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Small business in the digital platform era – competition law landscape[1]

Małe przedsiębiorstwa w erze platform cyfrowych – perspektywa prawa konkurencji

Abstract

The digital revolution, apart from its particular impact on the economy, also generated specific competition problems and influenced the shape of competition rules. In the article I take a look at these changes from the perspective of small business. I refer to current changes in the EU competition law and to new legal acts concerning digital markets that pursue, to some extent, similar objectives to competition law (DMA). On this basis, I present how the challenges of digital economy marked by platformisation and the growing disparity between the big hi-tech companies and the rest of market players strengthened the tendency to treat SMEs favorably. At the same time, I make references to specific examples in legal provisions and case law showing that the contemporary EU competition law's favorable attitude towards smaller market players is not really a drastic change of rules but an effect of evolution of tendencies with strong roots in the pre-digital past.

Keywords: EU competition law, small business, SME, platformisation, digital markets, DMA

Streszczenie

Rewolucja cyfrowa wywarła wpływ na gospodarkę, generując także specyficzne problemy w sferze konkurencji i wpływając na kształt reguł ochrony konkurencji. W artykule przyglądam się tym zmianom z perspektywy małych przedsiębiorstw. Odnoszę się do ewolucji prawa konkurencji UE i do nowych aktów prawnych dotyczących rynków cyfrowych, które realizują zbliżone cele (DMA). Przedstawiam, jak wyzwania gospodarki cyfrowej naznaczone platformizacją i rosnącą dysproporcją między dużymi firmami high-tech a resztą uczestników rynku wzmocniły tendencję do zapewnienia MŚP ochrony instrumentami prawa konkurencji. Wskazuję konkretne przykłady w przepisach i orzecznictwie pokazujące, że przychylne nastawienie współczesnego prawa konkurencji UE do mniejszych przedsiębiorstw nie jest drastyczną zmianą reguł, ale efektem ewolucji tendencji mających silne korzenie w rzeczywistości sprzed cyfrowej rewolucji.

Słowa kluczowe: prawo konkurencji UE, małe przedsiębiorstwa, MŚP, platformizacja, rynki cyfrowe, DMA

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Introduction

Development and growth of digital markets reshaped the economic landscape. Among a variety of changes introduced in the economy by the digital revolution, the most profound impact gives the rise of online platforms. They transform "the lives we lead, the way we work – as individuals, in business, and in our communities"[2] and affect the entire economy. Information and communication technologies no longer form a separate market sector. Now they are the foundation of all modern innovative economic systems[3] with the central role of online platforms as a specific gatekeepers.

The rise of new business models based on digital economy also generates various new competition problems (Graef, 2016; Ezrachi & Stucke, 2016; Stucke & Grunes, 2016; Mandrescu, 2017; Akman, 2017; Małobędzka-Szwast, 2021; Wiggers et al., 2023) which sparked reflection on whether traditional competition law can effectively achieve its goals in the new (digital) reality (Cabral et al., 2021, p. 10 and 28). The combination of features characterizing online platforms causing an increasing imbalances in bargaining power led the EU law makers to the conclusion that the "existing Union law does not address, or does not address effectively, the challenges to the effective functioning of the internal market posed by the conduct of gatekeepers".[4] This assumption gave rise at the EU level to the establishment of new regulations (most notable: Digital Markets Act, hereinafter: DMA)[5] and soft law (more specifically referred to below) aimed at correcting adverse effects for weaker market players of the growth of the digital super dominants' power. Challenges of digital economy marked by platformisation and the growing disparity between the big hi-tech companies and the rest of market players also strengthened the approach to implement the existing competition law provisions in the manner which is sensitive to the protection of interests of consumers, workers and small business from technological giants.

Notwithstanding observations on the contemporary competition law's favorable attitude towards the weaker side of the market, it should be noted that such an attitude is not really a revolutionary change in the public enforcement of EU competition law, but a mere evolution of the SMEs-friendly approach which characterized the EU competition law even before the rise of digital markets despite the absence of explicit exemptions for SMEs.[6]

The aim of the article is to explain reasons to the above observation by presenting both new and well established protective legal measures in the EU competition law and its surroundings, at the disposal of small business when facing the battle against New Digital Monopolists' overwhelming power.

How did the digital economy change the competition rules

Before presenting the measures supporting protection of SMEs against digital dominants it is worth formulating more general observations on how the digital economy changed the EU competition rules. As the digital revolution had a particular impact on the economy, changing the rules of the market game, creating new business models and generating specific competition problems, also competition policy had to adapt to new market reality and it did, at least in three different ways:

- challenging the principle of *ex post* enforcement of competition rules;
- going beyond the concept of market (dominant) position on a strictly defined market as a condition to apply competition rules;
- strengthening SMEs and other weaker market players – in the face of increasing disproportion of market power between them and online platforms.

Not only *ex post* enforcement of competition rules

The thesis regarding challenging the principle of *ex post* enforcement of competition rules obviously does not mean depriving the enforcement of Article 101 and 102 of the Treaty of its importance. However it was the Union leaders' assumption of ineffectiveness of these provisions when enforced on digital markets that gave rise at the EU level to the discussion about enforcing new measures that would address, by means of *ex ante* regulation, problems with effective functioning of the internal market posed by the conduct of gatekeepers.[7]

With the aim of "strengthening competition enforcement in all sectors"[8] and to guarantee that "competition policy and rules are fit for the modern economy"[9] the Commission was testing the proposal for a New Competition Tool. The proposal of this new instrument was aimed at "addressing gaps in the current EU competition rules and allowing for timely and effective intervention against structural competition problems across markets"[10] by the empowerment of the EC to impose, where appropriate, structural remedies to overcome structural harms to competition in the market based on the outcomes of market investigation, and not on *ex post* assessment of specific undertakings' conduct.

The initiative to establish New Competition Tool was suspended[11] after public consultations took place, however it reapeared in 2024 Mario Draghi's competitiveness report.[12] But the other legislative initiative to establish *ex ante* regulation pursuing competition-related goals was successfully finalized: the DMA, which aims at correcting adverse effects for digital markets of the most powerful online platforms operators, which play the role of gatekeepers. DMA results from the critical observation that the "existing Union law does not (…) address effectively the challenges to the effective functioning of the internal market posed by the conduct of gatekeepers that are not necessarily dominant in competition-law terms".[13] DMA plays a complementary role to traditional competition rules in relation to digital markets, ensuring that these markets are "contestable" and "fair", to the benefit of business users and end users.[14] DMA pursues an objective not equal but complementary to objective of protecting undistorted competition on a given market, realized by Articles 101 and 102 TFEU and the corresponding national competition rules.[15] DMA's aim is to ensure that markets where gatekeepers are present are and remain contestable and fair *ex ante*, independently from the actual conduct of a given gatekeeper. It results that the aims of both DMA and traditional competition rules are complementary, but the approach to achieve these goals is different. DMA focuses on preventing potential distortions of competition, while traditional competition law focuses on detecting and prosecuting anticompetitive practices that have already occurred. In any case, it has been observed in the literature that although it is unclear to what extent DMA and EU competition law pursue common or separate objectives

(Bania, 2023, p. 147), "the substance and the scope of the DMA intersect with the substance and scope of EU competition law" (Akman, 2022, p. 85–114).

The above examples confirm the thesis about a trend that has accelerated with the development of digital markets, to encapsulate traditional EU competition rules enforced *ex post* with rules enforced *ex ante*, setting obligations and prohibitions applicable independently from the actual conduct of a given undertaking.

Beyond the market (dominant) position concept

The digital revolution also resulted in the decreasing importance of the concept of dominant position as a decisive factor for the application of competition rules. Obviously, the enforcement of Article 102 TFEU remains of great importance, also in digital markets. The EC's growing case law in this area reminds us of this.[16] However, competition protection in digital markets and beyond increasingly depends on mechanisms not based on the concept of a dominant position and its abuse.

It has been explicitly pronounced in DMA that the enforcement of traditional competition law, based on such concepts as dominant position and its abuse contributes to the ineffective protection of digital markets, because unilateral conducts of certain powerful online platforms providers may distort competition even in the absence of dominant position.[17] Such "gatekeepers" have a significant impact on the market because they provide "gateways for a large number of business users to reach end users everywhere in the Union and on different markets".[18] DMA defines "gatekeepers" as undertakings providing core platform services (such as online intermediation services, online search engines, online social networking services, video-sharing platform services, etc.),[19] which, due to their strong market position, can influence the market, are of great importance to users and have a permanently established position. For gatekeepers being subject to the obligations set out in DMA does not arise from their dominant position, but depends on numerical indicators which measure the importance of the platform, and are related to turnover and market value, the number of active users (end and business) and the universality of the platform service provided in the EU.[20]

DMA is not the only EU regulation driven by competition protection objectives, that applies to digital market players, regardless of their market position. Even earlier the so-called Platform-to-Business regulation (P2B regulation)[21] was adopted. It concerns relations between providers of online intermediation services and other undertakings, sets rules deemed necessary to ensure "a competitive, fair, and transparent online ecosystem where companies behave responsibly" and to "ensure a fair, predictable, sustainable and trusted online business environment within the internal market".[22]

P2B regulation sets rules for terms and conditions of a contractual relationship unilaterally determined by the provider of online intermediation services in order to effectively protect business users. Applicability of these rules is not dependent on the market power of online platform, but on the type of business activity (provision of online intermediation services). When such entity use unilaterally pre-formulated terms and conditions of a contractual relationship, certain rules apply to it, and "the relative size of the parties concerned (…) should not, in itself, be decisive".[23]

Finally, evidence of the decreasing importance of dominant position on a strictly defined relevant market is also apparent from the enforcement of traditional competition law. In the preceding years we have been experiencing a big comeback of the enforcement of vertical restraints at the EU level (by the EC). It was remarkable that prior to the digital revolution EC had not been enforcing EU competition law provisions on vertical restraints for over decade. At that time the last EC's Article 101 case concerning vertical restraints was the 5.10.2005 decision in case COMP.36.623 Peugeot, while the last case concerning resale price maintenance (RPM) was the 16.07.2003 decision in case COMP/37.975 PO Yamaha. Things changed with the first term of Commissioner Margrethe Vestager. A competition inquiry in the e-commerce sector which she announced in 2015[24] confirmed that cross-border online sales within the EU are growing slowly not only due to language barriers or consumer preferences, but also because of restrictions of cross-border e-commerce. The inquiry showed the "increased presence of manufacturers at the retail level and increased recourse to agreements or concerted practices between manufacturers and retailers ('vertical restraints'), affecting competition among retailers".[25] According to the report, "depending on the business model and strategy, restraints may take various forms, such as pricing restrictions, marketplace (platform) bans, restrictions on the use of price comparison tools and the exclusion of pure online players from distribution networks".[26] The renaissance of EC engagement in the enforcement of Article 101 TFEU to vertical restraints started with a package of EC decisions in consumer electronics sector[27] and a decision in clothing sector.[28]

Also, provisions on vertical restrictions, namely the EC exemption regulation for vertical agreements (Regulation 2022/720),[29] became a vehicle to provide in the competition law a strict rule on the usage of most favored nation (MFN) clauses by providers of online intermediation services. On the basis of the Regulation 2022/720 the entire category of undertakings (providers of online intermediation services) irrespectively of their market position (without detailed assessment of dominant position) has been assumed to have greater responsibility (resulting from their stronger position in relation to other professional contractors). It has been explicitly declared that the providers of online intermediation services are not exempted from Article 101(1) TFEU prohibition when they enter into (vertical) agreements containing "any direct or indirect obligation causing a buyer of online intermediation services not to offer, sell or resell goods or services to end users under more favourable conditions via competing online intermediation services".[30]

The above examples confirm that with the development of digital markets EU laws designed to protect competition rely more on rules based on other concepts than the concept of dominant position on the relevant market. There is a tendency to define the objects of regulation by other indicators (as in DMA) or to use such means of the traditional EU competition rules where the prove of market power on the precisely defined relevant market is not so much important (vertical restraints).

Strengthening SMEs and other weaker market players

The last particularity of competition rules in the times of digital economy, that I identify, is the tendency to enforce existing rules or to enact new rules with the objective of protecting small business and other weaker market players in the face of increasing disproportion of market power between them and online platforms. EC's favorable view on small businesses and other entities potentially affected by the platforms' conduct will be elaborated upon in the following sections.

How competition law supports small business

It is my objective to demonstrate that the realities of the digital economy gave an excuse for lawmakers and enforcers to protect small business (more) using competition-law based tools. At the same time, I will present examples proving that certain rules of the traditional EC competition law, their enforcement and interpretation by the Courts, not necessary in the digital context, create opportunities to develop especially for small entrepreneurs.

EU competition law does not include explicit exemptions of SMEs from competition rules but EU institutions make efforts to be SME-friendly.[31] Such an approach was even formally connected with competition policy, by appointing the previous Commissioner for Competition to "co-lead the work on a new SME strategy".[32] Also the European Parliament calls for EU institutions' special attention towards small and medium-sized enterprises (SMEs), underlining that the EU competition policy goal is to "encourage innovation and growth for the companies – especially small and medium-sized enterprises (SMEs) – within the single market".[33]

The following sections will allow to present specific means by which small business is being supported. The SMEs' competition "armament", described below, contains:

- guarantees for self-employed persons of sole-owned companies for collective negotiations of operating conditions with their counterparties with substantially higher bargaining power,
- measures to protect enterprises economically dependent upon online platforms,
- easing competition rules for SMEs,
- resigning (at least to some extent) from the enforcement of competition rules against SMEs, which may even give them certain 'license to be irresponsible'.

Guarantees of non-intervention in collective negotiations of operating conditions in case of imbalance in bargaining power between the parties

One of the clearest proofs of recognizing the need of appropriate competition policy's support to small businesses when confronted with technology giants is the EC's move to clarify its attitude towards collective bargaining. With the "Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons"[34] EC responds to the contemporary "trend towards subcontracting and outsourcing business and personal services, as well as the digitalization of production processes and the rise of the online platform economy".[35] EC aims at strengthening position of individual service providers which are or could be regarded as undertakings under Article 101 TFEU, when they collectively negotiate their working conditions with their digital employers. The Guidelines clarify when such negotiations will not infringe competition rules.

Following the Court's position, that in today's economy it is not always easy to establish the status of some self-employed contractors as undertakings,[36] the Guidelines confirm that collective bargaining agreements between employers and workers and their counterparties, aimed at improving working conditions fall outside of the scope of Article 101 TFEU,[37] also when involving so called false self-employed persons: solo self-employed persons who are in a situation comparable to that of workers.[38] They also clarify when individuals meet the criteria of false solo self-employed persons.[39]

Importantly for the interests and legal certainty of micro-entrepreneurs, the EC did not limit itself to regulate situation of workers or semi-workers. It also declared not to intervene in case of collective agreements involving solo self-employed persons who formally are undertakings but with much worse bargaining power vis-a-vis their counterparty (comparable to that of worker).[40]

Protecting enterprises economically dependent upon online platforms

The growing disparity of bargaining powers of technological giants, especially providers of online intermediation services, and undertakings with which they cooperate, led to the introduction of various legal rules, within and outside of the traditional competition law scheme, to protect entities economically dependent upon online platforms. This thesis can be illustrated by the following issues:

- MFN clauses imposed by online intermediation services providers,
- Protection of SMEs against practices contrary to good faith and fair dealing,
- Protection against dependence of gatekeepers,
- National regulations against abuses of superior bargaining power.

MFN clauses imposed by online intermediation services providers. Observation of the negative effects of practices of online intermediation services providers on business entities to whom these services are provided, led to significant changes in the new EU rules for vertical restrictions (Regulation 2022/720) aimed at protecting suppliers and retailers against providers of online intermediary services. The EC recognized that on one hand "online marketplaces have become an important sales channel for suppliers and retailers [and] (…) may also facilitate cross-border sales and increase the visibility of, in particular small and medium-sized sellers",[41] while on the other hand, "small or medium-sized buyers may rely on online marketplaces to attract customers. Restrictions on the use of online marketplaces may deprive those buyers of a potentially important sales channel".[42]

The most obvious example of taking into account the interests of SMEs by the rules of vertical exemptions are the rules regarding MFN clauses in contracts with online intermediary platforms. Regulation 2022/720 provides that MFN clauses are not exempted from Article 101(1) TFEU prohibition when implemented by providers of online intermediation services into contracts with contracting parties – buyers of online intermediation services.[43]

Introducing this rule must be seen as a consequence of numerous investigations conducted before by national competition authorities in several member states concerning MFN clauses in contracts between various hotel booking platforms and hotels[44] (for more, see: Cipolla, 2015, p. 175–180; Colangelo, 2017, p. 3–14; Mantovani et al., 2018, p. 650–654; Mackenrodt, 2019, p. 1131–1143). It is apparent from the merits of these decisions, that the restrictive effect of the conduct was identified in relation to small and medium enterprises. In the Italian competition authority's (Autorita Garante della Concorrenza e del Mercato, AGCM) decision regarding Booking.com it has been stressed that "in Italy, OTAs[45] appear to constitute a particularly important sales channel (…) above all, for medium-small and independent structures".[46] Similarly, the European Parliament, when referring to the potential concentration in the online bookings sector, noted that "the largest and most influential online platforms affect the daily operations of tens of thousands of SMEs".[47]

Protection of SMEs against practices contrary to good faith and fair dealing. The aim of protecting small business entities stems also from specific regulations which have objectives close to, but not identical to the traditional competition law. It is worth to mention the P2B regulation, which identifies the problem of the "superior bargaining power" of providers of online intermediation services as a central issue as regards conditions for business development of SMEs in digital environment. The EU legislator rightly observes that online intermediaries' strong market position enables them to "behave unilaterally in a way that can be unfair and that can be harmful to the legitimate interests of their businesses users and, indirectly, also of consumers".[48]

For these reasons the P2B regulation interferes in the detailed aspects of cooperation between the provider of intermediation services and his contractor (that are largely SMEs) in order to create "competitive, fair, and transparent online ecosystem where companies behave responsibly",[49] to ensure "fair, predictable, sustainable and trusted online business environment within the internal market",[50] to "protect business users and to provide legal certainty"[51] and to "ensure that business users can fully exploit the commercial opportunities offered by online intermediation services".[52]

Protection against dependence of gatekeepers. The desire to create fair conditions for the development of SMEs in digital markets is also reflected in the justification of the DMA. Although no direct references to small business are made explicitly in the DMA, its preamble points out that the Act's objective is to "contribute to the proper functioning of the internal market by laying down rules to ensure contestability and fairness for the markets"[53] reinforce fair relations between gatekeepers and business users with much weaker bargaining power, that depend on a core platform services (largely: SMEs) to take full advantage of their contribution in digital economy[54] and prevent further reinforcing their dependence on the core platform services of gatekeepers[55].

National regulations against abuses of superior bargaining power. For the sake of completeness it is worth mentioning that also member states may develop national competition rules shaping relations between digital platforms and entities with much weaker bargaining position. National laws may prohibit clients of online intermediary services providers from their unilateral business practices other than abuse of a dominant position ("superior bargaining power" or "significant influence"), which are contrary to the objectives of competition protection. The aim of such rules is to regulate disparities of bargaining power in distribution relationships.[56]

Rules of this type have been and are in practice applied to companies providing core platform services (for more, see Scalzini, 2021, p. 81–103; Scalzini, 2022, p. 113–152). For example, the norms in Italian law relating to the issues of subcontracting in production activities[57] include a prohibition on the abuse of the economic dependence by one or more entrepreneurs. At the same time the regulation provides for a presumption of economic dependence of clients of online intermediation services providers playing a decisive role in reaching end users or suppliers.[58]

SMEs allowed to do more

Also pre-digital era competition law provisions confirm to allow SMEs to do more. Several regulations and rules belonging to traditional competition law reflect general assumption of no need to involve competition authorities in investigation business activities of SMEs as due to their small size, they have rather inconsiderable impact on the market.

According to the EU soft law, SMEs are presumably not capable to affect trade between Member States and rarely capable to restrict competition appreciably. This is confirmed by the Guidelines on the effect on trade,[59] Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union (*De Minimis* Notice)[60] and by the Guidelines on vertical restraints.[61] This rule does not however apply to agreements that restrict competition by object.[62]

Then, the EC also declares that it will "generally refrain from opening proceedings, due to a lack of sufficient interest for the Union" against vertical agreements between SMEs "unless the undertakings individually or collectively hold a dominant position in a substantial part of the internal market".[63]

SMEs also benefit from the subcontracting agreement exemption. EC declared to believe that subcontracting agreements offer opportunities for development in particular to small and medium sized firms and that they are not of themselves caught by the prohibition of anti-competitive agreements.[64]

License to be irresponsible?

According to the principles of competition law the undertakings' market power matters. Accumulating bigger market power means being subject to more rules and restrictions that entities with rather inconsiderable impact on the market. This applies both to unilateral practices (Article 102 TFEU applies only to undertakings of dominant position on relevant market, and SMEs rarely have a dominant position, although it is not unimaginable, especially in local markets) and to anticompetitive agreements (*de minimis* rule and block exemption regulations effectively reduce application of Article 101 TFEU to entities with less potential). Dominant position is accompanied with "special responsibility not to allow (…) to impair genuine, undistorted competition on the internal market".[65]

What more, according to recent jurisprudence the bigger you are, the more responsibility you have. As the EU Court stated in one of Google cases, acquiring 'super-dominant' position on that market characterized by very high barriers to entry and its role as a "gateway to the internet", puts that undertaking "under a stronger obligation not to allow its behavior to impair genuine, undistorted competition".[66] As it is explained in the literature, "the essence of this special responsibility is to prohibit some practices when exerted by a dominant firm while considering them lawful if practiced by smaller competitors" (Corcho, 2007; for more: D'Amico & Balasingham, 2022, p. 614–630).

Furthermore, under the recent ECJ jurisprudence dominant undertakings on certain occasions can be also responsible for business activity of their counterparties – undertakings with smaller bargaining power, economically dependent on the dominant company. According to the Court, undertakings with dominant position are responsible not only for their and their subsidiaries' conduct[67] but may also be responsible for their independent collaborators, which – in such circumstances – will not be sanctioned. This conclusion may be drawn from the ECJ judgment concerning an undertaking with a dominant position, operating through a network of independent distributors that were used by the dominant as a means to introduce actions designed at restricting competition.[68] Actions performed by formally autonomous and independent economic operators (distributors) under instructions of the organizer of the distribution network (undertaking with a dominant position), following requirements of distribution agreement generally fall within the scope of Article 101(1) TFEU. However, "given that the conduct of which the undertaking in a dominant position is accused was decided unilaterally, that [dominant] undertaking may be regarded as being the perpetrator of that conduct and, therefore, where appropriate, as being solely liable for it, for the purposes of the application of Article 102 TFEU". In such circumstances, "the distributors (…) must be regarded as merely an instrument of territorial implementation of the commercial policy of that undertaking".[69]

There is also one another example of the EC's favorable attitude towards SMEs. When applying Article 101 TFEU to vertical agreements EC frequently addresses the prohibition decisions solely against the organizer of distribution chain, and not against distributors. Even though Article 101 TFEU concerns multilateral practices to which all parties agreed (distributors included), for decades the EC has enforced Article 101 mostly against organizers of distribution chains only. In this way EC has taken more lenient approach to weaker parties of distribution contracts simply not applying sanctions to them or even addressing decisions to them, but assigning all responsibility to the organizer.[70] The EC justified the fact that it did not hold the distributors liable, e.g., by the fact that the infringement was aimed primarily at implementing the interests of the network organizer,[71] or that they did not take an active part in creating anticompetitive rules and in fact, they could not object to the application of these rules if they wanted to remain in the distribution network[72] or that they did not actively participate in the agreement. The EC continues this line of case law in recent decisions on vertical agreements.[73]

Conclusions

The idea of using competition law in the interests of consumers and small businesses is not new at all (Kirkwood, 2013, p. 2452; Kirkwood, 2022, p. 31), although the perception of the competition law role towards SMEs is a matter of constant debate (Hovenkamp, 2018, p. 113). As presented in the article, EU competition law in many instances demonstrates its favorable attitude towards small business. However, referring to the provocative title of the preceding section: EU competition law definitely does not provide SMEs with the license to be irresponsible. However, it provides many instruments to protect them against competitors and counterparties with overwhelmingly bigger bargaining power: beginning from by the same concept of the abuse of dominant position, and ending with a set of regulations aimed at ensuring that the prohibition of anticompetitive agreements is enforced primarily against business entities with relatively significant market power.

The article confirms that the digital platform era, and observance of its consequences to the market, even strengthened the conviction of regulators and legislators of the need to protect smaller enterprises from those with significant market power, now becoming even bigger and more powerful. It changed traditional competition law rules and created new regulations playing a complementary role to traditional competition rules in relation to digital markets. This demonstrates that the contemporary EU approach may be summarized by the title of one of academic articles: *The essence of antitrust: Protecting consumers and small suppliers* (Kirkwood, 2013, p. 2452). As it has been showed in the article, this is also the EU approach, even if it is not specifically stressed by the same EC.

Notes/Przypisy

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[2] *A Digital Single Market Strategy for Europe*, Brussels, 6.05.2015, COM(2015) 192 final, p. 2.

[3] *Ibidem*, p. 2.

[4] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14.09.2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1–66), recital 5.

[5] See previous footnote.

[6] The same as most of national regulations. See: *OECD Policy Roundtables. General Cartel Bans: Criteria for Exemption for Small and Medium-sized Enterprises*, OCDE/GD(97)53, 1996, p. 14.

[7] DMA, recital 5.

[8] Ursula von der Leyen's, President of the European Commission, mission letter for Margrethe Vestager, Executive Vice-President for A Europe fit for the Digital Age, Brussels, 1.12.2019, p. 5, https://commissioners.ec.europa.eu/system/files/2022-12/mission-letter-margrethe-vestager_2019_en.pdf

[9] *Ibidem*.

[10] New Competition Tool (NCT). Inception impact assessment. Ref. Ares(2020)2877634 – 04/06/2020.

[11] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12416-Single-Market-new-complementary-tool-to-strengthen-competition-enforcement_en

[12] See the European Parliament's encouragement to develop the concept of New Competition Tool (European Parliament resolution of 16 January 2024 on competition policy – annual report 2023 (2023/2077(INI)), P9_TA(2024)0011, https://www.europarl.europa.eu/doceo/document/TA-9-2024-0011_EN.pdf) and Mario Draghi's report (The future of European competitiveness. Part B | In-depth analysis and recommendations, September 2024, p. 303–304, https://commission.europa.eu/topics/strengthening-european-competitiveness/eu-competitiveness-looking-ahead_en).

[13] DMA, Recital 5.

[14] *Ibidem*, Article 1.1.

[15] *Ibidem*, Recital 11.

[16] Suffice it to mention the EC's decisions of 27.06.2017, AT.39740 Google Search (Shopping); of 18.07.2018, AT.40099 Google Android; of 20.03.2019, AT. 40411 Google Search (AdSense).

[17] DMA, Recital.

[18] *Ibidem*, Recital 6.

[19] *Ibidem*, Article 2(1) and (2).

[20] *Ibidem*, Article 3.

[21] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20.06.2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.07.2019, p. 57–79).

[22] Regulation P2B, Recitals 3 and 7.

[23] *Ibidem*, Recital 14.

[24] See: Speech by Commissioner Vestager at the Bundeskartellamt International Conference on Competition, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_15_4704 (access: 2024.08.05).

[25] Final report on the E-commerce Sector Inquiry, Brussels, 10.05.2017, COM(2017) 229 final, par. 15.

[26] *Ibidem*, par. 15.iii.

[27] EC decisions of 24.07.2018 (AT.40465 Asus, AT.40469 Denon&Marantz, AT.40182 Pioneer, AT.40181 Philips).

[28] EC decision of 17.12.2018 (AT.40428 Guess).

[29] Commission Regulation (EU) 2022/720 of 10.05.2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 134, 11.05.2022, p. 4–13).

[30] Article 5(1)(d).

[31] See: Communication from the Commission. An SME Strategy for a sustainable and digital Europe, Brussels, 10.03.2020, COM(2020) 103 final, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0103&from=EN

[32] Ursula von der Leyen's, President of the European Commission, mission letter for Margrethe Vestager, Executive Vice-President for A Europe fit for the Digital Age, Brussels, 1.12.2019, p. 5, https://commissioners.ec.europa.eu/system/files/2022-12/mission-letter-margrethe-vestager_2019_en.pdf

[33] European Parliament resolution of 16.01.2024 on competition policy – annual report 2023 (2023/2077(INI)), P9_TA(2024)0011, https://www.europarl.europa.eu/doceo/document/TA-9-2024-0011_EN.pdf

[34] OJ C 374, 30.9.2022, p. 2.

[35] Guidelines, par. 8.

[36] ECJ judgment, 4.12.2014, C-413/13 FNV Kunsten Informatie en Media, ECLI:EU:C:2014:2411, par. 32.
[37] ECJ judgment, C-67/96 21.9.1999, Albany International BV, ECLI:EU:C:1999:430, par. 60.
[38] ECJ judgment, 4.12.2014, C-413/13 FNV Kunsten Informatie en Media, ECLI:EU:C:2014:2411, par. 36–37.
[39] For more, see: Guidelines, par. 20–31.
[40] For more, see: Guidelines, par. 32–40.
[41] Communication from the Commission. Guidelines on vertical restraints, OJ C 248, 30.06.2022, p. 1–85, par. 333.
[42] *Ibidem*, par. 340.
[43] Article 5(1)(d).
[44] See e.g.: Bundeskartellamt decisions of 20.12.2013, B9-66/10 HRS Bestpreisklausel; of 22.12.2015, B9-121/13 Meistbegünstigstenklauseln bei Booking.com Autorita Garante della Concorrenza e del Mercato decisions No. 25422 of 21.04.2015, I779 Booking.com B.V. and Booking.com (Italia) S.r.l.; No 25940 of 23.03.2016, I779 Expedia Inc. and Expedia Italy S.r.l.
[45] Online travel agencies.
[46] AGCM decision No. 25422 of 21.04.2015 r., I779 Booking.com B.V., Booking.com (Italia) S.r.l., par. 13.
[47] European Parliament resolution of 16.01.2024 on competition policy – annual report 2023 (2023/2077(INI)), P9_TA(2024)0011, https://www.europarl.europa.eu/doceo/document/TA-9-2024-0011_EN.pdf
[48] P2B regulation, recital 2.
[49] *Ibidem*, recitals 2–3.
[50] *Ibidem*, recitals 7.
[51] *Ibidem*, recital 20.
[52] *Ibidem*, recital 21.
[53] DMA, recital 7.
[54] *Ibidem*, recital 33.
[55] *Ibidem*, recital 40.
[56] Commission staff working paper accompanying the Communication from the Commission to the European Parliament and Council – Report on the functioning of Regulation 1/2003 (COM(2009)206 final), par. 162.
[57] Legge 18 giugno 1998, n. 192 Disciplina della subfornitura nelle attivita produttive, Gazzetta Ufficiale N. 143 del 22 giugno 1998.
[58] Article 9(1), Legge 18 giugno 1998, n. 192 Disciplina della subfornitura nelle attivita produttive, Gazzetta Ufficiale N. 143 del 22 giugno 1998.
[59] OJ C 101, 27.04.2004, p. 81–96 (par. 50).
[60] OJ C 291, 30.08.2014, p. 1–4 (footnote 5).
[61] OJ C 248, 30.06.2022, p. 1–85 (par. 28).
[62] See: Guidelines on the applicability of Article 101 of the Treaty to horizontal cooperation agreements, OJ C 259, 21.07.2023, p. 1–125 (par. 167) and Guidelines on vertical restraints, OJ C 248, 30.06.2022, p. 1–85 (par. 28).
[63] Communication from the Commission. Guidelines on vertical restraints, OJ C 248, 30.6.2022, p. 1–85 (par. 28).
[64] Commission notice of 18.12.1978 concerning its assessment of certain subcontracting agreements in relation to Article 85 (1) of the EEC Treaty, OJ C 1, 3.01.1979, p. 2–3.
[65] ECJ judgement of 19.1.2023, C-680/20 Unilever Italia, ECLI:EU:C:2023:33, par. 28; EU Court judgment of 17.09.2007, T-201/04 Microsoft Corp., ECLI:EU:T:2007:289, par. 229.
[66] EU Court judgement of 10.11.2021, T-612/17 Google LLC, Alphabet, Inc., ECLI:EU:T:2021:763, par. 182–183.
[67] When companies forming a single economic unit which has a dominant position on the market, take actions contradictory to Article 102 TFEU, the parent company can be found responsible for the anticompetitive practice of its subsidiaries, see: ECJ judgment of 25.3.2021, C-152/19 P Deutsche Telekom AG, ECLI:EU:C:2021:238, par. 94. See also: ECJ judgment of 12.05.2022, C-377/20 Servizio Elettrico Nazionale SpA, ECLI:EU:C:2022:379, par. 123.
[68] ECJ judgements of 19.01.2023, C-680/20 Unilever Italia Mkt. Operations, ECLI:EU:C:2023:33.
[69] *Ibidem*, par. 26–30 and par. 33.
[70] EC decisions of 18.12.1987 (IV/31.503 Konica); of 20.09.2000 (COMP/36.653 Opel); of 5.10.2005 (COMP/E2/36623 36820 37275 SEP and others v. Automobiles Peugeot SA).
[71] EC decision of 18.12.1987 (IV/31.503 Konica), par. 51.
[72] EC decision of 28.01.1998 (IV/35.733 VW).
[73] E.g. EC decision of 17.12.2018 (AT.40428 Guess).

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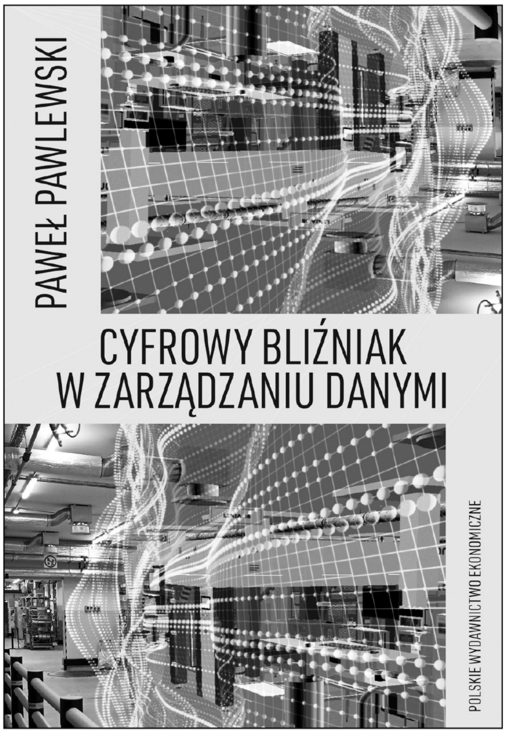

ZAPOWIEDŹ

PAWEŁ PAWLEWSKI

CYFROWY BLIŹNIAK W ZARZĄDZANIU DANYMI

Książka jest podsumowaniem badań i doświadczeń autora z ostatnich kilkunastu lat w obszarze modelowania i symulacji procesów wytwarzania i intralogistyki. Celem działań naukowych i praktycznych autora jest zbudowanie takiego podejścia, aby wychodząc od tego, co się dzieje w fabryce, umożliwić budowanie modeli symulacyjnych fabryk w taki sam sposób, jak budowane są (projektowane i wdrażane) procesy w fabrykach rzeczywistych. Zburzyłoby to istniejące w tej chwili bariery we wdrażaniu technologii symulacyjnych w praktyce działania fabryk, dając inżynierom produkcji i logistykom narzędzia, które są dla nich jasne i zrozumiałe, a przede wszystkim potrzebne. Jednocześnie podejście takie wymaga wiedzy o zasobach fabryki, o procesach, o sytuacjach, w których są podejmowane decyzje, o logice podejmowania decyzji, jej skutkach wyrażających się wynikami działania fabryki. To wszystko powoduje, że przestaje się mówić jedynie o modelowaniu symulacyjnym, pomagającym rozwiązać pojawiający się problem, a zaczyna się rozważać obszar dużo szerszy, który w tej chwili oznaczany jest pojęciem cyfrowego bliźniaka fabryki.