Autorité de la concurrence

@Echelle event on 16 July 2019 focuses on the report to the European Commission on Competition policy for the digital era by Yves-Alexandre de Montjoye

On 16 July the *Autorité de la concurrence* hosted an @Echelle event on the report submitted to the European Commission on competition policy for the digital era by Yves-Alexandre de Montjoye, one of the three authors of the report. The discussion brought together Yves-Alexandre de Montjoye, Isabelle de Silva, President of the *Autorité de la concurrence* and Henri Piffaut, Vice-President.

In his introduction, de Montjoye noted that, following the conference organised on 17 January 2019 in Brussels on how to "shape competition policy for the digital era", the **European Commission published on 4 April 2019 a report prepared by a panel of three academics (Professors Heike Schweitzer, Jacques Crémer and Yves-Alexandre de Montjoye) on competition policy for the digital era** (**https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf**). The Report's aim is to analyse possible adaptations of competition law for the digital era in order to ensure innovation for consumers.

The report covers four themes: (1) the goals of EU competition law in the digital era and the methodologies it should use, (2) the application of competition rules to platforms, (3) the application of competition rules to data and (4) the question of updating merger control in Europe.

De Montjoye recalled the three key characteristics of the digital economy that justify adaptations in the way competition law is applied: 1) extreme returns to scale, 2) network externalities and 3) the role of data.

A case-by-case analysis is still necessary for the application of competition rules to platforms, but **the practices of dominant platforms to limit competitors' ability to attract users should be considered with suspicion** by competition authorities. The report thus examines practices that may limit the possibility for users to change services (data lock-in) as well as the measures by which dominant operators implement strategies that limit "multihoming" (possibility of using several platforms in parallel).

The report also examines **the case where platforms play a regulatory role**, which can be problematic when these operators are dominant. They must then ensure that the rules they impose are fair and impartial to all users. Particular attention should therefore be paid to preferential treatment practices and measures limiting transparency with regard to the functioning of platforms.

De Montjoye, who specialises in data matters, then went into more detail on the report's analysis of data issues with regard to artificial intelligence from the perspective of competition law.

First of all, he considers that it is important to understand **the heterogeneity of data**. It may be (1) volunteered, observed or inferred and (2) used in different forms (data may be collected by different means and may or may not be personal).

These specificities have important consequences from the point of view of competition law.

The issue of **data pooling** is thus addressed because it is necessary to consider the cases where data pools can be considered procompetitive. This requires a case-by-case analysis.

Lastly de Montjoye addressed the issue of **data access,** distinguishing between access to personal data in order to provide a service to a user and cases where competing companies need the data, for example, to carry out the "training" for an artificial intelligence algorithm. In the first case, the **real interoperability of data** ensures healthy competition and a diversified market. In the second case, it is necessary to consider whether **access to the data is really necessary** and to specify, as the case may be, the conditions for data access.