



Office of Competition
and Consumer Protection



Budapest, 27.04.2022

Challenges and opportunities in the digital markets

Visegrad 4 Competition Conference



➤ Digital markets - why intervene and what sort of intervention?

Why?

P1: Fair competition contributes to economic development and consumer welfare

P2: Competition law and enforcement should safeguard fair competition and consumer welfare and intervene if this is threatened

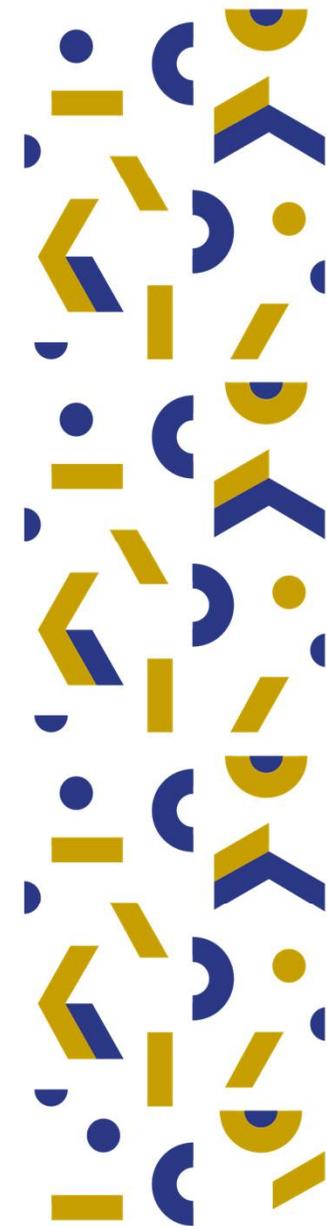
P3: Gatekeeping on digital markets does not contribute to fair competition and consumer welfare

C: Therefore, gatekeeping should be subject to intervention



Digital markets - why intervene and what sort of intervention?

1. Market structure characteristics: concentration, market power, winner-takes-most dynamics, economies of scale and scope
2. Business models characteristics: data economy, Network effects, cross-sectoral market impact, algorithms and use of tech, lower bargaining power of users, privacy, consumer lock-in
3. Make it easy to acquire market power - with or without anticompetitive behaviour ? („anticompetitive” understood traditionally)

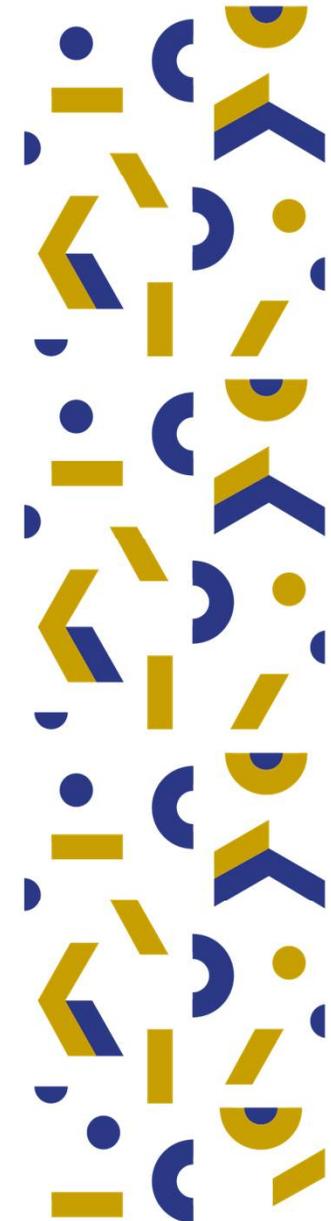




Digital markets - why intervene and what sort of intervention?

How?

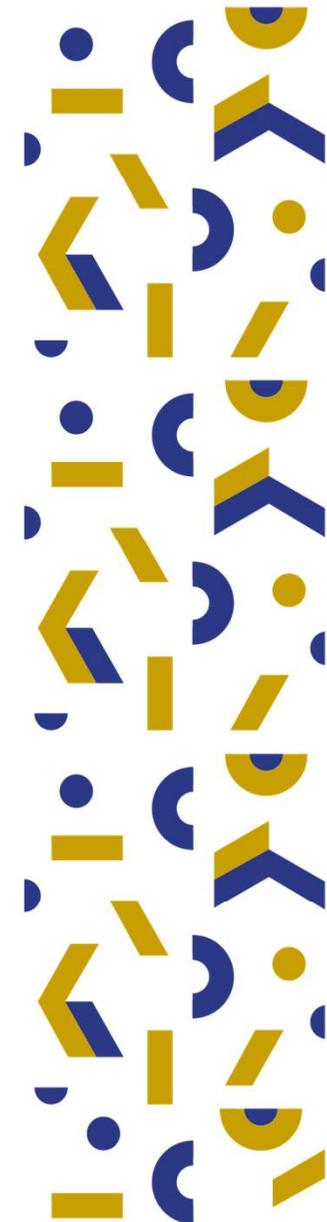
1. Ex ante **regulation** (as complementary to „ex post” regulation) - much agreement that an ex ante approach was needed
2. **Enforcement**





Ex ante vs. ex post

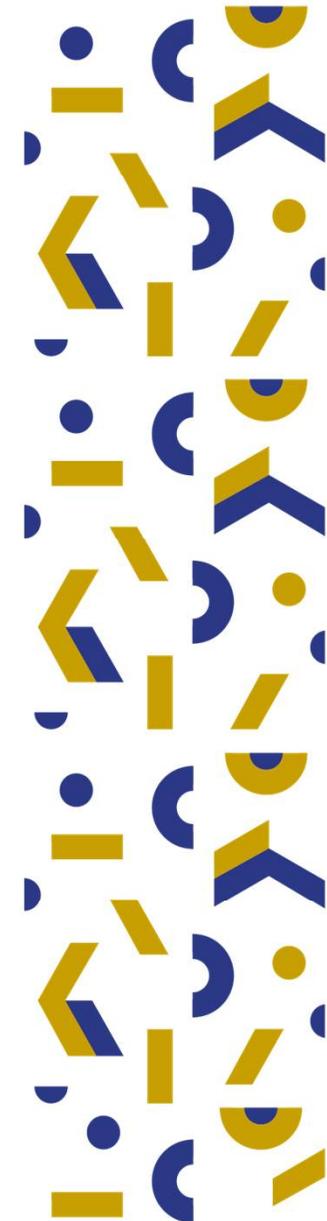
1. The regulation directly names, classifies and bans certain practices
2. The rules may become outdated again
3. Ex- ante/ex-post - preventive&proactive rather than reactive
4. An ex ante list = self-enforcing ? (can legislation be self enforcing ?)





Enforcement

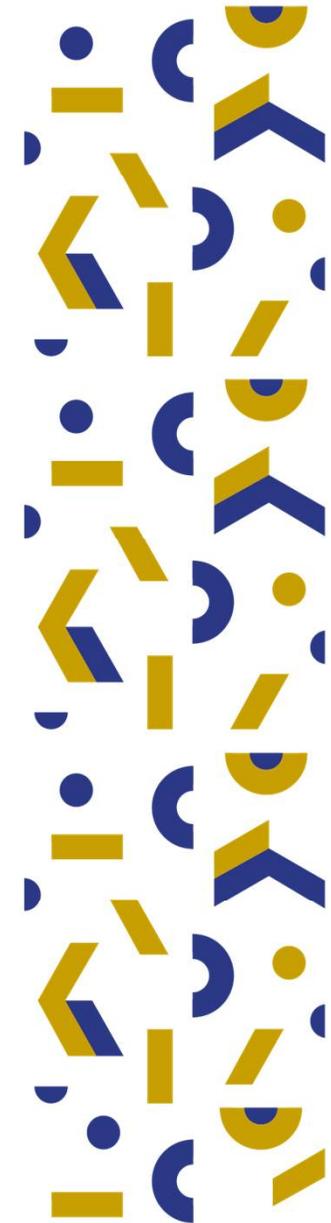
1. Ex ante still requires the ability to evaluate compliance with dos and don'ts when there is an interpretation leeway
2. Need for a better understanding of mechanisms that drive market position & better understanding of what may constitute emerging anticompetitive behavior
3. Resources for competition enforcement needed





DMA vs. competition law vs. national enforcement

1. Various views on how the two will co-exist in practice - will need to see how it plays out
2. Some argue that they are complementary - to what extent will they be?
3. Impact on actions against national gatekeepers?
4. Governance - cooperation at EC, EC - MS levels, the role of ECN, Advisory Committee, High Level Group...

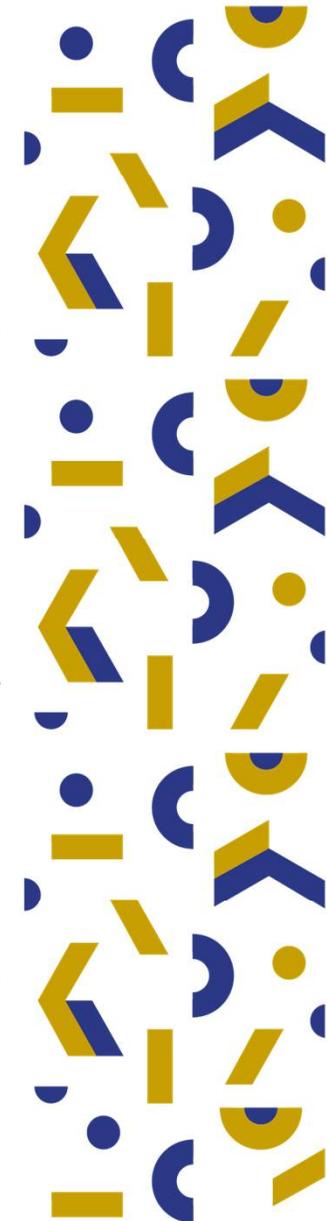




UOKiK's digital cases - Allegro I - antimonopoly proceedings (self- preferencing)

Allegro - the largest Polish e-commerce platform (two-sided transactional platform); offers intermediation services across many product categories. (over 16 million users in 2017); facilitates trade between businesses (retailers, merchants) and consumers (B2C)

- In June 2017 - unannounced inspections in Poznań
- 6 December 2019 - **antimonopoly proceedings** (abuse of dominant position)
- Allegro could favor its own retail activity (conducted mainly through Official Allegro Store - OSA, 1p) on the Marketplace (operating under the domain name: Allegro.pl) compared to competing merchants' retail activity (3p) (self-preferencing)

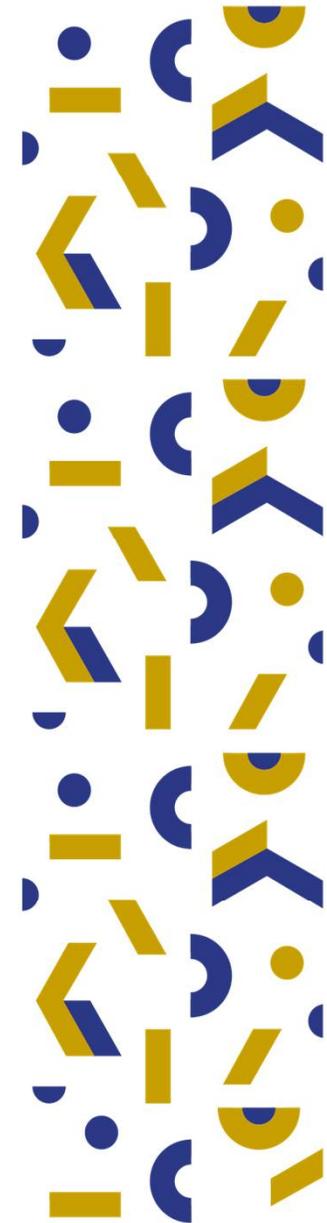




UOKiK's digital cases - Allegro II - preliminary proceedings (exploitative conduct)

September 2020 - preliminary proceedings investigating conditions of cooperation between Allegro and its users (professional and incidental sellers), in particular:

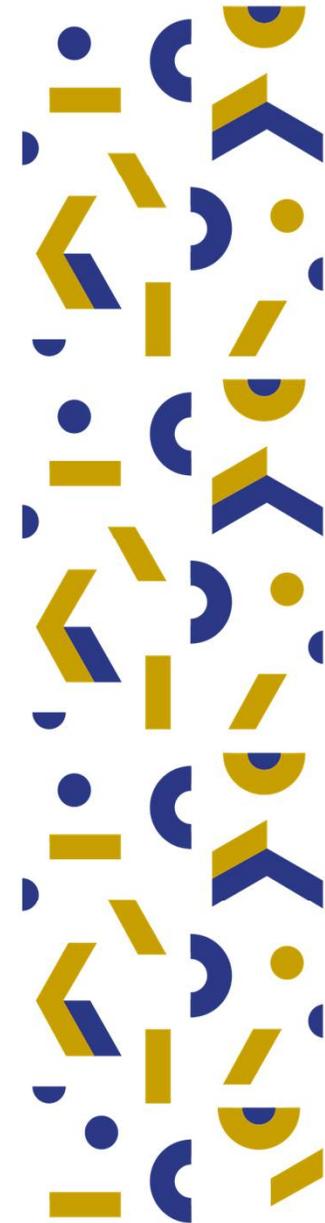
- changes in Allegro regulations concerning charging commissions on sales
- terms and conditions of refunding the commissions charged (so-called transactional rebates) in a situation when a purchasing party withdraws from the agreement concluded by means of an on-line platform
- the principles governing the functioning of the Allegro Smart service





UOKiK's digital cases - Apple - preliminary proceedings

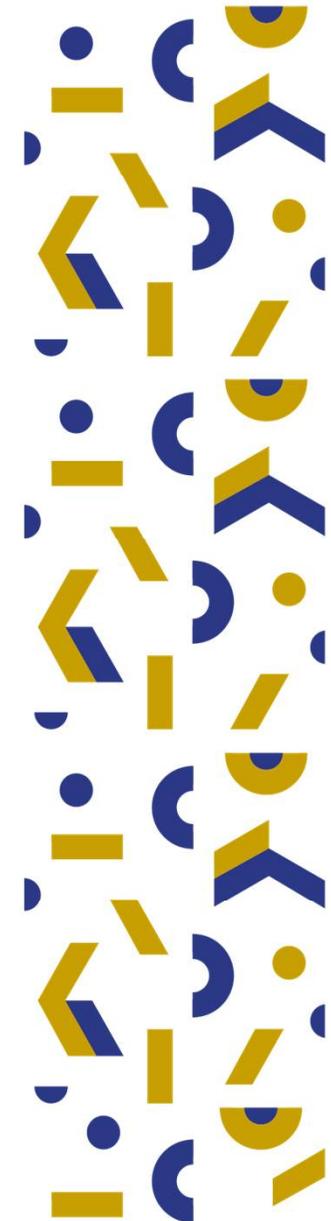
- November 2021 - **preliminary proceedings** to determine whether the new rules of the Privacy Policy and Personal Data Processing Policy introduced by Apple for iOS devices violate competition law, in particular to verify:
 - ✓ whether the rules concerned apply in the same way to the apps developed by third parties and Apple itself
 - ✓ whether the rules concerned act for the benefit of other Apple advertising services
- Possible exclusionary abuse of market power





Opportunities?

1. Opportunities for whom ? Economy at large? Society? Consumers? Gatekeepers? Potential competitors and other businesses using gatekeeper services?
2. How to create win-win solutions out of economic conflicts for gatekeepers against welfare of consumers, smaller businesses using platform services and economy at large?





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Thank you

Martyna Derszniak-Noirjean, PhD

Director of the International Cooperation Office

Ph. +48 22 55 60 518

martyna.derszniak-noirjean@uokik.gov.pl

www.uokik.gov.pl

