

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Implications of E-commerce for Competition Policy - Note by Israel****6 June 2018**

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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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1. Introduction

1. The role of e-commerce specifically, and the digital economy more generally, in competition policy, presents a double-edged challenge to competition regulators. On the one hand, the existence of a global, content-agnostic, ubiquitous, very low cost distribution network vastly increases consumer choice and makes geographic segmentation largely irrelevant in many markets. On the other hand, despite the perception of low barriers to entry in digital markets, the rise of "super-platforms" and other manifestations of big data based business models, raises the specter of increasingly impregnable market power.

2. While the argument over whether the rise of the super-platforms represents a paradigm shift in the competitive landscape continues to swirl, the Israel Antitrust Authority is conducting its own inquiry into the matter, focusing on elements of the digital economy that may be unique, or of special importance, to the Israeli economy.

2. Characteristics and competition challenges of Israel's digital market

3. Competition issues in the digital economy present special challenges for a small, open economy like Israel's.

4. On the one hand, the rise of the digital economy has allowed local providers of digital goods and services to provide their wares directly to end-users worldwide, and this has led to the creation of a leading sector in the Israeli economy. Conversely, Israeli consumers now have increased choices of digital goods and services (mainly provided via the internet) which has rendered many local markets significantly more competitive. However, the increasingly global nature of competition, especially in entirely digital goods and services, calls into question the applicability of national regulatory frameworks.

5. One crucial issue for the competition regulator in Israel is the degree to which regulation may affect the incentives for investment and innovation in the digital economy. Specifically, Israeli technology companies tend to be early-stage, innovative product oriented firms, and a common exit strategy is acquisition by a large international technology company who wishes to integrate the firm's product or service into its portfolio not only (or even mainly) for its standalone utility, but to gain efficiencies from product synergy, portfolio effects, and others. While the macroeconomic effects of such an orientation are debatable, it is undeniable that this must cause the local regulator to tread carefully when considering these incentives. In many cases, the relatively small size of the local market and the inability to achieve minimum efficient scale without a more global footprint means that this acquisition strategy is both efficient from the acquiring firm's viewpoint, and effective from the standpoint of the entrepreneurs and their investors.

6. In this sense, then, the international discussion of the rise of "super-platforms", to use Ezrachi and Stucke's term, takes on importance both for the competitiveness of the local market and for this significant sector of the Israeli economy.

3. The IAA's involvement in e-commerce markets

7. Since the e-commerce markets in Israel tend to be dominated by large, multi-national firms, most of the complaints received by the Israel Antitrust Authority (IAA) have dealt with the interface between such firms and local consumers and firms. Often, these have involved such practices as "geoblocking", in which an international firm will limit access to its global e-commerce website or direct traffic to the website of a local distributor, whose prices are often higher and/or who offers a smaller selection of products. The IAA has also received complaints regarding two-sided markets alleging that super-platforms are unfairly using dominance to limit competition in advertising markets, for example.

8. The digital economy in Israel is quite unique in the sense that no dominant local e-commerce players (such as the US's Amazon or India's Flipkart) have emerged; the local e-commerce market is quite fragmented, including many small providers and the online operations of many traditional brick-and-mortar businesses. This may be partially attributable to a relatively under-developed local delivery and logistical services market, and to the high willingness of Israeli consumers to use international e-commerce platforms. Thus, the IAA has dealt with relatively fewer cases of abuse of dominant power, cartels, etc., which are specific to e-commerce or digital economy markets. In the last year the IAA took enforcement action against an erstwhile cartel which aimed to set the price of a popular video game on one of the leading price comparison engines. However, the members of the alleged cartel carried out their activities without the use of algorithmic pricing; in this case the size of the group and the relatively small number of products involved made the alleged price-fixing possible using traditional means of communications.¹ In the realm of access to price comparisons, the government has recently required large retailers of food and household products to provide online access to data on prices, including special prices² and this has led to the creation of a number of undertakings providing local consumers with new price-comparison tools.

9. Other regulators in Israel have dealt with the challenges of e-commerce markets as well. These include the Privacy Authority, the Consumer Protection Authority, and others. As the IAA's remit is relatively specialized and limited to competition issues, the IAA often carries out advocacy work with other government entities; for example the authority was part of an effort to lower regulatory barriers to personal imports by consumers (the vast majority of which are e-commerce transactions), through reduced regulatory requirements by sectorial regulators and streamlined processes for tax collection where relevant. This effort also led to a proposal to ease the creation of logistical centers that would support local e-commerce. These initiatives help to lower the cost of goods and services in Israel, and to continue to ensure that imported goods and services purchased on e-commerce platforms are a part of the competitive landscape.

10. However, the IAA understands that competition issues in the digital economy will only increase in the next few years; and that the agency must be ready to meet the challenge.

¹ www.antitrust.gov.il/files/34899/%D7%A7%D7%A8%D7%98%D7%9C%20%D7%A4%D7%99%D7%A4%D7%90.pdf

² <http://economy.gov.il/Trade/ConsumerProtection/Pages/PriceTransparencyRegulations.aspx>

4. The IAA's inquiry on the digital economy

11. In the above context, the IAA is carrying out an inquiry on the digital economy (widely defined), aimed at identifying and analysing the main issues that are likely to arise as the digital economy becomes more ubiquitous, with a focus on issues in which the current competition framework might require changes, or areas in which a national regulator might face an increasing challenge as cross-border transactions increase.

12. The issues the IAA is considering include "traditional" questions of horizontal and vertical competition in a digital environment, algorithmic competition, and the increasing prevalence of two-sided markets, quasi-open and quasi-closed software platforms such as mobile operating systems, and others.

13. So too, the inquiry aims to reach a better understand of the ways in which competition in the digital economy may affect competition in more traditional, non-digital sectors. Thus, for example, as large e-commerce players are expected to increasingly enter the Israeli market in the next few years, whether by joint ventures with local firms or independently, this may have a significant effect on traditional retailing sectors. While traditional market definition approaches might create "silos" between different markets and thus view mergers and acquisitions between online entities and traditional businesses as non-problematic, the special role of online and digital marketing, together with the creation of enormous stores of actionable data, might mean that the competition regulator should take into account these additional issues when considering possible mergers. In traditional terms, the possibility of market foreclosure in certain markets (generally for physical goods and services) might be so enhanced by the use of "big data" collected in others (digital goods and services) that regulators might need to consider these kinds of arrangements separately.

14. Another aspect that the IAA is considering in its inquiry is markets for non-priced goods and services; and specifically those markets in which "market power", measured by market share in users, traffic, or other similar metrics, is in itself part of the service that brings utility to consumers. For example, a social network is generally considered as a two-sided market with users (who provide the platform with non-financial utility by providing personal information, etc.) and advertisers, who remunerate the provider more highly based on the ability to target users, via their information. However, unlike in some other markets, market power is the very utility a social network provides to its users, whose utility is measured by the size of their individual network on the platform. Thus, in the absence of standards of interoperability, it might be difficult to argue even that a completely monopolistic social network entails a loss of economic efficiency.

15. The IAA is also interested in the differences between business practices of "super-platforms" in different jurisdictions, and the question of to what extent "best practices" set in certain jurisdictions are implemented elsewhere. Specifically, the IAA is interested in ascertaining whether Israeli consumers who use the services of a super-platform are subject to different business practices than European consumers, for example.

16. Finally, the inquiry must take into account the unique factors of the digital economy and the existence of the internet as a ubiquitous, content-agnostic platform. It has become cliché to claim that the internet is the "great leveler" and thus regulators should take a light touch approach, because the barriers to entry are significantly lower than they are using traditional marketing and distribution methods. The history of the 20 or so years of the commercial internet has been marked by the rise and fall of many giants. Further, the claim has been raised that the markets for digital goods and services

tend to be supply-based; that is, that users are receptive to new products and services offered by innovative firms even if they did not have a perceived need for these products before their introduction, and that these might supplant existing products and services, even if provided by large and powerful undertakings. The rise of the super-platforms calls this somewhat into question; and it remains to be seen which of the two competing tendencies – of consolidation on the one hand, and the ever-present threat of new entry, whether of improved products and services, or new categories of services on the other – will dominate.

5. Conclusion

17. Opinions are still split as to whether the rise of the "super-platforms" of the digital economy requires a fundamental shift in competition regulation frameworks. What is becoming increasingly clear, though, is that future regulatory frameworks will have to take into account the increasingly international nature of e-commerce, and more international coordination will be required.