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THE DIGITAL ECONOMY AND LEGAL CHALLENGES

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ABSTRACT

This article analyses the digital economy, its treatment under competition, and the need for potential regulation. The aim of this article is to answer the question, of how a legal framework looks like that, on the one hand, prevents possible undesirable developments and undesirable side effects of digitization, while not unduly preventing opportunities and suppressing positive effects. The analysis requires an examination of the proper legal framework as well as the unique characteristics of the digital economy that this legal framework must take into account. As a result, in the first part of the paper, the particular features of the digital economy are worked out in the context of existing competition legislation. Based on this, the second part investigates the need for regulation. From the scientific methods, we have used the analytical and descriptive methods to analyze the current situation. By the comparative method, we introduce different views on legal regulation. The presented topic has not been thoroughly examined in the literature on the subject thus far, giving the chance to identify avenues for future research.

KEYWORDS*: competition, digital markets, digital economy, regulation.*

1. INTRODUCTION

Digital services and markets are essentially shaped by the fact that, compared to traditional services and analog markets, they are characterized by consid-

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erable design options. These are most obvious in the fact that the offer can be tailored, and features can be created in such a way that network effects occur. Business models of the digital economy are therefore characterized by several characteristics.[1] They may often grow quite effectively because of the lack of marginal costs and non-rivalry of consumption, among other things. Providers of digital business models are likewise particularly interested in collecting data on their customers due to the possibility of tailoring the offer. Platform business ideas, which regularly occur in the digital economy and bring two sides of the market together, demand special attention. Platforms are distinguished by having two sets of customers or users (demanders, suppliers, or networks) on two-sided or multi-sided markets.[2] To benefit from network effects, some platforms offer their services to users on one side of the market at very favorable conditions or even free of charge, in order to increase their attractiveness for the other side of the market. In addition, products or services are also offered free of charge to win potential customers for higher-quality versions that are therefore subject to a charge.

2. THE AIM AND METHODOLOGY

The aim of our article is a digital economy as a challenge for competition. Concerning the characteristics of this article we apply the scientific methods of knowledge. The result of it is new knowledge that is organized into a certain system. Based on this, as well as on the content and scope of the article, we will also focus on the use of the logic method. Apart from the scientific methods of knowledge, we have also used analytical and descriptive methods to approach and analyze the legal situation. We introduced different views on legal regulation and the interpretation of examined notions. The data was collected from scientific literature through in-depth document analysis.

[1] Nyman-Metcalf, K. and Dutt, P.K. and Chochia, A. (2014). The Freedom to Conduct Business and the Right to Property: The EU Technology Transfer Block Exemption Regulation and the Relationship Between Intellectual Property and Competition Law. [in:] Kerikmäe T. (eds) *Protecting Human Rights in the EU*. Springer, Heidelberg. pp. 27-70. DOI: 10.1007/978-3-642-38902-3_4.

[2] Plavčan, P. and Funta, R. (2020). Some Economic Characteristics of Internet Platforms. *Danube: Law, Economics and Social Issues Review*. no. 2. pp. 156-167. DOI: 10.24193/ojmne.2021.35.03; Šmejkal, V. (2016). Výzvy pro evropský antitrust ve světě vícestranných online platforem. *Antitrust: Revue soutěžního práva*. no. 4, pp. 105-114.

3. DIGITAL ECONOMY AND ITS TREATMENT UNDER COMPETITION LAW (DE LEGE LATA)

3.1. ECONOMIC PROPERTIES OF DATA AND THEIR ROLE IN THE DATA ECONOMY

Because of the above-mentioned relevance of data for a wide range of business models in the digital economy, it is worthwhile to examine the economic features of data and their function in the digital economy in greater depth. Data are diverse input components for the digital economy that distinguish themselves from other input factors due to their unique qualities. They are frequently referred to as the "digital economy's currency" or the "new oil." This connection with money or oil, however, is flawed: Data has the attribute of non-rivalry since it is not consumed by its use and can be employed in an infinite number of ways. Therefore, unlike money, data is not scarce. The non-exclusivity of data is another factor to consider: Identical data might be acquired more than once and hence used by numerous systems. Data, unlike money, can thus be "spent" several times. Furthermore, unlike money, data does not lend itself well to becoming a store of value because it depreciates over time as it becomes obsolete.

3.2. MONOPOLIZATION TENDENCIES AND SUSCEPTIBILITY TO MARKET CLOSURE IN THE DIGITAL ECONOMY

Although growing digitalization can have a price-lowering and welfare-enhancing effect, it can also have a negative impact on competition policy. There are indications that the digital economy may be subject to market foreclosure.[3] The peculiarities of the digital economy, on the other hand, can contribute to the emergence of monopolies.[4] Such monopolization is mostly the result of causes that will be discussed in further detail later.

3.2.1. NETWORK EFFECTS

The benefit for the user grows in proportion to the size of the network: the more users a network has, the greater the benefit for the individual user to participate

[3] Funta, R. (2019). Economic and legal features of digital markets. *Danube: Law, Economics and Social Issues Review*. no. 2. pp. 173-183. DOI: 10.2478/danb-2019-0009.

[4] Aravantinos, S. (2021). Competition law and the digital economy: the framework of remedies in the digital era in the EU, *European Competition Journal*. DOI: 10.1080/17441056.2020.1860565

in the network. Such network effects can act as market entrance barriers because offers from competitors only become appealing to potential customers after a critical mass of users has been reached. Network effects can reinforce one another, resulting in spiral and feedback effects. If competitors are forced out as a result, this might result in so-called tipping or market tipping in favor of a corporation.[5] As a result, the supplier with the most participants and hence the largest network wins. As a result, the so-called "winner takes all" situation occurs. The firm that eventually wins will maximize its profits by offering the number of items for which the marginal revenue equals the marginal cost of production. In comparison to full competition, fewer goods will be provided, and a higher price will be demanded. Because of the described winner-takes-all scenario, it is often the case in the digital economy that there is less competition in the market than rivalry for the market.[6]

3.2.2. COST STRUCTURE OF DIGITAL GOODS

The cost structure of digital goods leads to monopolization: the products or services produced by companies in the digital economy are frequently associated with very low or no variable costs. As a result, increased production volume leads to lower average costs. As a result, the company with the lowest average cost and, as a result, the lowest pricing will offer the most quantity. The marginal costs of some digital economy commodities are approaching zero. In general, a company makes the most money when it sells the quantity for which the marginal cost matches the marginal income. At zero marginal cost, this is problematic since the supply curve coincides with the quantity axis. As a result, the market has reached a state of equilibrium in which the price is zero (like marginal cost). As a result, the fixed costs are not covered, and losses are made. This creates a monopoly in this area because the company that supplies the most amount will win, effectively covering the entire market.[7] He will supply the quantity at which marginal revenue is zero at a price that corresponds to the highest consumer willingness to pay, as long as this price covers average costs.

[5] Funta, R. (2020). Social Networks and Potential Competition Issues. *Krytyka Prawa*. Tom 12. pp. 193-205. DOI: 10.7206/kp.2080-1084.369.

[6] Peráček T. and Srebalová M. (2022). Effective Public Administration as a Tool for Building Smart Cities: The Experience of the Slovak Republic. *Laws*. 11 (5):67. DOI: 10.3390/laws11050067

[7] Lopatka, J. (2011). Market Definition?. Review of Industrial Organization 39. no. 1. pp. 69–93.

3.2.3. Lock-in effects

The emergence of monopolies in the digital economy is also aided by corporations making it difficult for their clients to switch to a competitor by making switching onerous. The lock-in effect is a term used to describe this form of client devotion. As a result of this impact, there is an overall welfare loss: the provider raises his earnings due to the high switching costs, while consumers pay for this rise in profit with a higher price, resulting in a decrease in the amount desired.

3.3. THE EXISTING LEGAL FRAMEWORK AND ITS APPLICATION TO DIGITAL MARKETS

In the following, the legal framework applicable in the legal systems is to be presented and analyzed to what extent the above-mentioned characteristics of the digital economy can be taken into account when applying the existing legal framework.

3.3.1. MERGER CONTROL AND ABUSE CONTROL

In EU law, the Merger Control Regulation regulates the examination of mergers.[8] The so-called SIEC test ("significant impediment of effective competition") is used as a prohibition criterion. For the European Commission, this has been the result since 2004 of Art. 2 (3) Merger Control Regulation, according to which mergers are incompatible with the common market if the "effective competition [...] would be significantly impeded". Mergers between large tech companies and smaller digital platforms are quite common. The big Internet giants Alphabet, Amazon, Apple, Facebook, and Microsoft are reported to have made over 400 company purchases worth over 130 billion $ in the last few years.

The prohibition on the abuse of market power is enshrined in EU law in Art. 102 TFEU.[9] The "abuse of a dominating position in the internal market or a major portion of it by one or more enterprises, since this can have the impact of affecting trade between Member States" is prohibited.[10] The EU Commis-

[8] Svoboda, P. (2019). *Úvod do evropského práva. [Introduction into EU Law]*. Praha: C.H. Beck.

[9] Jones, A. and Sufrin, B. and Dunne, N. (2019). *EU Competition Law: Text, Cases, and Materials*. Oxford: Oxford University Press.

[10] Whish, R. and Bailey, D. (2021). *Competition Law*. Oxford: Oxford University Press; Mulaj, V. (2022). Protection of Competition from Abuse with Dominant Positions and Anti-

sion's decisions to penalize significant Internet corporations, such as Google Shopping, have gotten a lot of attention in the media. After a nearly seven-year investigation, the Commission found in June 2017 that Google had abused its dominant position in the general search market.[11]

4. CHALLENGES POSED BY THE DIGITAL ECONOMY FOR COMPETITION LAW AND THE NEED FOR REGULATION (DE LEGE FERENDA)

The explanations presented in previous parts showed that the application of the existing legal framework in the digital economy can give rise to questions of interpretation and a need for legislative action. In the following, we will therefore examine in more detail which challenges for competition law result from the increasing digitization of the economy. Based on this, it is to be examined whether and to what extent the legal framework should be adapted to take account of the special features of the digital economy.[12]

4.1. CHALLENGES IN APPLYING COMPETITION LAW

In the following, the challenges in the application of competition law will be examined in more detail. Above all, it is questionable how market power can be determined in the digital economy and what role data plays in the assessment of competition law. In addition, the question arises as to whether a new model of competition policy is required.

competitive Agreements in the Kosovo Market. Studia Iuridica Lublinensia. Vol. 31. pp. 207-227, DOI: 10.17951/sil.2022.31.2.207-227; Miskolczi-Bodnár, P. (2015). *Visszaélés gazdasági erőfölénnyel [Abuse of Economic Dominance]*. [In.] Tóth, András; Juhász, Miklós; Ruszthiné, Juhász Dorina (eds) Kommentár a tisztességtelen piaci magatartás és versenykorlátozás tilalmáról szóló 1996. évi LVII. törvényhez, Gazdasági Versenyhivatal. Pp. 280-320.

[11] Case AT.39740 Google Search (Shopping), decision of 27.6. 2017; T-612/17, Google LLC, anciennement Google Inc. a Alphabet, Inc. v. European Commission, ECLI:EU:T:2021:763.

[12] Furman, J. (2019). *Unlocking digital competition*. Report of the Digital Competition Expert Panel. London: HM Treasury; Srebalová, M. and Peráček, T. And Mucha, B. (2023). Nuclear Waste Potential and Circular Economy: Case of Selected European Country. In: Kryvinska, N., Greguš, M., Fedushko, S. (eds) Developments in Information and Knowledge Management Systems for Business Applications. Studies in Systems, Decision and Control, vol 462. Springer, Cham. DOI: 10.1007/978-3-031-25695-0_13

4.1.1. DIFFICULTIES IN DETERMINING MARKET POWER

In the case of the abuse control and merger control described above, the decisive factor is whether market power exists or is emerging. To determine market power, the natural, product, and geographically relevant market is first determined. In a subsequent step, market shares, market concentration, and any market entry barriers are derived.

In principle, the competitive forces that affect the companies active in a market are decisive for determining the relevant product market. The substitutability of supply and demand is particularly important. If products or services can be easily substituted, one speaks of a high cross-price elasticity, the existence of which leads to a strong competitive relationship. All products that can be substituted in the short term from the point of view of the customer are decisive for the relevant product market, which can be measured by the cross-price elasticity.

The market is usually defined using a hypothetical monopolist (the so-called HM test). This approach examines whether at least one monopolist would be able to exercise market power in the relevant market. Market power is understood as an opportunity to push through permanently higher prices. As a rule, market power is assumed when a firm can set prices above its marginal costs. If a monopolist cannot do this, the relevant market is too broad and needs to be narrowed down. The approach is conducted as part of the so-called SSNIP test. Market power can be assumed if a small, but significant, permanent price increase ("small significant non-transitory increase in price" – SSNIP) can be implemented, which ranges from 5 to 10% over one year.

In the digital economy, traditional approaches to market definition are reaching their limits as digital companies redefine the boundaries of a market or create new markets. Although the problems that may arise when determining market power as such are not unique to digital markets and can occur in traditional markets as well, a distinguishing feature is that problems frequently occur in tandem, and a large amount of data and quality is required, which can slow down antitrust procedures. One of the challenges that can occur in digital marketplaces is that they are subject to high dynamics as a result of technological improvements. The fact that price structures and demand-substitution interactions can be asymmetrical adds to the challenge. This is true, for example, when a service is replaced with one with greater capabilities, but not the other way around. Furthermore, providers of digital services frequently aim to differentiate themselves from competitors by offering exclusive material or customized offers. This makes determining demand substitutability more challenging.[13] Fur-

[13] Stehlík, V. and Hamuľák, O. (2013). *Legal issues of EU Internal Market: Understanding the Four Freedoms*, Olomouc: Univerzita Palackého v Olomouci.

thermore, the assessment of demand substitutability is complicated by the fact that digital services are frequently given in conjunction with other services. Two of the issues associated with digital markets in market definition merit specific attention: the cost structure and the markets' multi-sidedness.[14]

4.1.1.1. Cost structure and the markets' multi-sidedness

Another difficulty is that digital services are often offered to the user free of charge. However, the analysis of a "price increase" for the consumer to be carried out in the HM test described above is not useful in the case of free services. Another problem is that, as indicated above, digital markets are frequently multi-sided. Determining market power in such marketplaces is more difficult than in one-sided markets, especially because the interconnection of the sub-markets must be considered. In the case of multi-sided markets, it is theoretically possible to either construct separate markets for each user group or to define a single, common market for all user groups. Because of the difficulties stated above, typical methods of market determination for digital marketplaces are not thought to be readily applicable. As a result, we may advocate for the use of a modified version of the SSNIP test. For example, it is occasionally suggested that instead of a hypothetical price increase, a decline in quality be used. This type of test is known as a "small but considerable and non-transitory drop in quality" (SSNDQ). The question to be answered is whether there is a modest but considerable degradation in quality for the service provider to be viable. However, the suggestion correctly responds to the complaint that the test cannot be operationalized because quality is difficult to assess.

4.1.1.2. The role of data

Since a large number of business models in the digital economy are data-based, the role of data in the assessment of competition law deserves special attention.[15] Of particular interest is what significance data can have for the assessment of market power and, on the other hand, to what extent databases are to be taken into account when companies merge.[16] The topic of whether data can

[14] Niels, G. and Ralston, H. (2021). Two-sided market definition: some common misunderstandings. *European Competition Journal*. pp. 118-133. DOI: 10.1080/17441056.2020.1851478.

[15] Funta, R. and Klimek, L. (2021). Data and e-commerce: An economic relationship. *Danube: Law, Economics and Social Issues Review*. no. 1. pp. 33-44, DOI:10.2478/danb-2021-0003.

[16] Žárská, P. (2022). Databases consisting of personal data: promising financial opportunity for member states? *The Lawyer Quarterly*. no. 2. pp. 159-172.

serve as a vital infrastructural facility is closely related to the role of data in market power. If this is the case, a dominant company's refusal to allow access to the data may be considered an abuse of its dominant position. The so-called essential facilities doctrine serves as the foundation for an obligation to provide access to necessary facilities. In fact, because data, as previously said, is not exclusive and can often be copied, it is rarely expected that competitors will not be able to develop or acquire the data themselves. As a result, an obligation to give access to data will only have to be confirmed if the data is non-personal and exclusive. When it comes to personal data, it is also important to remember that a responsibility to share the data may conflict with data protection requirements. We propose synthesizing data (i.e. the "manufactured" representation of an original data collection) as a feasible method for making previously exclusive data available to the market. However, it is unclear how this may be put into effect. The idea to arrange data access through data pools,[17] in particular, is likely to pose several questions in practical implementation, because data pools, despite their potential benefits, might have anti-competitive effects and contravene competition law.[18] In conclusion, based on what has been described above, it can be claimed that an obligation to allow access to data,[19] at least for non-personal data, can be regarded under specific conditions. To reduce the standards, a legal rule would be required at best.

4.1.1.3. Need for a new competition policy model?

The digitization of the economy also provides a challenge to competition policy since it puts into question traditional forms of competition policy.[20] In the United States, for example, there are growing calls to abandon the Chicago school, which has molded American competition policy, when it comes to the

[17] Fedushko, S. and Mastykash, O. and Syerov, Y. and Peráček, T. (2020). Model of user data analysis complex for the management of diverse web projects during crises. *Applied Sciences*, Vol. 24, pp. 1-12. DOI:10.3390/app10249122.

[18] Šmejkal, V. (2020). EU control of concentrations: update to the reality of global business?. *The Lawyer Quarterly*. no. 4. pp. 448-461. DOI: 10.2139/ssrn.3624825.

[19] Specific laws, such as the 'Digital Markets Regulation' (DMA), will govern data-related competition problems.E.g. Article 19 DMA gives the European Commission broad authority to request access to companies' records and algorithms. This competency involves not just access to gatekeeper databases and algorithms, but also access to databases and algorithms from other companies. In relation to the DMA, it will become obvious which businesses the European Commission will name as gatekeepers and how they would apply the DMA's requirements into their daily operations.

[20] Jančíková, E. and Pásztorová, K. (2021). Promoting EU values in international agreements. *Juridical Tribune*. vol. 11. pp. 203-218, DOI: 10.24818/TBJ/2021/11/2.04.

market strength of corporations in the Internet economy such as Amazon. The purpose of competition policy, according to this school of thinking, is to maximize consumer welfare, with efficiency being the most essential metric. It is frequently argued that the emphasis on maximizing welfare neglects other competing goals, such as power control.

In light of this, the question of whether a new competition policy model or approach is required to address the competition policy concerns of the digital economy is significant. We can favor e.h. the "more technological approach." As with the more economic approach, each separate instance should be studied for its economic consequences and rated based on its effects on welfare; similarly, a more technological approach should examine every single case regarding technical effects, such as inventive abilities. This, however, does not appear to be accompanied by a demand for a change in the legislative framework. The approach appears to be referring to the development of institutional knowledge among both competition authorities.

4.1.1.4. Identifying Abusive Behavior

Another source of suspicion of disability abuse in the digital market is the usage of zero prices. Offering things for free for an extended period and to a significant extent usually suggests that it is about "reducing price," because such activity is usually only sensible if it serves to push competitors out of the market. In the digital economy, however, this conclusion is more difficult to reach. As stated, many digital economy business models are distinguished by the fact that enterprises serve as a platform in multi-sided markets. It is quite common for services to be provided on one side of the market for no monetary consideration, and this is compensated for on the other side of the market, for example, through advertising. Zero prices on such platform markets are thus not necessarily indicative of undercutting and consequently anti-competitive activity but may suggest an indirect funding mechanism. In two-sided markets, it might be difficult to demonstrate intent to crowd out prices in some circumstances.

4.1.2. NEED FOR REGULATION *DE LEGE FERENDA*?

Given the special features of the digital economy described above and the associated challenges, the question arises as to whether there is a need for legislative or regulatory action to ensure competition in digital markets. In the following, we will therefore examine which measures have already been

implemented or are being discussed,[21] and whether and to what extent these instruments could be transferred to the respective other legal system.[22]

4.1.2.1. The national legislature's legislative competence

Before addressing the necessity for regulation, it is necessary to determine whether and to what extent EU member states, have leeway to impose competition law restrictions that go beyond EU law. The principle of parallel applicability of Union and national law, as stated in Art. 3 of Regulation 1/2003, applies to cartel agreements and abuse control (Art. 101 and 102 TFEU).[23] However, Art. 3 (2) of the Regulation 1/2003 authorizes member states to "enact or implement tougher national legislation to prevent or punish unilateral activities by enterprises in their sovereign territory."

In the area of merger control, on the other hand, the so-called principle of exclusivity applies, because according to Art. 21 (3) of the Merger Regulation 139/2004, the member states do not apply their respective law to mergers of Community-wide importance. According to Art. 1 (1), the Merger Regulation 139/2004 applies to all mergers of community-wide importance, which in turn depends on exceeding certain turnover thresholds by the company according to Art. 1 (2 and 3). Below these thresholds, however, the Member States can provide for their controls. However, within the scope of the Merger Regulation 139/2004, the application of national regulations is excluded. However, according to Art. 21 (4) of the Merger Regulation 139/2004, the Member States are authorized to take measures under national law in the event of a merger of companies that are subject to the Merger Regulation 139/2004, which are not taken into account by the Merger Regulation 139/2004.

Merger control is one of the areas of competition law where legislative changes have already been made. It is therefore questionable to what extent the changes made can also serve as a model for the EU and whether further changes to

[21] Miskolczi-Bodnár, P. and Szuchy, R. (2017). Joint and Several Liability of Competition Law Infringers in the Legislation of Central and Eastern European Member States. *Yearbook of Antitrust and Regulatory Studies*, vol. 10. pp. 85-109. DOI: 10.7172/1689-9024.YARS.2017.10.15.5.

[22] Nováčková, D. and Vnuková, J. (2021). Competition issues including in the international agreements of the European Union. *Juridical Tribune*. vol. 11. pp. 234-250, DOI: 10.24818/TBJ/2021/11/2.06.

[23] Osztovits, A. (2012). *Quantifying Harm in Action for Damages Based on Breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union – Some Remarks on the Draft Guidance Paper of the European Commission*. In: OSZTOVITS, A. (ed.). Recent developments in European and Hungarian competition law, Budapest: Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar. pp. 41-54.

the merger control would make sense. The introduction of a transaction value-based threshold is also being discussed concerning European competition law. The Commission conducted a public consultation on certain aspects of EU merger control, including the need to extend the threshold to include the transaction value criterion.

4.1.2.2. Data access rights and data portability

As stated above in relation to the role of data, it is assumed that data assets can represent an essential facility to which competitors must be granted access based on the essential facilities doctrine. However, this opinion is subject to uncertainty. In addition, the right of access only exists under strict conditions, in particular only vis-à-vis dominant companies. Therefore, there are demands to regulate data access rights separately. This is discussed in particular concerning legal access rights and an expansion of data portability. The two concepts differ in one essential point: the first is about giving competitors access to data. In the case of data portability, on the other hand, it is the users themselves who receive the data to be able to transfer it if they switch to a competitor.

A concept for eliminating the lock-in effects described above and making it easier for users of digital services to switch to other providers is a right to data portability. A legal anchoring of data portability concerning personal data can be found - in addition to special legal regulations in the area of energy and payment services - in Art. 20 of the General Data Protection Regulation (GDPR), which came into force in May 2018. The regulation serves competition policy purposes, despite its anchoring in data protection law.[24] According to Art. 4 (1), the scope of the GDPR is limited to personal data, information relating to an identified or identifiable natural person. It is conceivable, however, to make data portability *de lege ferenda* mandatory for non-personal data in addition to the existing rules.[25]

[24] Šramel, B. and Horváth, P. (2021). Internet as the communication medium of the 21st century: do we need a special legal regulation of freedom of expression on the internet? *The Lawyer Quarterly*. no. 1. pp. 141-157.

[25] Králik, J. and Králiková, K. and Kozák, P. (2021). *Právna ochrana osobných údajov De Lege Lata*. Sociální média v oblasti řízení lidských zdrojů IV. Uherské Hradiště: Akademie krizového řízení a managementu, pp. 208-242; Gregušová ,D. and Halásová, Z. and Peráček, T. (2022). eIDAS Regulation and Its Impact on National Legislation: The Case of the Slovak Republic. *Administrative Sciences*. 12 (4):187. DOI:10.3390/admsci12040187; Andraško, J. and Horvat, M. and Mesarčík, M. (2019). Vybrané kapitoly práva informačných technológií II [Selected Chapters of Information Technology Law II]. Bratislava: Comenius University; Horváth, M. (2021). *Digitálna éra ako výzva pre občianske a pracovné právo v kontexte personálneho manažmentu [The digital age as a challenge for civil and labor law in the context of personnel management]*. Týn nad Vltavou: Nová Forma.

However, it is doubtful whether an expansion of data portability makes sense. It may be argued that data portability does not necessarily have positive effects but may prevent innovation and reduce incentives to invest in customer acquisition. It should also be noted that a right to export data does not automatically entail a right to import data from another provider, which is why an implied agreement can be made not to provide a function for importing data from competitors. Although the right to portability benefits companies insofar as they can more easily win customers from competitors, all companies would ultimately be in a worse position, since portability increases competition as such in line with their objectives. It would therefore make sense to make an import function mandatory if data portability were to be expanded, or at least to develop appropriate standards. It also seems preferable not to extend data portability to non-personal data without linking it to the intervention thresholds under competition law.

What is also remarkable about the data portability described above is that the law does not require the respective provider to have a position of market power. Beyond this special case, there are also considerations of abandoning the criterion of market dominance or adding new forms of market power. The fact that the restriction of competition law from a legislative point of view is not sufficient to achieve the regulatory goals is also made clear by the fact that special regulations are proposed for the platform economy: The EU Commission's regulation for transparency and fairness of online platforms,[26] for example, provides for regulations to ensure that the platforms do not abuse their power and thus do not harm their commercial users. As far as can be seen, market power as an intervention threshold is not being seriously explored, because it would represent a paradigm shift and would be connected with a change in main law in EU law because Art. 102 TFEU clearly states a dominant position. Rather, an enlargement and supplementation of the market power requirements are proposed: on the one hand, by adding "intermediation power", and on the other, by enhancing the relative market power.

5. CONCLUSION AND RECOMMENDATIONS

Obviously, the European Commission has made significant efforts in recent years to combat the anti-competitive impacts of data. The way competition law is applied reflects the value of data for the modern economy. The capacity of a business to gather data and then strategically exploit it has emerged as one of the most crucial competitive factors in the modern digital economy. The paper is limited to competition law in the sense of the legislation against competition restrictions, without taking into account the law against unfair competition.

[26] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services.

Against the backdrop of huge corporations' growing market dominance, a debate has erupted about whether the existing competition legislation is adequate to address the demands of the digital economy. Germany was one of the first countries to enact legislation to address the competition law concerns posed by the internet economy. As the research has revealed, the current legal system is basically adequate for dealing with the issues of the digital economy. Legislative actions are especially important when it comes to improving the effectiveness of existing law enforcement. These include, on the one hand, procedural changes, in particular the strengthening of interim measures. On the other hand, removing the SME exemption from the law should improve the relative market power. Digital platform regulation is becoming more popular as a result of rising worries about the economic clout of platform corporations as well as worries about privacy and the improper use of personal data. Through its Digital Markets Act and its Digital Services Act, the European Commission seeks to address some political and social welfare issues while fostering a more competitive marketplace that is fair to consumers.

LITERATURE

1. Andraško, Jozef and Horvat, Matej and Mesarčík, Matúš. *Vybrané kapitoly práva informačných technológií II [Selected Chapters of Information Technology Law II]*. Bratislava: Comenius University. 2019.
2. Aravantinos, Stavros. Competition law and the digital economy: the framework of remedies in the digital era in the EU, *European Competition Journal*, 2021.
   – DOI: 10.1080/17441056.2020.1860565.
3. Fedushko, Solomiia and Mastykash, Oleg and Syerov, Yuriy and Peráček, Tomáš. Model of user data analysis complex for the management of diverse web projects during crises. *Applied Sciences*, Vol. 24, (2020): 1-12.
   – DOI:10.3390/app10249122.
4. Funta, Rastislav and Klimek, Libor. Data and e-commerce: An economic relationship. *Danube: Law, Economics and Social Issues Review*. no. 1 (2021): 33-44,

– DOI:10.2478/danb-2021-0003.

5. Funta, Rastislav. Social Networks and Potential Competition Issues. *Krytyka Prawa*. Tom 12 (2020): 193-205.
   – DOI: 10.7206/kp.2080-1084.369.
6. Funta, Rastislav. Economic and legal features of digital markets. *Danube: Law, Economics and Social Issues Review*. no. 2 (2019): 173-183.
   – DOI: 10.2478/danb-2019-0009.
7. Furman, Jason. *Unlocking digital competition. Report of the Digital Competition Expert Panel*. London: HM Treasury. 2019.

8. Gregušová, Daniela and Halásová, Zuzana and Peráček, Tomáš. eIDAS Regulation and Its Impact on National Legislation: The Case of the Slovak Republic. *Administrative Sciences*. (2022).12 (4):187.
   – DOI: 10.3390/admsci12040187.

9. Horváth, Marian. *Digitálna éra ako výzva pre občianske a pracovné právo v kontexte personálneho manažmentu [The digital age as a challenge for civil and labor law in the context of personnel management]*. Týn nad Vltavou: Nová Forma. 2021.

10. Jančíková, Eva and Pásztorová, Jana. Promoting EU values in international agreements. *Juridical Tribune*. vol. 11, (2021): 203-218.
   – DOI: 10.24818/TBJ/2021/11/2.04.

11. Jones, Alison and Sufrin, Brenda and Dunne, Niamh. *EU Competition Law: Text, Cases, and Materials*. Oxford: Oxford University Press. 2019.
   – DOI: https://doi.org/10.2139/ssrn.3976852

12. Králik, Jozef and Králiková, Kristína and Kozák, Peter. *Právna ochrana osobných údajov De Lege Lata*. Sociální média v oblasti řízení lidských zdrojů IV. Uherské Hradiště: Akademie krizového řízení a managementu, 2021.

13. Lopatka, John. Market Definition?. *Review of Industrial Organization* 39. no. 1 (2011): 69–93.
   – DOI: https://doi.org/10.1007/s11151-011-9302-z

14. Miskolczi-Bodnár, Peter and Szuchy, Robert. Joint and Several Liability of Competition Law Infringers in the Legislation of Central and Eastern European Member States. *Yearbook of Antitrust and Regulatory Studies*, vol. 10 (2017): 85-109.
   – DOI: 10.7172/1689-9024.YARS.2017.10.15.5.

15. Miskolczi-Bodnár, Peter. *Visszaélés gazdasági erőfölénnyel [Abuse of Economic Dominance]*. [In.] Tóth, András; Juhász, Miklós; Ruszthiné, Juhász Dorina (eds) Kommentár a tisztességtelen piaci magatartás és versenykorlátozás tilalmáról szóló 1996. évi LVII. törvényhez, Gazdasági Versenyhivatal. 2014.

16. Mulaj, Valbon. Protection of Competition from Abuse with Dominant Positions and Anticompetitive Agreements in the Kosovo Market. *Studia Iuridica Lublinensia*. Vol. 31 (2022): 207-227.
   – DOI: 10.17951/sil.2022.31.2.207-227.

17. Nyman-Metcalf, Katrin and Dutt, Pawan-Kumar and Chochia, Archil. *The Freedom to Conduct Business and the Right to Property: The EU Technology Transfer Block Exemption Regulation and the Relationship Between Intellectual Property and Competition Law.* [in:] Kerikmäe T. (eds) Protecting Human Rights in the EU. Springer, Heidelberg 2014.
   – DOI: 10.1007/978-3-642-38902-3_4.

18. Niels, Gunnar and Ralston, Helen. *Two-sided market definition: some common misunderstandings*. *European Competition Journal*. (2021): 118-133.
   – DOI: 10.1080/17441056.2020.1851478.

19. Nováčková, Daniela and Vnuková, Jana. Competition issues including in the international agreements of the European Union. *Juridical Tribune*. vol. 11 (2021): 234-250,
   – DOI: 10.24818/TBJ/2021/11/2.06.

20. Osztovits, Andras. *Quantifying Harm in Action for Damages Based on Breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union – Some Remarks on the Draft Guidance Paper of the European Commission*. In: OSZTOVITS, A. (ed.). Recent developments in European and Hungarian competition law, Budapest: Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, 2012, pp. 41-54.

21. Peráček, Tomáš and Srebalová Mária. Effective Public Administration as a Tool for Building Smart Cities: The Experience of the Slovak Republic. *Laws*. (2022).11 (5):67.
   – DOI: 10.3390/laws11050067.

22. Plavčan, Peter and Funta, Rastislav. Some Economic Characteristics of Internet Platforms. *Danube: Law, Economics and Social Issues Review*. no. 2 (2020): 156-167.
   – DOI: 10.24193/ojmne.2021.35.03.

23. Srebalová, Mária and Peráček, Tomáš and Mucha, Boris (2023). Nuclear Waste Potential and Circular Economy: Case of Selected European Country. In: Kryvinska, N., Greguš, M., Fedushko, S. (eds) Developments in Information and Knowledge Management Systems for Business Applications. Studies in Systems, Decision and Control, vol 462. Springer, Cham.
   – DOI: 10.1007/978-3-031-25695-0_13.

24. Stehlík, Václav and Hamuľák, Ondrej. *Legal issues of EU Internal Market: Understanding the Four Freedoms*, Olomouc: Univerzita Palackého v Olomouci. 2013.

25. Svoboda, Pavel. *Úvod do evropského práva. [Introduction into EU Law]*. Praha: C. H. Beck. 2019.

26. Šmejkal, Václav. EU control of concentrations: update to the reality of global business?. *The Lawyer Quarterly*. no. 4 (2020): 448-461.
   – DOI: 10.2139/ssrn.3624825.

27. Šmejkal, Václav. Výzvy pro evropský antitrust ve světě vícestranných online platforem. *Antitrust: Revue soutěžního práva*. (2016). no. 4, pp. 105-114.

28. Šramel, Bystrík and Horváth, Peter. Internet as the communication medium of the 21st century: do we need a special legal regulation of freedom of expression on the internet? *The Lawyer Quarterly*. no. 1. (2021): 141-157.

29. Whish, Robert and Bailey, David. *Competition Law*. Oxford: Oxford University Press. 2021.
   – DOI: https://doi.org/10.1093/he/9780198836322.001.0001

30. Žárská, Petra. Databases consisting of personal data: a promising financial opportunity for member states? *The Lawyer Quarterly*. no. 2. (2022): 159-172.