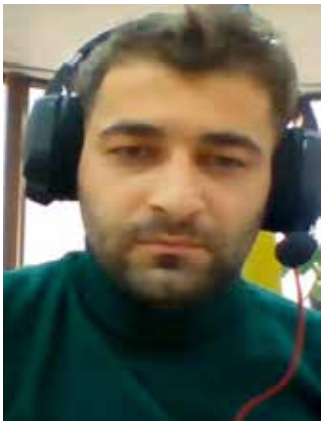
I would like to conclude by saying that this crisis revealed the important role played by competition law and policy and competition authorities which responded in a very timely, appropriate, and effective manner to the immediate challenges arising from the crisis. Therefore, governments need to resource and engage more with their competition authorities in policy making, empowering them both legally and financially to restore competition in markets in the post-COVID-19 period.

Thank you very much for your attention and for this opportunity to speak, to present the UNCTAD report findings and some ideas for future economic recovery. I would be happy to answer your questions if any.

Thank you very much.

**FAİK METİN TİRYAKİ**

Thank you very much, Ms. Dessemond. Your contributions to the discussion are very valuable, especially for the government authorities. Our last speaker of this session is Mr. Valon Prestreshi, President of the Kosovo Competition Authority. Mr. Prestreshi was born in Pristina. He studied in the USA until he graduated from the Rochester Institute of Technology on Economics and Statistics. In 2005, he worked as a senior life insurance sales officer at Primerica Financial Services and worked as a sales agent at the National Commercial Bank during 2009. Early 2010, he started working as the Director of Economy, Finance and Development in the Municipality of Obiliq. In 2013, he began his master's studies at the University of Sheffield for banking and finance. In 2014, he started working in the private sector. After applying for the President of the Kosovo Competition Authority position, he successfully passed the government filters and was nominated by the government for president of the institution. The Assembly approved the government's proposal on June 9, 2016, and he immediately took office. Mr. Prestreshi, the floor is yours. Thank you.



**VALON PRESTRESHI**

President, Kosovo Competition Authority

Thank you very much. Thank you for giving me this opportunity to hold a quick speech on some of the work that the Competition Authority has done during the pandemic situation. Once again, distinguished colleagues, I am honored to be among this panel of experts and talk about the experience.

Despite the difficulties, I believe the Kosovo Competition Authority has managed to play a very important role during this period of dealing with the pandemic. You know that Kosovo is a new state and accordingly Kosovo Competition Authority is a new authority. We are aware that there is still work to be done to ensure that the role and mandate as well as the knowledge of competition policy in Kosovo reach the level we are aiming for.

Given this fact, from the first day of the spread of the pandemic in Europe and our region, we have given ourselves the task to take a very active role during this period. Our commitment has been made in two areas. On one hand, on-site inspections and intensive investigations, and on the other hand the advocacy campaign on competition policy and close communication with the media and the general public.

At the beginning of March, I was appointed to the Special Commission for the Prevention of the Pandemic by the government – more concretely, by the Prime Minister. The duty of this Commission was to manage the situation in all levels of authorities, starting from the intelligence, to the police, the healthcare system and the other institutions in order to prevent the spread of the pandemic.

A few weeks later, after investigations in several markets that we have initiated, we were able to identify competition violations in the sales of disinfectants and alcohol for medical use. We were able to find concrete bid-rigging situations, especially on the tenders of the Ministry of Health where they needed these disinfectants and alcohol. We were able to identify these companies that actually agreed on enormous price-fixing

when submitting their offers to tenders. As you all may know, when dealing with bid-rigging, competition authorities only deal with horizontal agreements instead of vertical, when we are addressing state and private companies. As for vertical agreements, they mostly fall under the criminal law, where we have corruption, meaning that the Ministry and the company agreed on some sort of rigging the tenders and so on. However, we were able to identify these and we pursued and we are still conducting in-depth investigations in order to bring forward the best decision that we need to bring to stop this.

However, in August, when the authorities – meaning the Ministry of Health together with the Prime Ministry – decided to license large private laboratories for doing the PCR and serological tests for COVID, because the public institutions were so full and so busy that the government started licensing private institutions to do these tests. So, what the Competition Authority in Kosovo did is that, we took a further step where we obliged all licensed companies that do these tests to report weekly to the Competition Authority on prices and to send all their weekly turnovers, in order to, somehow, step away from any prohibited agreements on price fixing. Because we were very scared that all these licensed private institutions could have agreements with each other and set prices for PCR and serological testing at the same level. This was our concern.

After we started monitoring this and obliging them to report to us, in Kosovo all laboratories have different prices. For you can find from €20 for serological tests to €60 for PCR to €40, €30 and so on. The prices on COVID tests are different in Kosova and we actually managed to deal with this and to actually stabilize this.

Even the EU officers here in Kosovo actually liked the work that we did. Even though we somehow went beyond our competences by putting so much pressure on the private sector, especially on the licensed laboratories... putting this pressure is too much, but because we had the pandemic situation, they understood it and they cooperated with us all the way up to this date, as well.

We also conducted an awareness campaign, which included the publication of informative videos. We did a lot of animated videos as well as other videos that we put out in social media and TV and so on. By

these advocacy efforts, we explained to the public and to the companies what the competition policies and the three pillars we deal with were: prohibited agreements, abuse of dominance, and mergers and acquisitions.

In the end, I want to emphasize that perhaps we as the Competition Authority have done something extraordinary – beyond our mandate, as I mentioned. But another thing to mention is that, during this work that we have done, most of the people here working in the Competition Authority were infected. We all had COVID together. All the Commissioners, we all were infected. Somehow, we pulled through, we are feeling good. However, there is still this fear in the Authority. But because of the work, we got infected, we did a good job and now we are feeling good and basically this is what we did during the pandemic.

Thank you very much.

**FAİK METİN TİRYAKİ**

Thank you very much, Mr. Prestreshi.

From your speech, we have learned what the Kosovo Competition Authority encountered during the COVID-19 pandemic. We also learned that you caught COVID-19 and recovered successfully. Thank you very much.

I think today's sessions have been very fruitful. We covered many topics. Now we can make a short Q&A session if our participants have any questions. But we have a limited time, because as you know we have another session after this. I think there is a question for Ms. Ergezen about the effects of COVID-19: "What kind of difficulties did the Turkish Competition Authority encounter during the COVID-19 pandemic?"

**AYŞE ERGEZEN**

Thank you Dr. Tiryaki. The Turkish Competition Authority did not postpone most of its working processes. For example, dawn raids were restarted at the very beginning of the summer and are still going on. All the investigations continued during the remote working period. Of course, there have been some difficulties, for instance in collecting data and evidence and information from the companies as a result of the COVID-19 pandemic conditions, such as remote working, health problems and other reasons. For example, small companies had to shut down their businesses. Thank you.

**FAİK METİN TİRYAKİ**

Thank you very much. I want to thank again to all of our speakers for their valuable contributions.

The first session of the webinar has ended now. But we will have the second session of the webinar starting at 15:00 Geneva time, not Istanbul time. We had a good webinar in this session about competition issues in labor markets.

Thank you very much. See you.


# SESSION 2
# Competition Issues in Labor Markets

16 DECEMBER 2020
07.00 Salt Lake City, USA
15.00 Geneva, Switzerland
17.00 Istanbul, Turkey

Moderator:

**Ebru GÖKÇE DESSEMOND**
Legal Officer, Competition and Consumer Policies Branch, UNCTAD

Speakers:

**Alberto HEIMLER**
Head of Working Party No 2, OECD

**Marshall STEINBAUM**
Assistant Professor, University of UTAH

**Meltem BAĞIŞ AKKAYA**
Acting Head of External Relations and Competition Advocacy Department, Turkish Competition Authority

**EBRU GÖKÇE DESSEMOND**
Legal Officer, Competition and Consumer Policies Branch, UNCTAD

Good afternoon everyone. Welcome to the last session of the Istanbul Competition Forum. In this session we are going to discuss competition issues in labor markets, and we have very distinguished speakers: Mr. Alberto Heimler and Mr. Marshall Steinbaum and Ms. Bağış Akkaya from the TCA. I will introduce them to you in more detail as their turn comes.

So, as you know, as some of us mentioned in the previous session if you followed, we talked about increasing market concentration, especially post-COVID-19, which will reinforce the market power of already dominant firms. This plays for two sides: both as a disadvantage for consumers in the form of higher prices, fewer choices, less privacy; but also for workers and employees on the other side of the coin because they will have fewer and fewer firms to work for and more and more powerful firms in the marketplace, which can impose harder and more unfair conditions on employees as well.

So, we will look into these issues with our experts. Now I would like to invite our first speaker, Mr. Alberto Heimler. Alberto Heimler is Professor of Economics at the Italian School of Government in Rome. He is the Chairman of the Working Party on Competition and Regulation of the Competition Committee of the OECD. He was Counselor of the Italian Minister for European Affairs, Director for Research at the Italian Competition Authority, Member of the Steering Group of ICN and Co-Chair of a number of ICN working groups. He has been a visiting professor at the Department of Economics at LUISS University, University of Rome Tor Vergata and Bocconi University and in the School of Law of Haifa University and Tel Aviv University. He has a strong academic background, as you can see. He has written extensively on anti-trust issues, anti-trust enforcement, economic regulation, and public procurement. He published in leading journals.

The floor is yours, Mr. Heimler.


**ALBERTO HEIMLER**
Head of Working Party No 2, OECD

I would like to thank for the kind invitation of Chairman Birol KÜLE and Meltem Bağış for having put together such an interesting program.

Indeed, it is quite rare for labor issues to be discussed in anti-trust conferences, so I would like to congratulate the TCA for the initiative. From what I know, this is the first time labor issues and anti-trust are discussed in a public forum. What is even more interesting today is that although labor market and the digital industry look very distant and very different from one another, most of the anti-competitive practices that affect the labor markets can also be found in the digital industry. Not vice-versa of course, in the sense that the digital economy has additional anti-competitive practices that I will only very briefly mention today.

In any way, putting digitals and labors together is an excellent idea. I will refer to some remarks that Lina Khan made yesterday to show how good an idea this was.

Certainly, trade unions negotiating collectively the salary of their associated workers do not violate the anti-trust laws. And this is simply because workers are not firms and the legal provisions of most countries specifically refer to firms as the subject of these provisions. However, the same person – a lawyer, a surgeon, an engineer, an Italian harbor worker – are firms when they work independently. They are workers, on the other hand, when they work for a salary.

So, what characterizes a firm in anti-trust is not its organization, but a contract which controls the way it supplies its services. As we all know, this extended notion of what is an enterprise is accepted everywhere and is not an issue to be discussed any more. We have had many cases against lawyers or engineers or medical doctors. So, this is not really an issue.

But what I will discuss today is conduct by firms that influences the way

they collectively or unilaterally affect the way labor is paid. Indeed, in the introduction the Chair just mentioned this possibility that there are these big companies that may reduce the wage of the workers working for them. In this talk I refer to a joint research conducted by Darryl Biggar, Allan Fels and myself. We wrote two papers on anti-trust and labor markets. One was published in the CPI Chronicle, and the other one in a book honoring Eleanor Fox. Both papers have been published in 2019, so in a sense this is a quite recent piece of work.

The point that I would like to make is that we have to refer to the standard by which we judge whether a practice is an anti-trust offense or not. The problem with monopsony is their practices: that is, big buyers buying things on the market and reducing the price of what they buy, which affect market leading to lower prices downstream. Because they buy cheap and then they also sell cheaper. In this way, they make consumers downstream better off, not worse off. As a result, the consumer welfare standard should welcome monopsonies - unless, of course, they become monopolistic.

This is why the consumer welfare standard is not really the right approach for understanding buyer power or for analyzing buyer power, because buyer power, unless it leads to monopoly as well by the buyer, should be welcome under a consumer welfare standard.

So, what should we do to address these issues? In recent years, there has been increasing support and Lina Khan is one of the most vocal people that have been promoting this approach, which is that we should go back to the protection of the process of competition – which is where anti-trust started, especially in the US with the Sherman Act. This approach is also historical tradition in Europe with the liberal school, which uses competition law as part of an economic constitution designed to protect economic freedom by ensuring that competitive process and the market structure are not distorted.

You see, the objective is to avoid distortion of competition. But for an economist, competition should not be considered an end in itself. Competition is a means to an end. The end meaning the welfare of the society or the welfare in the economy as a whole. As a result, according to another piece of work I will tell you in a second, in the absence of a central

notion of economic welfare, the protection of the competitive process cannot make clear predictions in circumstances where competing economic objectives are placed in conflict.

For example, what does it mean "protecting the process of competition" when we are discussing price discrimination? Should we promote price discrimination or prohibit price discrimination? The same would be "What should we do with an owner of a bottleneck facility? Should they sell at cost to rivals or is it better for competition to allow a firm to decide with whom and on what terms to deal? Finally, under the protection of the process of competition, what is the maximum price a company may be charged?

Those are questions that do not have an answer with such standards. It may well be that in certain circumstances, the protection of competition standard may provide the right answer but not in general. This is why we need a more general approach, a more general solution to this problem.

We found the solution to this. The solution is to adopt what we call the "transaction cost approach" to competition law, which was recently developed by Darryl Biggar and myself in a paper recently published by the journal Antitrust Enforcement. The approach starts from the observation that nearly all economic relationships, including labor relationships as we just heard, will require some form of sunk investment by one or both of the transacting parties.

Just to give you an example: for working in an antitrust authority, I need to invest my time and my effort in learning antitrust. This is a sunk investment. However, it is not relationship specific: I can work in an antitrust agency or I can work in a law firm, I could even choose an international organization or a big company. So, it is a sunk investment that cannot be exploited because if anyone would try – for example, the agency offering very low wages, which unfortunately happens in many countries – I will switch to somewhere else.

A problem therefore exists only in such a world if the sunk investment is relationship specific. This means that I do not have any other place to go and the only employer that can employ people like me can exploit his dominance with respect to me. Unless of course I am also dominant. Then, as we know, equilibrium is undefined. Anyway, in principle, only if a

firm is dominant, I have no other possibility to go to this dominant firm and the firm of course has power with respect to me.

The sunk investment of labor supplier however is not limited to human capital someone requires. For example, labor supply requires in usual times – unfortunately not today but in most cases – requires the physical presence of the labor supplier in a specific city and most workers would therefore make a sunk investment in a location. They have friends, schools, family networks, sometimes grandparents taking care of the kids... These are all examples of sunk costs that a single employer may exploit to her advantage.

Even though the single employer may be a monopsonist, of course there are private arrangements which can offer some protection against the threat of holdup. Contracts, for example, can take into consideration the fact that we are in a long-term relationship and the contract may put some limit on the possibility of the employer to reduce my wage in the future. Another possible mechanism is vertical integration. There a few labor cooperatives where it is laborers that own the capital equipment. We refer to old times when in theater companies which were active at the time of Shakespeare the leading actors hired the venues, supporting staff and partially resolved the holdup problem without the need for elaborate contracts.

As a result of the existence of these sunk costs, it may happen that the workers may be unwilling to move to a company town because they may be afraid that the company may take advantage of them. Or an individual may be unwilling to invest in new skills that are too company-specific because they may be afraid that the company may then take advantage of them, that they will not be able to spend this human capital investment elsewhere. Or a firm, on the other side of the market, may be unwilling to invest more productive capacity because they may be concerned that the workers would exploit that investment and exploit that investment, asking for a bigger share of the firm's profits.

According to the transactional cost approach to competition law, a transacting party is in a dominant position or possesses market power if it can engage in holdup. That is, it is in a position to change the terms and conditions of trade without fear that a transacting party will go

elsewhere. The economic harm from the exercise of such market power is the chilling effect on incentives for socially valuable investment. If I am concerned that my effort will be taken away from me, I will not do the effort.

In conclusion, as long as some suppliers have made material sunk investments and these are relationship-specific investments, the transaction cost approach suggests that the competition authority should prevent firms from taking advantage of their position to expropriate the value of the investment. This might include, for example, both the case of a dominant employer which we just heard in the introduction, lowering wages to employees or a firm in a bottleneck position, like Amazon for example – and this is how the digital issue comes up – taking advantage of its position to exploit the sunk investment of suppliers.

Such cases affecting the liberal markets do exist. They are rare, but they do exist. They have not come to a conclusion, because they were concluded by settlement in the US. But for example, in the State of California v. eBay, the Court approved an anti-trust settlement shutting down a cartel involving a no-poaching agreement between eBay and Twitter covering specialized computer engineers where the two companies agreed not to compete away their engineers from one another. The Court in the US drew a settlement so there is not a final decision prohibiting such an agreement.

What the transaction cost approach does is that it also provides an economic standard of harm. Indeed, a practice should be prohibited if it would lead to the expropriation of the relationship-specific investment sufficient to make the sunk investment unprofitable. So, had expropriation had been foreseen in advance, I would not have made the effort to study antitrust or I would not have made the effort to study something firm-specific.

The transaction cost approach offers some benefits over the protection of competitive process standard, because it is based in conventional economic welfare notions and allows for economic welfare trade-offs between different objectives. For example, there are trade-offs between the need to protect sunk investment by trading partners or

sunk investment by the dominant firm itself. Such trade-offs have no resolution under the protection of the competitive process standard.

Finally, the transaction cost approach allows us to continue to view competition not as an end in itself, but as a means to an end, which is what we really would like to have.

Just leave me one minute for a final comment on what Prof. Lina Khan said yesterday. She gave an excellent talk, identifying practices by digital platforms being anti-competitive. But she also acknowledged that they would not be anti-competitive under a consumer welfare standard, especially not in the US, if the exploited users were not part of our toolkit. She suggested that we should not have a welfare standard for antitrust but adopt a much more flexible approach where different disciplines – engineering, accounting, finance, economics, law, equity – are mixed together. So, these disciplines with no rigor and nor with a definite standard.

We – I mean Darryl Biggar and myself – argue that a better antitrust standard exists, that this standard is coherent with welfare principles, that it could easily be used, and that it addresses most of the questions that Lina Khan mentioned yesterday. This is the transaction cost standard.

This ends my presentation and I thank you very much for your attention.

**EBRU GÖKÇE DESSEMOND**

Thank you very much, Mr. Alberto Heimler. It was nice to hear from you an alternative approach to consumer welfare standard which usually dominates the US antitrust practice and which as you mentioned was also criticized by Lina Khan in our session yesterday. You presented us the transaction cost approach that was new to many of us, I guess. It was a nice discovery, I think. We will want to learn more about it after your presentation. Thank you very much.

Now I would like to introduce Mr. Marshall Steinbaum. Marshall Steinbaum is Assistant Professor of Economics at the University of Utah. His research lies at the intersection of labor economics and competition law and policy, focusing on employer power in labor markets, particularly in the context of the gig economy. His research has been published in the Journal of Human Resources, Labor Economics, the University of Chicago Law Review, Antitrust Bulletin, and Law and Contemporary Problems, among others. He earned his PhD. in Economics from the University of Chicago.

So, we will hear from Mr. Steinbaum on especially the competition issues in labor markets, but in the gig economy. The floor is yours.

**MARSHALL STEINBAUM**
Assistant Professor,
University of UTAH

Thank you very much. I apologize, my camera is not working, so you just have to have my voice and my slides. Thank you to the TCA for inviting me to this conference and I would echo what Ebru just said about Prof. Heimler's presentation that I found quite illuminating. The transaction cost approach, I think, is extremely promising as to labor markets. I am in total agreement that most of the existing landscape about how to evaluate competition in labor markets is not really representative of the larger debate about standards and protecting competition and consumer welfare. I think that that sounds like a very promising way forward.

I want to focus, in this talk, on the gig economy in particular and its antitrust implications. Here I am really speaking of the context in which workers, people who labor for a living, are outside the regulated bounds of employment. I am reflecting especially on the legal context in the

United States, but I think that is mirrored around the world. There are more and more workers who work for a living, who are not in the legal classification of employee. That, to my mind, naturally brings forward a competition law evaluation of the labor markets in which they work.

My general contention is that the gig economy relies on vertical restraints as we understand them in the context of competition law, and in particular a major reason why the gig economy has become more prevalent, is more attractive as a business model as a way to hire labor and to direct is exactly because of the antitrust erosion of vertical restraints jurisprudence. I will not go into a huge digression to the historical evaluation of vertical restraints within antitrust law but suffice it to say that it used to be much more onerous and starting in the 1970s in the US and I think emanating outward from there, competition enforcers and courts took the view that vertical restraints are in general pro-competitive and consequently should not be subject to liability except under somewhat extreme circumstances.

This invites, in my view, the direction of labor outside the bounds of employment. So, in effect, the labor relationship is a relationship of subordination in which a boss tells a worker what to do. The regulated context of employment creates emoluments for the worker: that is, they are owed something by the boss in exchange for that economically subordinate relationship. Outside the bounds of employment, you can get an economically subordinate relationship that, economically, is exactly like labor as we see in the gig economy, but in which workers are not owed the rights that are attendant to legal employees.

So that is what I think lies at the heart of the gig economy. I have listed a couple of examples of the types of competition concerns that arise in the gig economy context. I am thinking here of a platform that has putatively independent service providers offering their services on that platform and then customers going to the platform to hire those services. The platform's legal position is, in effect, that these are third party transactions, that the platform is neutral. The platform is not a party to the third-party transaction that is going on between the service provider and the customer.

So, many of the things that actually do happen, I propose, are the result of the dominance of the platform and the fact that they are not a neutral third party to that relationship. Just the very fact that individual service providers are matched to individual customers at the platform's discretion seems like market division within the context of the platform. That is, the service providers are not really in competition with one another to service individual customers. There is also – not in all platforms, but in many of them – a strong price-fixing dimension. It is the platform who determines the price at which this putatively independent transaction takes place.

I will get to the dimensions of the price decision at the platform level in a second. There is a strong exclusion dimension. First of all, the idea that service providers can be deactivated by the platform... This is the main disciplinary mechanism that the platforms have at their discretion. It is, basically, to deny access to the platform to certain service providers on the basis of criteria that can be opaque. I would say beyond that sort of nuclear option vis-à-vis one service provider, there is the – and this is sort of what the non-linear bonus-based pay is getting at – there is also the use of bonuses and incentives to service particular geographies... Here I am invoking the ride-sharing context in particular. But service particular geographies, work at particular times in exchange for a bonus. The pay structure is such that essentially it is not economical to work a shift on a platform unless you earn the bonus and essentially the bonus will make it very difficult to multi-home, even if it is technically possible. If you do not get deactivated just for having another app loaded on your phone. You can fail to earn the bonus, and then at the other extreme you can get deactivated for operating in ways that would go along with multi-homing. So, you have to work in certain areas otherwise you do not get the bonus. You have to work at certain times, you have to accept a certain number of the tasks that are put before you by the platform, or else you face some sort of discipline.

Price and wage discrimination I think are both pretty rampant in the gig economy context. This gets, as I was saying, a little bit to the price-fixing. One of the reasons, one of the ways that a gig economy platform would

defend itself from the claim that it is operating in anti-competitive ways is by saying "Well, prices are lower on this platform than they would be for some other means of getting the same work done," including those means that depend on traditional employment relationship.

That is not always the case, but I would also say that the experiments that we saw that gained a great deal of attention in the early days of the gig economy: labor platforms with surge pricing. The idea being that it would bring in more service providers to the platform at key times and this would enhance consumer welfare. I think that has somewhat gone away, this is my impression. That was, essentially, a mass experimentation to determine individual price elasticities of demand to enable a regime more of price discrimination than of surge pricing that is individually tailored. I think it was largely successful in that.

As Prof. Heimler was saying, there is an economic question about the welfare implications of price discrimination and its implications for competition. I think it is not really in doubt that price discrimination or wage discrimination is evidence of market power. Then we could get to the question of whether that is in itself a harm to welfare versus part of a larger business model that overall is anti-competitive, even if the discriminatory part of it is not the thing that we worry about reducing welfare.

Finally, the last thing on my list here is predatory pricing. This more pertains to the platforms as a whole using low prices and high wages, in a sense, to gain market share. This is what Lina has talked about in many contexts as the signature of tech platforms more broadly. That they can swiftly get to monopolistic market shares through below-cost pricing, and then ratchet that back once their dominance is achieved. I think in the gig economy context, we have seen some price increases. I am most familiar with the US, so I do not want to speak beyond what my knowledge is, but we have seen some evidence of higher prices on the consumer side, but we have definitely seen evidence of lower wages and lower pay – higher take rates, as it is called – on the workers' side of these platforms. I think that can very much sustain a sort of predatory pricing and recruitment-type interpretation of what the platforms have done.

I just threw in this story I saw recently on inequality.org about ride sharing in a couple of developing economies. This is in a context of the Prop. 22 passage in California that happened last month, which was in effect ratifying the non-employment status of gig workers across a number of different platforms in California. This is still a live issue in California and very much a live issue in other states as well as the federal level in the US. I thought this was a very good article because in some ways the coverage of the gig economy as a labor policy matter in the US has not really attended to the competition concerns that I was just raising. I like this article exactly because it does. If you look at the narrative about this rickshaw driver in Cambodia, he is saying "Well, I liked the apps when they first arrived because it was a way to easily meet customers, but little by little I have lost all of my autonomy as an independent service provider. I cannot charge my own fare. I used to bargain the fares, now it is the app that decides how much I get paid. Now all of the customers are on the app, so if I am not on the app, I have no customers and the app determines effectively everything about my business."

I thought that was putting the competition concerns of the platforms front and center in a way that I think is useful for competition enforcers.

I am going a little bit long here, so I should not spend too much time on this. My overall point is that the reasons why the antitrust jurisprudence took a more permissive approach to vertical restraints do not apply in the case of the gig economy. That is my main contention. You have got this elimination of double-marginalization as essentially a principle, agent problem between a dominant upstream manufacturer is usually the conceptualization, and then a downstream retailer of some kind where the manufacturer is basically getting the agent to act in the interest of the principal. That is, I would say, the main trust of the literature when you ask for vertical restraints' permissibility – there is some of the literature that is expressly about inducing effort on the part of the subordinated retailer. Usually that is, for example, through an exclusive dealing contract. If they cannot do any other business, then they have to do what the principal wants. And then there is the idea that says the positive flip-side of inducing effort is that making the agents act

more in line with the principal makes the overall company – the affiliate manufacturer/retailer company – more appealing to customers which enhances inter-brand competition

So, none of these apply to the platforms. The one big reason is that the platforms are the dominant entities between the workers and the consumers. So, the elimination of double marginalization just is not an issue there, in the sense that they are a third party as they themselves say. So, there is no real supply chain in the way that we normally understand it going on. Instead, as we know from the literature, the platforms face a low platform-specific labor supply elasticity such that they have wage setting power over the service providers as the Cambodian rickshaw driver example illustrates. The wage discrimination. As I was saying at the beginning, they can impose penalties for multi-homing, even though they will say that they do not do that. In fact, they do. Then we have evidence that they are taking a very high percentage of the revenues for themselves when all of the costs are located at the level of the worker.

So the take rates that we have seen are something like 25% or more. And I should also say that there is extreme variability based on the evidence that we have. That is, in effect, a payment to a middleman. I mean I will not say that the middleman is providing no services, but it is not in a labor relationship where the employer would own the capital. So, they would be in some ways entitled to or require a high share because they have a lot of costs. In the context of the gig economy, the whole premise of it is that the costs are born by the service provider.

Finally, I will just speak briefly about one case that had this as a subject. It was a private case in the US, a private consumer class action against the CEO of Uber. Eventually the company Uber was joined to the case. Basically, it alleged a hub-and-spoke conspiracy. So, Uber, Kalanick – the CEO – and the drivers are in a horizontal conspiracy per the theory of the case. It focused mostly on the surge pricing because the case was fundamentally about harm to consumers. They were saying "Well, the harm from this horizontal conspiracy manifests in the form of these surge prices which are higher than regulated taxi fares." That is the anti-competitive harm of this conspiracy.

Obviously, the legal landscape for a horizontal conspiracy is more favorable in general. In particular, this case was brought in New York where there was a favorable precedent in the Apple e-books case that found a hub-and-spoke conspiracy between Apple and the book publishers. It sought to use that as the precedent to say that ride sharing was similar. You know, as this presentation has been suggesting, my view of what is going on here economically is not really of a horizontal conspiracy, notwithstanding that the legal landscape would be more favorable to the plaintiffs on alleging that harm.

Anyway, under these facts, this case initially had a positive reception at the district court level, but it was sent to arbitration when the company was successful in imposing a mandatory arbitration clause. Ultimately the arbitrator found for the defendant on the specific injunctive relief about whether the platform's control over prices was a violation of the Sherman Act. There may have been damages in addition to that, but that was the main policy question in my opinion.

So, this is a fairly thin record of cases of this type. But I think as the gig economy becomes more prevalent, especially in the US following Prop. 22, there is going to be efforts I am sure to accentuate the policy embodied in that law in other states. I think the extent to which the labor relationship becomes a subject of competition law and regulation in that sphere is only going to be more heightened over time as this business model gains market share.

## EBRU GÖKÇE DESSEMOND

Thank you very much, Marshall, for the presentation and references to the studies on inequality.org and the market power vis-à-vis the gig economy. I will abuse my moderator power now to ask a question to our speakers. Maybe I will leave it till the end and I will first go up to our third speaker.

Our third speaker is Ms. Meltem BAĞIŞ AKKAYA. She is the Head of the Department of Strategy Development and Acting Head of the Department of External Relations and Competition Advocacy at the TCA. She has been working for the TCA for the past 20 years. She has broad experience in merger review, cartels, and abuse of dominance cases.

After graduating from Ankara University, Faculty of Political Sciences, she received a master's degree in European Union Law in the University Essex with distinction. She has been a member of the Scientific Committee of the Turin School of Regulation in Italy since 2012 and she has been teaching competition and regulation and digital economy in the same school. She is also teaching digital economy at Atılım University in Ankara.

Meltem, the floor is yours. Thank you.

**MELTEM BAĞIŞ AKKAYA**
Acting Head of External Relations and Competition Advocacy Department

Thank you, Ebru. Good morning Prof. Steinbaum. It must be 7 a.m. in Utah. I guess we are replacing your breakfast time, sorry for that. And good afternoon, Alberto and Ebru.

It is a great pleasure and honor to speak after two prominent professors. I thank them for accepting our invitation and for their excellent talks and their contributions.

So, labor law issues and complaints and cases have been quite rare in the Turkish jurisdiction. I know that we are not the only competition authority who has either a weak voice or even silence in labor markets. I was asking myself when I was preparing my talk why that was so. For the TCA, the fact seems to have its foundations in two reasons – or two misperceptions, if you like. When our law was drafted back in 1997, in the preamble to the definitions provision where services and undertakings were defined, a statement was added to exclude "collective bargaining of worker unions." So instead of excluding solely collective bargaining of workers from our enforcement, the whole labor market seems to have been pushed aside. For years, our Authority and the Board tried to refrain from intervening in labor markets based on this principle, thinking that all labor market issues were excluded from the competence of our Authority. For a decade or so there were almost no cases and I know that we are not the only ones. It is more or less the same in Europe, similar in the US.

The second problem, from my understanding is it has its roots in the theories of harm, which under the Chicago School, heavily relied on the standard of consumer welfare. I will get back to this point after I give some examples from our cases and then I will get back to the theoretical debate again.

Up until this year, all the cases we had – although limited in number –

were preliminary investigation cases. No complaints were taken to the secondary stage of investigation. The very first case we had on labor markets was based on a complaint on wage fixing and no-poaching of TV actors between TV series producers. That was in 2005. The Board was quite cautious in not making a clear reference to the dynamics of labor issues and competition issues because it did not know what to say at that time, thinking labor issues were out of our scope. It just sent a warning opinion and said that the conduct should be terminated.

The next case we had was six years later. That was in 2011. It was based again on a complaint, this time related to the principles laid down by the Federation of Private Schools on no-poaching of teachers. So, commenting on the lessening of the mobility of workers, a warning opinion was again sent to terminate the conduct and there the Board stopped.

In 2013, there was an interesting case which has stopped for some more time our labor law enforcement. The case clearly shows us this misperception of competition issues in labor markets the Board was operating under at the time. It was a complaint claiming that the Federation of Agricultural Engineers and Chemists was fixing the wages of engineers and chemists. The Board narrowed its competence and decided that labor market issues were out of its competence totally, thus they should be excluded.

So until recently, we have had no labor cases based on this understanding. Then in 2018, all of a sudden, we had a milestone case which involved a shift of attention to labor markets again. This involves wage-fixing and no-poaching of truck drivers based on a complaint. For the first time in our competition enforcement history, in this labor issue the Board made a clear comment and even went further to make a reference to the 2016 FTC/DOJ Guidance for Human Resources Professionals, and emphasized the per se illegality of no-poaching agreements. That was a milestone case for us. The Board, making a clear and concrete reference to both sides of market and supplier relations, said that "Supplier and consumer sides are the two sides of the market." It even went on to

say that – and this was quite a strong statement – "Supplier side wage-fixing agreements are no different than those of product-side price fixing agreement and no-poaching contracts are no different than market sharing and consumer allocation agreements." So that was clearly a good, strong statement.

So soon after we had another case again related to no-poaching in a franchising contract. The provision of no-poaching was found to be lessening competition in labor markets and the parties were required to redraft the contract in a competitive manner.

So, we have a very fresh case – last month – in which the Board sent a signal to the markets, to the economy that it would intervene more and be more active in labor markets now. I guess we owe this new reformist approach to the pandemic and the decline in the economic growth and its reflections in the employment side. So, based on no-poaching, again, of medical doctors this time, the case is now in its full investigation stage. We are waiting for the outcome in the upcoming months.

Let me now return from the practical issues to the theoretical foundations of the debate. As is well-known for decades, the Chicago School was quite influential in competition policy and enforcement. The consumer welfare standard was the dominant standard of the harm theory for a long time. Any conduct that made consumers better-off was deemed to be competitive and any conduct that ends up with declining consumer surplus was perceived as anti-competitive. That was clearly disregarding the other side of the market. What about the supplier-side then? On the extreme version, in the case of an exercise of market power by a dominant buyer in labor markets, an agreement on wage suppression or a decrease in wages – even if it hurts workers – would mean lower costs, and accordingly that would mean lower prices that the consumer would receive, which would in turn mean that the consumers would be better off. They would benefit, they would like the lower prices. So, even if it hurts the workers, the conduct could be evaluated as competitive. That is a theory many, many competition authorities, including ours, refrained from this extreme and hazardous evaluation. We were mute to labor

market complaints, because the other side was a quite dangerous area under the consumer welfare standard.

Obviously the economic foundations brought by the consumer welfare standard is ill-fitted for labor markets. Because the focus is always on downstream consumers, it neglects the input supplier-side.

What is the alternative then? The alternative, as Alberto already mentioned, could be the total welfare standard, which takes into account both sides: consumer and producer surplus. This has also flaws and is ill-fitting for the labor markets. I am not going to go in deep because I am running out of time.

The third option... How can we evaluate labor market issues and competition issues? It could be the protection of the competitive process – as already discussed by our speakers – which hardly again has a foundation in economic welfare concepts. In this standard, under the protection of competitive process approach, when interests of different market players clash there is no certain answer. The standard cannot make clear predictions in circumstances where competing economic objectives are in conflict. This leads to unpredictability and inconsistency.

Due to the latest developments in markets, I guess we will always be talking more about competition issues in labor markets. We have to address these problems. How do we handle these problems, then?

As in her excellent talk yesterday Lina Khan and today Prof. Steinbaum has said, the spread of platforms has created a new category of workers, called gig workers, who are not directly employed by the platforms. Uber is a good example of this category. The question here, for this type of workers is: They are generally called independent contractors, as was the case for Uber drivers in the US already discussed by Prof. STEINBAUM with relation to the Meyer v. Kalanick. If they are independent contractors, do they constitute a cartel, perhaps, in the form of a hub-and-spoke cartel? Or vertical restraints to be enforced, or even an agent and principal relationship as was the case... Since the Meyer v. Kalanick case was brought to arbitration, there are no certain answers on that case.

I know that there are attempts in Europe for this category of people, gig workers. In the UK, for example, they are trying to make the earnings of Uber drivers equal with at least the legal minimum wage. This has more labor law implications than today's panels debate.

Due to the decline in economic growth, which already has had its negative impact in labor markets - be it in the form of wage suppression or the risk of collective wage-fixing or no-poaching - we have to find ways to enforce competition law in labor markets. That quite straightforward, but how?

When I went through our cases as well as the US and European cases I found, to my surprise, another field is mergers which labor issues could have been enforced. To my knowledge, there has never been a merger analysis, or a merger case blocked on the basis of lessening of competition in labor markets. The good news is, this was addressed by the FTC, stressing that when evaluating a merger, they would focus on labor market impacts of the merger. Yet no case.

FTC/DOJ Guidance warns against collusion in the form of agreements not to poach workers would be deemed per se illegal. That is a very good step forward, that was in the 2016 Guidance. Still, there is no outcome. As Prof. Steinbaum said, we are still trying to find answers to the problems of the labor markets. Yesterday Lina Khan told us to be more innovative, more creative on exploitative abuses. Today, Prof. Steinbaum told us and in his recent papers suggested amendments to antitrust law to ensure employers with labor market power do not harm competition in labor markets. So, he suggests amendments to legislation and provisions. Instead, Alberto today and in his recent work co-authored with, I guess, Darryl Biggar, right Alberto?

**ALBERTO HEIMLER**

Right.

**MELTEM BAĞIŞ AKKAYA**

Okay. Alberto has come up with a fourth alternative, if you like. Very reformative standard to the ones that are already available. He suggests

using a transaction cost approach to the competition law. He has based his solution on sunk costs and his suggestion will be very useful in handling competition problems in labor markets, as well as other markets, of course.

In my view, this will be an excellent standard for digitalization and digitalized markets. So, I – being an enforcer of competition law myself – find both of our speakers' suggestions and their papers and contributions to the competition law quite valuable indeed. In the years ahead, I am sure we will likely encounter more digitalization and new types of workers and new problems, for which the existing competition law provisions will be insufficient to address and solve the problems. Unfortunately, due to the pandemic and due to the decline in economic growth, we will see unemployment and some other problems in labor markets. This will force us to have a strong view in these markets. So, I am more than sure we need new tools and I believe both of our speakers' suggestions will prove to be quite useful from an enforcer's point of view. So, I thank both of the speakers and I thank you Ebru, and I wish you all happy holidays and a happy new year. A healthy new year, of course.

Thank you.

**EBRU GÖKÇE DESSEMOND**

Thank you very much, Meltem, for your presentation and nice summary of the points of all of the speakers. You did the most difficult part of my job, actually. But as I said, I am going to abuse my moderator power and – having these distinguished speakers and Meltem here – I would like to ask you all a question that came up in my mind when I was listening to Meltem's presentation, and there is a related question as a follow-up to mine from the audience.

So, as you mentioned, there is the definition of the status of gig workers. In some jurisdictions, they are recognized as individual contractors, in others they are recognized as employees. To give us perspective, in the Geneva region the court decided that Uber

employees were actually employees, not individual workers. So, they would fall under the labor law and the way they worked, the conditions under which they were working were against the labor laws in the Geneva region. So, Uber was prohibited from operating in the Geneva region in Switzerland.

I think several other countries had similar cases and court decisions. Does not this affect how competition law and competition authorities address these kinds of competition issues in labor markets? To my understanding – I am not a lawyer but I think this goes beyond the scope of the law and the competition authorities, doesn't it? The way you define gig workers also determines the way or the possibility, if any, that competition authorities can intervene or cannot intervene. Because if they are considered employees, to me it seems easier to intervene as competition authorities. But if they are individual contractors, then there are issues like hub-and-spoke cartels, can they coordinate, is it a competitive structure...? So, the debate moves in another direction than wage discrimination and everything else that we discussed with the speakers. So, in that case, maybe there is a role for competition authorities to advocate in their countries for these workers to be recognized as employees? What do you think about it?

The similar question from the audience related to mine is as follows: "If we accept the Uber drivers as employees, then are not they subject to employment law, rather than competition law?" It is a slightly different question on the same subject. What do you think?

**MARSHALL STEINBAUM**

I could say a few things about that, if that is alright. I think the legal status of employment question is very important, but I do not think it is dispositive as to the application of competition law. You all have mentioned cases of no-poaching agreements that pertain to employees. Basically, regardless of the economics of the case, the entire case is hinged on the fact that the workers are not employees. They are still subjected to the same anti-competitive behavior between employers.

Where it seems to matter most would be where you have a dominant employer – a platform, say – and the question is "Well, are they allowed to set the prices for these transactions?" If they are talking about their own workers, of course, they can set the prices because it is all just one company that can set its own prices subject to the other restrictions that the competition law might bring into the case. Whereas if they are separate entities, then at least in my view, there should be more scrutiny of that.

It may legally be the case that it is easier to intervene if the workers are employees, but I think, economically speaking, there should be more of an impetus to intervene when they are not employees. That is, when the legal status is such that these are two different entities. To me that is exactly where competition law should be brought to bear the most, because this is the area of law that regulates the imbalances of power and its potential ill-implications across the boundaries of the firms. I think that is at the foundation of the diminution of labor power more broadly, and in particular the spread of the gig economy is exactly that there is a sort of grey area that pertains to where the legal boundary of the firm is, where dominant employers are neither subject to labor law nor to meaningful competition enforcement given their ability to impose vertical restraints.

Finally, just to wrap this up, Commissioner Rebecca Slaughter of the American Federal Trade Commission did submit a comment. Right now, there is a rule going through the Federal Department of Labor – I do not know exactly what the status is but I suspect it is near its completion – that would essentially ratify, for the purposes of federal labor law,

the treatment of gig workers as independent contractors as opposed to employees. Commissioner Slaughter articulated, in my view, a very strong case why that pertains to competition and would have the effect of reducing competition in labor markets for disadvantaged workers. So, she was saying that treating these workers as employees would promote competition in labor markets, coming from a Commissioner of the Federal Trade Commission.

**EBRU GÖKÇE DESSEMOND**

Thank you, Marshall. Anybody else? Alberto?

**ALBERTO HEIMLER**

Yes, I would like to just make a comment.

The fact that a worker is a worker, an employee or an independent worker has an effect on how antitrust law can intervene on its specific behavior. So, trade union negotiations are not subject to antitrust law, but of course no-poaching agreements – that is, behavior on the part of the companies purchasing labor – are of course subject to antitrust law. With respect to contractors, they are like firms so their association or any type of practice they put in place, coordination, etc... They are like firms, so they are subject to competition law.

Indeed, there are old cases of the EU. I refer to the Italian harbor workers as a very famous case of 1991 concerning the Harbor of Genova. The Commission intervened against the workers at the harbor because they were fixing wages, but effectively these workers were not workers: they were contractors. So they were fixing their contract fee. In this way, they were actually like a firm and they were fully subject to competition law. So that particular case was brought by a ship owner against the Harbor of Geneva because they were not allowing him to use his own workers or other contract workers to unload his ship. There were some exclusionary practices that were exclusively given to identify the workers in the Harbor of Geneva. But these were not workers, they

were contractors. So, in this way, this practice could be addressed by competition law.

All I am saying is that if a worker is a contractor, he is fully subject to competition law, including his own practices. On the other hand, if he is an employee, only the practices that affect him, practices by companies, could indeed be subject to competition law while the practices by the worker himself are not. Because, for example, Article 101 and 102 of the European Treaty, which are the main antitrust legal provisions in Europe, and similar provisions all over the world effectively refer to firms as being the subject of the provisions, not anyone.

France, for example has a different provision. It is much more open. Also, Australia, by the way. They do not refer to firms. In fact, in these countries, these jurisdictions, there have been some actions which have been undertaken against trade unions themselves. Because the agreements are prohibited, the agreements that restrict competition, not necessarily agreements by firms.

So, it depends on the legal provision. But in general, legal provisions are directed towards firms.

**MELTEM BAĞIŞ AKKAYA**

Ebru, can I contribute?

**EBRU GÖKÇE DESSEMOND**

Of course. Please, Meltem.

**MELTEM BAĞIŞ AKKAYA**

Thank you. My contribution would be since with the digitalization and with these platforms we have a totally new world, all the categories that we used to know are no longer available, all the standards that we are applying to them are no longer sufficient enough. If you look at gig workers - there is no single homogeneous category as gig workers. If you

look at Uber drivers, they are quite different than Airbnb hosts because in Airbnb you are free to price your house, the time, and everything else the way you like. Instead in Uber drivers get instructions from Uber. The price is almost fixed by the company algorithm. If you look at Taskrabbiters, they are free to put the price on their task the way they like. There is no one specific category of gig workers.

This is true also with the other types of competition issues in digital markets. If you look at abuse of dominance cases, we have difficulties and challenges in naming those conducts now. In the past we would say "predatory pricing," or "this is excessive pricing," or "this is an exclusive agreement". Instead, now we have exploitative abuses. As Lina KHAN suggested yesterday, we have to move towards exploitative abuses so the grey area or the boundary where competition law meets consumer protection law seems to be blurring.

So, in my understanding, we have to change our mindset a little bit and rather than trying to come up with all solutions, we have to find new tools and new amendments. Maybe we have to refresh our existing legislation in order to address the needs of these problems.

That would be what I would suggest. Thank you.

**EBRU GÖKÇE DESSEMOND**

Thank you very much, Meltem. That was a nice exchange, actually.

We have another question. Maybe we can end with this one specifically on the transaction costs approach presented by Alberto.

I am reading the question. You can also see it in the Q&A on your screens, but I will read it for all the audience: "Isn't the transaction costs approach assuming too much that the undertakings are substitutes for structuring efficient transactions when markets fail? Aren't undertakings legitimately focusing on many other goals and preferences while governing certain kinds of economic activities through a logic that is very different from that of a market?"

Would you like to react to this, Alberto?

### ALBERTO HEIMLER

So, of course internally the firm acts outside of the market, decides internally how it wants to organize itself. But its relationships with other companies, other suppliers and consumers are market-based. So, I do not understand well what it is meant by the person that asked the question by saying firms have different objectives. Of course, firms can have any objective but the issue that I am concentrating on is that the relationships that exist between the firm and its buyers and the firm and its suppliers. In both instances, in our view, antitrust law is there to make sure that sunk cost investments on both sides – on the consumer-side and on the supplier-side – are not exploited by the company itself. It can do so only if the company becomes dominant, either unilaterally or in a coordinated fashion, and only if there are no other ways to protect that sunk investments. Through contracting or considering also the choices that the consumer and the supplier had at the time the decision to trade with the company was taken.

So, we have to see whether it was a mistake by the supplier or a mistake by the consumer not to be cautious enough as to be subject to holdup, or whether it was a strategic action by the company itself to engage in holdup. We want to exclude lack of caution and we want to make sure that the approach only catches strategic practices by the company with respect to its buyers or with respect to its suppliers.

I hope I have responded.

### EBRU GÖKÇE DESSEMOND

Thank you very much, Alberto.

I thank all the speakers; it was a very interesting debate. I think the presentations will be posted on the ICF website for the audience. If you would like to you can check the ICF website for all the presentations. They will be uploaded with biographies of the speakers.

Thank you very much for your attention. And looking forward to meeting you in Istanbul next year.

### MELTEM BAĞIŞ AKKAYA

Ebru, we wanted to add that for labor issues we have been trying to find new paths and we wanted to broaden our understanding here in the TCA. So, we have a young colleague who is writing a thesis on these issues. I think next year or in an upcoming month we are going to include him in an upcoming debate. Nezir Furkan. He is the one who has collaborated with us in writing the background notes. So, I really need to thank him as well.

And just a quick reminder: hopefully, if the pandemic ends before the expected time, we want to renew this forum before the third meeting in Istanbul. So hopefully we will not have to wait until December.

### EBRU GÖKÇE DESSEMOND

That is actually a very good plan.

### MELTEM BAĞIŞ AKKAYA

Thank you, Alberto and thank you Ebru. Thank you, Prof. Steinbaum for contributing. Thank you.