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Implications of E-commerce for Competition Policy - Summaries of Contributions

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This document reproduces summaries of contributions submitted for Item 5 of the 129th meeting of the OECD Competition Committee on 6-8 June 2018.

More documents related to this discussion can be found at www.oecd.org/daf/competition/e-commerce-implications-for-competition-policy.htm

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Implications of E-commerce for Competition Policy - Summaries of Contributions

This document contains summaries of the various written contributions received for the discussion on the Implications of E-commerce for Competition Policy (129th meeting of the Competition Committee meeting, 6-8 June 2018). When the authors did not submit their own summary, the OECD Competition Division Secretariat summarised the contribution. Summaries by the OECD Secretariat are indicated by an *.

Australia

The Australian Competition and Consumer Commission (ACCC) has considered competition issues that arise in the context of electronic commerce, including through the following activities:

- The ACCC is engaged in a substantial market study that is examining the role of digital platforms in the Australia;¹
- The ACCC has taken enforcement action against e-commerce businesses based outside Australia which have confirmed the ACCC's jurisdiction when those businesses are 'engaging in business in Australia' or 'otherwise have a connection to the jurisdiction'.²

The ACCC is also co-leading the Vertical Restraints Project of the Unilateral Conduct Working Group (UCWG) of the International Competition Network (ICN). The Vertical Restraints Project involves the development of a series of papers exploring hypothetical vertical restraint scenarios such as the across platform online parity clauses, to examine the effect on competition and potential resulting efficiencies.

- The first hypothetical considered the possible effect of certain parity requirements included in contractual arrangements between fictional Online Travel Agents (OTAs) and accommodation providers.
- A group of ICN volunteers considered the hypothetical scenario in the framework of a rule of reason/competition test. Based upon the limited facts presented it was considered that the scenario was unlikely to give rise to potential per se/by object contravention. The first hypothetical returned constructive responses which indicate there are likely to be similarities and divergences in the approaches of the various jurisdictions.

¹ ACCC, *Digital platforms inquiry*: <https://www.accc.gov.au/about-us/inquiries/digital-platforms-inquiry>

² See for example: ACCC, 'High Court dismisses Valve's special leave to appeal application' < <https://www.accc.gov.au/media-release/high-court-dismisses-valve%E2%80%99s-special-leave-to-appeal-application> > and ACCC, 'Visa ordered to pay \$18 million penalty for anti-competitive conduct following ACCC action' < <https://www.accc.gov.au/media-release/high-court-dismisses-valve%E2%80%99s-special-leave-to-appeal-application>>.

*BIAC**

E-commerce, which is broadly understood to mean the sale of goods and services online, is a growing mechanism of retail sales, which can bring substantial benefits for consumers globally. It is important, in the increasingly important sector, that competition authorities provide clear and consistent guidance on the application of competition law to new practices; that they take enforcement action only when needed and which is evidence-based, consistent and follows sound economic principles; and that they act only in the interest of consumers rather than established competitors.

Features of the e-commerce sector, which are relevant to any assessment of the competitive dynamics within it, include: the wide availability of information and knowledgeable consumers; innovation and efficiency; low barriers to entry and expansion; and a diversity of providers and alongside disruptive innovation.

Potential competition concerns include horizontal collusion, including an increasingly prominent concern about algorithmic collusion. In this context, it is important to distinguish between three instances. First, there are circumstances where algorithms are part of the infrastructure deployed to implement a cartel; here, the ordinary cartel assessment framework should apply. Second, there are instances of tacit collusion, where it is questionable whether such conduct can be considered ‘collusion’ in a competition law sense. Third, there may be instances where computers autonomously collude without human intervention, although such theories of harm are largely speculative at present.

Vertical restraints are a further potential competition concern. The online world has seen the increased introduction of various traditional vertical restraints, including “most-favoured-nations” provisions, resale price maintenance, online sales restrictions, geo-blocking and restrictions on advertising online. In assessing the antitrust implications of such restraints, it is important to bear in mind, first, that the problems encountered in applying competition law in online markets do not warrant the adoption of novel legal approaches or specific rules, as competition law itself incorporates sufficient flexibility. Second, the “rule of reason” found within US antitrust law should be the approach adopted in most if not all cases. Third, it is only if a vertical restraint falls outside one of the antitrust safe harbours that a case-by-case analysis should be conducted, which should start by considering the business rationale and reason for the restraint at issue.

In the context of unilateral conduct concerns, the ordinary test for dominance should apply: namely, whether a company can behave independently of its customers, competitors and consumers. Any market power analysis must be evidence-based, and reflect the fact that digital markets are generally highly dynamic. Moreover, market power should not be equated with bargaining strength. Five principles should guide assessment of unilateral conduct in the e-commerce sector. First, antitrust enforcement should be based on sound economic principles and follow existing case law wherever possible. Second, it is important to take an evidence-based approach to enforcement by considering actual market developments over the period since the allegedly abusive conduct began. Third, in dynamic innovative sectors, a consideration of a well-defined and realistic counterfactual can help improve decision-making. Fourth, enforcement should take place by reference to equally efficient competitors. Fifth, and finally, it is useful to seek to understand the business justification for a given form of conduct at an early stage in any investigation, in particular given the often new and innovative nature of business models in the e-commerce sector.

BEUC

E-commerce brought new opportunities for both firms and consumers. In the web 1.0 businesses went online with e-shops widening their customer reach-out. Consumers gained the possibility to find wider choices and compare prices from different online retailers.

With the web 2.0 and the emerge of the platform economy, retailers started relying on the infrastructure provided by intermediary platforms to reach consumers and therefore reduce costs. Consumers, on the other hand, benefited from greater choices in a single marketplace. However, these developments also brought new challenges to competition authorities and regulators concerning new practices deployed by such platforms.

In this contribution, we identified four challenges in e-commerce 2.0:

1. Gatekeeping and interdependence: Many firms, especially SMEs, depend on the infrastructure of intermediary platforms to reach consumers and, vice-versa, consumers rely on these platforms to find and purchase goods and access digital services. This has created a situation of interdependence between firms, platforms and consumers in which the intermediary in a two-sided market is in a position to influence the transactional process i.e. the interaction between consumers and firms offering their products on the platform. Against this background, online platforms - irrespective of whether they are in a dominant position or not - can become de facto gatekeepers of information, choice and prices, gradually restricting the ability of consumers to freely choose between a wide array of innovative options.
2. Price manipulation: In an ever more interdependent e-commerce market, platforms can deploy practices that impact how prices are set. This has been done in the context of online platforms applying parity clauses. However, the widespread use of price tracking technologies and the automatisisation of price adjustments bring new challenges to how prices are established in online markets.
3. Loss of interface along with the use default options: The imposition of default options on consumers has been an issue of concern of competition authorities. With the introduction of interface-less technologies such as digital butlers or assistants, consumers would have to rely on pre-programmed options to access products and services without having to look at a screen. These default options mean that choices are imposed on consumers making it difficult to opt-out and de facto restricting the ability of consumers to make informed consumption choices.
4. Introduction of automatic decision making (ADM): Default options will become even more problematic in ADM processes. While ADM can reduce search costs for consumers e.g. an algorithm that is able to compare multiple offers at the same

time, these processes can limit considerably the consumers' autonomy to make consumption decisions.

Finally, we provide suggestions about how to approach these challenges from competition law enforcement and a regulation perspective.

1. Enforcement of competition law: The current competition framework is capable to address many of these concerns: Article 101 can be used to tackle a wide range of contractual arrangements that lead to a disruption of competition in online markets. Similarly, Article 102 is broad enough to encompass almost all behaviours that could concern a dominant firm.
2. A case for regulation: However, there are situations in which ex-ante regulation should be preferable to ex-post investigations. Particularly when it comes to platforms that facilitate and have the power to influence the relationship between firms and consumers is it necessary to look at more efficient means to guarantee a fair treatment of those firms by the platforms to keep markets competitive. With the emerge of ADM, a question that deserves consideration is whether the legislator should limit the use of default options in e-commerce. Consumers are likely to rely on these technologies for reducing search costs and facilitating the purchasing process of goods and services. However, firms could abuse that trust to exploit consumers biases with the aim of promoting their own vertically integrated services by the imposition of default options from which consumers are highly unlikely to opt-out.

Brazil

The paper provides an overview of how CADE has been dealing with the challenges brought by e-commerce, by examining related cases in three areas: retail (as the sale of physical goods in an online environment), education (as the online provision of services), and advertisement (as an important activity associated with e-commerce).

In particular, the paper discusses how CADE delimited relevant market in the context of online/offline product/service offerings, how it analyzed the interdependencies between online and offline markets, and how it has been applying the concept of multi-sided platforms.

Finally, the document provides preliminary insights on the challenges and opportunities created by e-commerce and associated developments for competition authorities.

Chinese Taipei

The regulations regarding price- or non-price vertical restrictions in the Fair Trade Act (FTA) of Chinese Taipei have been established in accordance with the rule of reason. As for the former type, the Fair Trade Commission (FTC) will consider whether there are justifiable reasons, such as encouraging downstream enterprises to improve the efficiency and quality of their pre-sale services, preventing other enterprises from free riding, facilitating the market entry of new businesses or brands, promoting inter-brand competition and other reasonable economic grounds concerning competition. Regarding the latter, the FTC will consider the intent, purpose and market status of the parties of concern, the structure of the relevant market, as well as the impact on market competition of the execution of such restrictions in order to determine whether such restrictions are in violation of the FTA.

So far, the law enforcement experience of the FTC in e-commerce markets has been mostly associated with non-price vertical restrictions, including online sale restrictions, and most favored customer and exclusive dealing clauses. Most enterprises have claimed that the purpose in establishing such clauses had been to prevent competitors from free riding, and some of them have contested that the restrictions had to be imposed to promote business. In principle, the FTC's law enforcement against vertical restrictions involving online operations will not differ from those for brick-and-mortar businesses.

Colombia*

Although e-commerce is growing in Latin America, growth lags behind many other regions, accounting for only a tiny percentage of sales of consumer goods at present. One area where competition concerns have already emerged concerns the ‘sharing economy,’ whereby online platforms operate as intermediaries matching consumers with (typically, non-professional) goods and service providers. The emergence of the sharing economy has been characterised as a ‘fourth industrial revolution,’ facilitated by technology. A significant concern exists, however, as to whether the traditional tools for analysing and sanctioning anticompetitive practices are appropriate and effective in this context.

In 2016 the public authorities in Colombia began to focus attention on environmental protection, by encouraging policies such as car-sharing and greater bicycle use by public workers. These policies also sought to reverse a downturn in use of public transport, in favour of greater private car use. However, these forms of disruptive innovation (typified by the increasing popularity of Uber in Colombia) have caused significant regulatory difficulties, in particular coming into conflict with existing regulation within the transport sector. The Superintendencia de Industria y Comercio has engaged in advocacy efforts to demonstrate the competition issues that might arise as a result of a clash between traditional and more innovative business models in the transport sector, although these have not to date been acted upon by the relevant transport regulator.

More generally, the emergence of the sharing economy raises broader questions regarding the interaction between antitrust and economic regulation. There is some evidence that sharing economy companies, in the absence of regulation, might behave in a manner that is contrary to legitimate consumer expectations. Going forward, it is necessary to create a level regulatory playing field between disruptive and more traditional firms, while fostering open competition without stifling innovation.

*Consumers International**

E-commerce presents similar problems from a competition law perspective to existing markets, but often in a novel manner. Few enforcement cases arise that cannot be analysed within existing antitrust frameworks. For example, the traditional market definition tools can be successfully adapted to the e-commerce context. Moreover, vertical restraints pose equivalent problems online to the offline context.

Two features of e-commerce markets raise particular concerns from a consumer perspective, however. First, there is the large-scale extraction of data from consumers in the normal part of business, often without their knowledge. Second, there is an increasing concentration among those that control that data. This may facilitate horizontal collusion, and/or result in market power for ‘gatekeeper’ platforms. The increased personalisation of products in e-commerce markets poses a particular competition challenge going forward.

Finally, the management of data, privacy and consumer protection issues is a shared responsibility often across a large number of different agencies, and any intervention by competition enforcers must be cognisant of the broader regulatory landscape.

Croatia

According to some publicly available data, online sales in Croatia in 2017 made up for only 1 percent of the total retail of goods – a number which will certainly rise in the years to come. According to the Eurostat data, most on-line shopping in Croatia is in the department of clothing and footwear (58 percent), followed by technical goods (56 percent), and books (26 percent). The biggest potential for online sales in Croatia are fashion accessories (34 percent), cosmetics (32 percent) and gadgets (29 percent), followed by toys and baby products (26 percent), car equipment (22 percent) and sports equipment (21 percent).

In its contribution, Croatian Competition Agency (CCA) presents two cases from its recent practice – both in the market of electrical household appliances – in which it primarily investigated alleged restrictive vertical agreements. It is worth mentioning, that as early as in 2014 the CCA opened a proceeding focused on allegedly restrictive passive sales provisions in the contracts concluded between the manufacturer Gorenje and its distributors engaged in the online sales, in distinction from the traditional brick and mortar shops, but at the same time followed the track of the resale price maintenance (RPM) practices. Interestingly enough, Gorenje was fined for RMP but there were not enough indices that it was engaged in any illegal restriction of passive sales on the internet.

In the second case, opened in 2016, it was the CCA who analysed the rebate scheme of BSH providing for a slightly different incentive for e-traders and brick and mortar shops. Since there was no harm for the consumers the case was terminated but it was the CCA who definitely contributed to the new rebate scheme of BSH that equally favours all the operators in the market – on- and offline.

European Union

The European Commission's contribution to the OECD Roundtable on e-commerce and competition elaborates on the main findings of the Commission's 2017 e-commerce sector inquiry and corresponding follow-up investigations.³

New business models and emerging new players such as online platforms pose new questions and challenges regarding market definition. Given the multi-sidedness of e-commerce platforms it is important to clarify, on a case-by-case basis, the nature of agreements between platforms and third party businesses (distribution or provision of platform services).

The wide-scale use of price tracking software may in some situations, depending on the market conditions, raise competition concerns with a view to horizontal restrictions. Equally, the use of automated computer (pricing) algorithms may have implications for competition. Possible competition concerns can also emerge from data-collection and usage if it involves the exchange of competitively sensitive data between competitors.

In terms of vertical agreements, the paper explains that some practices that have emerged in e-commerce markets may call for enforcement. Many of them are well-known restraints in a "new guise" adapted to online markets, such as resale price maintenance and territorial restrictions ("geo-blocking"/"geo-filtering"). The latter are a particular concern for European competition law as they run counter to the objective of creating an EU Digital Single Market. Other practices raise novel issues such as sales or advertising restrictions on online platforms or so-called "most-favoured-nation" clauses. In the context of sales/advertising restrictions on online platforms, the paper discusses the implications of the recent ECJ judgment in the *Coty* case, according to which (absolute) marketplace bans do not constitute hardcore restrictions within the meaning of Article 4 of the Vertical Block Exemption Regulation.

The paper further addresses possible competition concerns relating to contractual restrictions in licensing agreements of digital content. The Commission identified four main issues: first, limitations of the scope of the licensed rights, in particular bundling of transmission rights; second, territorial restrictions and geo-blocking; third, the duration of the licensing agreements for digital content and related problems of market entry; and fourth, payment structures and metrics (e.g. requirements of advance payments, minimum guarantees).

In the context of unilateral conduct, the paper analyses the particularities of online markets, which are characterised by network effects that can lead to switching costs and positions of entrenched market power. It summarises the recent Commission decisions in this area on the basis of Article 102 TFEU, namely the *Amazon e-books* case (abuse relating to "most-favoured-nation" clauses) and the *Google shopping* case (abuse by giving an illegal advantage to another Google product in an adjacent market to the detriment of competing services).

³ Final report on the E-commerce Sector Inquiry, COM(2017) 229 final, for a complete overview see http://ec.europa.eu/competition/antitrust/sector_inquiries_e_commerce.html.

Finally, the paper gives an overview of legislative initiatives aiming at creating a European Digital Single Market, including the Portability Regulation (Regulation 2017/1128), Geo-blocking Regulation (Regulation 2018/302) and the Commission proposal for a Regulation on fairness and transparency for business users of online intermediation services.

Germany

Competition authorities are at the forefront of the Digital Economy. Germany is one of the most important and most rapidly growing areas for e-commerce in Europe. As a consequence, e-commerce represents a key area of the Bundeskartellamt's past and present enforcement practice.

With regard to horizontal cooperation, possible concerns include *inter alia* the possibility of an anticompetitive information exchange via intermediaries such as online trading platforms. The Bundeskartellamt recently supervised the creation of a digital business to business trading platform for steel products in this context.

Vertical restraints are on the rise regarding e-commerce in Germany because competition has increased in online markets and there is a tendency towards lower prices. The Bundeskartellamt sent clear signals against the implementation of RPM by imposing high fines in several cases. Illegal Dual pricing systems often specifically target online sales. The decisional practice of the Bundeskartellamt shows the growing importance of more sophisticated strategies of vertical restraints in online markets. An example is the *ASICS* case where a combination of measures like the prohibition of third-party platform sales, prohibition of price comparison websites and certain restrictions of online advertisement were put in place. The Bundeskartellamt's landmark cases concerning price parity clauses are a further example.

Digital markets are frequently characterized by direct and indirect network effects and strong economies of scale. They are often highly concentrated. Accordingly, the control of unilateral conduct is crucial and one of the most challenging enforcement areas for competition authorities within the e-commerce sector to date. In its pilot *Facebook* case, the Bundeskartellamt communicated its preliminary view that Facebook is abusing its dominant position on the German market for social networks by making the use of its social network conditional on its being allowed to limitlessly amass every kind of data generated in particular by using third-party websites as well as apps and merge it with the user's Facebook account.

The latest reform of the national competition law added consumer protection as novel subject matter to the Bundeskartellamt's investigatory portfolio. It can now launch a sector inquiry where there is a reasonable suspicion that consumer law provisions have been severely violated. The new investigative tools for consumer protection support the monitoring of the digital economy, in which it only takes one illegal measure by a company to harm millions of consumers. To meet its new responsibilities, the Bundeskartellamt has set up a new decision division for consumer protection that already initiated sector inquiries into online price comparison websites and smart TVs with a particular view on consumer problems in everyday digital life.

India

The Indian e-commerce sector has witnessed an unprecedented growth and has immensely benefited consumers by expanding choices and increasing their ability to compare prices and finding the products and services that best meet their needs. However, in spite of its pro-competitive benefits, the sector has remained vulnerable to anti-competitive practices. The Competition Commission of India has come across e-commerce cases dealing with vertical agreements, abuse of dominance and mergers and acquisition. Majority of these cases have been closed at the prima facie stage whereas some have gone into further investigation. In all the cases, the Commission has applied nuanced assessment, based on the facts of the case and the market and technology in question. It has followed the approach of applying a case-by-case holistic analysis, providing the flexibility to attune the case analyses to the sector and the issue at hand within a broad framework prescribed.

*Israel**

The growth of the digital economy, and e-commerce specifically, presents special challenges for a small open economy like Israel. While the increasingly global nature of e-commerce markets has increased consumer choice, it also calls into question the applicability of national regulatory frameworks. Local regulators moreover need to be mindful of the potential impact on investment and innovation in the digital economy.

The Israel Antitrust Authority (IAA) has received various complaints regarding e-commerce markets. These include alleged “geoblocking” practices whereby an international firm seeks to limit local access to its global website, abuse of dominance in online advertising markets, and a cartel aimed at setting the price of a popular videogame on a leading price comparison engine. The IAA has also carried out advocacy work in the e-commerce sector, including efforts to lower regulatory barriers to personal imports by consumers. Other regulators in Israel have similarly dealt with e-commerce issues, including the Privacy Authority and the Consumer Protection Authority.

The IAA is currently carrying out an inquiry on the digital economy, widely defined, which aims to identify and analyse the main competition issues that are likely to arise in this sector as it continues to develop. It is considering, inter alia, questions of more conventional horizontal and vertical cooperation, algorithmic collusion, the increasing prevalence of two-sided markets, the emergence of so-called super-platforms, and the implications of zero-priced markets.

Italy

The OECD Roundtable on “Implication of E-commerce for Competition Policy” offers a valuable opportunity for the Italian Competition Authority (AGCM) to present its experience regarding competition enforcement and advocacy in the digital realm, as well as some relevant interventions in the field of consumer protection. In fact, AGCM is employing a comprehensive set of tools to address competition concerns, gain a better understanding of digital economic transactions and ensure that the potential of innovation is fully realized.

In particular, the Authority has conducted a few investigations in E-commerce, addressing alleged anticompetitive vertical restraints to online sales, on the one hand, and possible foreclosure effects for online platforms, on the other. Questions on the role of digital sales have also arisen in the assessment of some mergers, with regard to the definition of the relevant markets.

Furthermore, AGCM has used its set of advocacy powers to argue against attempts to undermine the growth of innovative services through restrictive regulation in a number of sectors, including taxi and Uber-like services, long-haul bus transport, non-hotel accommodation and in-home restaurant services. In May 2017 it also launched a joint sector inquiry on Big Data with the Data Protection Agency and the Telecommunication Regulator, acknowledging that the analysis of the use of Big Data requires a multidisciplinary approach.

Finally, as an authority with a dual competence in competition and consumer protection, the AGCM has the opportunity to analyse market issues from a twofold perspective and to use these two competences cooperatively.

Japan

JFTC published the “Guidelines concerning Distribution Systems and Business Practices under the Antimonopoly Act (DSPBG)”, which set out the criteria for assessing non-price vertical restraints in 1991. After a lapse of 25 years, JFTC held the “Study Group on Competition Policy for Distribution Systems and Business Practices” in 2016, given the significant changes of distribution and business practices in Japan.

The Study Group concluded in its Report that vertical restraints on e-commerce including vertical restraints by online platformers can be regulated, in principle, under the existing framework described in the DSPBG. However, the Report recommended that JFTC examines whether it is needed to refer in the DSPBG to indirect network effects observed in recent e-commerce.

In June 2017, JFTC revised the DSPBG based on the implication of the Study Group Report. As to the assessment of vertical restraints by platformers, the revised DSPBG apparently mentions that JFTC should consider the competition among platformers in light of direct or indirect network effects.

JFTC has an actual enforcement experience against vertical restraints in e-commerce market according to the framework described in the DSPBG. In *Amazon Japan* case (2017), Amazon Japan was suspected to restrict business activities of the sellers in Amazon Marketplace by the contract which contains the MFN clauses. During JFTC’s investigation, Amazon Japan made a proposal to JFTC to promptly take voluntary measures such as deleting the MFN clauses. JFTC examined the measures of Amazon Japan and concluded that the suspected violation of the AMA would be eliminated.

When JFTC announced the closing of *Amazon Japan* case, JFTC made public its general concerns over MFN clauses imposed by operators of online shopping malls on sellers considering competitive impacts by network effects in the online shopping mall market in the light of the analytical framework of the DSPBG.

Korea

Korea's e-commerce market has been growing rapidly. The expansion of e-commerce is causing a tremendous change to retail market and affecting consumers' purchase habits. The Korea Fair Trade Commission (hereinafter the "KFTC") is trying to promote competition and correct unfair trade practices in the e-commerce sector through enforcement of competition law. In this paper, we are going to introduce the KFTC's major enforcement cases in e-commerce sector including '*eBay's acquisition of G-market*' in which market definition was a problem due to two-sided characteristics of the open market, and '*the Naver's case of consent decree*' in which Naver allegedly misconceived consumers with the unclear distinction between its organic search results and keyword advertisements.

*Lithuania**

The Lithuanian Competition Council (CC) has dealt with numerous competition cases involving online trading, the most prominent of which is the E-Turas case.

Here, the CC found that 30 travel agencies and Eturas, an online sales platform, had coordinated their behaviour with regard to the discounts for online travel bookings through the E-TURAS system. Specifically, information about the collective capping of the discount rates to a maximum of 3% of sales value was sent by the E-TURAS system to the travel agencies which participated in its platform. Although there was no evidence of direct communications between travel agencies about the discount rate, the CC held that there was sufficient evidence of common will between the parties in respect of the cap imposed, in particular because they had not opposed the capping of the permissible rebates. The CC held that this amounted to a breach of Article 101(1) TFEU, and the equivalent domestic provision, and imposed fines on all the undertakings involved with the exception of the leniency applicant.

On appeal, the case reached the Court of Justice of the European Union as reference case under Article 267 TFEU (Case C-74/14). The Court of Justice held that the presumption of innocence precluded a finding of breach from the mere fact that the travel agencies had ostensibly been informed about the capping of the discount rate by electronic message. It was, nonetheless, acceptable in the circumstances to presume that the travel agencies were aware of the content of the message, from which it was possible to presume tacit consent. However, it was possible for the agencies to rebut that presumption by, for example, providing evidence that they had distanced themselves from the practice.

On the basis of this guidance, the Supreme Administrative Court of Lithuania reviewed the findings of the CC. It upheld the finding of breach against a number of agencies and Eturas itself, although the findings against other defendants were annulled. The key consideration was whether there was sufficient evidence of direct or indirect contact amongst the agencies, bearing in mind that collusive will could be expressed tacitly.

The CC has also dealt with merger control issues in relation to the e-commerce sector in a number of cases. These include a retail food merger, in which the offline and online retail channels were assessed separately for the purposes of market definition. Moreover, the CC has prohibited a merger involving online advertising for real estate and vehicles, as it had concerns that the concentration would lead to a dominant position on the domestic markets, resulting in the anticompetitive unilateral exercise of market power.

Mexico

Mexico has a growing e-commerce economy, as access to the internet and internet-ready devices increases. This has been facilitated, inter alia, by the reorganisation and liberalisation of the Mexican telecommunications sector, as well as efforts to increase internet penetration. In terms of the existing regulatory framework, the main players are: COFECE, the Mexican competition authority; PROFECO, the Federal Consumer Bureau which enforces consumer protection law in the e-commerce sector; and PROMEXICO, a federal agency charged with promoting Mexico's participation in the global economy.

Mexico is now the second-largest e-commerce sector in the Latin American and Caribbean region, with a projected value of more than US\$40 billion by 2019. Levels of online shopping tend to be related to income, which in turn determines access to internet. The available data suggests that social media sites present an untapped e-commerce potential in the Mexican market. Barriers to e-commerce growth continue to exist, however. These include: consumer preferences for shopping and brick-and-mortar stores; lack of need; lack of interest; a preference for paying in cash or a lack of a credit/debit card; alongside fears of fraud and a general lack of trust in e-commerce.

COFECE has opened one major investigation involving e-commerce markets to date, which remains on-going. In February 2018, it also published a document entitled, "Rethinking competition in the Digital Economy," which seeks to investigate whether traditional detection and investigation tools are still effective for competition authorities within the digital economy. This was complemented by a Digital Economy Forum, where stakeholders discussed the development of the sector and their concerns about government intervention.

Although Mexico has no specific e-commerce regulation, many general areas of law are nonetheless applicable to such transactions, including: the Federal Civil Code; the Civil Procedure Code; the Code of Commerce; and the Consumer Protection law.

Netherlands

E-commerce in both the European Union and the Netherlands is steadily evolving. From the competition perspective, e-commerce has driven two important developments. Firstly, it has led to new online business models, notably the growth and importance of online platforms. Secondly, it has led to increased price transparency. These developments generate efficiencies for consumers and businesses, but also raise concerns in the competition and the consumer protection field. In this paper the Netherlands Authority for Consumers and Markets (ACM) discusses the consequences of these market developments for enforcement practice. The paper consists of three sections.

The first section of this paper sets out the ACM's dynamic approach to e-commerce, which is illustrated by various ACM cases. The ACM believes that speed and flexibility of enforcement are important in e-commerce. As a multifunctional authority, the ACM can address problems regardless of whether they are labelled competition or consumer. This proves useful in online markets where competition and consumer problems are often closely related. The ACM selects cases in which it believes the effect on consumer welfare is the highest and chooses the appropriate tool from its mix of instruments. The first section concludes with addressing market definition in multi-sided markets, which is challenging, but feasible.

The second section discusses how the ACM assesses vertical agreements in e-commerce. The ACM is of the opinion that vertical agreements generally speaking, and especially in the absence of market power, more often than not benefit consumer welfare. In each specific case the balance between pro- and anti-competitive effects is assessed. The ACM is of the opinion that labelling vertical restrictions such as price parity clauses and online platform bans as hardcore would lead to over-enforcement. These clauses generally have strong efficiency effects, but could give rise to competition concerns under specific market conditions (e.g. market power).

In the third section, the ACM discusses three specific enforcement challenges in the area of e-commerce. The first is the role of data in e-commerce. The ACM believes that the use of data by businesses will often lead to pro-competitive effects in e-commerce markets, but in exceptional cases might lead to competitive concerns. In some of these cases it is unclear whether the ACM has the right instruments to solve the problem. For example, an intervention on data-driven abuse of dominance may come too late in the fast changing digital economy. Here, the ACM is in favor of evaluating the balance between *ex ante* and *ex post* regulation. The other two challenges that are discussed are the rise of algorithms in pricing, and personalization. It is unclear what precisely their implications will be for the competition domain and whether the ACM has a role to play. The ACM invests in learning about these developments, but primarily politicians and policy makers have an important role to play.

Romania

With the rapid advancement of technology in recent years, the online environment has become an essential sector in the economy, both at national and regional / global levels. Online platforms improve consumers' access to products and services, help new businesses enter the market, and existing ones to develop, as the development of internet infrastructure has allowed, in the economic ensemble, the accelerated expansion of online businesses, both in terms of supply and demand, and also geographically.

Understanding the competitive mechanisms in the digital market, how online businesses work, is essential for competition authorities to prevent or limit possible negative effects of anti-competitive facts.

In this particular sector, Romanian Competition Council's more noticeable cases thoroughly described in current submission concern a merger approved with commitments (the Competition Council analyzed the new sales channel developments and how they are competing or/and how they are substitutable), an investigation regarding a possible abuse of a dominant position on a platforms market (the investigation concerns the discriminatory behavior of the enterprise that owns the platform, in relation to the other undertakings that sell on the platform), a finalized study regarding different types of platforms on the Romanian market (the study aimed to present an overview of the online platforms concept) and also a finalized sector investigation regarding online trade and marketing strategies (the Competition Authority analyzed through a sector investigation, the impact of the development of online commerce on the competitive environment through the marketing strategies, especially the price ones, adopted by the active companies on this particular segment).

Thus, research and analysis of this area must be a priority, and in the context of the strong development of the digitized economy and e-commerce in Romania, Competition Council considers necessary to strengthen the expertise in this field.

Russian Federation

At present, the government bodies of the Russian Federation at all levels pay special attention to the digitalization of the global economy and the growing influence of transnational corporations on competition in national markets.

In 2017, the Government of the Russian Federation approved the program "Digital Economy of the Russian Federation" that defines the goals, objectives, directions and timeframes for the implementation of the main measures of state policy to create the necessary conditions for the development of the digital economy in Russia.

Therefore, the President of the Russian Federation signed the Decree No. 618 "On the Main Directions of the State Policy on the Development of Competition", which approves the National Competition Development Plan in the Russian Federation for 2018-2020.

The Decree and the National Plan determine the principles of interaction between the state and the society, implying intolerance to any incidents of unfair competition, cartels and abusing monopolistic position. The authorities at all levels are obliged to evaluate administrative decisions, taking into account the consequences of such decisions for competition.

As one of the fundamental principles of the state policy for the development of competition, the Decree defines the improvement of antimonopoly regulation in the digital economy and its globalization.

In this regard, the FAS working group was established to draft a law (the so-called "fifth antimonopoly package") that is planned to submit to the Government in the first half of 2018.

In the law drafted by the working group:

3. the goals and objectives of antimonopoly regulation and the terminology apparatus of competitive legislation are clarified taking into account the new economy;
4. legal instruments to counteract anticompetitive agreements (concerted actions) and illegal coordination of economic activity are supplemented by prohibitions on such activities carried out with the help of digital algorithms and platforms;
5. requirements for prohibitions on abuse of dominant position regarding use of data (information) and digital platforms for monopolistic activities are specified;
6. there are tools to control economic concentration in the digital economy, including the concentration of large data as a means of monopolizing and accounting for the network effects of digital platforms as a factor in strengthening market power.

Moreover, another working group was formed under the FAS Russia aimed at finding and developing approaches to solving the problem of emerging unequal business conditions for Russian and foreign sellers (Internet platforms) in the field of electronic commerce.

Its members elaborated two plans of actions.

Firstly, they consider the possibility of imposing a compulsory VAT - registration with the imposition VAT on goods sold by Internet shops, Internet platforms (as tax agents), if

the place of sale of the goods is the Russian Federation. Currently, foreign online shops do not pay VAT (18%) of goods sold to a Russian buyer.

Secondly, the possibility of introducing a customs fee is considered. The scheme assumes detailed administration of the procedure for performing customs operations with respect to goods sent to individuals.

Singapore

This paper provides an overview of the E-commerce landscape in ASEAN, particularly Singapore, and CCCS's enforcement experiences and market studies efforts in the area of E-commerce.

In Singapore, the largest sectors impacted by E-commerce are travel, fashion and beauty, entertainment and lifestyle, IT and electronics, and general insurance. Key drivers of growth in these sectors are high internet penetration (78%) and smartphone adoption, strong financial infrastructure and good logistical facilities.⁴ Although many consumers still prefer the convenience of shopping in traditional brick-and-mortar stores in Singapore, online retail adoption are expected to grow with the introduction of new initiatives to improve logistics solutions and last mile delivery.⁵

Over the period of 2009 to 2014, many B2C and C2C online businesses entered the markets in Singapore. New online platforms providing innovative products and services emerged in specific sectors, generating new challenges for the enforcement of competition law in Singapore. Below set out the past cases which CCCS has looked at:

- Case Study 1: Agreement to pressurise competitor to withdraw online offer in the life insurance market
- Case study 2: Exclusive agreements by online food delivery providers
- Case study 3: Alleged price fixing by sellers on C2C E-commerce platform
- Case study 4: Merger between online recruitment advertising services company

Besides administering and enforcing the Competition Act, CCCS also proactively conducts market studies to better understand the structure and the workings of different markets, and to identify areas where market competition can be improved to benefit both consumers and businesses. CCCS has recently announced that it will be embarking on a market study to understand the industry landscape relating to the online provision of flight tickets and hotel accommodation to Singapore consumers, including the contractual arrangements and practices adopted by the online travel booking platforms.

CCCS also actively works with other agencies to enhance regulations for the E-commerce sector. In August 2017, CCCS, together with the Personal Data Protection Commission ("PDPC") and Intellectual Property Office of Singapore ("IPOS"), published a research paper which looked into the data landscape in Singapore, and explored the implications of the proliferation of data analytics and data sharing on competition policy and law, personal data protection regulation and intellectual property law in Singapore. This year, CCCS will collaborate with PDPC to study the consumer protection, competition and personal data protection issues which could arise if data portability requirement is introduced in Singapore. CCCS is also part of a working group (consisting of different public agencies and sector regulators with an interest in the development of artificial intelligence ("AI")) to come up with a framework to ensure AI systems and processes are implemented responsibly in Singapore.

⁴ Source: CCS Handbook on E-Commerce and Competition in ASEAN, page 25

⁵ Source: CCS Handbook on E-Commerce and Competition in ASEAN, page 26

Spain

This document presents a summary of the enforcement activity of the Spanish Competition Authority (CA) regarding e-commerce, its priorities in this area and the difficulties it has encountered when conducting this task.

Despite the booming of e-commerce, the Spanish CA has not experienced an increase in antitrust complaints related to this sector. The single most relevant case arising from a complaint (S/DC/0592/16 LABORATORIOS MARTÍ TOR) concerned online resale price maintenance and did not lead to the opening of formal proceedings. Moreover, two ex officio preliminary investigations have been recently closed regarding the activities of eBay and Amazon marketplace in Spain, without finding cause for concern. Currently, the Spanish CA is conducting three preliminary investigations dealing with e-commerce vertical restraints.

In the Spanish CA's view, this activity shows the need to reach a deeper common understanding when dealing with e-commerce antitrust cases, at least at EU level, given that the same issues tend to arise in different countries, though the reaching of this consensus is plagued with analytical difficulties. In addition, if imbalances between the parties are detected, the Spanish CA believes other policy instruments rather than competition policy should be considered.

The realization of the challenges that the digitization of the economy poses for competition policy enforcement, has led the Spanish CA to the setting of an internal working group, tasked with monitoring the e-commerce sector, among other responsibilities

Sweden

Technological advancements have enabled the emergence of websites and platforms for the sale of goods and services. The conditions for the continued growth of e-commerce are good. With e-commerce, price-transparency has increased and price competition has intensified. This is positive for consumers, who can more easily find products that fit their needs at the best price with the help of price-comparison services.

Furthermore, services within the sharing economy, facilitated by technological advances, make it possible for unused resources to easily be shared, primarily between private persons. The development of sharing economy business models and companies can therefore improve competition and lead to enhanced consumer welfare.

Nevertheless, the development of e-commerce has particular implications for competition authorities in their enforcement work. This contribution considers these implications first by considering the potential effect on relevant market definition based on Swedish case experience. It then considers cases in the sphere of e-commerce generally, and platform markets in particular. Finally, the contribution turns to future implications for competition enforcement and policy which have been identified in the course of recent market studies on digital markets carried out by the Swedish Competition Authority.

United Kingdom

This UK submission gives an overview of the CMA's approach to assessing competition and consumer issues arising in e-commerce markets, and its recent interventions and actions in those markets.

The growth of e-commerce has generated significant benefits for consumers, and has stimulated innovation and economic growth. However, as is the case offline, certain market features or business practices can result in harm to competition or consumers. The challenge for competition authorities is therefore to ensure that they effectively distinguish between such pro-competitive and anti-competitive aspects, and are able to take effective action to address potential harms that do arise.

The CMA takes a multifaceted approach to promoting competition in the online economy, combining enforcement and investigations under various competition and consumer protection law powers with ongoing efforts to evaluate and deepen its understanding of, and expertise in, the dynamics of e-commerce markets. Given the rapid pace of technological change, the CMA is keeping under review its competition and consumer protection powers and it is working with the UK Government to ensure that it has the legal tools necessary to gather evidence of, and investigate, possible anti-competitive practices in the digital economy.

In that context, this submission builds on previous UK submissions to the OECD, and describes the CMA's approach to, and recent experience in:

- assessing vertical restrictions in e-commerce markets;
- reviewing mergers between businesses active online; and
- using its full range of tools in combination to ensure it maximises the positive impact of its actions for consumers.

*United States**

The e-commerce sector is growing in importance as a retail channel in the United States. Concurrently, online and offline marketplaces increasingly interact and compete with each other, blurring the lines between these ostensibly distinct sales channels. This means that the US competition agencies are increasingly required to consider the effects of both offline and online sales when assessing the competitive effects of conduct or transactions, as they have done in recent enforcement practice. Moreover, antitrust law needs to be aware of the increasing integration of technology into traditional items like durable goods, whether sold offline or online, such as the “internet of things”.

Although business and competition are evolving quickly in the e-commerce sector, the US antitrust law remain flexible enough to address potential new forms of anticompetitive behaviour. This includes application of the existing rules against algorithmic collusion, vertical restraints such as exclusive dealing, and merger control such as the proposed 2015 Staples/Office Depot transaction. The Federal Trade Commission also brings enforcement proceedings under its consumer protection authority against unfair or deceptive practices in the marketplace, including against practices which harm consumer privacy.