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Game Changer: Defining the Relevant Market of Esports Ecosystems

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Esports (short for: 'electronic sports') have emerged as a major player in the entertainment industry, attracting billions of euros in revenue and a massive global audience. Now that big tech companies have started to establish themselves in the industry, the legal landscape of esports is also becoming increasingly important, especially with regards to [the antitrust aspects](#). Competition law plays a critical role in market regulation and protecting consumer welfare, but its applicability to the unique characteristics of esports is a subject of debate. The purpose of this blog is to explore the challenges and implications of applying EU competition law to esports, with a focus on the crucial aspect of relevant market definition. The post will provide an overview of the guiding legal principles, assess how they would apply to the unique features of esports and conclude with a number of possible approaches to address these challenges.

What are esports?

Establishing a precise definition of the term esports has been a matter of much debate. A recent analysis by the [European Parliament](#) found that esports cannot be completely merged with or separated from the umbrella definition of traditional sports. While both include human competitions, the digital aspect sets them apart. However, the report suggests that it might be possible to recognise specific esports titles as sports, rather than the entire esports industry. Currently, no EU member state has fully recognised esports as a sport, but some have granted partial legal recognition. Hence, the exact definition of esports remains a topic of discussion, but is most commonly referred to as "professional competitive video gaming".

The industry encompasses a wide range of stakeholders, including game publishers, tournament organisers, broadcasters, teams, professional players, viewers, and advertisers. It is complex and revenue streams are interdependent between these various entities. Game publishers have significant power in the industry due to their exclusive control over their video games' intellectual property rights. This has led to concerns about potential monopolisation of downstream esports markets if game publishers decide to take over the role of the other stakeholders. As a result, some critics are calling for a governing body to help regulate the industry from within.

How are markets generally defined?

Simply put, relevant market definition is a tool used in competition law to identify the market in which a company operates. It helps regulators determine the extent of the market, the level of competition, and the effects of anti-competitive practices. This is important for the purposes of antitrust measures by regulators, like breaking up cartels or prohibiting illegitimate mergers.

The principles of market definition find their roots in case law, subsequently inspiring the [1997 Commission Notice on the Definition of Relevant Market](#) providing additional guidance. In essence, the relevant market is defined, first, by determining the [product market](#) and, second, the [geographic](#) market:

The product market is defined by considering the substitutability of products or services from the perspective of the consumer and possibly of the supplier too. All products or services that are regarded sufficiently interchangeable are considered to be in the same relevant product market. This is assessed from the perspective of consumer motives and factors like barriers to entry. The relevant geographic market, the second element defining a product's relevant market is defined as the area in which firms offer products and/or services and where conditions of competition are sufficiently homogeneous, distinguishing it from neighboring areas. Similar products from different regions can be considered in the same market if they are subject to the same conditions.

This market definition applies at equal measure to esports. It provides the foundation for assessing the level of competition and the effects of anti-competitive practices in this field. The principles discussed above will be applied to the unique circumstances of the esports ecosystem, and it will be important to take into account the specific characteristics of the industry when defining the relevant market.

Defining digital markets

The traditional framework of market definition has been criticised for its lacking applicability to markets in the digital world. For example, substitutability is often

determined with the use of a test based on hypothetical increases in price: [the 'SSNIP'](#). In practice, this starts with defining the narrowest possible market definition, which expands until a hypothetical monopolist could profitably raise prices beyond the competitive level. If consumers would still buy the product or service after this hypothetical change in price, the market definition is considered well-defined. However, this test is quantitative and generally used when sufficient data is available, which is not always the case.

Moreover, in modern days, markets often include ['free' market sides](#), such as social networks that provide 'free' services for consumers, while profiting from data collection. Due to the fact that quantitative tests like the SSNIP do not consider these zero-profit market sides, they are unable to provide an adequate overview of the market.

As a result, qualitative assessments may prove to be useful. For example, in [Google Android](#) (2018) the market was defined using the 'SSNDQ' test, which analyses the effect of a hypothetical decrease in quality ('SSNDQ test') instead of price. This led to the separation of the Google Play Store from the Apple App Store in this case. Regarding the geographic market, digital markets have increasingly been categorised with broad markets, like a worldwide or at least EEA-wide market. This is due to the essentially international character of internet platforms.

Defining traditional sports markets

Over the years, the EU has gradually gained competence in regulating the traditional sports industry. Since [Bosman](#) (1995), rules by sports governing bodies could be contested before European Courts and [Meca-Medina](#) (2006) established the current legal framework whereby those rules governing sports must satisfy the principles of proportionality and subsidiarity.

More recently, the European Commission has taken antitrust action against sports governing bodies for rules that hinder athlete participation in events outside this established model. In the court rulings that resulted from these actions, the market definition has often included multiple aspects of professional sports, such as the organisation of events or commercial exploitation of the sport, including broadcasting rights.

For example, in the [International Skating Union Decision](#) (2020), the restriction of competition took place on the worldwide market for the organisation and commercial exploitation of international speed skating events. Similarly, in the Attorney General's [Opinion](#) regarding the proposed *Super League* (2022), the relevant market of the UEFA was found to be the market for the organisation and commercial exploitation of international competitions between football clubs at the European level.

These examples illustrate how traditional sports markets can be straightforwardly defined, typically in terms of the geographic location of the market, the type of sport, and consumer preferences.

Application to esports markets

The framework for defining the relevant market in EU competition law has proven to be able to adapt to a certain extent to modern markets. However, the unique nature of esports present several challenges for market definition. A few are listed hereunder.

1. **Complicated Demand Substitutability:** Esports viewers are characterised by a distinctively high loyalty to specific video game titles and esports athletes. These consumers have a strong emotional attachment to their chosen game and fandom requires a significant time investment in learning specific game knowledge, making it unattractive to switch to other game titles. These demand motives resemble the motives for the traditional sports consumer, which would plead for a market definition per game title. This would in turn give game publishers a monopoly over their respective game title and its downstream market. However, the similar practical monopolies of sports governing bodies are based on their “non-commercial”, objectively legitimate goals for the sport in question. This would be difficult to apply to the essentially commercially driven game publishers. Moreover, there is a lack of specific research on different game titles, leading to uncertainty regarding which titles constitute a distinct market and which are in fact deemed sufficiently interchangeable by the consumer.
2. **Less Potential Competition:** The esports industry presents higher barriers to entry than many other internet businesses, which results in fewer potential competitors and a less intense competition dynamic. However, this also poses a higher risk of monopolistic behavior, and regulatory authorities need to investigate the market more closely.
3. **More Complex than Traditional Sports:** The esports industry is still new and constantly evolving, causing uncertainty about its future and market trends. It is uniquely structured, with game publishers holding full legal control over the downstream market, and leagues organised with a franchise system based on fees. This makes market definition more complex compared to traditional sports, where the market is more developed and stable. Currently, the esports industry is not likely to be included in the European Sports Model, but in cases regarding certain game titles, similarities might outweigh the differences.

Implications

These challenges lead to an undesirable level of legal uncertainty in the antitrust field. That presents significant consequences which may impact the esports industry's growth and competitiveness. Additionally, this lack of clarity may allow game publishers to exert even more control over the downstream market, resulting in decreased incentives for competition in terms of price and quality, and limiting participation for independent tournament organisers, broadcasters, and teams. To ensure the healthy development of the emerging esports industry, it is important to find a suitable approach to defining the relevant market.

Approaches

To effectively address these challenges, a comprehensive framework is needed that takes into account the specific elements of the esports ecosystem. I present two possible approaches that could be adopted (jointly) when defining esports markets.

Inspiration from Similar Markets: Traditional Sports and Digital Platforms

One approach that regulators could take is to draw inspiration from similar markets, such as traditional sports and digital platforms. The frameworks for these markets are not applicable without adaptations, but provide a useful starting point due to the close similarities.

Traditional sports markets can provide valuable insight into the competitive dynamics of potentially monopolistic market players and factors for assessing substitution of demand. Research has shown that esports viewership motives may be similar to traditional sports, but this is not conclusive. An in-depth analysis of consumption demand for specific game titles, while considering the more stable traditional sports, would aid substitutability assessment. Moreover, like sports, esports are considered "glocal" as they are played locally in stadiums but viewed globally through streaming platforms, leaving both local and global geographic market options open.

The framework, although still in development, for defining digital markets offers lessons on how to define multiple market sides, of which some free, by using qualitative assessments. These cases have also paved the way for defining wider geographical markets due to the global nature of the internet, which is applicable to esports.

By incorporating these insights, regulators can gain a deeper understanding of the competitive dynamics in the esports ecosystem and create a framework that is effective in addressing the challenges of the industry. Regulators could consider the unique characteristics of esports in case-by-case analyses to better understand the competitive landscape and identify key concerns when it comes to market definition.

Shifting the Focus to Market Characterisation

In addition to drawing inspiration from similar markets, regulators could consider a different objective for market definition. Rather than specifically determining markets in order to calculate market shares, they could focus on [characterising the market](#). This approach would focus on analysing the industry and its key elements in a qualitative manner, as opposed to the traditional quantitative approach. This includes making an overview of market players, market structures, and market dynamics.

By considering the interaction between the various elements of the esports ecosystem, authorities could better identify and address anti-competitive conduct that may be occurring across multiple elements.

Hypothetical application

This framework can be applied to the hypothetical case of game publisher Define & Conquer Games (DCG) that decides to further monopolise the downstream esports market of the popular first-person shooter title *Market Warfare*, by refusing to license any broadcasting rights to third-party platforms. Regulators could then use qualitative research to gather consumer motives and costs for game publishers in the first-person shooter genre. They can then draw inspiration from traditional sports to examine the governance structure and competition model. This analysis of demand and supply substitutability would likely result in defining the relevant product market as the commercial exploitation of competitive video gaming within the first-person shooter genre, a group of interchangeable games, or just the Market Warfare ecosystem, on a worldwide basis.

Conclusion

In conclusion, the EU competition law's legal framework for market definition faces several challenges when applied to the unique characteristics of the esports industry. This includes the control exerted by publishers, difficulties in analysing demand substitution, and the complex digital nature of the market. It is crucial that regulators understand the intricacies of the esports industry and adapt their approach in market definition to ensure fair competition and enforce antitrust rules.

The recommended approach includes a focus on qualitative (instead of quantitative) analysis, drawing inspiration from similar markets and considering the various elements of the esports ecosystem. As the industry continues to grow, it is imperative that regulators stay informed and adapt their framework accordingly.

Market definition has always relied on a case-by-case analysis, provided several tools for unconventional situations and evolved significantly over time while remaining relevant.

Hence, when esports cases emerge, regulators must prove to be able to modify the framework and adapt their approach so that the relevant market adequately represents the complex industry and its various stakeholders.