Organisation for Economic Co-operation and Development

DAF/COMP/M(2018)2/ANN9/FINAL

Unclassified **English - Or. English**

22 April 2020

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Executive Summary of the discussion on Quality Considerations in the Zero-Price Economy

Annex to the Summary Record of the 130th Meeting of the Competition Committee held on 27-28 November 2018

This Executive Summary of the OECD Secretariat contains the key findings from the Roundtable on Quality Considerations in the Zero-Price Economy held during the joint meeting between the Competition Committee and the Committee on Consumer Policy on 28 November 2018.
More documents related to this discussion can be found at
http://www.oecd.org/daf/competition/quality-considerations-in-the-zero-price-economy.htm

Please contact Mr. Antonio Capobianco if you have any questions about this document
[E-mail: Antonio.Capobianco@oecd.org]

JT03461009

Executive Summary

By the Secretariat*

On 28 November 2018, the OECD Competition Committee and the Committee on Consumer Policy held a joint meeting to discuss quality considerations in the zero-price economy. Considering the background note prepared by the OECD Secretariat, the written contributions, as well as the discussion by delegates and the expert panellist, the following key points emerged:

1. While zero-priced markets are not new, they are increasingly prevalent in the digital economy.

Most consumers use goods or services provided at a price of zero on a daily basis. While this business model is not new, zero-price markets have appeared in great numbers in the digital economy, and have unique characteristics that may raise challenges for competition and consumer policy. In particular, consumers increasingly access goods or services in exchange for their personal data or their attention to adverting. Many of these digital goods and services are now considered as vital to the daily lives of many consumers.

2. There are multiple reasons why firms offer goods and services at zero price but advertising and data acquisition appear to be key motivations in the digital economy.

The main motivations for offering zero-price goods and services in the digital economy include the sale of advertising space and the acquisition of data, particularly consumers' personal data. Firms uses such data for multiple purposes including to target online advertising, improve the quality of products, sell positive price complements, for fraud prevention, or, in some cases, to facilitate the direct sale of data to third parties, like data brokers. In the case of advertising and data acquisition, economies of scale, network effects and multi-sided markets are often relevant, which raise their own specific challenges in respect of competition assessments. In particular, network effects can raise endogenous barriers to entry, and can involve learning, scope and scale economies.

Firms can also use zero-price markets to establish a customer relationship to sell complementary or other kinds of revenue generating activities in related markets. One common business model is to offer a "basic" service at a zero price and then to charge more for a more premium version of the service.

3. Alongside traditional aspects of quality, firms in zero-priced markets can compete on privacy, data security and advertising quality, among other things in the digital economy.

Competition policy and enforcement should be cognisant that in markets where goods and services are supplied at zero price, competitive effects may manifest in the form of effects

* This executive summary does not necessarily represent the consensus view of the Competition Committee or the Committee on Consumer Policy. It does however identify key points from the discussion at the Roundtable on Quality Considerations in the Zero-Price Economy, including the views of the expert panellist, the delegates' oral and written contributions and the background note prepared by the OECD Secretariat.

on quality. That is, in the absence of price competition, competition may be more on the quality of a good or service. In this respect, traditional aspects of quality, such as functionality and user friendliness, remain relevant. However, in the digital economy, other aspects, such as privacy, data protection and security; the quality and nature of advertising; the provision of complementary offerings, and; choice and innovation, are increasingly important. In respect of privacy, some consumers may view the collection of personal data as a degradation in quality. Similarly, some consumers will feel they have experienced a degradation in quality if they have to watch more advertising to access a good or service. Online advertising can also impose direct costs in terms of data traffic and energy use.

4. Several potential theories of harm are relevant to competitive impacts in zero-price markets.

Theories of harm that involve a degradation in good or service quality are especially relevant to zero-price markets. In such circumstances, a reduction in quality could be along the lines of reduced functionality or user friendliness such as slower or less accurate results in search engine performance. In addition, it could result in a degradation of quality in respect of the level of privacy afforded, the amount of personal data requested, or the amount and type of advertising that consumers are subject to. Such a degradation could potentially occur as a result of an anti-competitive merger, a cartel that sets the level of quality provided, or an abuse of dominance where a dominant business unilaterally imposes unfair contract clauses, for example. Such issues can potentially raise consumer policy concerns, and data security and privacy concerns, alongside competition concerns.

5. Demand-side issues may also affect competitive outcomes in zero-price markets.

A range of demand-side issues, alongside information asymmetries, can affect competitive outcomes in zero-price markets. In particular, consumers may be subject to behavioural biases that undermine competitive outcomes in zero-price markets. One example is the "free effect", where consumers are less likely to accept a positive price for a good once they have enjoyed a similar one for a price of zero. Another potentially relevant bias is the so-called "privacy paradox": while many consumers report that they care about their privacy, it is unclear whether privacy really motivates their purchasing decisions and, if not, the reasons for this are not always clear.

Another key consideration on the demand-side is whether consumers can adequately observe quality in zero-price markets. In particular, if competition is along quality dimensions, consumers will only be able to make informed decisions where they can objectively assess the various aspects of quality in these markets. This may be particularly difficult in digital markets where the level of certain aspects of quality, such as privacy and data security, may be difficult for consumers to discern. In this respect, consumer policy can potentially be used to reinforce competition by ensuring consumers are able to make informed decisions between businesses, as well as to safeguard minimum standards of quality where appropriate. Hence, there may be merit in exploring remedies that enable consumers to better assess quality. In particular, remedies that make aspects of quality such as privacy and data security more transparent for consumers may be particularly effective.

6. Analytical tools for assessing competitive impacts need to be adapted to incorporate impacts on quality rather than price.

Many of the analytical tools used for defining markets and assessing competitive impacts focus on price impacts. Further, traditional approaches to market definition are not well suited to multi-sided markets. For this reason, market definition and establishing market dominance in zero-price markets, are challenging.

Alternative tools are needed to assess demand (and supply) substitutability in respect of quality. In this respect, understanding the motivation for a firm in undertaking a zero price strategy is key to understanding the competitive dynamics in the relevant market. However, given difficulties in measuring quality trade-offs, especially in relation to consumer data and attention, as well as heterogeneous consumer preferences, even approaches that focus on demand substitutability as a result of a change in quality have their difficulties. Hence, other indicators such as measures of online user attention, volume of transactions, and assessment of network effects and the prevalence of multi-homing, may be more useful indicators in zero-price markets. Specifically, in multi-sided markets, the competitive impacts and pricing strategies on all sides of the market need to be considered. Other measures of competitive constraints, such as the frequency and significance of product improvements and innovations, may also be useful.

Some of the tools for assessing anti-competitive conduct based on price may also be ill-suited to zero-price markets. For example, a cartel fixing a price at zero might not necessarily negatively impact competition. Similarly, pricing below marginal cost by a dominant firm in a zero-price market will not necessarily amount to predatory pricing. Where such cases involve multi-sided markets, all sides of the market need to be considered to understand the competitive impacts.

7. In some jurisdictions, there may be legal challenges to undertaking competition law enforcement in zero-price markets.

From the legal point of view, there may be some limitations to applying competition law to certain types of conduct in zero-price markets in some jurisdictions. For example, if competition law is interpreted as covering only businesses charging a positive price for the good or service sold, this might exclude zero-price transactions from the application of competition law. Another question is the ability for competition authorities to consider aspects of quality that are regulated under other regimes, such as privacy and data security regimes. There may also be challenges to establishing the dominance of firms offering zero-price goods or services. Similarly, merger thresholds based on turnover may not be fit-for-purpose in zero-price markets.

8. Traditional remedies under competition law may not be fit-for-purpose in zero-price markets and there is a need for cooperation across competition, consumer and privacy enforcement agencies.

Traditional remedies under competition law, such as fines and structural remedies, may not be especially effective in addressing competition problems in zero-price markets. In particular, structural remedies risk undermining direct network externalities, which could harm product quality. Instead, behavioural remedies may be more appropriate. For example, remedies that increase transparency and consumer awareness, fix minimum service standards, or facilitate data portability, may be appropriate in certain circumstances. However, such remedies can be costly to monitor and risk overlap with other policy areas such as privacy and data protection and consumer law.

Hence, a key question is whether such issues should be addressed through competition remedies or under privacy and data protection or consumer laws. Before intervening on competition grounds, it needs to be established that competition on quality is lacking and that the proposed intervention would address the identified problem. In some cases, consumer policy enforcement can ensure a faster and more direct intervention. For example, to improve consumer information or to address unfair commercial practices. In other cases, issues around privacy and data security, and minimum standards around this, may be better addressed by the relevant privacy and data protection regulator or enforcement authority. In other cases, for example, where the conduct involves a dominant business, competition remedies may be more appropriate. Where behavioural remedies in competition law are pursued, perhaps to clarify unclear aspects of privacy and data protection and consumer law, such remedies should be drafted in cooperation and consultation with the privacy and data protection and consumer authorities.

More generally, a key challenge is to improve cooperation and information sharing between competition, privacy and data protection and consumer protection regulators. In addition, there could be scope to engage in joint advocacy initiatives, such as enhancing consumer information or facilitating private actors' initiatives to make sure that consumers have access to choices.