



Overview of recent cases in the digital era in the Netherlands

Slovenian Competition Day, 27th September 2018

Mission and organizational structure ACM

- The Netherlands Authority for Consumers and Markets (ACM) is a multifunctional authority charged with:
 - competition oversight;
 - sector-specific regulation of several sectors;
 - enforcement of consumer protection laws.
- Problem-solving approach:
 - Effect is central
 - Advocacy
- National and international cooperation

Focus on four topics in 2018-2019



Digital economy



Prescription drug prices



Energy markets in transition



Ports and transport

ACM approach to digital economy (1/3)

- Digital markets are generally welfare enhancing
- Aim to retain benefits of digital markets, but to intervene when consumer harm is likely
- Speed and flexibility of enforcement important in digital markets
- Mix of instruments: enforcement cases (we do see some restrictions in enforcement cases with sanctions in the digital sector. It may be more effective and faster to adopt commitments), market studies, guidance (open for complex questions arising from the digitalization) etc.
- ACM in favour of an evaluation of the current balance between ex ante and ex post regulation

Approach of ACM in these cases (2/3)

- Case-by-case approach
- How does the competitive process work on the market?
- What is market dynamics?
- Is there enough competition left?
- Is there any harm to be expected for consumer welfare?

ACM approach to digital economy (3/3)

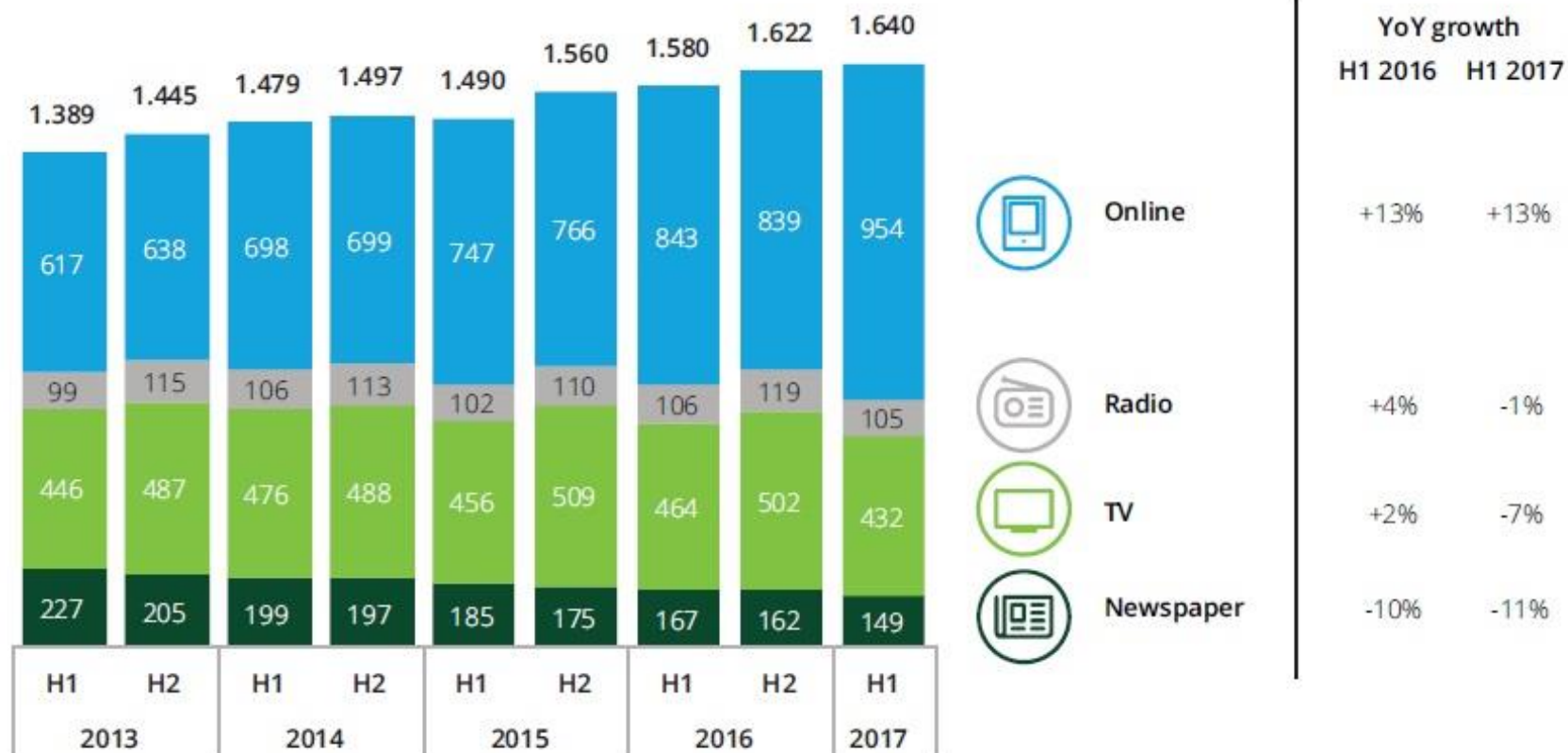
- ACM formulated three pillars for their strategy towards digital markets:
 - (i) invest in knowledge,
 - (ii) actively monitoring developments in the market in order to be able to intervene in time, and
 - (iii) make ACM a recognizable and obvious stakeholder.
- A broad steering group is working on one coordinated approach across the supervisory domains;
- Specific to the competition activities within the Competition Department of the ACM, there is a team for digital competition
- A lot of issues within the digital economy are cross border and ask for a coordinated approach amongst the NCAs. The ACM therefore actively participates in the ECN.

Competition cases ACM in digital economy

Market study into online video platforms

- Market study (in house) into consumer & competition aspects of online video platforms (e.g. Youtube)
- Study based on desk research, interviews (30-40 participants) and RFI's
- Important elements of the study:
 - business models and multisided markets
 - content and user side of market
 - online advertising side of market
 - role of user data
 - terms and conditions
- Focus on Dutch online advertisement market

Net advertising market Online, TV, Radio & Newspaper (m€)



Note: The Internet figures we report are net/net figures, meaning that the figures are reported after agency discount that in some cases may apply; TV is excluding online video; Newspaper is excluding ad revenue from digital content; Growth rate and/or additions may not equal presented numbers due to rounding;

Source: RAB, Nielsen, Screenforce, Annual reports, NDP, Deloitte analysis

Risk analysis in online video study

- In advance we identified four most likely risks in these kind of markets (literature, signals)
- “Tested” the hypotheses in the market study
 1. Market power arising from of data collection and possession
 2. Bundling ad space with advertising technology
 3. Dependency on large market players to reach users
 4. Disadvantages for consumers due to general terms and conditions

Competition cases ACM in digital economy

Market study on the value of data in the competitive process

- Purpose of study is learning about:
 - Which data is collected by companies and how they use it to create value
 - The risk of data-driven market power
- National in scope
- Practical approach: interviews with businesses and experts on four markets

Competition cases ACM in digital economy

Market study on the value of data in the competitive process

- Data allows new products/services and experimenting important parameter of competition by innovative firms
- Use of data gives firms more focus and saves money
- Availability of data not an important issue
- Data analytics very important. What can you do with the data?
- Possession of data alone does not lead to value
- Complementary assets (workforce, capital), luck and trial & error seem also important
- Therefore data advantage alone does not lead inevitably to market tipping

Competition cases ACM in digital economy

Other market studies

- To increase our knowledge in specific areas we also started three other market studies:

1. Market study into new revenue models in the media sector

The main questions in this study are:

- How do new revenue models influence competition in the media sector?
- What do consumers notice of these changes? What are the advantages?
- Are there also risks to competition, for example if companies start to cooperate?

2. Project on self-learning algorithms

- ACM is conducting a study into the technologies that are used in the design of these algorithms, and into the theoretical effects on competition.
- ACM considers whether policy response about whether or not the toolkit needs to be adjusted or expanded is needed.

3. Market study into appstores on mobile devices

- The ACM will investigate how appstores work when approving and selecting apps (from themselves and from third parties) for the stores, and how this affects the total supply of apps.

Competition cases ACM in digital economy

Thuisbezorgd.nl

- A restaurant owner filed an enforcement request against the narrow parity clause of the popular platform Thuisbezorgd.nl (subsidiary of Takeaway.com NV) which he considered to be in violation of competition rules.
- Restaurant must charge the same prices on thuisbezorgd.nl as on their own website
- Possible limitation of price competition between Thuisbezorgd.nl and restaurant
- Possible justification: reduction of free-riding

Competition cases ACM in digital economy

Thuisbezorgd.nl

- In the preliminary investigation ACM found that there would not be any harm to consumer welfare:
 - Restaurants and consumers can enter into transactions through other channels:
 - ❑ Competition from other online platforms
 - ❑ Direct order at the restaurant
 - ❑ Competition of restaurant chains (including Domino's, MacDonald's)
 - Market dynamics (a lot of new business models, new entrants and growth) were an important factor.



Competition cases ACM in digital economy

NL Submission in Coty-case

- The Dutch government submitted comments to the European Court in the Coty case.
- The Dutch government argued that the legality of a platform ban depends on the specific circumstances of the case. It is likely that such clauses in general can protect the investments of the supplier and distributors to improve the quality and image of the product and reduce free-riding.
- On the other hand, there is a risk of softening competition by limiting online commerce. The outcome of the assessment depends on the market conditions, notably interbrand competition and the available online sales channels.
- For example: the Dutch government argued that *if* platforms were the only online channel, a platform ban would in practice amount to a total ban on online sales, which we know since Pierre Fabre, is illegal; on the other hand, if there are competing online channels, a platform ban doesn't restrict all online sales.
- Therefore, the Dutch government argued against labelling these clauses as hard-core, but preferred a case-by-case assessment of the effects on consumer welfare.



Conclusive remarks

- Digital markets are generally welfare enhancing
- Aim to retain benefits of digital markets, but to intervene when consumer harm is likely
- ACM uses a mix of instruments: enforcement cases, market studies, guidance (open for complex questions arising from the digitalization)

Thank you for your attention!