

Fostering AI Innovation and Competition: The Way Ahead

by Ettore Greco

Since Open AI launched ChatGPT, its generative artificial intelligence (AI) service, at the end of 2022, a heated debate has developed over the economic and social impact of AI. Growing attention has been paid, in particular, to the implications of the development and use of generative AI for competition policies. Competition authorities have been intensively working to deepen their understanding of the dynamics of the rapidly evolving AI markets and the new challenges that they pose for competition and consumer regulations. They have conducted several stakeholder consultations and promoted research to identify the most relevant market developments that require fresh regulatory efforts or enforcement action through the existing instruments.

It is widely recognised that the transformative power of generative AI can bring unprecedented benefits to citizens and consumers in a wide range of areas, from transportation to health to education. At the same time, it has

the potential to bring about dramatic changes in companies' business models and the way in which many markets work. Competition authorities are focusing on the potential risks that such far-reaching transformation entails for competition and consumers. They are intensifying their monitoring of dynamics that may lead to market concentration, anti-competitive behaviour and unfair business practices restricting consumers' choices. The declared aim of competition regulators is to establish governance models that address anticompetitive conduct in the AI realm without stifling innovation: a delicate balancing act, not least because of the extremely rapid advancement of AI technologies.

A learning curve

Regulators have made no mystery of their concern that, by not acting early enough, they might fail to prevent the consolidation of monopolies or dominant market positions as happened with the previous technological

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revolution in the digital economy. A feeling of urgency has taken root. At the same time, the opposite risk cannot be underestimated. Not only do AI markets appear to be at an embryonic stage, but they also are very complex systems cutting across many different economic sectors. Hence the need, openly recognised by competition authorities, to analyse market dynamics more thoroughly to avoid premature regulatory action that hampers innovation or quickly becomes obsolete. "We are on a learning curve", Margrethe Vestager, European Commissioner for Competition, candidly acknowledged.¹

Two major concerns

A first major concern relates to control by few market players of inputs that are key to developing foundation models, such as training data, advanced semiconductors, computing power, cloud services and technical expertise. Incumbent AI companies may deny their competitors access to such inputs to entrench their dominant market positions. Concentrated control of critical inputs can also limit customers' choices. A second risk is the use of acquisitions or partnerships by large digital companies to further consolidate their market power. In particular, a growing number of partnerships between big companies and small AI developers have been signed. The attitude of regulators towards these deals has been rather cautious so

¹ European Commission, *Speech by EVP Margrethe Vestager at the European Commission Workshop on "Competition in Virtual Worlds and Generative AI"*, 28 June 2024, https://ec.europa.eu/commission/presscorner/detail/en/speech_24_3550.

far. "Actually, these investments are important" – Vestager, for example, declared – "They give access to the necessary components and allow AI systems to be developed. So generally, we consider these deals to be pro-competitive. But they can sometimes create entrenched market positions, especially through exclusivity rights. So we need to keep an eye on them to ensure fair play."² More generally, competition authorities have warned against the risk that powerful incumbent companies may prevent, through various anticompetitive practices, smaller AI developers and start-ups from entering the market or reaching end users.

Towards more assertive action by regulators?

Government initiatives signalling heightened concerns about competition risks in AI markets have multiplied. In October 2023, US President Joe Biden issued an executive order on "Safe, Secure and Trustworthy Artificial Intelligence" which emphasises the need to promote competition in AI and related technologies, by "addressing risks arising from concentrated control of key inputs, taking steps to stop unlawful collusion and prevent dominant firms from disadvantaging competitors", with the goal, inter alia, of "provid[ing] new opportunities for small businesses and entrepreneurs".³

² Ibid.

³ White House, *Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, 30 October 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy->

No less significant, in a paper on AI foundation models published in April 2024, the UK Competition and Markets Authority (CMA) voiced concerns about the potentially disruptive impact of AI on the economic environment, hinting at the use of its regulatory powers to prevent the consolidation of dominant market positions.⁴ The paper marked a significant shift from CMA's previous plan to focus on the introduction of flexible guiding principles. The European Commission has indicated that it will apply EU competition law, including the Digital Markets Act (DMA) that took effect in 2023, also to AI market players.⁵ In July 2024, the competition authorities of the EU, the US and the UK published a joint statement on competition in AI in which they underline the "great potential benefits" that AI services can bring to markets but commit, at the same time, to using their powers to safeguard against market practices that could undermine fair competition in the AI sphere.⁶

development-and-use-of-artificial-intelligence.

⁴ Competition and Markets Authority, *AI Foundation Models: Update Paper*, 11 April 2024, <https://www.gov.uk/government/publications/ai-foundation-models-update-paper>.

⁵ According to Vestager, "the DMA can also regulate AI even though it is not listed as a core platform service itself. AI is covered where it is embedded in designated core platform services such as search engines, operating systems and social networking services". European Commission, *Speech by EVP Margrethe Vestager at the European Commission Workshop on "Competition in Virtual Worlds and Generative AI"*, cit.

⁶ European Commission et al., *Joint Statement on Competition in Generative AI Foundation Models and AI Products*, 23 July 2024, https://competition-policy.ec.europa.eu/node/1301_en.

G7 initiatives

In the last few years, the G7 has addressed competition problems in the digital markets in various documents, including with the involvement of competition authorities of the member countries.⁷ In April 2023, a contact group was established among the G7 competition authorities and policymakers to facilitate exchange of information and experience on competition issues in digital markets. A subsequent G7 Communiqué (November 2023) emphasised competition risks associated with the rise of AI, including anticompetitive conduct by incumbent tech firms that control key AI inputs and adjacent markets.⁸ The Apulia G7 Leaders' Communiqué issued in June 2024 encouraged the competition authorities of G7 countries "to monitor the development of the AI industry, with a view to addressing potential competition issues, and prevent adverse effects at an early stage".⁹

⁷ Early documents include the 2019 *Common Understanding of G7 Competition Authorities on "Competition and Digital Economy"* (https://www.ftc.gov/system/files/attachments/press-releases/ftc-chairman-supports-common-understanding-g7-competition-authorities-competition-digital-economy/g7_common_understanding_7-5-19.pdf) and the 2021 policymakers' *G7 Shared Policy Objectives for Competition in Digital Markets* (<https://www.gov.uk/government/publications/g7-shared-policy-objectives-for-competition-in-digital-markets/g7-shared-policy-objectives-for-competition-in-digital-markets>).

⁸ *G7 Competition Authorities and Policymakers' Summit Digital Competition Communiqué*, Tokyo, 8 November 2023, https://www.kantei.go.jp/jp/singi/digitalmarket/pdf_e/betten1.pdf.

⁹ *Apulia G7 Leaders' Communiqué*, 14 June 2024, <https://www.g7italy.it/wp-content/uploads/Apulia-G7-Leaders-Communique.pdf>.

Worth mentioning is also the crucial role played by the Organisation for Economic Cooperation and Development (OECD) in technically supporting the G7 initiatives and providing research-based analysis and advice on how to promote competition in the AI realm.¹⁰ The OECD work is key to advancing convergent governance models for generative AI.

Dialogue with stakeholders

In parallel, both governments and competition authorities have intensified dialogue with market players and stakeholders about market dynamics and regulatory problems. Significant initiatives that demonstrate the potential of such dialogue include the July 2023 White House Voluntary AI Commitments,¹¹ endorsed by many

¹⁰ See, in particular, OECD Competition Division, *G7 Inventory of New Rules for Digital Markets*, Prepared for the 2023 G7 Joint Competition Policy Makers and Enforcers Summit, November 2023, https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/competition-and-digital-economy/g7-inventory-of-new-rules-for-digital-markets-2023.pdf/_jcr_content/renditions/original./g7-inventory-of-new-rules-for-digital-markets-2023.pdf; *Analytical Note on the G7 Inventory of New Rules for Digital Markets*, November 2023, https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/competition-and-digital-economy/analytical-note-on-the-g7-inventory-of-new-rules-for-digital-markets-2023.pdf/_jcr_content/renditions/original./analytical-note-on-the-g7-inventory-of-new-rules-for-digital-markets-2023.pdf; *Theories of Harm for Digital Mergers. OECD Competition Policy Roundtable Background Note*, May 2023, https://www.oecd.org/en/publications/theories-of-harm-for-digital-mergers_0099737e-en.html.

¹¹ White House, *Fact Sheet: Biden-Harris Administration Secures Voluntary Commitments from Leading Artificial Intelligence Companies to Manage the Risks Posed by AI*, 21 July

2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/21/fact-sheet-biden-harris-administration-secures-voluntary-commitments-from-leading-artificial-intelligence-companies-to-manage-the-risks-posed-by-ai>; *Voluntary AI Commitments*, September 2023, <https://www.whitehouse.gov/wp-content/uploads/2023/09/Voluntary-AI-Commitments-September-2023.pdf>.

Looking ahead

The intensifying dialogue and cooperation between competition authorities across the Atlantic and in the G7 framework to deal with risks stemming from the rise of generative AI is a promising development. A convergence of efforts and policies to safeguard market competition and the interests of consumers can greatly contribute to countering the disruptive effects of rapid technological change and building transparency and trust.

¹² G7, *Hiroshima Process International Code of Conduct for Organizations Developing Advanced AI Systems*, 30 October 2023, <https://digital-strategy.ec.europa.eu/en/library/hiroshima-process-international-code-conduct-advanced-ai-systems>.



The AI markets are however at an early stage of their development and the future trajectory of AI technologies and their multi-faceted applications remains highly uncertain. This requires a thorough and continuously updated study of market dynamics. While there is a rising feeling that early action by governments and regulators is needed to counter anticompetitive drives, premature interventions run the risk of stifling competition.

Dialogue with market players and stakeholders is of paramount importance to identify the emerging competition risks and evaluate the impact of the existing pro-competition tools or new regulatory measures on the AI realm. The outreach activities undertaken by governments and competition authorities provide a solid basis for further advancements in the dialogue with stakeholders. Voluntary codes of conduct such as the one launched by the Biden administration and the G7 may play a role in promoting responsible behaviour by industrial actors.

In this context, the G7 can provide an essential platform for advancing discussions on the role of competition policy in AI markets to ensure adequate actions to address anticompetitive issues. The G7 has also proved to be a valuable instrument to foster policy convergence among its members on competition rules and more broadly governance models for generative AI.

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