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Competition and Consumer Policy in Digital Markets – Background Note

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Abstract

Digital markets have profoundly transformed the way consumers interact with businesses, offering new opportunities for innovative goods and services, greater choice, and enhanced convenience. These evolving dynamics create new challenges for both competition and consumer protection authorities, as practices that impact competition may also have an effect on consumer autonomy and choice, privacy, as well as trust, and *vice versa*. Traditional analytical frameworks based on price, output, information and transparency often fail to capture the full competition and consumer implications of conduct in digital environments. This note examines areas where the two policy areas converge, where gaps remain and how authorities can work together to address challenges arising from digitalisation.

Keywords: Antitrust Law, Antitrust Policies, Consumer Protection, Consumer Economics, Imperfect Markets, Anticompetitive Practices

JEL codes: D12, D18, K21, L13, L40, L41

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Executive summary

1. Digital markets have fundamentally reshaped the relationship between competition and consumer policy, underscoring the growing importance of conducting an integrated analysis.[1] Digital platforms now structure consumer interactions through sophisticated data-driven and algorithmic mechanisms, from personalised pricing and recommendation systems to interface design, that strongly influence both consumer behaviour and market dynamics. Recent advances in artificial intelligence (AI) further embed these mechanisms into core functions such as pricing, ranking and demand forecasting, while the emergence of agentic AI, systems capable of acting autonomously on behalf of humans, raises new questions about transparency, intermediation and consumer autonomy. At the same time, the rapid deployment and systemic impact of these practices have encouraged in some jurisdictions the emergence of *ex-ante* regulatory frameworks that integrate competition and consumer objectives, complementing the role of traditional *ex-post* tools.

Competition policy and consumer policy – diverging approaches and goals?

2. Competition policy aims to preserve effective market structures and rivalry, focussing primarily on supply-side market failures arising from market power. Consumer policy directly targets individuals, protecting them from misleading, fraudulent or unfair commercial practices. Both frameworks share a common goal of safeguarding consumer welfare, with transparency of information recognised as a central point of convergence.

3. The complementarity between the two policies is visible particularly in digital markets, with some overlapping objectives. Robust consumer protection and empowerment enable consumers to make informed choices online, thereby supporting competition and innovation. Conversely, greater competition in digital markets incentivises better business practices, further strengthening consumer empowerment and contributing to higher consumer welfare. These complementarities do not, however, eliminate the possibility of tension between the two policy areas in particular cases. One example is stronger product-safety obligations on online marketplaces that could potentially raise barriers to entry for smaller firms due to increased compliance costs.

4. Consumer agency refers to the meaningful ability of individuals to understand alternatives, make informed choices and act on their preferences, including switching providers when appropriate. Several jurisdictions have developed institutional mechanisms to structure the relationship between competition and consumer policy, from dual-mandate authorities and co-operation protocols to dedicated digital co-ordination bodies. Instruments, such as joint market studies and working groups, have proven effective entry points for cross-policy collaboration. Enforcement, however, largely continues on separate tracks, with authorities choosing the most appropriate framework or proceeding in parallel based on legal thresholds and available remedies. This strategic decision on how to pursue a conduct leaves some room for an integrated perspective based on consumer agency considerations, which is particularly relevant in digital markets, where practices often produce both distortions of consumer choices and effects on competitive dynamics, making cross-regime collaboration increasingly essential.

5. The analysis of specific practices that sit at the intersection of the two regimes, where conduct in digital markets may simultaneously raise concerns under competition and consumer law, shows a growing overlap between the two frameworks, which suggests that addressing digital market conducts in a coherent and effective way may require closer co-ordination between the two policy domains. This overlap offers multiple enforcement routes to regulators, and aspects such as the complexity of the assessment, the legal thresholds, timing and resources, and availability of remedial action may influence the decision to pursue a case under one enforcement route or the other.

Current and prospective joint approaches: Bridging the two policy areas

6. In some circumstances, neither framework alone is sufficient to capture the full implications of digital market conduct. A more integrated perspective supported by structured inter-institutional co-operation can help authorities address both the structural and behavioural dimensions of digital markets more effectively.

7. Looking ahead, the paper proposes ways to integrate consumer agency more systematically into both enforcement frameworks and into remedy design and monitoring, as combining competition law's structural tools with consumer protection's conduct insights can prevent remedies that appear structurally sound but prove ineffective in practice. This includes using consumer agency as a meaningful parameter in enforcement frameworks, recognising autonomy as a condition that can influence how markets function and how existing legal standards are applied. While aspects of consumer agency are already implicitly reflected in existing assessments, especially through the analysis of consumer behaviour, they remain unsystematised and not explicitly framed as a distinct analytical parameter. Considerations on consumer agency may also be extended to the design of remedies. The emergence of agentic AI further underscores the need for co-ordinated policy responses, raising questions about transparency and bias.

1 Introduction

8. The relationship between competition and consumer policy has long been grounded in a shared objective: promoting consumer welfare through well-functioning markets (OECD, 2008[1]). While the interaction between the two policy domains is not new, it has gained renewed relevance in the context of digital markets. Digitalisation has profoundly transformed both how firms compete and how consumers interact with markets, amplifying the potential benefits of innovation, efficiency, and choice, while at the same time increasing consumer risks and challenges and the entrenchment of market power. As a result, the boundaries between competition and consumer policy concerns have become increasingly porous (Tonazzi, 2025[2]).

9. The interaction between competition and consumer policy is particularly salient today because the economic and legal assumptions underpinning both fields have been discussed over the past decade (OECD, 2022[3]). First, digital platforms now play a central role in structuring interactions between consumers and businesses. They shape access to information and frame consumer choice through increasingly sophisticated data-driven and algorithmic mechanisms that were marginal or far less developed ten years ago. According to the OECD Going Digital Toolkit, in 2024, more than 75% of internet users in OECD jurisdictions purchased goods and services online and around 77% of businesses had a web presence, showing how relevant transactions in online markets have become (OECD, 2026[4]).[2] Second, practices such as personalised pricing, self-preferencing, misleading or deceptive online choice architecture,[3] and data-based lock-in may influence (sometimes significantly) consumer behaviour while simultaneously reinforcing market power and raising barriers to entry. In digital markets, these practices may have a far broader potential to impact consumers than in offline markets, as firms can exploit behavioural biases with unprecedented precision, adjusting market features such as prices dynamically, and experimenting on users in real time. While some of the conduct issues at stake, including self-preferencing and misleading commercial practices, have analogues in brick-and-mortar markets, digitalisation has introduced qualitatively new dimensions: in particular, the ability to personalise not only prices but also product design, bundling and interface presentation at the individual level, and the capacity to exploit consumers' cognitive biases with a precision and scale that was previously unattainable. Third, regulators and policymakers have increasingly recognised that traditional ex-post competition law tools may be slow to address fast-moving and systemic conduct in digital markets. This has prompted an emerging trend in legal frameworks acknowledging that effective market contestability and meaningful consumer choice are interdependent objectives. Recent legislative and enforcement developments illustrate one possible reaction bringing consumer and competition considerations together more explicitly (UNCTAD, 2021[5]). While a few years ago the discussion was led by the need and the design of new regulatory frameworks, today those frameworks are now in place in some OECD jurisdictions and have the potential to shape digital businesses behaviour and market dynamics generating new challenges from a policy perspective, particularly regarding their interaction with existing competition and consumer protection tools (OECD, 2024[6]).

10. Digital markets have distinctive features, including extensive data collection and processing, algorithmic decision making, economies of scale and scope, and the growing role of intermediation (OECD, 2024[7]; 2025[8]). This has led to new business models that deliver significant consumer benefits, such as lower search costs, personalised services and more efficient transactions. At the same time, these features create complex and information-rich environments in which consumers' decisions are increasingly shaped by interface design, personalised content and targeted advertising. The growing sophistication of online

choice architecture has become a key channel through which both competitive dynamics and consumer outcomes are influenced, making it particularly timely to examine how these mechanisms operate in digital markets today. Recent advances in artificial intelligence (AI) are further reshaping digital markets and reinforcing the interlinkages between competition and consumer policy. AI is increasingly embedded in core market functions such as pricing, ranking and recommendation systems, where it supports operational efficiency, innovation and data-driven decision making, thereby influencing firms' competitive strategies (OECD, 2025[8]; 2024[7]; Gunawan, 2025[9]). At the same time, AI-driven tools are transforming consumer behaviour through real-time responsiveness, personalised marketing and demand forecasting, enabling more tailored interactions while also raising ethical concerns related to data privacy, algorithmic bias and transparency (Gunawan, 2025[9]). In parallel, the emergence of agentic AI systems capable of acting on behalf of humans introduces new forms of intermediation, which may both enhance consumer agency and shift decision making away from users, raising issues of transparency and bias (OECD, 2025[8]).

11. In this environment, practices that affect how choices are presented to consumers may have a dual impact. On the one hand, the design of online interfaces can enhance consumer experience and generate efficiencies; on the other, it may steer behaviour in non-transparent ways, limit effective choice, or exploit behavioural biases, thereby constraining consumer agency (Nokhiz and Ruwanpathirana, 2025[10]).

12. New digital frameworks and enforcement initiatives have begun to integrate consumer and competition objectives more closely, raising questions about the complementarities between the two policy domains as well as the limits of each framework when applied in isolation. As competition and consumer protection authorities have acknowledged the growing interdependence of their actions, co-operation between them has also gradually emerged. Most joint initiatives so far have taken the form of advocacy efforts aimed at identifying synergies, whereas enforcement activity continues to occur largely in parallel rather than jointly. Against this backdrop, a renewed and integrated legal analysis is timely to assess how consumer protection tools may complement competition law in addressing forms of digital market power that could not have been fully anticipated a decade ago.

13. This paper examines the areas of interaction between competition and consumer policy in digital markets. It does not focus on any specific type of market or actor but adopts a broad perspective on digital markets more generally.[4] The paper aims to identify where the two policy frameworks address similar concerns, where they may be better suited to tackle different aspects of digital market behaviour, and where gaps or co-ordination challenges may arise. The paper does not, moreover, provide a detailed assessment of the relevant provisions of *ex-ante* regulatory regimes adopted across different jurisdictions.[5] Similarly, and in light of the fact that the interaction between competition and data privacy, as well as the impact of AI have been the subject of recent OECD publications, these matters are likewise beyond the scope of this paper.

14. Following this introduction, Section 2 outlines the objectives of competition and consumer policy and discusses how digital market features affect their application. It also presents some discussions around practices in which both policies interact. Section 3 shows some areas where authorities have explored synergies between both policies, discusses areas where greater co-operation between consumer protection and competition authorities may be needed to understand the full impact of certain behaviour, as well as presents alternatives. This latter includes the possibility of tackling some issues more accurately through one of the two policies as well as areas that could benefit from a joint approach based on the concept of consumer agency. Section 4 provides concluding remarks.

15. Other previous related work includes roundtables on The intersection between competition and data privacy (2024[11]), Applying Behavioural Insights to Consumer and Competition Policy and Enforcement (2023[12]), Theories of Harm for Digital Mergers (2023[13]), Algorithmic Competition (2023[14]), Integrating Consumer Behaviour Insights in Competition Enforcement (2022[15]), Dark Commercial Patterns (2022[3]) – from the Committee on Consumer Policy, Consumer Data Rights and Competition

(2020[16]), Personalised Pricing in the Digital Era (2018[17]), Quality Considerations in the Zero-price Economy (2018[18]), Designing and Testing Effective Consumer-facing Remedies (2018[19]), Competition in Financial Consumer Protection (2014[20]) and The Interface between Competition and Consumer Policies (2008[1]). When relevant, the paper will cross-reference previous work to avoid duplication.

2 The intersection between competition and consumer policy in digital markets

16. As digital markets have reshaped the way consumers interact with firms and the way firms compete, they have created new challenges for regulatory and enforcement frameworks. Regulators and policymakers are increasingly confronted with practices that may have implications for both consumer and competition law. In light of these developments, this section aims at examining how these two frameworks interact and is divided into two parts. It first outlines the foundational objectives of competition and consumer policy, examining how the distinctive characteristics of digital markets have challenged the ability of each framework to fulfil its goals. It then considers different types of conduct that highlight the increasing convergence between the two policy domains in the digital environment. While the section does not aim to provide an exhaustive list of practices relevant to both fields, it identifies several prominent areas that illustrate their growing interdependence.

2.1. The policy goals

17. Before delving into the intersection between consumer and competition policy, it is useful to briefly outline their core objectives, and note how these objectives have evolved in response to digitalisation, an evolution well-documented in past OECD work (e.g. (OECD, 2023[21]; 2022[15]; 2020[16]; 2010[22]; 2008[1])).

18. Competition policy aims to safeguard the effective functioning of markets. When markets function well, consumers benefit from a wide range of goods and services at prices shaped by competitive rivalry. Competition intervention focusses primarily on addressing market failures arising from market power (ICN, 2022[23]).[6] Because its objective is to preserve or restore the competitive process, competition policy adopts a broad understanding of markets that extends beyond the parameters of individual transactions, incorporating considerations on market structure and conduct (Okiche and Okiche, 2025[24]). It also adopts a wide notion of consumer. While it considers final consumers' welfare, it may also recognise businesses as (intermediate) consumers when they act as customers that buy goods or services and, in that role, are affected by market conduct (Nathani and Akman, 2017[25]).

19. Competition policy relies on supply-side instruments to achieve its goals. This includes prohibitions on cartels and other anti-competitive agreements, abuses of dominant position or attempted monopolisation, and, in general, practices that distort the competitive process of markets. Unlike competition policy that tackles failures that are external to consumers, consumer policy directly targets consumers to empower them to make well-informed decisions, and to protect them from misleading, fraudulent and unfair commercial practices, and from unsafe products (Graef, 2021[26]; European Commission, 2025[27]).[7] For this reason, the concept of "consumer" is narrower than in competition policy and refers specifically to individuals purchasing goods or services for personal, non-business purposes.

20. While competition and consumer policy across jurisdictions may have other objectives and goals,[8] both policies share a common ultimate purpose of safeguarding consumer welfare.[9] They are aimed at

fostering efficient markets that benefit consumers and businesses alike. Synergies between the two policies have also widely recognised transparency of information at the core of their interaction. Rules that ensure accurate and transparent product and transaction information not only safeguard consumers but also enhance competition by encouraging firms to compete on their merits (Tonazzi, 2025[2]). To the extent that consumers are placed in a better position to consciously and actively exercise their choices, consumer protection rules can also be seen as having a pro-competition role (ICN, 2022[23]). This means that, together, competition and consumer policy create an environment in which businesses can compete on a level playing field and consumers can make informed choices (UNCTAD, 2025[28]). The complementary nature, as well as the existence of overlapping concerns in the two policy frameworks persist in digital markets. Robust consumer protection and empowerment can lead consumers in online environments to make better choices, thus playing an important role in driving competition and innovation. Likewise, more competition in digital markets can lead to better business practices, contributing to consumer empowerment and an overall increase in consumer welfare.

21. Product safety provides a particularly clear illustration of the complementarity between competition and consumer policy in digital markets, especially in the context of online marketplaces. While product safety is primarily a matter of consumer protection, it also affects competition because it forms part of the quality of goods and services on which firms may compete. Where businesses reduce costs by cutting corners on product safety standards, businesses that invest in compliance, testing and safer design may be placed at a competitive disadvantage (Australian Treasury, 2019[29]). This risk can be amplified in online marketplaces, where the scale, speed and cross-border reach of online distribution can allow unsafe products to reach large numbers of consumers before authorities are able to intervene. In this way, effective product safety enforcement can serve both consumer and competition policy objectives by helping to ensure that competitive advantage is not derived from non-compliance or the externalisation of product safety risks onto consumers.[10] Moreover, the proliferation of unsafe products online, as identified in a 2021 OECD sweep report, may erode consumer trust in online marketplaces and in online transactions more broadly, to the detriment of compliant sellers as well as consumers (OECD, 2023[30]).

22. These complementarities do not, however, eliminate the possibility of tension between the two policy areas in particular cases. For example, competition enforcement might inadvertently reduce consumers' ability to make informed choices if the resulting changes in business strategies fail to account for information asymmetries or consumer biases. This may occur, for instance, when competition remedies involve changes to choice architecture that generate limited impact or unintended consequences arising from the existence of consumers' default biases (Fletcher and Vasas, 2024[31]). Concerns have also been raised in the opposite direction. While stronger product safety-related obligations on online marketplaces and traders can protect consumers, they could potentially increase compliance costs and raise barriers to entry for smaller firms or new market entrants. Such requirements may, in some circumstances, disproportionately benefit large incumbents, who are better equipped to comply, while placing a heavier burden on smaller firms with limited resources. Like with other types of regulation, smaller sellers may face higher administrative and financial burdens, slowing their growth and limiting competition, while large incumbents are better positioned to absorb these costs (ICN, 2022[23]).[11]

2.2. Consumer agency in digital markets

23. In digital markets, the question of consumer agency, that is, the extent to which individuals can understand their options, act on their preferences, and meaningfully influence market dynamics, has become increasingly central (Wertenbroch et al., 2020[32]). Agency has never been static, but digitalisation has introduced layers of intermediation and design choices that subtly reshape how consumers navigate markets. As online environments have grown more complex, the tools available to firms to structure choice, personalise content, and adapt interfaces in real time have become markedly more sophisticated (Zac et al., 2025[33]). This evolution has expanded opportunities for innovation and efficiency, yet it has also

made it easier for design features to influence decisions in ways that consumers may not fully perceive (US FTC, 2022[34]).

24. Rather than resulting from overtly misleading practices alone, the erosion of consumer agency, also understood as consumer autonomy, often materialises through incremental design decisions (small, iterative changes to the design): how options are framed, how information is sequenced, or how friction is distributed across a user journey (Davida, 2024[35]). These elements are central components of online choice architecture (see 2.3) and their impact on consumer agency underscores their relevance from the perspective of the two policies: they are the means by which interface design affects both consumer outcomes and competitive dynamics. These mechanisms do not remove choice, but they can affect how choices are interpreted or pursued, particularly in environments where attention is limited and cognitive demands are high.

25. Understanding the pressures on consumer agency therefore requires looking beyond single design tactics and instead considering a broader set of market dynamics.[12] Modern digital interfaces are frequently optimised through continuous testing and large-scale behavioural data, enabling firms to refine how consumers encounter information or alternatives (Fast, Schnurr and Wohlfarth, 2023[36]). These optimisations may genuinely enhance usability, but they can also tilt decision making towards outcomes that align with firms' commercial incentives. Where such dynamics are present, consumers may find it more difficult to compare alternatives, reassess their preferences, or switch to competing services.

26. In digital markets, agency can be affected when the presentation of information obscures relevant details or emphasises some choices disproportionately (Kozyreva, Lewandowsky and Hertwig, 2020[37]; Islam, Ali and Azizzadeh, 2024[38]). Also, the growing cognitive complexity of digital environments means that even small changes in framing or defaults can meaningfully influence behaviour (Jin, Zhang and Chen, 2017[39]). Moreover, the practical ability to switch providers may be weakened by design choices that complicate cancellation, limit interoperability, or discourage multi-homing (Siciliani and Giovannetti, 2019[40]). Finally, data portability and interoperability increasingly determine whether consumers can carry their preferences, histories, or connections with them, affecting whether switching is not only desirable but feasible (Pecher, Syrmoudis and Grossklags, 2024[41]).

27. These pressures do not operate in isolation. When agency is weakened, consumer protection concerns, such as transparency and informed choice, intersect with competition concerns regarding entry, switching and effective rivalry (Graef, Clifford and Valcke, 2018[42]). In other words, design choices that limit the meaningful exercise of choice can also diminish the competitive constraints faced by firms. This convergence has led to a growing recognition that consumer and competition policy cannot be treated as strictly separate domains in digital markets. Box 1 presents some considerations on how the most recent developments in AI, particularly related to AI agents, may impact consumer agency. This issue is explored further in Section 3, which examines how the two policy frameworks could contribute to each other in practice and how authorities have begun to operationalise it.

Box 1. Consumer agency in a world with agentic AI

As advances in artificial intelligence and the growing reliance on autonomous AI agents and tools continue to reshape market dynamics, both consumer and competition policy are confronted with emerging tasks and novel challenges.

Agentic AI, AI systems that autonomously take actions on behalf of humans, can already compare products, negotiate prices and even place orders. This means that they can interact in digital environments and take actions on behalf of consumers according to pre-defined preferences and

payment options. These new dynamics will reshape markets, and their effects could span consumer and competition policies as well as other areas such as privacy, all of which are human-centric.

Literature has already started looking at possible effects, for instance, on consumer agency, and has signalled that agentic AI can both expand and constrain consumer autonomy depending on design, governance and external market dynamics. The level of impact depends on how much delegation there is to the AI agent, reshaping in any case what consumer agency means and how it can be taken into account in consumer and competition enforcement. Consumers may choose how much control to give to the agency, shifting autonomy from low delegation to full decision making.

On the positive side, AI agents can empower consumers to delegate tasks such as research, comparison and purchasing without involving biases inherent in humans. They can also facilitate consumers express their preferences and articulate their needs to better match their demand to the available supply. This could also lead to lower search, comparison and shopping costs. All these processes can also happen at unprecedented speed, contributing to faster and more optimal decisions, greatly amplifying consumer agency.

When transactions become AI-driven, however, there is also a risk of reduced consumer agency that comes from the agent predetermining what the consumers see and are able to explore. Consumers may become less aware of product choice or brand identity as they rely more on agentic filtering. This risks shifting consumer autonomy from final consumers to AI agents, who may act as intermediaries, potentially creating new gatekeepers. If the AI agent is wrongly trained, errors in its output can also distort consumer autonomy, nudging its choices in unintended directions. This may intensify if there is overreliance or minimal oversight on the AI agent.

From a competition perspective, agentic AI also raises distinct concerns. Integrated platforms that simultaneously operate marketplace infrastructures and deploy AI agents face inherent conflicts of interest, creating incentives for self-preferencing in how agents rank, recommend or transact. More broadly, the emergence of agentic AI may entrench the position of platforms already dominant in search and data, given that the effectiveness of an AI agent depends critically on access to large datasets, reinforcing existing ecosystemic advantages.

As agentic AI becomes more embedded in market interactions, the already complex relationships between consumers and businesses are set to evolve in new and potentially far-reaching ways. Advancing research on the impact of AI agents, especially on the nature and exercise of consumer agency, will therefore be crucial in guiding future policy development.

Sources: OECD, "*Artificial intelligence and competitive dynamics in downstream markets*", OECD Roundtables on Competition Policy Papers, No. 331, OECD Publishing, Paris, https://doi.org/10.1787/ccf0624a-en; Busch, C. (2025[43]), *Consumer Law for AI Agents*. Elsevier BV. doi:10.2139/ssrn.5187056; Hunt S., et al, (2025[44]) Will 2025 be the year of the agent? A primer for competition practitioners on the next wave of AI innovation. *Competition Law & Policy Debate, 9*(1), 20-30. doi:10.4337/clpd.2025.0004.

2.3. Conduct at the intersection of the two policy areas

28. The second part of this section turns to specific types of conduct in digital markets that may trigger intervention. It examines practices that can fall under consumer policy, competition policy, or simultaneously within both frameworks. The discussion highlights complementarities between the two approaches as well as potential areas where their respective powers and responsibilities may overlap, signalling how co-ordinated or complementary enforcement can be crucial in addressing complex digital-market behaviours (as will be further discussed in Section 3).

29. To provide a structured frame for the analysis that follows, the paper will discuss the following types of behaviour where the overlap between the two policies is particularly evident: personalisation,

misleading or deceptive online choice architecture and a set of practices with foreclosure effects. For each conduct, it first presents the key concerns raised from each policy perspective, outlining possible effects and enforcement alternatives under each framework. Then, it identifies aspects that bridge both policy areas and sets the stage for the discussion in Section 3 on joint approaches.

2.3.1. Personalisation practices

30. Personalisation (mostly through prices but also through other variables such as advertising and recommendations) is the "*practice of (price) discriminating final consumers based on their personal characteristics and conduct*" (OECD, 2018[17]). This results in consumers acquiring a product tailored to their preferences, for example at prices that reflect closely their individual willingness to pay. In digital markets, where businesses are able to collect higher amounts of consumers' data, price personalisation has become a reality (BEUC, 2023[45]), with firms increasingly able to tailor offers in ways that approach the theoretical ideal of first-price discrimination in microeconomic theory (see Box 2 for key definitions). While the discussion focusses mostly on price personalisation, it acknowledges the existence of other personalisation practices including rankings and targeted advertising[13] and their analogous effects on consumers and competition.

Box 2. Key definitions in personalisation practices

Price discrimination

In economics, there are traditionally three degrees of price discrimination being the first degree the scenario where perfect discrimination among customers materialises, with each consumer being charged a price equal to its willingness to pay. Second degree discrimination refers to situations in which businesses grant discounts once a specific purchase quota is achieved, with prices being set in two parts. This means that they offer the same product at different prices for different quantity or quality levels. Third degree price discrimination takes place when businesses charge different prices to different groups of customers based on certain characteristics that groups them.

In digital markets, there are common practices that account for price discrimination at different degrees, depending on the level of big data analytics performed over consumers' information (Ezrachi and Stucke, 2016[46]). Examples are steering and re-offers. Steering, also known as search discrimination, refers to differentiation by search engines of consumers even when they submit the same search query. Re-offers are the practice of presenting an offer at a discounted rate to a consumer that has searched for a specific product or service, giving an advantage to "more patient" consumers.

Other personalisation practices

While price is the most used variable to discriminate among customers, digital businesses can also discriminate through other variables, such as advertising and rankings. Ads personalisation means adjusting ads to match individuals' interests and characteristics, while personalised rankings involve practices that adjust order of appearance of products or services in search results. In both cases, businesses use information about the user beyond the search query (including previous queries, location, browsing history and purchasing behaviour) to decide which results to display and in what order.

Sources: Varian, H. (1989[47]), Chapter 10 Price discrimination. In *Handbook of Industrial Organization, Handbook of Industrial Organization Volume 1* (pp. 597-654). Elsevier. doi:10.1016/s1573-448x(89)01013-7; Ezrachi, A., & Stucke, M. (2016[46]), Virtual Competition. *Journal of European Competition Law & Practice, 7*(9), 585-586. doi:10.1093/jeclap/lpw083; OECD (2018[17]), Personalised Pricing in the Digital Era. In *OECD Roundtables on Competition Policy Papers.* OECD Publishing, Paris. doi:10.1787/db4d9c9c-en.

31. Previous work, including past OECD discussions, has explored the benefits of personalisation, which include online experiences that are tailored to consumers' needs and preferences, with increased engagement and availability of goods and services for consumers that would have otherwise not been able to consume[14] (see for example (OECD, 2023[12]; 2023[48]; 2018[17])). From a mere economic perspective, the closer the discrimination to perfect discrimination, the higher the allocative efficiency (*i.e.* the better the alignment between consumers and producers' preferences), with the consumer welfare being transferred to the firms (Varian, 1989[47]) as explained in (OECD, 2018[17]). In imperfect personalisation scenarios, the resulting levels of efficiency are lower, with some transactions that could have been efficient not happening (for consumers with a higher willingness to pay), generating what literature knows as deadweight welfare loss and an overall decrease in output (Motta, 2004, p. 496[49]).

32. Despite these benefits, concerns regarding the use of personalisation practices have been raised from both competition and consumer perspectives. While they are not prohibited *per se* under either of the two regimes, they may account for infringements under certain circumstances (see (OECD, 2023[14]; 2025[50])).[15]

33. From a consumer policy perspective, personalisation may raise concerns where it is opaque, misleading, exploitative or combined with other practices that impair consumers' ability to make informed choices (OECD, 2023[48]). In other words, under consumer law the issue is not personalisation as such, but whether the way it is designed, presented or implemented gives rise to a misleading, unfair or otherwise harmful commercial practice. A central concern is information asymmetry, which is exacerbated in digital markets: consumers will often not know how prices, offers, rankings, recommendations or advertising have been tailored to them, making it difficult to assess available options, compare alternatives, or detect differential treatment (Bergemann and Bonatti, 2024[51]). This informational advantage may allow businesses to exploit not only behavioural biases common across consumers, but also the situational vulnerabilities of individual consumers (OECD, 2023[48]).[16] Consumer detriment may take multiple forms, including financial, privacy and psychological impacts, and is likely to be greater for consumers who are less discerning, less engaged or who face higher switching costs (OECD, 2023[48]). More broadly, the prevalence of personalisation in digital environments may require reconsideration of how concepts such as the "average" or "reasonable" consumer are applied in enforcement, since personalisation means that each consumer may face a different offer, price or presentation, making it difficult to assess a commercial practice against a single representative benchmark (OECD, 2023[48]).

34. From a competition framework, when personalised practices for consumers are implemented by a dominant firm, it may result in exploitative effects towards consumers and, under certain circumstances, exclusion of competitors from the market. While both theories of harm have been analysed by market studies and reports conducted by competition authorities in the past years, enforcement in this area, particularly in digital markets, remains limited.

35. In multiple jurisdictions exploitative abuses are recognised as abusive conduct, in principle. However, in others, mainly in common law jurisdictions, there is a traditional rejection of purely exploitative conduct as antitrust violations. When exploitative abuses fall within the scope of competition enforcement, personalisation can be conceived under the rationale that some consumers can be charged higher prices for reasons not related to costs (*i.e.,* their higher willingness to pay for the goods or services). In digital markets, where "winner-takes-most" dynamics prevail, this may imply higher barriers to entry, thus leaving consumers more locked in without a choice but to accept the unfair terms or excessive prices for a relevant period of time. This means that personalisation may result in excessive pricing, or discriminatory or unfair terms, thus having the potential to constitute exploitative abuses. In practice, however, enforcement priorities in most jurisdictions have traditionally focussed on exclusionary abuses, leading to less clear guidance on how authorities could potentially deal with the exploitative effects of personalisation in digital markets (Balasingham and D'Amico, 2024[52]; OECD, 2018[17]).[17] It is worth noting that exploitative conduct in digital markets is not confined to personalisation. While personalisation is examined here as a prominent

example, exploitative practices may occur independently of personalised treatment, and in practice there is often a thin line between exploitative conduct, exclusionary abuse and self-preferencing. These categories, though analytically distinct, may describe overlapping aspects of the same conduct. The appropriate enforcement framing may depend on legal and strategic considerations rather than on the nature of the behaviour itself.

36. Personalisation can also result in the exclusion of rivals from the market. This may happen because rivals may not be able to match the asymmetric access to granular consumer data that allows the dominant firm to customise its offers, reinforcing barriers to entry and, thus, impacting the competitive process, as a whole. When these strategies entail selectively offering lower prices to a competitor's customers in a way that could hinder the competitor's ability to compete, this may give rise to concerns about potential exclusionary conduct (ICN, 2022[23]).

37. Some challenges arise when analysing personalisation under abuse of dominance or monopolisation provisions. Competition authorities or competent bodies typically bear the burden of establishing when personalisation amounts to anti-competitive conduct, including by demonstrating either a competitive disadvantage for affected customers or its capability to distort competition.[18] The difficulty in proving, under the competition framework, whether terms or price are unfair or excessive is higher in digital markets, where often pricing reflects the multiple sides of the markets, making pro-competitive effects harder to distinguish from anti-competitive conduct (Botta and Wiedemann, 2019[53]). Moreover, because in digital markets prices constantly change over time and adjust to new information and data received, the extent of their excessiveness or unfairness will also vary, making more difficult for the competition authority to conduct its analysis (Graef, 2021[26]). When personalisation occurs for reasons linked to heterogeneity in costs (e.g., search costs), there may be objective justifications that restrict the application of competition provisions (UNCTAD, 2021[5]). One final challenge relates to whether the good or service in itself was personalised, as this would make more difficult to argue that transactions between the different types of transactions were equivalent (Botta and Wiedemann, 2019[53]).

38. Overall, when assessing personalisation practices, competition and consumer regimes converge in important ways. Competition law asks whether they reinforce a dominant position or entrench market power, thus hindering effective rivalry, whereas consumer law evaluates whether they meet the standards of transparency. This overlap between both areas, as will be analysed in Section 3 below, offers multiple enforcement routes to regulators examining personalised practices. At the same time, the analytical challenges associated with evaluating personalisation under competition law may give consumer protection enforcement a more prominent role.[19] This is especially true where unfair practices provisions are available, as their assessment follows a more normative approach (*i.e.,* relies on clearer standards rather than on market effects). Remedial strategies to resolve concerns brought by personalisation are also at the intersection of both policies. Requiring businesses to disclose the use of personalisation practices (information duties) may be available in both enforcement areas and could encourage consumers to shop around.[20]

39. One final important element that is worth considering is the behavioural relevance of personalisation for consumers. Behavioural studies seem to suggest that consumers consider "unfair" the lack of transparency in online markets, rather than price discrimination *per se*.[21] This further blurs the need for intervention from a competition perspective, at least against personalisation itself, revealing a preference for transparency and opt-out remedies rather than explicit prohibitions (see Section 3).

2.3.2. Misleading or deceptive online choice architecture practices

40. Online choice architecture "*is the environment in which users act, including the presentation and placement of choices and the design of interfaces*" (CMA, 2022[54]). In well-designed choice architectures, consumers may face themselves with seamless purchase and after-sales processes, relevant recommendations and opportunities for future actions. However, certain choice architecture practices may

also impact consumers negatively when they are deceptive, misleading, fraudulent or otherwise illegal (OECD, Forthcoming[55]). These may include practices involving framing, creating a sense of urgency, generating social proof, forcing registration or information disclosure, nagging to make a choice, or making it difficult to cancel or opt out (OECD, 2022[3]) (see examples in Box 3). These practices make user's behaviour feel organic, thus appearing as an exercise of free will (Day and Stemler, 2019[56]).

Box 3. Examples of misleading or deceptive online choice architecture practices

OECD (2022[3]) presents a useful taxonomy of misleading or deceptive online choice architecture practices. The identified categories are:

- **Forced action**: practices that aim at forcing consumers to do something in order to access a specific functionality. Examples include forcing them to register or into disclosing more personal information than required, including consumer's contacts.
- **Interface interference**: practices that aim at exploiting framing or anchoring biases by privileging specific actions for consumers through framing of information. Examples include preselection of options favourable to the business by default; giving visual preference to some options, thus creating a false hierarchy; displaying misleading reference prices; using trick questions such as double negatives; and framing through emotive language.
- **Nagging**: practices that involve repeated requests to consumers to do something favourable to the business. This includes turning on notifications or location-tracking.
- **Obstruction**: practices that aim to make a task flow or interaction more difficult than needed with the intent to dissuade an action. Examples include making it easy to sign up for a service but hard to cancel it or opt out of certain settings. Similarly, practices like generating *click fatigue* to steer consumers to choose the simpler option or preventing price comparison.
- **Sneaking**: practices that seek to hide, disguise or delay information relevant for the consumer's decision. Examples include non-optional charges that are added later to the final price (known as drip pricing), sneaking an item into a consumer's basket without previous consent and automatically reviewing a transaction following a trial period (hidden subscriptions).
- **Social proof**: practices that involve proof attempt to trigger a decision. For example, notifications about other consumers' activities and purchases or testimonials (that may be misleading or false).
- **Urgency**: practices that impose a real or fake sense of urgency to pressure consumers into making a purchase. Examples are messages of low stock or high demand, or countdown timers to indicate an expiring deal or discount.

Source: OECD (2022[3]), "Dark commercial patterns", *OECD Digital Economy Papers*, No. 336, OECD Publishing, Paris, https://doi.org/10.1787/44f5e846-en

41. Misleading commercial practices are, of course, not a product of digitalization: evidence of consumers being deceived by traders can be traced to antiquity. What technology has changed is the scale, precision and speed at which such practices can be deployed, enabling real-time behavioural optimisation across millions of users simultaneously, a dimension with no historical precedent. However, in online environments, choice architecture practices have become prevalent.[22] This happens because businesses in digital markets have more possibilities to run repeated experiments with consumers that allow them to steer them into making choices that may not be in their best interests (OECD, 2023[12]). For example, the use of algorithms enables businesses to use consumers' data at a speed and scale that allows them to test their choice architecture in real time. This possibility increases firms' awareness of how

behavioural insights can be leveraged to refine their marketing strategies, including in ways that exploit consumer biases (Narayanan et al., 2020[57]).

42. From a consumer policy perspective, these practices, whether related to structure, information or pressure,[23] and regardless of market power, may then have the effect of misleading, deceiving, or coercing consumers, causing direct or indirect detriment to consumers (CMA, 2022[54]).[24] In addition to impairing consumers' autonomy, some of these practices may cause significant financial loss, privacy harm and psychological detriment. Thus, they may be prohibited under consumer law against deceptive or unfair business practices.[25]

43. While there is evidence of recent enforcement action from consumer protection authorities against different types of misleading or deceptive online choice architecture practices,[26] their prevalence and opacity could make it difficult for enforcers to identify the most severe and recurrent offenders and target them with enforcement action (Himes and Crevier, 2021[58]). As it will be explored in Section 3 below, some jurisdictions have developed other alternatives such as *ex-ante* regulations with explicit bans.

44. Competition enforcement has also been recognised as another means to intervene against these practices. Because the use of misleading or deceptive online choice architecture practices may hinder switching[27] and exploits consumer biases, they may result in a significant weakening of competition when consumers do not have the capacity to shift. In turn, they can distort businesses' incentives, shifting competition away from product attributes that benefit consumers, such as quality and total price paid, towards features designed to induce purchasing decisions, including urgency cues or prominently displayed headline prices (CMA, 2022[54]; OECD, 2022[3]). Moreover, if enough businesses adopt similar practices, they could ultimately shape the market in a way that might further harm consumers, with competition among businesses being a "race to the bottom"[28] (CMA, 2022[54]). When used by firms with market power, these practices can entrench this power and disadvantage new entrants, while reducing consumers' trust in the market by preventing them from switching away. This, in turn, would raise rivals' costs to persuade users to switch by competing for their attention through means other than competition (Himes and Crevier, 2021[58]). Thus, they have the potential to constitute abuses of a dominant position. For all these reasons, competition authorities have started looking at their effects on competition.

45. Scholars supporting antitrust intervention against misleading or deceptive online choice architecture practices argue that it is not a legitimate way of competing when digital companies build market power by manipulating consumers' choices.[29] They claim that to the extent that these practices impede consumers' ability to select the best firms on the merits of their product offering, they can distort the competitive process as a whole. Moreover, they have identified that a path to consider misleading or deceptive online choice architecture practices as restrictive to competition is by understanding that these practices may significantly impede consumers' autonomy as quality degradation[30] (Day and Stemler, 2019[56]) with deceptive strategies generating exclusionary effects (Himes and Crevier, 2021[58]).

46. Behavioural considerations in competitive assessments have been a way to recognise and analyse misleading or deceptive online choice architecture practices in online markets as anti-competitive conduct and examine both exploitative and exclusionary effects. The European Commission's decisions against Google (Google Shopping[31] and Google Android[32])also illustrate the relevance of behavioural evidence in this regard. The decisions highlighted consumer harm of certain online choice architecture practices (through algorithm biases) by drawing on behavioural evidence of the impact on consumers of ranking within search results and of the role of choice screens for search engine. In both cases, the Commission concluded that both rivals and customers were harmed.[33]

47. The intersection between the two policies in this context also lies in the fact that, in competitive markets, businesses that employ misleading practices would most likely be punished by consumers, by switching when they become aware of the practices. Hence increased competition could potentially reduce the risk of companies using deceptive practices, thus reducing the need for intervention. Recent studies have revealed, however, that consumers' awareness in online markets is generally low and that

behavioural biases mean that they underestimate manipulation in online more than offline contexts (OECD, 2022[3]). In order for the positive relationship to materialise without enforcement intervention, awareness initiatives towards consumers may therefore be required.

48. The analysis of personalisation and misleading or deceptive online choice architecture practices illustrates the nuanced interplay between consumer protection and competition objectives in digital markets. These practices do not merely generate isolated consumer detriment or efficiency concerns; rather, they reveal systemic dynamics whereby behavioural manipulation, informational asymmetries and market power can interact, amplifying potential harm. Moreover, the overlap between the two regimes underscores the importance of co-ordinated or complementary enforcement, where interventions in one domain can reinforce objectives in the other. This dual perspective not only clarifies the potential sources of consumer and competitive harm but also sets the stage for Section 3, which explores joint approaches and remedies to address complex digital-market behaviour in a holistic and effective manner.

2.3.3. Other exclusionary practices

49. A number of business practices often reviewed by competition authorities under foreclosure theories of harm, due to their potential exclusionary effects, have also prompted scrutiny from a consumer protection perspective. This includes self-preferencing and tying and bundling, among other practices that have the potential to foreclose rivals.

Self-preferencing

50. Digital platforms rely on recommendations and rankings mechanisms to display results to consumers, for instance in response to product or service searches (Jürgensmeier and Skiera, 2025[59]). Self-preferencing practices, where digital businesses use their market power in one market to favour their own products in an ancillary market, are part of these strategies, and can have both pro-competitive effects and the potential to distort competition. As in any other situations involving a vertically integrated firm, self-preferencing may come as a consequence of objective product design decisions. It can be the result of competition on the merits, with the vertically integrated firm being the most efficient, thus facilitating consumers' choice of products with better features (Jacobson and Wang, 2023[60]). Some literature analysing incentives of vertically integrated businesses, such as digital platforms, suggests that they may have stronger incentives to compete downstream, as they can partially internalise certain benefits of integration that are not available to independent firms (Katz, 2024[61]) but, overall, literature appears to be nuanced on both the positive and negative welfare implications of self-preferencing (Bowman and Prasad, 2025[62]).

51. Competition authorities have recently raised concerns that digital platforms with inherent conflicts of interest, acting both as intermediaries and as competitors to the sellers they host, may use self-preferencing in ways that restrict competition when they hold a dominant position. These concerns are linked to intentionally raising rivals' costs in order to gain significant competitive advantage in the market downstream leveraging from its dominant position as a platform.[34] Although self-preferencing practices may also exist in offline markets,[35] concerns in digital markets are greater particularly when these are prone to tipping, making it harder to restore competition once consumers have chosen their provider (Bowman and Prasad, 2025[62]). Investigations on behaviour by Amazon, Google and a number of other digital businesses have been opened in different jurisdictions in the past couple of years with sanctioning decisions consistently concluding that the self-preferencing conduct produced foreclosure effects.[36] Moreover, *ex-ante* regulations have also been enacted in some jurisdictions, prohibiting self-preferencing in digital markets under certain conditions.[37]

52. Self-preferencing in a way that is not transparent to consumers (and especially when it is not linked to merits) may also be considered to violate consumer law by deceiving consumers. Where consumers reasonably perceive rankings or recommendations on an online marketplace as objective or relevance-

based, but it has in fact prioritised its own products or services without disclosure, this may amount to a misleading commercial practice. Strategies such as fake reviews, manipulation of algorithms, or the opaque collection of data to adjust rankings or promote their own products, are part of self-preferencing practices that can and have been prosecuted by consumer protection authorities (Jacobson and Wang, 2023[60]). These practices are of particular concern in digital environments, where consumers depend on signals such as rankings and ratings to navigate large volumes of options and make informed choices. Linked to recommendations and rankings, opaque or confusing default or ordered results that can be perceived as objective recommendations, for instance as a result of undisclosed partnerships, can also result in consumer detriment, thus triggering action by consumer protection authorities (CMA, 2021[63]). Several jurisdictions have accordingly taken enforcement action[38] or issued guidance[39] requiring that the main parameters determining ranking be disclosed and that sponsored or paid placements be clearly distinguished from organic results.

Tying and bundling

53. Tying and bundling practices, which can be linked to self-preferencing as they can enable platforms to steer users towards their own services or integrated offerings, are also featured among competition intervention in digital markets. Tying practices involve businesses requiring consumers to purchase additional products or services alongside the product they wish to purchase and may arise either contractually (through obligations directed at consumers) or technically (through restrictions on interoperability) (OECD, 2024[6]; 2021[64]). In digital markets, the combination of high fixed costs and very low marginal costs makes tying a common strategy. By bundling products or services, platforms with relevant market power can strategically sustain negative prices, using tying as an implicit subsidy to recover fixed investments, strengthen their market power, compete more effectively and generate efficiencies from improved co-ordination across the different sides of the platform. Economies of scope can also generate pro-competitive effects of tying related to quality improvement from added "free" services (Wu and Philipsen, 2022[65]).

54. However, the anti-competitive effects of tying and bundling are particularly pronounced when implemented by firms holding a dominant position or substantial market power. These practices allow dominant firms to leverage their existing well-established position in certain markets to strengthen their presence in markets where they are less established, raising barriers to entry and potentially limiting competitive pressure. Thus, multiple recent enforcement investigations and decisions have focussed on tying practices and interoperability restrictions and their effects on competitors and consumers. Examples are investigations related to mobile operating systems (OS) and app stores where effects include harm to competition through significant competitive advantages gained using the tying practices that resulted in competitors not being able to compete effectively and with lower incentives to invest.[40] Box 4 presents an example of parallel but complementary actions by the US Federal Trade Commission (FTC) and the *Autorità Garante della Concorrenza e del Mercato* (AGCM) against Amazon for practices related to its Amazon Prime service.[41]

Box 4. Enforcement actions in the United States and Italy against Amazon's practices

In the United States, a jurisdiction where the US FTC has a dual mandate as both a consumer protection and competition authority, parallel and complementary actions have been pursued against different digital businesses for analogous conduct. One clear example are the actions against Amazon's tying practices related to Amazon Prime. As discussed, while action in the framework of competition law explores exclusionary conduct, intervention in the framework of consumer protection focusses on effects on final consumers.[1]

In 2023, the US FTC together with 17 state attorneys sued Amazon for illegally maintaining its monopoly power by using a set of interlocking anticompetitive and unfair strategies. The complaint included allegations related to the use of anti-discounting measures and tying practices. With respect to the latter, the complaint states that Amazon's practice of conditioning sellers' ability to obtain Amazon Prime eligibility for their products on their use of its Fulfillment service[2] (for logistics) limited competitors' ability to effectively compete against Amazon. The conduct, according to the complaints, also resulted in higher costs for sellers to offer their products on Amazon and other platforms.[3] While most of the violations alleged referred to antitrust state and federal law, they also included violations of some States' consumer law related to unfair practices and deceptive conduct. The case is ongoing.

Similar concerns were investigated in Italy. In 2024, the AGCM sanctioned Amazon for an abuse of dominance in which Amazon leveraged its position in the market for intermediation services on marketplaces to favour the adoption of Fulfillment, its logistic service, to the detriment of competing logistics operators. Among the practices introduced by Amazon, the company introduced benefits of Fulfillment users such as being eligible to use the Amazon Prime label.

Notes: [1] Plaintiffs amended the complaint in October 2024, but the main arguments presented in this box remained; [2]. Amazon Fulfillment service is a logistics programme through which third-party sellers store their goods in Amazon's warehouses, while Amazon manages storage, packaging, shipping, customer service and returns; [3]. Plaintiffs amended the complaint in October 2024, but the main arguments presented in this box remained.
Sources: Complaint in Case No. 2:23-cv-01495-JHC, The United States District Court Western District of Washington; AGCM press release: A528 – Italian Competition Authority: Amazon fined over EUR 1.128 billion for abusing its dominant position, https://en.agcm.it/en/media/press-releases/2021/12/A528.

55. As tying or bundling involves some level of restriction on consumer choice, consumer detriment is clear, particularly when the practice is employed by a platform with significant market power and implemented deceptively. Examples could include situations where consumers are enrolled in bundled or add-on services without clear consent, where optional extras are presented as part of the main purchase without adequate disclosure, or where relevant interoperability limitations are not made clear.[42] In these cases, tying practices also become object of consumer protection interventions. A recent illustration is provided by proceedings brought by the Australian Competition and Consumer Commission (ACCC) against Microsoft concerning its Microsoft 365 subscriptions. The authority alleges that, following the integration of its Copilot AI tool, Microsoft misled consumers by effectively presenting them with a choice between upgrading to a more expensive bundled plan or cancelling their subscription, while failing to clearly disclose the existence of a lower-priced alternative without the additional feature. The ACCC is seeking orders including penalties, injunctions, declarations, consumer redress and costs, as approximately 2.7 million consumers were allegedly affected by this conduct.[43]

The role of algorithms

56. The role of algorithms in facilitating exclusionary practices in digital markets also links competition and consumer concerns. The impact of algorithms on competition has been extensively discussed in previous OECD work (for a thorough review of the competition benefits and concerns of algorithm use, see (OECD, 2023[14]; 2025[50]).

57. Studies by the Competition and Market Authority (CMA) (CMA, 2024[66]; 2021[63]), the Competition Bureau in Canada (Competition Bureau Canada, 2025[67]) and the Japan Fair Trade Commission (JFTC) (JFTC, 2021[68]), among others, have revealed that algorithms could facilitate the implementation of strategies aiming at limiting the entry or expansion of competitors, making these strategies more effective and less costly. This includes predatory pricing schemes, tying and bundling practices, self-preferencing practices and, more broadly, a variety of practices linked to the possibility to discriminate prices among consumers. Concerns are commonly linked to lack of transparency on these practices, mostly on how

algorithms reach the prices or what the final price is; increased costs for certain customers, particularly the most vulnerable[44] or competitors' customers, and an overall increase in searching and transaction costs; loss of trust of consumers in the market; and potential exclusion of competitors linked to data misuse (CMA, 2021[63]).[45]

58. For example, in the case of predatory practices, pricing algorithms trained on detailed customers data can enhance the ability of a company to predate, by better identifying profitable opportunities in the predation and recoupment phases (OECD, 2025[8]). They can increase incentives to do so, by pricing in a way that minimises losses to the firm employing the strategy, reducing prices at a very specific level in which the strategy makes financial sense and targeting only certain customers, while accelerating recoupment once rivals exit (Competition Bureau Canada, 2024[69]). Similarly, price personalisation through the use of algorithms may make it easier for firms to leverage market power in one product to gain a competitive advantage in another by tying the two together, targeting discounts to identified consumers who place lower value on the tied product (Competition Bureau Canada, 2025[67]).

59. From a consumer perspective, algorithms may amplify informational asymmetries and behavioural biases, rendering offers less transparent, choices harder to compare and decisions more susceptible to manipulation. This has the potential of reducing consumer autonomy and undermining trust, in ways that closely mirror and reinforce the competitive risks (CMA, 2021[63]).

2.4. Conclusions

60. Overall, the practices discussed above illustrate how conduct in digital markets increasingly falls within the scope of both competition and consumer protection frameworks. The examples presented are not intended to provide an exhaustive list, but rather to highlight some prominent areas where the two policy domains intersect. In digital environments, certain practices may simultaneously affect consumer decision making and market dynamics, raising concerns that may be characterised as deceptive, exploitative or exclusionary depending on the analytical framework applied. While each policy addresses these practices through distinct legal standards and enforcement tools, their objectives often converge in protecting consumer welfare and ensuring well-functioning markets. This growing overlap suggests that a coherent understanding of digital market conduct may require closer co-ordination between the two policy domains. The following section explores how authorities have approached this interaction in practice and where further co-operation may be beneficial.

3 From identification to action: towards more joint approaches between the two policies

61. This section examines how a joint approach can generate enhanced benefits for consumers in areas where both markets and consumers are affected. Consumer agency is used as the central lens, emphasising informed and autonomous decision making as a point of convergence between competition and consumer policy. It reviews current practices and initiatives through which authorities have operationalised synergies and considers how consumer agency can be systematically integrated into both domains. The discussion concludes by highlighting remedies as a key area where combined insights can deliver more effective and consumer-oriented outcomes.

3.1. Existing practices to approach policy overlaps

62. Multiple jurisdictions have set up initiatives and strategies that enhance joint approaches among consumer, competition and even data protection regulators, whether they are both under the same or different enforcement authorities. These initiatives, which consider policy overlaps in certain principles, objectives and conduct, recognise the value in aligning policies that enhance market efficiency and aim at integrating, at different levels of depth, consumer interests into decision making, including consumer agency aspects, while preventing regulatory gaps or overlaps that could affect implementation and enforcement.

3.1.1. Institutional design

63. Institutional design of the authorities in charge of enforcing competition and consumer law is the primary factor shaping the extent to which competition and consumer policies can reinforce one another. In 16 of the OECD jurisdictions, there are authorities with dual and even multiple mandates, including competition and consumer protection enforcement.[46]

64. Past OECD work has explored benefits and costs of integrating competition and consumer policy within a single authority (OECD, 2014[70]). It concluded that the appropriate institutional setting depends on country-specific factors, and that the critical factor is ensuring mechanisms are in place to exploit economies of scope in policy design and enforcement, whether functions are integrated or split across authorities. Benefits of integration include more flexibility in combining the two policy instruments within a single portfolio of action, developing and sharing of expertise across the two areas, and gains in terms of visibility and understanding from the wider community. Costs of integration stem from the differing nature of tasks, procedures, and substantive standards involved in enforcement, which can limit the economies of scope achievable through integration. Additional risks include the diversion of attention and resources from one policy area to the other, as well as the multi-level nature of consumer policy administration, which often makes centralisation more difficult. While the rise of digitalisation has revived this debate, evidence

on whether one institutional set up is optimal remains scarce, focussing on co-ordinated enforcement rather than on whether the powers lie in a single or multiple authorities.

65. Dual-mandate authorities may incorporate the synergies between the two policies in their governance structure. Because they can decide to rely on shared tools and mandates, as well as on unified prioritisation exercises, information sharing may become simpler and decision making processes, such as deciding whether to pursue a case under one or both enforcement paths, may become easier. However, this does not come without a challenge. Balancing enforcement priorities within the same authority with limited resources may become complex and allocating more resources to one may come at the expense of the other (UNCTAD, 2025[28]). Given differences in legal frameworks and standards, a common understanding of the same issue may not be straightforward (Tonazzi, 2025[2]) and less interaction is seen at later stages.

66. When authorities enforcing the two laws are different, co-operation protocols govern co-ordination between the two authorities. Examples include Brazil, where co-ordination takes place between the Administrative Council for Economic Defense (CADE) and the National Consumer Secretariat (Senacon). These mechanisms may rank from informal engagement to procedures agreed on under *Memoranda of Understanding*, as well as explicit provisions in laws, some of which have been in place for a long time. In the context of digital markets, however, these have been reinforced and new strategies implemented to oversee matters holistically.

3.1.2. Advocacy initiatives

67. Advocacy activities[47] allow authorities to start examining issues in digital markets within a holistic framework that encompasses both competition and consumer protection considerations. As advocacy initiatives avoid the procedural and substantive complexities of enforcement and reduce the need for harmonising standards across both regimes, they serve as an effective entry point for co-operation between distinct authorities, or for strengthening internal synergies within a dual-mandate institution. Recent examples of authorities exploring complementarities between both policy areas in advocacy activities include:

- Joint market studies or market studies, discussion papers or similar tools that cover consumer and competition concerns in a unified analytical framework (see Box 5).
- Public hearings and workshops, such as those conducted by the US FTC (e.g. Consumer Injuries and Benefits in the Data-Driven Economy workshop in 2026[48] and the 2018-19 hearings on Competition and Consumer Protection in the 21st Century).[49]
- Joint institutional responses through advocacy initiatives. For example, in 2021, the Public Prosecutor's Office (MPF), CADE, Senacon and the data protection authority, *Agência Nacional de Proteção de Dados* (ANPD) in Brazil, issued a joint recommendation as a response to a privacy policy update by WhatsApp in the Brazilian market aiming at protecting consumers by ensuring that the policy update complied with the different regimes.[50]
- Working groups to analyse certain digital issues or overall assess dynamics of digital markets within a specific timeframe. E.g. Japan's Study Group on Competition Policy in Digital Markets (that issued a report on algorithmic competition (JFTC, 2021[68])) and FTC's Surveillance Pricing Study that started in 2024 to examine how companies track consumer behaviours to inform surveillance pricing and examine their potential impact on privacy, competition and consumer protection.[51]
- Digital regulation co-ordination bodies such as the UK's Digital Regulation Cooperation Forum (DRCF) that was established in 2020 and brings together four UK regulators with responsibilities for digital regulation: the Competition and Markets Authority, the Financial Conduct Authority, the Information Commissioner's Office and the telecommunications regulator, Ofcom.[52] Similar bodies have been created in Australia (Digital Platform Regulators Forum, DP-REG), Canada (Canadian

Digital Regulators Forum, CDRF), Ireland (Digital Regulators Group, DRG) and the Netherlands (Digital Regulation Cooperation Platform, SDT), with an International Network for Digital Regulation Cooperation (INDRC) that was launched in 2023 to connect these bodies.

Box 5. Examples of market studies exploring both competition and consumer issues in digital markets

Australia

In March 2025, the ACCC finalised a five-year Digital Platform Services Inquiry (DPSI) preceded by its Digital Platforms Inquiry between 2017 and 2019 and the Digital Advertising Services Inquiry between 2020 and 2021. These inquiries examined competition and consumer protection issues in a range of digital markets,[1] identifying potential and emerging risks and harms, and leading to recommendations on policy and legislative reform. The ACCC produced 10 reports in the framework of the DPSI including a final one summarising previous findings and recommendations, as well as actions already taken towards their implementation.

Canada

The Competition Bureau in Canada regularly conducts research, including through public consultations, to better understand different digital markets and practices in digital environments, as well as how they might affect competition. In the past couple of years, it has produced discussion papers on Artificial Intelligence and Competition (2024)[2] and Algorithmic Pricing and Competition (2025). In both papers, the Bureau discussed competition issues related to unilateral and co-ordinated conduct, considerations arising in merger review and risks regarding deceptive marketing practices, identifying potential impacts on markets and consumers and how to factor these into competition analysis.

Italy

In 2020, the Italian Competition Authority (AGCM), the Communications Regulator (AGCOM) and the Data Protection Authority published a jointly conducted inquiry on the big data sector. Among others, the inquiry examined data, competition and consumer protection issues associated with the collection and use of big data and identified synergies that could arise between enforcement in the different areas, as well as between *ex-ante* and *ex-post* intervention. It concluded that consumer protection provisions are effective against some practices and that they are complementary to the tools available under competition law. The authorities issued diverse policy recommendations on how to tackle the issues raised by big data and committed to a permanent co-operation mechanism in relation to acting on and studying the impact of big data on businesses and consumers.

Singapore

The Competition and Consumer Commission of Singapore (CCCS) published in 2020 its market study on e-commerce platforms. The market study focussed on gaining an in-depth understanding of the business models and operating environment of e-commerce platforms and identifying potential competition and consumer issues which may arise from the proliferation of such e-commerce platforms. The CCCS issued recommendations on both policy areas, particularly focussed on measures to improve consumers' trust in digital markets and raise awareness on anticompetitive and unfair trading practices that could arise in the sector.

Notes: [1]. Including online retail marketplaces, search services, web browsers, private messaging, social media, data services, generative AI, cloud services and online gaming; [2]. The Bureau engaged in cross-governmental collaboration for the drafting of the paper, engaging with different sectoral regulators through the Canadian Digital Regulators Forum.

Sources: (ICN, 2022[23]); ACCC (2025), Digital platform services inquiry 2020-25 reports, https://www.accc.gov.au/about-us/publications/serial-publications/digital-platform-services-inquiry-2020-25-reports; Competition Bureau Canada (2024), Artificial intelligence and competition: Discussion Paper, https://competition-bureau.canada.ca/sites/default/files/documents/AICompetition-Discussion-Paper-240320-ver3-e.pdf; Competition Bureau Canada (2025), Algorithmic pricing and competition: Discussion paper, https://competition-bureau.canada.ca/en/how-we-foster-competition/education-and-outreach/publications/algorithmic-pricing-and-competition-discussion-paper; AGCM (2020), Big Data Sector Inquiry : https://en.agcm.it/dotcmsdoc/pressrelease/Italy%20Big%20Data%20Sector%20Inquiry%20-%20Summary.pdf; CCCS (2020), E-commerce Platforms Market Study Findings and Recommendations, https://isomer-user-content.by.gov.sg/45/c224aa3d-fb94-474c-9df9-9a69bbf597c4/CCCS%20Ecommerce%20Platforms%20Market%20Study%20Report.pdf

68. More broadly, the OECD, the United Nations Conference on Trade and Development (UNCTAD), the International Competition Network (ICN) and the International Consumer Protection and Enforcement Network (ICPEN) have focussed their efforts to generate spaces of interaction between enforcers and policymakers in both areas. In 2020, the ICN launched a project on "*Competition law enforcement at the intersection between competition, consumer protection and privacy*" that resulted in a report summarising ICN member actions and policy responses to key issues in the intersection. As mentioned in the introduction of this note, the OECD has held multiple roundtables related to the topic, including joint discussions and workshops between the Competition Committee and the Committee on Consumer Policy.[53] Both policy communities have also interacted most recently during the Ninth UN Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices where synergies between both policies, with a focus on digital markets, were discussed (UNCTAD, 2025[28]).

3.1.3. Enforcement activity

69. When it comes to enforcement, the interaction between the two regimes becomes more complex. Authorities must determine which legal framework is most suitable or whether both should apply. Co-ordination between competition and consumer protection authorities when they are institutionally separate may also be more difficult, as it requires navigating additional procedural hurdles and confidentiality constraints. Businesses also argue that these grey areas may reduce legal predictability, as businesses may find it difficult to comply with frameworks that are increasingly complex to implement, often across multiple jurisdictions (OECD, 2024[71]).

70. While certain practices require analytical input from both competition and consumer policy to adequately assess their full impact on consumers, a combined perspective may not always be available. However, clarifying whether a behaviour distorts consumer choice or fairness and whether it alters market structure, competitive dynamics, or long-term welfare, may already shed a light at a case-prioritisation stage. Building on this, some enforcement interventions have already incorporated considerations from both areas. [54]

71. Either when enforcement is conducted in parallel or when only one area was chosen to intervene, proceedings can still benefit from co-ordinated analysis or joint effort. Including behavioural considerations in the analysis of competition issues has recently been a way to introduce consumer considerations, such as the impact on consumer agency, into competition enforcement.[55] However, unlike the case of advocacy initiatives, enforcement is still done in separate proceedings, particularly when mandates are held by different authorities and there are no examples of joint enforcement action yet[56] (i.e. joint infringement decisions).

72. Box 6 provides an example of how intervention against the same practice by Facebook triggered different reactions across jurisdictions.

Box 6. Enforcement action against Meta's practices

In 2019, in Germany, the Bundeskartellamt found that Meta had breached the German competition law by making access to its social network conditional on users accepting extensive data-collection terms. The authority held that requiring users to consent to the combination of data from Facebook's own services and from third-party websites violated data protection rules and, simultaneously, constituted an exploitative abuse of dominance. In the Bundeskartellamt's view, Facebook leveraged its dominant position to impose unfair terms on users, illustrating how conduct can raise concerns that lie at the intersection of competition, consumer and data protection policy.

Following the Bundeskartellamt's decision, the Düsseldorf Higher Regional Court referred questions to the European Court of Justice (ECJ) concerning how breaches of data protection rules should interact with competition law assessments. The ECJ clarified that competition authorities may consider compliance with other provisions when evaluating abusive conduct, provided they respect the duty of sincere co-operation and avoid undermining the competence of the relevant authorities. Subsequently, the German Federal Court of Justice confirmed the Bundeskartellamt's approach, emphasising the link between consumer sovereignty and competition law enforcement. The Court held that Facebook's conduct restricted users' freedom of choice and right to self-determination, rights protected under the German Constitution and that such restrictions could constitute exploitative abuse.

A comparable intervention emerged in 2018 in Italy when the AGCM intervened under its Consumer Code against Meta for pressuring users not to change default settings that allowed the sharing of personal data with third-party websites. The AGCM found this to be an aggressive commercial practice that generated consumer detriment by misleading them into registering in the Facebook platform and automatically and without express and prior consent transmitting their data to third-party websites and apps for commercial purposes. Later, in 2024, the AGCM fined Meta for having breached the Consumer Code by engaging in unfair commercial practices for lack of transparency to users about the collection of their data for commercial purposes.

These examples illustrate how similar concerns may be addressed through different legal regimes depending on the institutional framework and policy tools available.

Sources: Bundeskartellamt Case B6-22/16 Facebook; Case C-252/21 Meta Platforms and Others, ECLI:EU:2023:537; Bundesgerichtshof, KVF 69/19 Facebook; AGCM Press Release: Facebook fined 10 million Euros by the ICA for unfair commercial practices for using its subscribers' data for commercial purposes, https://en.agcm.it/en/media/press-releases/2018/12/facebook-fined-10-million-euros-by-the-ica-for-unfair-commercial-practices-for-using-its-subscribers%E2%80%99-data-for-commercial-purposes; AGCM Press Release: PS12566 - Italian Competition Authority: a sanction of EUR 3.5 million to Meta for unfair commercial practices, https://en.agcm.it/en/media/press-releases/2024/6/PS12566; (OECD, 2023[12]).

73. Finally, it is worth noticing that the growing interdependence between competition and consumer policy (de Elizalde, 2025[72]) has been progressively embedded in regulatory instruments that operate alongside traditional enforcement tools. These frameworks typically combine transparency obligations, restrictions on discriminatory or self-preferencing practices, data access and portability rights, and fairness requirements in ranking, intermediation and platform design. In doing so, they implicitly recognise that market structure, platform governance and user autonomy are structurally interconnected. The existence of such regulatory regimes does not eliminate the need for co-ordination between competition and consumer authorities. On the contrary, it reinforces it. Fragmented enforcement, *i.e.* where authorities operate in isolation, risks generating inconsistent obligations, duplicative compliance burdens, or interventions that address one dimension of harm while inadvertently weakening another (Pandey, 2025[73]).

3.2. Looking to the future: From parallel enforcement to integrated approaches

74. As discussed above, enforcement in the two areas still appears to take place separately. In practice, several factors may influence the decision to pursue a case under one enforcement route or the other. As a result, authorities often choose to proceed under one framework, or under both frameworks in parallel rather than through a joint approach. These factors can be summarised as:

- **Scope and target**: whether the intervention should target a specific set of consumers or a wider group. In competition law, intervention generally benefits more the consumers of dominant firms, at least as an immediate effect, as enforcement is linked to market power. However, as competition enforcement is focussed on market structure, its impact may be broader, with intervention having the ability to reshape market dynamics beyond a specific consumer group or individual transaction. Prohibitions in consumer law apply to all businesses, regardless of market power. This allows authorities to intervene for the benefit of any affected group of consumers, resulting in a more targeted protection although individual enforcement actions may have a more limited structural market impact.
- **Legal threshold and complexity of the assessment:** the two areas of enforcement are shaped by different enforcement standards (see for example (OECD, 2023[21]; UNCTAD, 2025[28])). Establishing competition infringements often requires a detailed market definition exercise, proof of dominance or substantial market power and an effects-based analysis. These steps are especially complex in digital environments due to considerations such as existence of multiple sides of the market, complex data dynamics and dynamic competition (OECD, 2022[74]). In contrast, in consumer law, many infringements operate as *per se* prohibitions or rely on simplified tests, making them generally easier and faster to enforce and typically subject to a lower evidentiary burden.
- **Nature of infringement and requirements of proof**: linked to the complexity of the assessment, in jurisdictions where exploitative conduct is not recognised as a standalone infringement, authorities must demonstrate exclusionary effects, adding another layer of analysis for competition intervention. Some of these practices can often be addressed without proving exclusion or market distortion through consumer law.
- **Timing and resource implications**: generally prompter intervention under consumer law given typically faster and more straightforward procedures can prevent greater harm to consumers before market structures are significantly affected by a business' conduct. Competition law proceedings tend to be more resource-intensive, lengthy and costly for authorities, leading to intervention arriving later, when competition is often already distorted (UNCTAD, 2021[5]; Siciliani, Riefa and Gamper, 2019[75]).
- **Availability of remedial action and deterrent effects**: competition law sanctions have traditionally been higher, although several jurisdictions have recently raised or plan to raise the maximum penalties for breaches of consumer law to align more closely with those available under competition law (for example, Australia, the United Kingdom and the EU with its Omnibus Directive), potentially offering a greater deterrent effect. Remedies tend to be more flexible than in consumer law and may include structural or behavioural measures aimed at restoring market dynamics. In consumer enforcement, remedies are often more directly focussed on consumer redress and the cessation of harmful practices, such as injunctions, compliance orders and compensation, and may be quicker to implement. However, they are generally not designed to address structural market dynamics in the way that competition remedies can.
- **Availability of private redress mechanisms**: while private enforcement mechanisms exist in both areas,[57] in competition enforcement they are relatively uncommon and more complex. Moreover, harm to consumers in some circumstances is indirect (through increased prices or reduced quantities or quality), thus requiring proving the overcharge. In contrast, consumer law frameworks

often grant individuals direct rights to compensation, facilitating access to redress. Comparable collective actions are generally less developed or more difficult to pursue in competition law.

75. Overall, the comparison highlights that choosing the appropriate enforcement route is not merely a legal or procedural decision but a strategic one. It depends on the nature of the conduct, the type of harm at stake, the urgency of intervention and the institutional framework of the authority. This way of approaching decision making when there is overlap between the two policy areas leaves some room for an integrated perspective based on consumer agency considerations, which is particularly relevant in digital markets, where practices often produce both distortions of consumer choices and effects on competitive dynamics, making cross-regime collaboration increasingly pertinent.

3.2.1. Integrating consumer agency into competition and consumer enforcement analysis

76. One way of linking consumer and competition considerations in enforcement, while acknowledging existing limitations for conducting actual joint enforcement action, is by integrating consumer agency into the analysis. In practice, both competition and consumer protection authorities already engage with elements of consumer agency, albeit often implicitly. This can be observed, for example, in the assessment of switching costs, default settings, or the transparency of ranking and recommendation systems, as well as in cases examining consumers' response to certain behaviour, the effects of misleading or deceptive online choice architecture practices or the validity of consumer consent. In certain situations, however, making this dimension more explicit may improve the assessment. Identifying when such explicit consideration is warranted is therefore key. In those instances, and irrespective of the institutional set-up, closer co-operation between competition and consumer protection authorities may be particularly relevant.

77. If consumer agency is to function as a meaningful analytical parameter rather than a purely rhetorical concern, both competition and consumer protection authorities may benefit from incorporating it more explicitly into their enforcement frameworks, particularly when assessing digital markets. This does not require altering the objectives of either policy domain. Rather, it involves recognising autonomy as a condition that can influence how markets function and how existing legal standards are interpreted and applied (Namysłowska, 2025[76]).

78. From a competition law perspective, consumer agency could be treated as a factor relevant to the intensity of competitive constraints. When competition authorities assess dominance, foreclosure, exploitative conduct, or leveraging in digital environments, it may be useful to consider whether market conditions enable consumers to understand alternatives, compare offers and switch providers without undue friction. Reduced autonomy may, in certain contexts, signal weakened competitive pressure even where nominal choice exists (Fassiaux, 2023[77]). Accordingly, competition enforcement could more explicitly take into account empirical indicators such as effective transparency in ranking or recommendation systems; the practical complexity of switching or multi-homing; asymmetries of friction between sign-up and cancellation; and the extent to which data portability allows users to maintain functional continuity across services. Where design features systematically dampen switching, exploit inertia, or create forms of data-based lock-in, these elements may reinforce market power or contribute to exclusionary dynamics. In this sense, diminished agency may not only raise concerns of individual detriment but also form part of the structural assessment of market power.

79. From a consumer protection perspective, consumer agency may serve as a benchmark for assessing fairness, transparency and the validity of consent. Particularly in digital markets characterised by complex interfaces and behavioural optimisation, consumer protection authorities could look beyond formal compliance with disclosure requirements and examine whether consumers can exercise informed and voluntary choice in practice. This may involve analysing how information is framed, sequenced and made salient; whether defaults or interface design steer decisions in ways that risk undermining genuine

consent; and whether cancellation, withdrawal, or data access rights can be exercised without disproportionate burden. Behavioural evidence, user-journey analysis, comprehension testing and empirical data on actual consumer behaviour could support this assessment. Where attention is systematically captured, where consent is obtained under conditions of cognitive overload, or where switching is technically available but practically obstructed, enforcement bodies may consider whether such practices impair consumer autonomy within the meaning of applicable legal standards (Namysłowska, 2025[76]).

80. Although the legal tests differ, the lines of analysis can still be complementary. In competition law, constrained autonomy may weaken rivalry and entrench market power. In consumer law, similar constraints may render commercial practices unfair or misleading. In both domains, authorities could therefore reflect on different dimensions of agency:

- informational autonomy: whether consumers can access and process relevant information
- decisional autonomy: whether design unduly steers or manipulates choice
- switching autonomy: whether consumers can realistically change providers or multi-home
- data autonomy: whether consumers can control and transfer the data that increasingly conditions market participation.

3.2.2. Integration between competition and consumer policies in remedy design

81. If the integration between competition and consumer considerations is to be operational rather than merely conceptual, it could also extend beyond the qualification and analysis of conduct to the design, implementation and monitoring of remedies. Remedies are a way in which legal reasoning translates into concrete market interventions. Coherence between competition and consumer policy therefore depends not only on aligned substantive analysis, but also on co-ordinated remedial strategies.

82. Before digging into the specifics of the discussion, it is worth noting that the types of remedies available differ across the two policy areas. In competition law, remedies can be structural, behavioural or a hybrid of both.[58] Consumer law typically relies on conduct-based remedies (such as disclosures, interface adjustments, or redress) while structural remedies, such as divestitures or interoperability mandates, are generally available only under competition law.

83. In both regimes, a remedy may be defined as the set of legal and practical measures adopted to terminate unlawful conduct and address its effects. Their orientation, however, differs. In competition law, remedies are directed at restoring or preserving the competitive process (OECD, 2025[78]; 2018[19]). They aim to eliminate mechanisms that distort rivalry and to re-establish conditions under which effective competition can operate (Bostoen and van Wamel, 2023[79]). Designing a competition remedy thus requires identifying how market power was created, leveraged, or entrenched, whether through structural integration, contractual restrictions, technological design or behavioural strategies, and calibrating an intervention capable of neutralising those mechanisms. Remedy design may also involve tensions worth acknowledging. Measures aimed at restoring competitive dynamics can in some circumstances generate unintended costs for consumers, including increased search costs or reduced service quality. Careful calibration and monitoring are therefore essential to ensure that remedies achieve their intended objectives without inadvertently undermining consumer welfare.

84. In consumer law, remedies are primarily concerned with restoring fairness and informed choice within the transactional relationship. They seek to halt unfair or deceptive practices, correct informational or behavioural imbalances, and, where appropriate, provide redress (Mucha, 2025[80]). Designing a consumer remedy involves examining how commercial practices shape understanding, consent, and decision making in practice, and determining which combination of prohibitions, disclosures, restitution or interface adjustments is necessary to restore meaningful autonomy.

85. In digital markets, these remedial logics are closely intertwined. Measures aimed at restoring competition, such as interoperability (Scott Morton and Kades, 2021[81]), data portability (OECD, 2021[82]), or ranking transparency (Veltri et al., 2020[83]), directly affect the conditions under which consumers exercise choice. Conversely, interventions targeting manipulative design or artificial switching frictions may alter competitive dynamics by reducing lock-in and strengthening multi-homing. Ensuring consistency at the remedial stage is therefore key to maintaining a coherent approach.

86. The effectiveness of such consistency depends on institutional co-operation. While convergence in substantive analysis is increasingly visible, remedial coherence requires structured interaction between competition and consumer authorities (OECD, 2025[78]). This may be facilitated in jurisdictions with a dual mandate, yet even there, co-ordination cannot be assumed. In systems with separate agencies, deliberate mechanisms of co-operation are essential to avoid fragmented or internally inconsistent interventions.

87. Co-operation is especially important at two distinct but interconnected phases of the remedial lifecycle: first, when remedies are designed and calibrated; and second, when their implementation and effects are monitored over time. These stages determine whether unlawful conduct is not only formally terminated, but effectively neutralised in practice, taking into account both structural market conditions and consumer-facing consequences.

88. The availability of structural tools in competition enforcement can influence the choice and design of remedies, including whether authorities complement or prioritise behavioural measures to restore effective competition and meaningful consumer choice. At the design stage, authorities must identify which obligations, prohibitions, or structural adjustments can address the identified concerns without generating unintended distortions. Competition authorities traditionally approach this task by focussing on market-level indicators, such as entry conditions, market shares, price dynamics, foreclosure patterns, or multi-homing rates. Consumer authorities, by contrast, are often more accustomed to analysing behavioural responses, whether revised disclosures improve comprehension, whether changes in defaults alter choices, whether cancellation flows reduce friction, or whether redesigned interfaces genuinely mitigate misleading effects. Integrating these perspectives at the outset can reduce the risk that a remedy appears structurally sound yet proves ineffective because users do not meaningfully perceive or act upon the new options available to them (Bush and Waller, 2024[84]). For example, in a 2025 settlement with Amazon, the US FTC required the company to make meaningful changes to the Prime enrollment and cancellation flows that focussed on eliminating practices that exploited consumer biases (e.g. Amazon can no longer have a button that says "*No, I don't want Free Shipping*"), increasing transparency on the terms and conditions and facilitating consumers to cancel the service, using the same method as the one to sign up.[59]

89. Monitoring constitutes a second and equally critical phase. In digital markets, the effects of remedies may evolve over time, particularly where firms can adapt interfaces, algorithms, or contractual terms. Co-ordinated monitoring should therefore combine quantitative market analysis with empirical evidence on user behaviour, interface design and decision making patterns. Assessing only price or market share effects, without examining how consumers interact with the modified environment, may provide an incomplete picture. Conversely, focussing exclusively on behavioural metrics without considering structural competitive dynamics risks overlooking persistent barriers to rivalry.

90. The importance of careful remedy design and effective monitoring is underscored by the European Commission's recent *ex-post* evaluation of antitrust remedies (European Commission: Directorate-General for Competition, GRIMALDI ALLIANCE and NERA, 2025[85]). The evaluation of 12 significant remedy cases found that while most remedies were fully implemented, fewer than half in the selected sample were fully effective in achieving their objective. Purely behavioural remedies were less likely to be both fully implemented and effective than other forms of remedies, although implementation and effectiveness appear to have improved over time. The study also formulates non-binding recommendations, including revisiting the hierarchy between behavioural and structural remedies under Article 7 of Council Regulation (EC) No 1/2003 (that allows the Commission to unilaterally impose remedies within prohibition decisions),[60]

expanding the use of market testing, and increasing reliance on monitoring trustees and strengthened reporting obligations.

91. Previous OECD work highlights that designing effective remedies is greatly enhanced by testing and refining them with actual consumers whenever feasible. Without such testing, authorities' assumptions about what will be effective may be mistaken and could result in remedies that inadvertently harm markets or consumers. The type and amount of evidence needed to inform remedy design varies by case and depends on the judgment of the responsible authority or government (OECD, 2018[19]).

92. Closer co-operation also allows each policy domain to contribute more explicitly to the objectives of the other (OECD, 2025[78]). Competition authorities routinely design remedies, such as interoperability or data portability, which enhance consumer agency by enabling comparison and switching. Consumer protection enforcement, in turn, may indirectly address sources of market power by reducing information asymmetries, limiting exploitative choice architecture, or constraining artificial switching barriers. In digital markets, where dominance is often reinforced through behavioural and informational channels, such interventions may have structural implications. It is also worth noting that competition and consumer policy have sometimes drawn on different behavioural assumptions. Greater integration of behavioural economics into competition analysis, an area where consumer policy has longer-standing experience, may offer useful insights, for instance in assessing how consumers actually respond to information, remedies or changes in market structure, thereby strengthening the complementarity between the two policy areas.

93. Remedy design and post-remedy monitoring under these frameworks could consider their effects on both market players and consumers from a dual perspective. Interventions should be evaluated not only in terms of their impact on rivalry and market structure, but also in terms of how they shape users' capacity to understand, compare, switch and control their data. Embedding this dual assessment throughout the remedial process is a necessary condition for ensuring that the convergence between competition and consumer policy in digital markets remains coherent, effective and mutually reinforcing.

4 Concluding remarks

94. Digital markets have deepened the interaction between competition and consumer policy. As this paper has shown, many of the practices shaping digital markets (such as personalisation, misleading or deceptive online choice architecture practices and certain exclusionary strategies) can simultaneously affect consumer decision making and competitive dynamics. These developments blur the traditional boundaries between the two policy domains. While competition policy focusses on preserving effective market structures and rivalry, consumer policy aims to ensure that individuals can make informed and autonomous choices. In digital environments, however, the same conduct may often impact both objectives at once.

95. The analysis presented suggests that in some cases neither framework may be sufficient to capture the full implications of digital market conduct. Competition law may address structural market distortions but can face practical challenges in detecting and remedying practices that primarily affect consumer agency. Consumer protection tools, by contrast, may provide more immediate and flexible responses to practices that mislead consumers, even in the absence of demonstrable market power. At the same time, remedies that focus solely on individual consumer harm may not fully address longer-term effects on market dynamics and innovation.

96. More recently, developments in artificial intelligence are making more evident the need for the two policies to interact. AI-driven transactions have the potential to enhance market functioning by improving the matching of supply and demand, facilitating more effective price comparisons, and reducing consumers' shopping and search costs. At the same time, these developments raise important enforcement questions for both competition and consumer policy. Among the most pressing issues are: what degree of transparency is required in the deployment of AI agents; will AI amplify existing consumer biases or help overcome them; and how their widespread use may reshape competitive dynamics as well as consumer agency? These considerations underscore the need for continued reflection and further research in the two policy areas, as AI systems become increasingly embedded in market interactions.

97. For these reasons, a more integrated perspective when dealing with conduct in digital markets may be beneficial. Concepts such as consumer agency provide a useful analytical bridge between the two policies, highlighting how the ability of consumers to make meaningful choices is closely linked to effective competition. While enforcement will likely continue to rely on distinct legal frameworks, greater co-ordination between competition and consumer authorities can help ensure that both the structural and behavioural dimensions of digital markets are adequately considered. Remedy design and implementation represent an important area where insights from both policy domains can complement one another, combining competition law's ability to address market-wide dynamics with consumer protection's focus on restoring informed and fair consumer choice.

98. Looking ahead, maintaining dialogue, co-operation and analytical exchange between both policy communities may help authorities better understand digital market dynamics and design interventions that more effectively protect both consumers and the competitive process.

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Notes

[1] This paper was prepared by Carolina Alessi and Aura García Pabón from the OECD Competition Division. The paper benefited from comments by Ori Schwartz, Antonio Capobianco, Ania Thiemann and Alessandra Tonazzi from the OECD Competition Division and by Brigitte Acoca, Nicholas McSpedden-Brown and Yash Patel from the OECD Consumer Policy Unit. It was prepared for the discussion on "Competition and Consumer Policy in Digital Markets" taking place at the 149th meeting of the Competition Committee.

[2] Similar trends are observed at the EU level. Data from the European Commission and Eurostat indicate that a comparable share of internet users purchase goods and services online. For more information, visit the following webpage: https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20250220-3.

[3] Online choice architecture practices that are deceptive, misleading, fraudulent, or otherwise illegal may also be referred to as dark commercial patterns in some jurisdictions.

[4] For the purposes of this paper, the term "consumer" refers to final consumers, rather than to businesses that may, in certain contexts of competition analysis, be considered as users or customers of a service (see Section 2 for a discussion on definitions).

[5] In competition law, an *ex-ante* regulatory regime refers to rules imposed on firms before anti-competitive conduct occurs, aiming to prevent market distortions and protect consumers and competitors. Unlike *ex-post* enforcement provisions, *ex-ante* regulation in digital markets seeks to anticipate and constrain behaviours that could harm competition, often through obligations on aspects such as transparency and interoperability, and restrictions on conduct by dominant firms.

[6] The goals of competition policy were most recently discussed by competition authorities in 2022 in the framework of the OECD Global Forum on Competition.

[7] In 2020, the OECD Council adopted the Recommendation on Consumer Product Safety [OECD/LEGAL/0459] which recognises that businesses should only place safe products on the market, that consumers have a right to expect that products put on the market are safe under reasonably normal or foreseeable consumer use or misuse; and that compliance with product safety requirements by all economic operators can support a safe, fair and competitive consumer product marketplace.

[8] Such as efficiency, promoting innovation, or preserving opportunities for specific categories of business, like small and medium enterprises, in the case of competition law, or contributing to economic dynamism or empowering certain consumer groups, in the case of consumer law.

[9] While in some jurisdictions consumers are explicitly mentioned as a direct objective of the application of competition law, in others benefits to consumers are an indirect effect.

[10] At the same time, product safety obligations may themselves become a vector of competitive distortion when invoked strategically by dominant players to justify restrictions on rivals.

[11] For example, in 2025, during the process of implementation of a new consumer enforcement regime, the UK's CMA explicitly recognised the need to streamline its guidance as "*for smaller businesses especially, the compliance burden must be proportionate*" (Cardell, 2025[94]).

[12] In *Compass Banca SpA v Autorità Garante della Concorrenza e del Mercato* (Case C-646/22, Judgment of 14 November 2024), the Court of Justice of the European Union clarified the interpretation of the "average consumer" standard under Directive 2005/29/EC on unfair commercial practices. While reaffirming the traditional notion of a reasonably well-informed, observant and circumspect consumer, the Court acknowledged that decision making may in practice be constrained by factors such as cognitive biases. Such factors do not automatically render a practice unfair, but national courts must assess whether, in the specific circumstances of a case, a commercial practice could materially distort consumer behaviour, reflecting an openness to integrating behavioural insights into the assessment of fairness and the validity of consumer choice.

[13] In addition to prices, businesses may use consumers data and profiles to disseminate personalised marketing output, such as advertising, offers and recommendations. With consumers data, companies are better able to predict how consumers will react to marketing and use the persuasion strategies that are most effective (Duivenvoorde, 2023[91]).

[14] For example, consumers with a willingness to pay that falls below the price that would be charged in the absence of personalisation.

[15] In some OECD jurisdictions, *ex-ante* legislations requiring transparency over personalisation offers that result from automated decision making have been introduced. Examples include Canada's Directive on Automated Decision-Making (2019) and the EU Consumer Rights Directive (CRD) as amended by Directive (EU) 2019/2161 (The Omnibus Directive). More generally, data privacy laws include provisions broadly requiring transparency in data processing involving automated processes.

[16] Price discrimination has also been tackled by *ex-ante* regulation. While regulation is out of the scope of this paper, it is important to mention that across OECD jurisdictions, regulations have been issued aiming at ending unjustified discrimination in online markets. The clearest example is the EU ban on geo-blocking and the implementation of regulation (EU) 2018/302 prohibiting discrimination based on nationality, place of residence or place of establishment within the internal market. Other examples in the EU include the Commission's 2024 Digital Fairness Fitness Check and the forthcoming Digital Fairness Act.

[17] Although examples of unfair, discriminatory and excessive prices can be found in offline markets. For example, in Merci (Case C-179/90), the European Court of Justice determined that price increases granted by a dominant firm to certain consumers to offset price reductions to others can be unfair. Similarly, the CMA has conducted multiple price-cost analyses to review whether medicine prices have been anti-competitive (e.g. Case CE/9742-13).

[18] See, for example the discussion on proving capability of distorting competition in the CJEU ruling Case C-525/16 in the MEO case.

[19] In the United States, the FTC has used its powers to study markets and request information for research and policymaking purposes (under Section 6(b) of the FTC Act) to investigate personalised pricing, particularly with the use of personal data and algorithmic tools. In 2024, it issued orders to eight companies seeking information on price surveillance and has since issued summaries as intermediate outputs on its ongoing study. These summaries highlight considerations that are at the intersection of FTC's responsibilities under competition, consumer and data privacy frameworks. See: https://www.ftc.gov/news-

events/news/press-releases/2024/07/ftc-issues-orders-eight-companies-seeking-information-surveillance-pricing.

[20] One clear example is the Tinder case in Europe. In 2024, the European Commission and the Consumer Protection Cooperation (CPC) Network concluded an ongoing dialogue with the dating platform Tinder, which had implemented automated personalised discounts without explicitly informing users. To address concerns under EU consumer law, the platform committed to informing consumers clearly and upfront when pricing is personalised based on age and to disclosing that automated means are used to calculate discounts for premium services. Furthermore, Tinder agreed to provide the underlying rationale for these offers, such as identifying users who were previously unwilling to purchase services at a standard rate (European Commission, 2024[93]).

[21] See (Victor-Nyebuchi, 2025[95]; Canhoto, Keegan and Ryzhikh, 2023[89]; Mo et al., 2023[88]; CPRC, 2020[90]; Botta and Wiedemann, 2019[53]) for references on empirical evidence on consumers' attitude towards personalisation and transparency about it. These studies show that what consumers in online markets dislike the most is the secrecy of personalisation rather than the personalisation itself, making it less clear that intervention against personalisation is needed (but transparency measures may be). This leads to preference for transparency and opt-out remedies rather than prohibitions. An additional consideration involves privacy concerns arising from consumers disliking being profiled (OECD, 2024[11]).

[22] (OECD, 2022[3]) presents a review of empirical evidence on the prevalence of misleading or deceptive online choice architecture practices, as well as on their influence on consumer decision making and their detectability.

[23] As classified by the (CMA, 2022[54]) in its taxonomy of online choice architecture practices. It is important to note, however, that only the manipulative character of these practices make them harmful for consumers as some online choice architectures can be beneficial.

[24] For instance, they can reduce transparency and disincentivise consumers to shop around, compare offers and switch. They can also influence consumers to purchase unsuitable products, choose inferior sellers and/or spend more than they want to. An OECD survey in 2024 revealed that online choice architecture practices significantly influenced online consumer decisions, causing significant financial, privacy and emotional impact. While the effects are on all consumers, older and infrequent internet users appeared more affected (OECD, Forthcoming[55]).

[25] Many OECD jurisdictions have provisions under their consumer laws prohibiting practices associated with deceptive, fraudulent or unfair online choice architecture. For example, Article 25 of the EU Digital Services Act (DSA) prohibits online platforms to "design, organise or operate their online interfaces in a way that deceives or manipulates the recipients of their service or in a way that otherwise materially distorts or impairs the ability of the recipients of their service to make free and informed decisions." Similarly, Section 5 of the US FTC Act prohibits ''unfair or deceptive acts or practices in or affecting commerce'', applying to both online and offline markets.

[26] To cite only a couple of examples, (1) the US FTC secured a historic USD 2.5 billion settlement against Amazon, representing the largest ever civil penalty in an FTC case, for the use of deceptive methods to sign up consumers for Amazon Prime subscriptions while making it exceedingly difficult to cancel, Case No. 2:23-cv-0932-JHC; (2) there are current investigations opened against Temu in Europe, including by the European Commission for possible violations of the DSA, related to practices that would include fake discounts, pressure selling, forced gamification, fake reviews, hidden contact details and others https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1913; and (3) the ACCC issued 3 relevant infringement decisions in 2024 to Dreamscape Networks International for practices linked to subscription

traps and hidden fees for building company websites https://www.accc.gov.au/media-release/web-hosting-business-pays-penalties-for-allegedly-misleading-customers-about-%E2%80%98free-gifts%E2%80%99.

[27] For example, in its 2021 Digital Platform Services Inquiry, the ACCC identified different practices that hinder switching of browsers to Australian consumers.

[28] This refers to a situation in which businesses would progressively decline quality, transparency and/or other features of their products and services, which reduce consumer welfare.

[29] Deceptive practices as antitrust violations have been analysed in the past, including in offline markets (e.g. see (Harvard Law School, 2012[86])). However, the extent into which these practices could harm consumers in online markets have brought back these concerns to the debate.

[30] Quality degradation as a consequence of misleading practices was the main argument in Sherman *v.* Facebook, Inc. (3:20-cv-08721) where the plaintiffs argued that Facebook wrongfully acquired or maintained monopoly power by deploying "*dark patterns, skullduggery, and other misleading and fraudulent behavior*" in its data collection efforts causing consumers to give away more data and privacy than they would have otherwise, representing a lower quality of Facebook's service.

[31] European Commission (EC) 2017, Case AT.39740 Google Search (Shopping).

[32] European Commission (EC) 2018, Case AT.40099 Google Android.

[33] More specifically, in *Google Shopping*, Google systematically positioned its comparison-shopping service more prominently in search results while demoting rivals. Given strong evidence that users disproportionately click on higher-ranked results, this self-preferencing diverted traffic from competitors, harming rivals (through loss of visibility and traffic) and consumers (through reduced choice and distorted comparison). In *Google Android*, Google imposed contractual restrictions tying Google Search and Chrome to the Android operating system and set them as defaults. Since behavioural evidence shows that consumers rarely change default settings, this foreclosed competing search engines, limiting rivals' access to scale and ultimately restricting consumer choice.

[34] E.g. European Commission (EC) 2017, Case AT.39740 Google Search (Shopping) as discussed above.

[35] E.g. supermarkets promoting their own brands in-store as explained in (OECD, 2024[92]).

[36] See (OECD, 2024[6]) for a summary of enforcement action against self-preferencing in G7 jurisdictions and (OECD, 2025[87]) for self-preferencing investigations in Latin America that involved imposition or acceptance of remedies.

[37] For example, in Germany, self-preferencing practices are addressed in Art 19a (2) of the German Act against Competition Restraints (GWB). Similar provisions are contained in Article 5 of the EU Digital Markets Act (DMA).

[38] For example, in 2018 the CMA launched an enforcement action against hotel booking sites identifying concerns where rankings were influenced by commission paid to the site and later secured remedies to change those practices (see: https://www.gov.uk/cma-cases/online-hotel-booking). Similarly, in 2020, the Australian Federal Court found Trivago misled consumers where rankings gave significant weight to cost-per-click payments and often did not highlight the cheapest offers (see: https://www.accc.gov.au/media-release/trivago-misled-consumers-about-hotel-room-rates).

[39] In the EU, the Omnibus Directive explains that traders must provide information on the main parameters determining ranking. Moreover, the 2021 Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer

commercial practices in the internal market states that providing search results without clearly disclosing paid advertisements or payments for higher ranking is prohibited.

[40] *Ex-ante* regulations enacted recently also tackles tying and bundling in digital markets directly, mostly in the shape of prohibitions. For example, in Japan, the Act on Promotion of Competition for Specified Smartphone Software (SSCPA) enacted in 2024 explicitly prohibits different tying practices such as tying a browser engine or payment services to the operating system.

[41] Amazon Prime is a paid subscription service that gives users access to additional services otherwise unavailable to other Amazon users. This includes benefits on delivery, streaming, shopping and reading services.

[42] The *Google Android* case illustrates an example of evaluating a firm's capability to restrict competition through the lens of consumer behaviour. Notably, at paragraph 574 of the judgment, the General Court establishes the factual tendency of consumers not to download alternatives to preinstalled apps as the relevant context for this assessment. By dismissing Google's claim that users could easily remedy this by downloading a competing app, the Court affirms that tying practices exploit consumers' "status quo bias". From a consumer protection standpoint, such conduct could be viewed as a constraint on decisional autonomy, as pre-set defaults can lead to consumers remaining with incumbent services even when alternatives are available. See: Case T-604/18 – Google and Alphabet v Commission (Google Android), https://infocuria.curia.europa.eu/tabs/affair?lang=en&sort=AFF_NUM-DESC&searchTerm=%22T-604%2F18%22&publishedId=T-604%2F18&juridiction=T

[43] See ACCC Press Release: Microsoft in court for allegedly misleading millions of Australians over Microsoft 365 subscriptions, October 2025, available at: https://www.accc.gov.au/media-release/microsoft-in-court-for-allegedly-misleading-millions-of-australians-over-microsoft-365-subscriptions.

[44] This includes personalisation generating and exploiting consumers' susceptibilities such as insecurities, weaknesses and biases.

[45] In 2024, the OECD published a report on Algorithmic Pricing and Competition in G7 Jurisdictions, providing an overview of potential competition concerns commonly associated with their use (OECD, 2025[50]).

[46] These are Australia, Canada, Colombia, Denmark, Finland, Hungary, Ireland, Italy, Japan, Korea, Lithuania, the Netherlands, New Zealand, Poland, the United Kingdom and the United States. Some include other responsibilities such as data privacy, sectoral regulation and/or intellectual property rights.

[47] For the purposes of this paper, "advocacy initiatives" denotes non-enforcement measures designed to foster a competitive market environment, such as market studies, advice to governments and regulators, and various forms of guidance and awareness-raising.

[48] For the event description, see: https://www.ftc.gov/news-events/events/2026/02/consumer-injuries-benefits-data-driven-economy.

[49] For a description of the hearings, see: https://www.ftc.gov/news-events/events-calendar/ftc-hearing-11-competition-consumer-protection-21st-century.

[50] See ANPD's press release: https://www.gov.br/anpd/pt-br/assuntos/noticias/cade-mpf-anpd-e-senacon-recomendam-que-whatsapp-adie-entrada-em-vigor-da-nova-politica-de-privacidade.

[51] To the date of drafting of this policy paper, the study was still ongoing. In January 2025, the FTC published initial findings. See more details on the study on: https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-issues-orders-eight-companies-seeking-information-surveillance-pricing.

[52] See: https://www.drcf.org.uk/about-us.

[53] Moreover, in 2024, the OECD and INDRC held a joint workshop on the interplay between digital regulatory frameworks: https://www.oecd.org/en/events/2024/11/oecd-indrc-joint-workshop-on-the-interplay-between-digital-regulatory-frameworks.html.

[54] Enforcement by the Polish Office of Competition and Consumer Protection has targeted manipulative interface and choice-architecture practices in online marketplace and e-commerce platforms. Decisions have been adopted against platforms such as OLX (proceedings concerning misleading presentation and ranking of offers and insufficient disclosure of optional services) and Vinted (for late disclosure of fees and verification requirements). Enforcement has also targeted fashion and retail e-commerce websites such as born2be.pl and renee.pl for using artificial urgency mechanisms, such as false countdown timers. These practices are relevant for both competition and consumer policy because they occur in platform-intermediated markets, affecting consumer autonomy and the transparency of competition between sellers using the platform. See: https://uokik.gov.pl/en/grupa-olx-decision-by-president-of-uokik and https://archiwum.uokik.gov.pl/aktualnosci.php?news_id=17912.

[55] For example, during the 2025 OECD Workshop on Leveraging Behavioural Economics in Competition Enforcement, different OECD jurisdictions shared experiences on how they introduce considerations on consumers' behaviour in their analysis of the impact of certain practices on consumers in the framework of enforcement, advocacy and market studies activity. Among the shared experiences, the Competition Bureau (Canada) presented the launch of its Behavioural Insights Unit and highlighted how its work is contributing to consider insights of consumer policy in competition enforcement. The OECD formed an Informal Working Group on Behavioural Science and Competition, which meets regularly to discuss and share experiences on behavioural considerations in competition enforcement.

[56] This excludes enforcement action arising from ex ante regulation, such as proceedings in the framework of the DMA, DSA and the Digital Markets, Competition and Consumers Act (DMCCA), among other similar initiatives where a designated authority has the task of investigating conduct.

[57] Some jurisdictions allow collective redress mechanisms in the framework of the two policies, such as class actions, whereby a group of consumers who have suffered similar harm from the same practice may bring a joint claim against a business, typically represented by a consumer organisation or another authorised body.

[58] In competition law, behavioural remedies (or conduct remedies) alter how a firm conducts its operations. Behavioural remedies can take the form of either negative or positive obligations that the firm must comply with. In contrast, structural remedies require firms to divest, release or carve-out certain of their tangible or intangible assets. They are generally one-off remedies that intend to restore the competitive structure of the market (OECD, 2025[78]).

[59] According to complaint No. 2:23-cv-0932. See press release: FTC Secures Historic $2.5 Billion Settlement Against Amazon, available at: https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-secures-historic-25-billion-settlement-against-amazon.

[60] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty, OJ L 1, 4.1.2003, p. 1–25.