



# COMPETITION AND DISRUPTIVE INNOVATION

Antonio Gomes  
Head of the Competition Division  
OECD

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# Overview

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## **I. Defining disruptive innovation**

## **II. Competition and Regulation**

## **III. Challenges to Competition Agencies**

### **A. Advocacy**

### **B. Enforcement**

### **C. International Cooperation**



# Defining Disruptive Innovation

- Innovations that drastically alter markets
- Breakthroughs rather than incremental technological developments
- Radical changes that restructure or create entire markets
- Typically from outside a market's value network, but incumbents sometimes disrupt their own market (e.g. Nestlé with Nespresso)
- New products, processes or business models



**NETFLIX**



**Google**





# Defining Disruptive Innovation

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- Many examples of disruptive innovation in history
  - e.g. assembly line manufacturing, internal combustion engine, CDs, etc
- Main difference today is the pace of disruptive innovation (speed and force)
- Some disrupted markets exhibit network effects resulting in a very rapid growth phase for the disruptor
- Often disruptors
  - Bypass intermediaries
  - Reduce unnecessary costs
  - Avoid regulations/costs imposed by regulation
- Typically reduces or destroys market shares of incumbent firms (e.g. Nokia displaced by Apple and Google) - resistance by incumbents



# Competition and Regulation

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- **Disruptive Innovation often appears in sectors subject to (heavy) regulation**
  - Taxis
  - Hotels
  - Financial services
  - Electricity generation (microgeneration)
  - Legal and other expert professional services
- **Incumbents call for applying existing regulation to new entrants even when it is not well-suited - claims of “fair competition” (e.g. Taxi driver reactions to Uber and alike services)**



# Competition and Regulation

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- When disruptive innovation takes place in a highly regulated market regulation may distort competition
  - Disruptive innovation may render the **regulation obsolete**
  - Regulation may **block, deter or retard entry** by disruptive firms
  - Regulation can raise unjustified barriers to entry (e.g., *numerus clausus* restrictions)
  - But can also unevenly impose unnecessary burdens on established firms (e.g., licensing obligations), compromising their strategic reaction towards innovators



# Competition and Regulation

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- Important to understand what are the policy objectives of regulation
- Regulators often look at safety/consumer protection as an absolute value – but innovation may be already addressing underlying policy concerns
- Role of reputational feedback mechanisms (e.g. online customer ratings) vs more traditional ways of dealing with risks such as licensing or other direct controls
- Regulators can use data to reduce the costs of regulation
- Competition and privacy concerns



# Challenges to Competition Agencies

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## Competition Advocacy

- Raise awareness regarding the benefits of competition
- Influence legislators, regulators and the general public
  - Comment on proposed or existing regulations, opinions and recommendations [e.g. CCS third party taxi booking apps]
  - Appearing before lawmakers to discuss competition matters
  - Conducting market studies
  - Disseminate information





# Challenges to Competition Agencies

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## Enforcement of competition law

- Mergers and Acquisitions
  - Incumbent firms acquiring a disruptive entrant
  - Is disruptor still nascent, may be difficult to establish harm
  - Firms not yet earning revenue may escape merger notification (use value of transaction as an alternative?)
- Unilateral Conduct
  - By incumbents which may adopt exclusionary conduct against a disruptive firm (predatory pricing, etc) - but disruptive firms often manage to erode demand of incumbents even when these become more price-competitive
  - With time disruptors may also become themselves dominant



# Challenges to Competition Agencies

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- Horizontal agreements/Collusive behaviour
  - The use of Big data and algorithms to facilitate collusion
- Vertical Restraints
  - MFNs, Resale price maintenance, territorial restrictions, quotas on internet sales, etc.
- How to consider Big Data across the enforcement spectrum?
  - As an asset and as possible barrier to entry
  - Privacy as an element of quality of service
  - As a basis for price discrimination
  - OECD is at the forefront of this discussion



# Challenges to Competition Agencies

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Traditional analytical competition tools – are they adequate?

- Multi-sided markets
- Market definition: markets change quickly and have blurred boundaries (consider business models, recognise non-price competition, take into account unique national characteristics, etc)
- How to assess market power
- zero-price markets/ “free” online services: competition authorities assess mergers and the dominance of firms which typically involves the analysis of the likely impact of pricing changes in a market. In markets with “free” services, tools may need to be adapted



# Challenges to Competition Agencies

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- **International co-operation**
  - Disruptive innovation brings new and complex issues (e.g. multisided markets)
  - as the geographic scope of online platforms expands, the nature of dominance and the scope of remedies to abusive behaviour will extend beyond the jurisdiction of a single competition authority
  - Benefits in sharing experiences and knowledge
  - Not only challenges for competition but also taxation, consumer protection, privacy issues, legal dispute settlement and product regulation (need for a global concerted effort and new thinking)
- **OECD**
  - OECD Competition Committee's defined Competition, Digital Economy and Innovation as a strategic theme
  - June 2017 - Hearing on "Rethinking the Use of Traditional Antitrust Enforcement Tools in Multi-Sided Markets" where the OECD will invite experts to propose practical and operational solutions.



**Thank you!**

[antonio.gomes@oecd.org](mailto:antonio.gomes@oecd.org)



# ADDITIONAL MATERIAL



# Challenges to Competition Agencies

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- **OECD Best Practice Roundtables:**
  - Vertical restraints for on-line sales (2013)
  - Disruptive innovation (2015)
  - The impact of disruptive innovations on competition law enforcement (2015)
  - Competition and disruptive innovation in financial markets (2015)
  - Competition and cross platform parity agreements (2015)
  - Disruptive innovations in legal services (2016)
  - Big Data: Bringing competition policy to the digital era (2016)
  - Competition and innovation in land transport (2016)