

Doing Business in Europe: The U.S. Tech Industry Struggles with Regulators

Brian Daigle, Office of Industries

Brian.Daigle@usitc.gov, (202) 205-3458

In a number of digital trade sectors,¹ the preeminent forces are major U.S. firms—from “traditional” firms making consumer electronics to dedicated providers of digital services, including those involving internet search, entertainment, social media, and cloud computing. Given the growing importance of technology in the consumer marketplace and U.S. firms’ dominance in several areas, the Competition Commission (ECC) of the European Union (EU) has increasingly viewed digital trade through the lens of antitrust enforcement. ECC antitrust actions against U.S. tech firms have created a new barrier to cross-border operations, and further actions are likely as technology firms grow in the European market.²

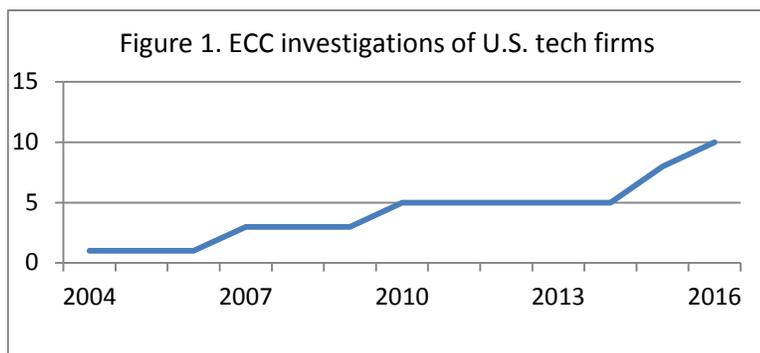
Introduction

The ECC, along with EU member states’ National Competition Authorities, is empowered by the Treaty on the Functioning of the European Union to prevent anticompetitive practices and address abuses of market dominance by firms operating in the EU. It has launched investigations of U.S., EU, Russian, and other companies that the ECC believes have manipulated the market in their own favor either to unfairly extract rents, to push out lower-level market competitors, or to affect operations of other sectors.³ In the technology sector, the ECC has examined issues that touch on U.S. tech industry operations in Europe, including mergers, taxation, and data privacy, along with antitrust concerns.

The antitrust caseload of the EU’s Competition Commission is rising, and so are the penalties

In 2015–16 alone, the EU launched as many antitrust investigations against major U.S. technology firms as it did in the decade from 2004 to 2014 (figure 1).⁴ So far, 2017 has been marked by major rulings involving three U.S. tech firms:

- In May, the ECC accepted a commitment from Amazon for fairer distribution agreements with European e-book publishers (box 1).
- In June, following a 2010 investigation, the ECC issued its largest fine ever (\$2.8 billion) against Google for manipulating search results to benefit Google Shopping results and boost ad revenue.
- In September, following a March 2009 investigation, the EU Court of Justice ruled that a lower court had erred in deciding not to consider



¹ Digital trade refers broadly to the delivery of products and services over the Internet by firms in any industry sector, and production of associated products such as smartphones and Internet-connected sensors. For more on the growing importance of digital trade, please review the USITC’s recent publication on trade in digital goods and services, [here](#).

² Reuters, “More Cases against Google to Come, Says EU Commissioner” (November 15, 2017).

<https://www.reuters.com/article/us-eu-google-antitrust/more-cases-against-google-to-come-eu-commissioner-says-idUSKBN1DF1BR>

³ European Competition Commission, “Overview: Making Markets Work Better” (accessed November 11, 2017).

⁴ European Competition Commission, website (accessed September 12, 2017).

certain evidence in Intel's appeal of a \$1.2 billion ECC fine. The fine penalized Intel for paying rebates to Dell and Lenovo in exchange for favoring Intel's semiconductor chips.

ECC actions extend from digital good providers to platforms and digital services, using expanded toolbox of options

As technology firms expand their scope beyond the technology sector to other industries, they have come under scrutiny by the ECC. In particular, the ECC has moved to block mergers that likely affect market competition as well as to fine companies for downplaying the likely competitive effects of successful mergers. For example, in May Facebook was fined \$131 million for supplying misleading data about the competitive effects of its acquisition of WhatsApp, which provides instant messaging services to users. In May 2016, the ECC also blocked a merger between two UK mobile digital service providers, O2 and Three, and it is currently investigating a merger between Qualcomm and Dutch company NXP.

ECC investigatory powers extend beyond antitrust enforcement. EU member states' tax policy for U.S. tech companies, their enforcement of data privacy regulations, and their oversight of mergers are all areas where major U.S. tech firms have already received substantial attention. Aside from the antitrust investigations listed in box 1, the ECC has also investigated Cisco, Google, Microsoft, Yahoo, Facebook, and Sun Microsystems, among others, for alleged problems with tax practices, disclosure of merger-related data, or privacy regulations in the past 10 years.

More ECC investigations are expected, likely raising compliance and enforcement costs to U.S. firms that offer technology services or products in the EU market

As the technology sector becomes more integrated with other industries, European competition authorities are expected to continue investigations of major U.S. tech firms. ECC Commissioner Margrethe Vestager has recently criticized Microsoft, Google, Amazon, and Facebook for their consumer policies as well as for allegedly using anticompetitive business practices to get ahead of EU and non-EU competitors. The ECC's strong enforcement mechanisms and substantial fines are likely to raise operating costs and depress profits for U.S. tech companies in the European market.

Sources: European Competition Commission press releases (Feb. 2, May 4, May 18, June 27 [all 2017]), *New York Times* ("Intel's \$1.4 Billion Fine in Europe Requires Review," Sept. 6, 2017), Europe.eu ("Full Text of the Maastricht Treaty"), others

Box 1. ECC antitrust investigations against major U.S. tech firms, with alleged offenses

Digital platforms

- **Google.** Limiting the ability of third-party websites to display search ads from Google competitors (July 2016).
- **Google.** Entering anticompetitive agreements; abusing position in Android operating systems, apps, and services for smartphones (April 2015).
- **Google.** In online shopping searches, elevating search results for Google-affiliated vendors over results for other vendors (November 2010).

Digital goods and services

- **Qualcomm.** Offering financial incentives to customers conditional on buying Qualcomm chipsets; pricing products below cost to push competitors to leave the market (July 2015).
- **Amazon.** Offering publishers e-book publishing contracts that require the publishers to notify Amazon if they offer more favorable terms to Amazon competitors (June 2015).
- **IBM.** Tying IBM mainframe hardware to mainframe operating system to gain market advantage; discriminating against competing suppliers (July 2010).
- **Intel.** Giving rebates to equipment manufacturers conditional on buying CPUs from Intel; limiting sales by Intel's chief rival, AMD, in Europe (March 2009).
- **Apple.** Territorial restrictions on iTunes music sales in Europe (March 2007).
- **Microsoft.** Limiting the interoperability of non-Microsoft software products with Windows 2000 (March 2004).