

@Echelle event with Cédric O

On 28 November, in the framework of its @Echelle events, the Autorité de la concurrence invited Cédric O, the French Secretary of State in charge of the digital economy, to discuss about the challenges in competition law resulting from the development of the digital economy, and share his views on ways to address them.

By way of introduction, the President of the Autorité, Isabelle de Silva, recalled that there is increasingly heated debate around the world about regulation and competition enforcement regarding digital economic players. Tech giants have been subject to unprecedented skepticism both from consumers and from governments, a phenomenon that some have named “Techlash”. These criticisms are rooted in various societal issues, such as the protection of confidential data and privacy, protection against misinformation or protection against hate speech. In the European Union and in France, measures meant to tackle such difficulties have been adopted or are currently under discussion (for example the EU General Data Protection Regulation adopted in 2016, the French draft online hate-speech “Avia” law, the French draft audiovisual law...). There are also issues related to the development of new, disrupting business models, which bring about new usages and innovations but at the same time raise equity issues and competition problems. It is against this background that several studies and reports have been produced this past year, presenting various proposals to respond to the challenges in competition law raised by the digital economy. Competition agencies are also looking into this matter, and the Autorité de la concurrence is taking part in the debate and has submitted proposals.

Cédric O started his allocution by pointing out that some of the issues the government and public authorities are faced with are the doings of a limited number of dominant digital international players. He believes that it is necessary to use several complementary tools to regulate the activities of such players. Among them, competition policy plays an essential role. Vested with strong powers, the Autorité de la concurrence has demonstrated its capacity to adapt traditional concepts of competition law to the issues of digital and has issued important decisions and opinions. Several cases are ongoing before the Autorité and also before the European Commission.

Cédric O continued by explaining that if the competition agencies’ tools are essential and potentially very powerful, the recently published reports and studies have shown that competition policy also faces limitations, notably the risk of reacting too little or too late. Considering this, Cedric O believes it is time to modernize competition policy.

This could be accomplished by updating the current legal framework. Notably, a more frequent use of interim measures at EU level should be encouraged. He underlined that the recent “Broadcom” decision of the European Commission is a positive sign in that direction. It would also be important to strengthen the means and capacities of the competition authorities by upgrading their technical skills in digital matters, and allowing them to develop expertise on the various issues, such as those related to access to data, and those raised by the use of algorithms. For Cédric O, understanding the workings of the digital economy is a prerequisite for all competition law enforcers. The minister disclosed that the government is currently thinking about creating a pool of data scientists and algorithm experts that could be shared by regulators, the French competition authority and general administration when dealing with digital issues.

Cédric O suggested that alongside these measures, more substantive steps should be taken. He calls in that sense for completing competition policy with new tools. The efforts at defining a general regulatory framework favorable to competition and innovation, such as the rules regarding transparency of platforms, should be pursued. On top of that, he advocated in favor of new forms of ex ante economic obligations for systemic digital players.

He proposed that systemic digital players, identified on the basis of several objective criteria, could be subject to certain obligations such as:

- Developing technical standards to facilitate data portability;
- Strengthening the right of access to data for companies in business relation with them;
- Complying with new requirements of transparency, loyalty and auditability of the algorithms they used;
- Respecting rules on non-discrimination.

These players could also be required to inform the competition authorities of all proposed acquisitions, so as to avoid “killer acquisitions” of innovative startups.

He indicated that these proposals of ex ante obligations should be brought to EU level, and that the French authorities will work with other EU countries towards a common position which could be taken up by the new European Commission.

During the Q/A session, Cédric O mentioned that when it comes to regulating digital players, he would prefer a system based on the articulation of different sectorial policies, including competition policy and trade policy, rather than a system in which there would be a single super regulator at EU level.

He also mentioned that regulation is not the sole solution to face the challenges of the digital economy. He strongly believes that the role of the government is to make sure public authorities develop their knowledge about the digital world, and to foster the emergence of European digital champions. Furthermore, Cédric O stated that his duty as Secretary of State in charge of the digital economy is to bring citizens closer to digital.