

THE CHALLENGES OF TECHNOLOGY - MONEREO MEYER MARINEL-LO ABOGADOS

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With market dominance by global technology companies, competition analysis in the face of such size and complexity is providing new challenges

With Competition Law, it is very important to consider market competition and market share, says Sönke Lund, a Partner at Monereo Meyer Marinel-lo Abogados. But while the legal and traditional metrics for estimating market share are sales and turnover – which has provided the framework for competition analysis – there are now global market players whose position in the online marketplace extends far beyond how much product they sell. New ways of controlling prices and market access will be important to consider.

“Companies operating in certain markets through the Internet will need to work out which is the relevant market and which is the market share in terms of dominance of the markets on the grounds of new parameters,” explains Lund. The actual relevant market and threshold definition for the players to identify the competitive constraints, may create profound implications for antitrust in the age of sales in Internet.

The tools of these companies are changing in that they can control the relevant markets, says Lund, resuming the example of the latest developments in the area of e-books in the EU and US: "While Amazon and certain publishers had agreed on certain prices, Amazon converting from a distributor to an agent means that this change does not exclude the possibility of controlling prices too." Added to which, he says, this is not only a vast market, but it is a global one too, incorporating several jurisdictions on a national, EU and worldwide scale. So while market share and definition of the relevant market continues to be indispensable in competition law, it now concerns developments in market concentration and the de facto power of the market, for instance by controlling apps.

"Lawyers need to go in deeper into the whole market and practices of their clients," concludes Lund. "That's not to say there is anything wrong with them, but there will be instances where market share is not always measurable through money. This is something that is essential that competition lawyers consider – if they haven't already."