



# *ARE COMPETITION LAWS FIT FOR THE DIGITAL AGE?*

Antonio Capobianco  
Senior Competition Expert  
OECD, Competition Division



# OUTLINE

---

- DIGITALISATION
  - OECD's WORK ON DIGITALISATION
  - SPECIFIC FEATURES OF THE DIGITAL ECONOMY
- BENEFITS FROM CROSS-BORDER DIGITALISATION
- CHALLENGES FROM CROSS-BORDER DIGITALISATION
  - NEW CHALLENGES
  - ENFORCEMENT CHALLENGES
- POLICY IMPLICATIONS BY ENFORCEMENT AREA
- INSTITUTIONAL DESIGN
- Q&A





# DIGITALISATION





*“Digital transformation is characterized by **a fusion of advanced technologies and the integration of physical and digital systems**, the predominance of innovative business models and new processes, and the creation of smart products and services.” -European Commission*

*"**The industrial revolution of our time is digital.** We need the right scale for technologies such as cloud computing, data-driven science and the internet of things to reach their full potential. As companies aim to scale up across the **Single Market**, public e-services should also meet today's needs: be digital, open and cross-border by design. The EU is the right scale for the digital times.“ - Andrus Ansip, EU Commissioner, Vice-President for the Digital Single Market, Brussels 19 April 2016*



*“The digitalisation of our economy, of our society, of our daily lives is, as we all know, having a huge effect on all aspects of human endeavour. It’s surely not surprising, then, that **this should include our own field of endeavour, competition or ‘antitrust’ law and policy.**” - CMA, 15 November 2016*

*“**Competition rules can't solve every problem on their own. But they can make an important contribution to keeping digital markets level and open. So that consumers get innovative products at the right prices. And so that digital entrepreneurs, however big or small, have a fair shot at success.**”  
- Margrethe Vestager, Munich, 17 January 2016*



# DIGITAL ECONOMY

- Umbrella term

*“...the part of an economy that enables and conducts the trade of goods and services through e-commerce”* (OECD Hearing on the Digital Economy, 2012)



## BUT

- Traditional (offline) vs digital (online) world is interconnected and integrated -> **no clear boundaries**
- **Impacts** of the digital economy **spill over to other areas** and to the society



# OECD's WORK ON DIGITALISATION

## (1) OECD-wide work: GOING DIGITAL

### GOING DIGITAL

Making the transformation work for growth and well-being

#### Our ambition



*“The OECD's Going Digital project will give policymakers the tools they need to help their economies and societies prosper in a world that is increasingly digital and data-driven.”*

#Going Digital

#### Just released

OECD Digital Economy Outlook 2017:  
What artificial intelligence really means for  
policy makers

Published on October 11, 2017



<http://www.oecd.org/going-digital/>



# OECD's WORK ON DIGITALISATION (2) COMPETITION PERSPECTIVE

➤ DIGITAL ECONOMY -> long-term strategic theme of the Competition Committee

## Sub-streams:

- (1) Relationship between the digital economy, competition law and innovation
- (2) Challenges posed to antitrust tools and approaches
- (3) Practical challenges to competition enforcement
- (4) Detailed industries and sectors
- (5) Role of competition vs regulation



<http://www.oecd.org/competition/digital-economy-innovation-and-competition.htm>





# OECD's WORK ON DIGITALISATION

## (2) COMPETITION PERSPECTIVE con't

- Policy discussions, hearings, roundtables related to the Digitalisation

### General policy issues

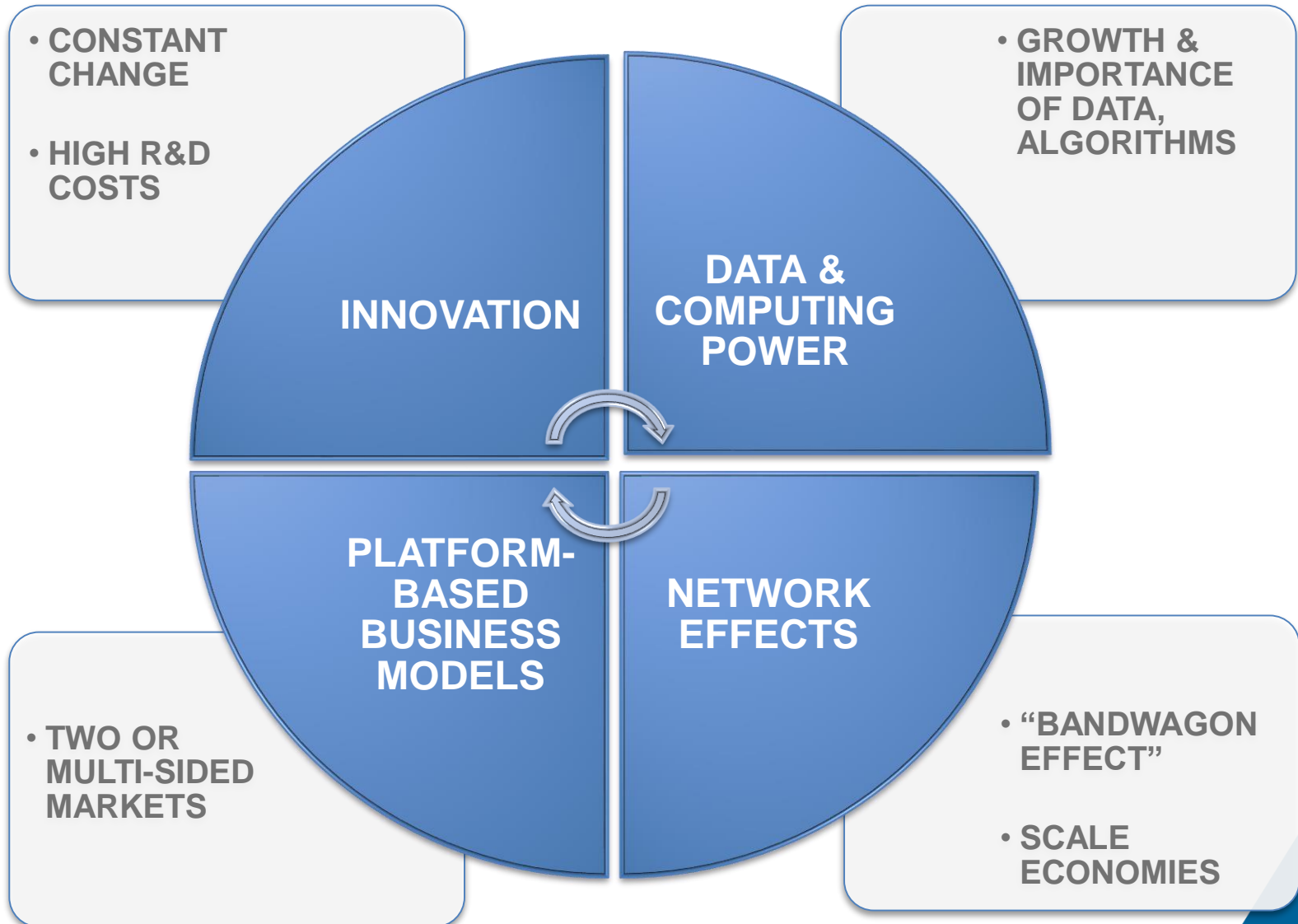
- ✓ Merger review in emerging high innovation markets (2002)
- ✓ Competition, patents and innovation (2006, 2009)
- ✓ The digital economy (2012)
- ✓ Disruptive innovation in competition law enforcement (2015)
- ✓ Disruptive innovation and their effect on competition (2015)
- ✓ Big Data: Bringing competition policy to the digital era (2016)
- ✓ Algorithms and collusion (2017)
- ✓ Rethinking the use of traditional antitrust enforcement tools in multi-sided markets (2017)

### Sector specific topics

- ✓ Vertical restraints in online sales (2013)
- ✓ Disruptive innovation in financial markets (2015) in legal services (2016) in land transport (2016) and in the electricity sector (2017)



# SPECIFIC FEATURES OF THE DIGITAL ECONOMY





# CROSS-BORDER DIGITALISATION

---

- Cross border digitalisation leads to **market integration**, promotes **international trade** and enables new **data-driven business models** that promote competition and economic growth.



Potential benefits from enhanced competition:

- Lower prices
- Quantity, quality & variety of services
- Product and process innovation





# CROSS-BORDER DIGITALISATION PROMOTES INNOVATION AND LEADS TO ECONOMIC GROWTH

- Digital platforms have served as the basis for many disruptive innovations (taxis, hotels, financial services, legal services...):
  - Cutting out intermediaries and reducing costs
  - Providing flexible employment opportunities
  - Addressing market failures normally dealt with by regulation
- Data analytics has enabled multiple innovations with benefits for firms and consumers:

## Applications of Big Data & Algorithms

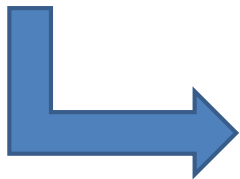
- New products & services
- Personalised recommendations
- Supply-chain optimisation
- Product recommendations
- Dynamic pricing
- Fraud prevention
- Risk management
- Product customisation
- Real-time supply
- Consumer information



# CROSS-BORDER DIGITALISATION CAN BRING **BENEFITS FOR ALL**

---

- Gains from digitalisation can also be captured by developing economies:
  - Countries without the infrastructure can benefit from the computational power and software developed elsewhere
  - Dissemination of data promotes **economic convergence** (e.g. data from country A can be analysed by country B to improve policies in country C)
  - Cross-border digitalisation exerts competitive pressure on established national monopolies



**Inclusive growth**



# BUT CROSS-BORDER DIGITALISATION ALSO BRINGS **NEW CHALLENGES** FOR COMPETITION POLICY...

---

**Dominance of  
online platforms**

**Non-price  
competition**

**Concentration of  
data holdings**

**Blurring of market  
boundaries**

**Competition for the  
market**

**Rapid market  
changes**

**Algorithmic pricing**

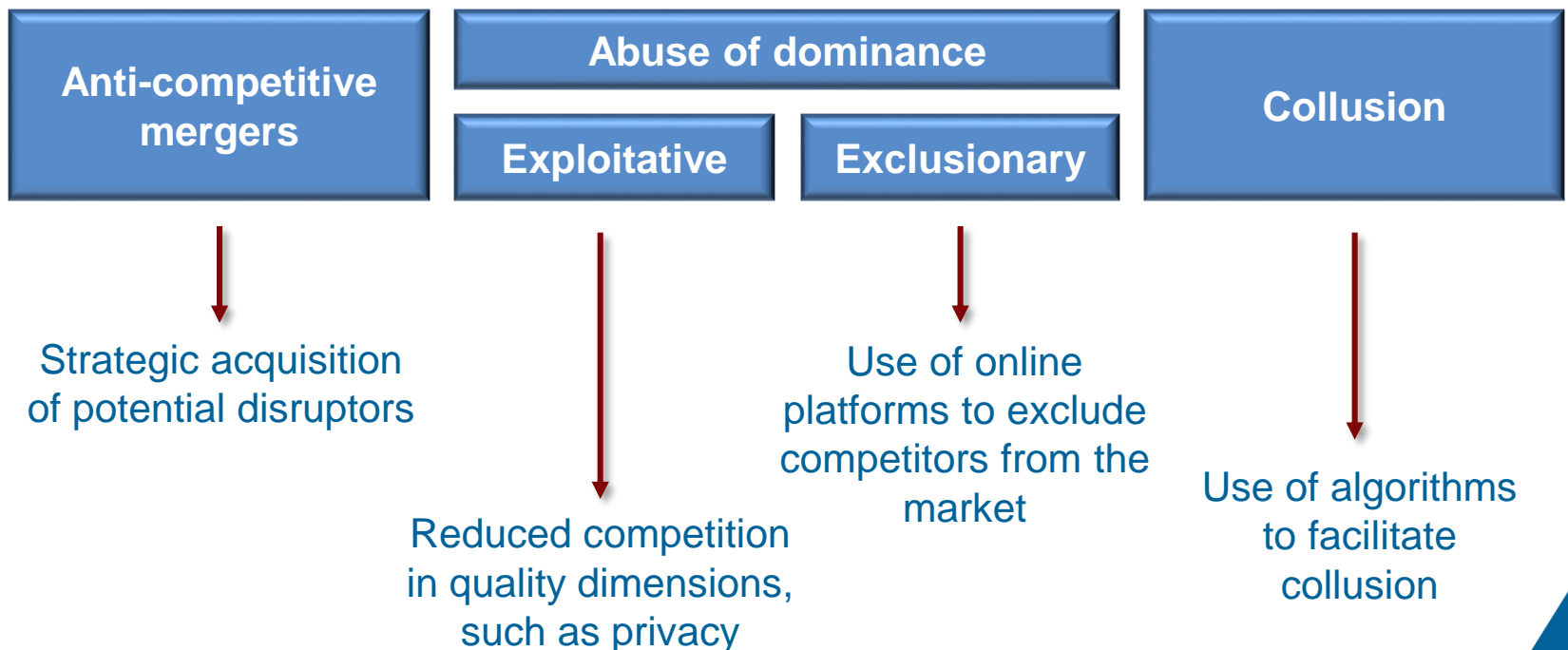
**High transparency**

**Disruptive  
innovation**



# COMPETITION ENFORCEMENT CONCERNS STEMMING FROM CROSS-BORDER DIGITALISATION

Digital markets are characterised by **economies of scope**, **economies of scale** and **network effects** that can lead to market power and enable new anti-competitive strategies:





# MERGER CONTROL

---

- The consequences of the zero-price economy
  - Old theories / new context
  - Market definition and SSNIP
- Are jurisdictional turnover thresholds adequate?
  - The German reforms
  - The Apple/Shazam & Facebook/Whatsapp cases





# CARTEL ENFORCEMENT

---

- Is the legal framework on anti-competitive agreement suitable to assess algorithms?
  - ⇒ Tacit collusion is not covered by the legal framework
- Policy question:
  - ⇒ Should we adjust the legal framework? How?
- Enforcement Challenges:
  - ⇒ Should legislators create a more clear definition of agreement, in order to capture “algorithmic collusion”?
  - ⇒ Can antitrust liability be established when business decisions are made by machines rather than by companies (human beings)?



## ABUSE OF DOMINANCE

---

- The consequences of individual pricing
- Pro-competitive or anti-competitive?
- Should we review the approach to perfect discrimination?
- Is it about efficiencies or fairness?



## INSTITUTIONAL DESIGN

---

- Need to adjust the internal organisation of the competition authority?
  - The new CMA Data Unit
  - The proposal of the Italian Competition Authority
  - Others?

<http://www.oecd.org/competition/digital-economy-innovation-and-competition.htm>

**Thank you for your attention!**

**Antonio Capobianco**

antonio.capobianco@oecd.org



# *ARE COMPETITION LAWS FIT FOR THE DIGITAL AGE?*

Antonio Capobianco  
Senior Competition Expert  
OECD, Competition Division