Common Understanding
of G7 Competition Authorities
on "Competition and the Digital Economy"
Paris, 5th June, 2019

In view of the G7 Finance Ministers and Central Bank Governors meeting on 17-18 July 2019, this paper reflects the G7 competition authorities' common understanding of the issues raised by the digital economy for competition analysis.

The G7 competition Authorities are: Autoritá Garante della Concorrenza e del Mercato (Italy), Autorité de la Concurrence (France), Bundeskartellamt (Germany), Competition Bureau (Canada), Competition and Markets Authority (United Kingdom), Department of Justice (United States of America), Directorate General for Competition (European Commission), Federal Trade Commission (United States of America) and Japan Fair Trade Commission (Japan).

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The G7 French presidency initiative seeks to include competition law among the relevant issues to be considered in the context of the digital economy, and to provide competition enforcers with an opportunity to further advance current thinking and cooperation on this important subject.

As set out in more detail below, G7 competition authorities agree that:

- **Competitive markets are key to well-functioning economies**. Robust competition policy can help unlock the benefits of digital transformation for

innovation and growth while safeguarding consumer welfare and trust in digital markets.

- **Competition law is flexible** – it can and should adapt to the challenges posed by the digital economy without wholesale changes to its guiding principles and goals. The challenges of digital transformation require competition authorities to ensure that their specific tools, resources and skills for competition law enforcement are up-to-date.

- **Governments should assess whether policies or regulations unnecessarily restrict competition in digital markets** or between digital and non-digital players, and should consider procompetitive alternatives where possible. Competition authorities can play an important role in identifying such restrictions, and advising on possible solutions, through evidence-based market studies and competition advocacy.

- Given the borderless nature of the digital economy, it is important to **promote greater international cooperation and convergence** in the application of competition laws. This work should continue in existing international and multilateral fora.

1. The benefits of the digital economy on innovation and growth

The digital economy has transformed the way many goods and services are produced and sold. Those changes have reshaped industries, generated investment and innovation, promoted transparency for consumers, created new business

opportunities, and reduced the costs of goods and services throughout the economy.

Data-driven innovations, in particular, have transformed the digital economy. Data and its associated network effects can play a key role in the development of algorithms and artificial intelligence.

The accumulation of data can also benefit consumers by improving the quality of existing goods and services and by creating new ones, including some that users can access for free. Strategies involving zero-priced offers have flourished amongst digital platforms and have brought significant benefits to consumers by offering more products and services to consumers who may have otherwise had to pay for them. These strategies can also enable new entrants to break into markets and increase competition. The products and services, however, are not necessarily “free”, but often are part of a strategy where firms earn revenue from a different product or service, a different customer, or at a different point in time.

The benefits delivered to consumers and the economic innovations spurred by the digital economy play an important role in the evaluation of its competitive impact. Investment and innovation in the digital economy can serve as an engine of economic growth and generate positive externalities globally by fuelling additional innovation and business models that did not previously exist. These benefits can best be realized if digital markets remain competitive. Sound competition law enforcement will continue to play an important role in safeguarding trust in digital markets and ensuring that the digital economy

continues to deliver economic dynamism, competitive markets, consumer benefits, and incentives to innovate.

2. The flexibility and relevance of existing antitrust rules

Along with its benefits, the digital economy also presents challenges for competition enforcers as they seek to maintain an environment that fosters innovation, supports robust competition and promotes consumer welfare.

For example, the fast-moving nature of the digital economy, multi-sided markets and zero-priced offers can make market definition, market power assessment, and competitive effects analysis more difficult, requiring closer analysis of non-price aspects of competition such as quality, innovation, and consumer choice.

Some digital markets also can be characterized by significant network effects (both direct and indirect) and economies of scale/scope, which have generated some concerns over the potential impact of these factors on concentration and barriers to entry. Concentration in digital markets may require enforcers to be even more vigilant to detect anticompetitive behaviour by dominant firms, promoting competitive markets while recognizing that significant market share or dominance in and of itself is not unlawful.

Similarly, concerns have been raised about whether accumulation of large amounts of data by platforms can create barriers to entry or market power, especially when data is difficult to replicate.

Although these are challenging issues, they are not beyond the reach of competition law. Many of the features of digital markets, including the existence of platforms, network effects, economies of scale/scope, industry concentration,

and zero-priced offers are not new and have been addressed by authorities under existing competition law. In fact, all G7 competition authorities have a proven record of dealing with these considerations.

Because of its flexible analytical framework, fact-based analysis, cross-sector application and technology-neutral nature, competition law can effectively apply to digital markets and to harmful anticompetitive behaviours emerging in the digital economy. This is not to say that jurisdictions have identical tools, resources or skills for putting competition law principles into practice. Indeed, in the spirit of continuous improvement, digital transformation has prompted many jurisdictions to consider how their competition law enforcement systems apply to digital markets. As noted below, this work should continue.

The concepts of market definition, market power, and abuse of dominance enable competition authorities to assess the individual circumstances of the market concerned. These analytical tools are not limited to examining effects on prices and quantity, but also include the effects on quality, consumer choice and innovation. The digital economy raises certain substantive and procedural challenges for competition authorities. One of the challenges is the common presence in the digital economy of various multi-sided platform models – ranging from platforms offering relatively simple ad-financed services to hybrid platforms active in both offering their own services and providing access and infrastructure to competitors.

Other challenges include how to use effective information-gathering powers given new forms of and methods for retaining data, and how to pursue sound enforcement intervention against anticompetitive conduct in a meaningful timeframe. In addition, competition authorities face new challenges of assessing

competitive effects of firm conduct that employs machine-learning and algorithmic pricing methods.

However, recent casework shows that competition law generally provides competition authorities with the tools and flexibility to tackle anticompetitive conduct in the digital economy.

Moreover, a case-by case, evidence-based approach benefits the assessment of some of the more challenging elements of competition analysis in digital markets. For example, with respect to data, the aggregation of data, in some circumstances, may create barriers to entry or enhance market power, but it does not necessarily have such a tendency, and in some instances can be procompetitive. Competition enforcers can evaluate data concerns based on the individual facts of a case to assess whether a firm's use of data benefits consumers or harms competition.

For effective enforcement and policy engagement, it is important that competition authorities have the tools and means to deepen their knowledge of new business models and their impact on competition, for example, through market studies or sector inquiries and by adding in-house capabilities to keep current with issues raised by the digital economy. Considering the need for continuous improvement, G7 competition authorities are further refining their expertise in the field, enhancing their in-house skills, tailoring their own institutional designs to address and keeping up-to-date with digital economy trends, and such efforts should be strengthened. For example, authorities continue discussing issues such as multi-

sided markets, data and algorithms and /or the impact of merger control on innovation and competition in the digital economy.

3. The importance of advocacy and of competition impact assessment of policies

Regulations, when targeted and proportionate, can be complementary to competition rules in addressing digital challenges and may be appropriate to solve issues that go beyond the reach of competition rules alone. Whereas governments should avoid using competition law enforcement to address non-competition objectives, domestic inter-agency cooperation can be important given the impact of digital economy-related regulations on competition. For example, cooperation with relevant consumer protection and data privacy authorities should be fostered where it is important to ensure a consistent approach with sound competition policy and practice.

Regulations also can harm competition by increasing the cost of entry and entrenching incumbents. Monitoring the impact of proposed regulations and periodically reviewing existing ones to ensure that they remain targeted and effective is another useful tool to promote and maintain competitive markets. Governments should assess whether proposed and existing laws or regulations unnecessarily hinder competition in digital markets, particularly through competition impact assessments of laws and regulations.

Sharing a competition authority's knowledge and expertise throughout government helps promote a competitive digital marketplace.Competition authorities can use advocacy methods to raise awareness of the risk of creating regulatory barriers to competition when policymakers consider adopting

regulations. Furthermore, governments should welcome and encourage such experience and knowledge sharing with their competition authority experts and carefully consider the impact that regulations in the digital economy have on competition. By doing so, governments can help ensure that expected benefits of regulations are balanced against their possible costs, including potential market distortions and chilling of innovation.

4. The need for international cooperation

In light of the global nature of the digital economy and the shared mission of sound application of the competition laws, international cooperation between competition enforcers and policymakers is crucial.

There is a growing need for convergent competition enforcement and for effective answers to cross-border practices and multijurisdictional cases. International cooperation helps foster a coherent competition landscape, which is also of interest for business stakeholders.

Competition enforcers therefore support continued cooperation and experience-sharing through existing fora and networks, as digital issues are already subject to work conducted by competition authorities at the multilateral level.

Most competition enforcers throughout the world are already fully engaged in national and international work to address these challenges. This is illustrated by recent and ongoing work commissioned by governments and competition authorities in all G7 countries. The G7 competition authorities welcome these

initiatives that complement each other and support continuing domestic and international work in this area.

The development of common understanding and closer cross-border cooperation in the detection and investigation of anticompetitive behaviours and concentrations, could help increase the efficiency of competition authorities.

This ongoing work should serve to continue to inform G7 competition authorities as well as G7 discussions on these topics in a flexible and voluntary manner, and without prejudice to ongoing work in existing international fora. Going forward, G7 competition authorities will pursue their efforts in this area by continuing their cooperation in existing international fora and group exchanges to deepen their common understanding. Where considered useful and relevant, the G7 competition authorities will continue to assist G7 on these issues.