



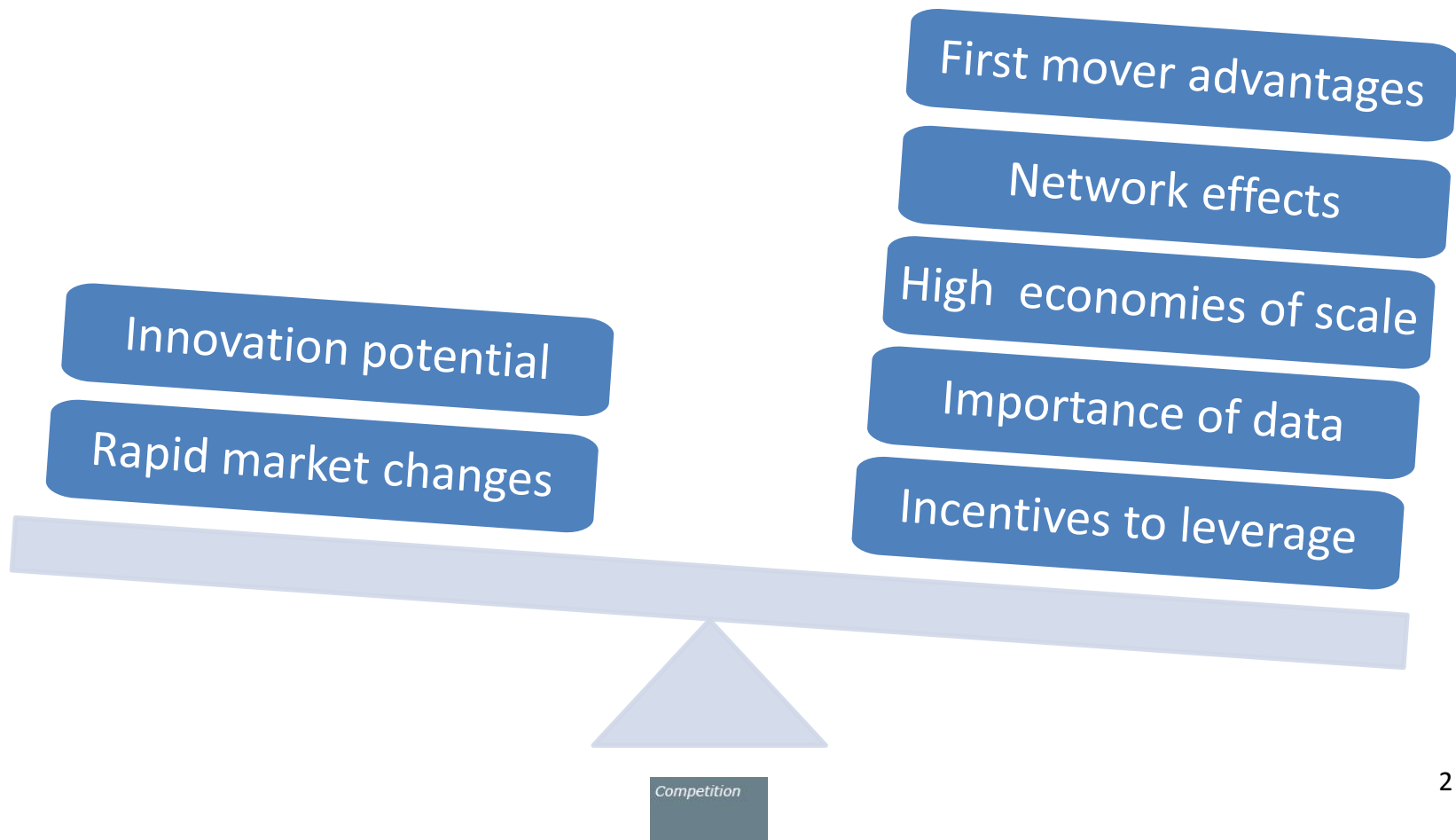
ENFORCEMENT CHALLENGES IN THE DIGITAL ERA

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Tendency of digital markets to "tip"





I. Challenges for the competition toolbox

Defining relevant markets

- **Multi-sided platforms and networks** are omnipresent.
- **Monetary-free services in exchange of data** challenge the use of traditional tools for defining markets.
- **New and rapidly emerging technologies gradually take over markets, superseding older technologies.**
 - Data on consumer preferences might be scarce.

Assessing market power

- Difficult to assess market power by focussing on scope for price increases, when companies provide **zero price services** in exchange of data.
- The possession of **non easily replicable data** may mean that traditional market shares on the basis of sales are not sufficiently informative.
- **Consumer inertia or incentives to single-home** may mean competing offers do not exert significant constraints.

Challenges raised by automated systems/algorithms

- New digital tools and big data may foster more **elusive forms of collusion**
- **Algorithms/automated systems** may be used to implement :
 - cartels;
 - Resale price maintenance.



II. Using the existing tools to successfully tackle the challenges

Market definition: addressing the role of data

- **Market definition:** the traditional inquiry into demand side and supply side substitutability is relevant also for data-driven markets with a high rate of innovation.
- There is no such thing as a *free lunch*: **data is a currency**
- Traditional market definition tools often rely on price, but also **other parameters of competition** matter (e.g. quality). It is also possible to define markets when there is no price: e.g. by reference to the product's characteristics or intended use.

Market power: addressing the role of data

- **Market power:** looking at **data as an asset**. Does the accumulation of data give an insurmountable advantage?
 - Is data a significant component in the attractiveness of the relevant product?
 - Is data exclusive or easily replicable?
 - Does the value of the data decrease over time?

Dealing with pre-emptive mergers

- Scenario of **incumbent buying up a digital company with innovative products and lots of users but little or no sales**
- EU Merger Control thresholds may not be met despite high transaction value, as target turnover is low
- Public consultation on the effectiveness of jurisdictional thresholds

Boosting cartel detection and enforcement

- **Detection:** a dedicated forensic IT team and necessary equipment to detect "new" cartels
 - **Enforcement:** a toolbox capable of apprehending novel issues. The example of algorithms:
 - They could serve to implement a pre-existing anti-competitive agreement, or to increase the effectiveness of such anticompetitive agreements
 - They could be used to reach an anti-competitive agreement, or engaging in anti-competitive concerted practices;
- ➔ "Digital" behaviour can be treated no differently than "offline" behaviour