

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Implications of E-commerce for Competition Policy - Note by Romania****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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Romania

1. Economic concentration with commitments

1.1. The trend towards omnichannel trade and the platforms development

1. Romanian Competition Council analysed the new sales channel developments and how they are competing or/and how they are substitutable. On the Romanian market, more and more traditional companies that own at least one store have started to integrate e-commerce within their business policy, to supplement their sales or to resist online competition. By adopting a mixed strategy, companies can profit from many benefits of online commerce, such as lower costs, increased consumer confidence, and expanding the geographic market and product market.

2. Searching for product information in the online environment, accessing forum discussions or price comparison platforms, have led both to an increase in the interest of businesses which are directly involved in this process and also an increase in the interest of consumers, on the online platforms, and to the growing interest of third parties (media agencies). Also, the possibility of a virtual channel to help expand a business beyond its physical or traditional outlets, by approaching new geographic and product markets, and new types of buyers, has incentivised retailers to set up and develop online platforms, in some cases triggering a traditional trade involution (offline).

3. The economic concentration consisted in the acquisition of sole control of one retailer (Emag) over another online retailer (PcGarage). The activities of the two parties took place especially in the online environment, a small part of the sales being made through showrooms.

4. A special analysis has been done in order to determine to what extent online commerce is competing with offline, and vice versa.

5. In order to define the market in terms of sales channels, online/offline, independent surveys on consumer choice and previous decisions were used from either European Commission and other European competition authorities.

6. The conclusion was that the two retail channels tend to uniformize their commercial behavior due to the common promotion environment where the advertising is joined, regardless of the retailer type.

7. The arguments for which the two channels might be considered interchangeable are:

- Customer access to both channels;
- Advertising and marketing are the same for all types of sellers;
- Growing number of multichannel retailers - offline and online;
- The large number of customers who check online offers and buy from physical stores or vice versa;
- The offer is made up of the same product range.

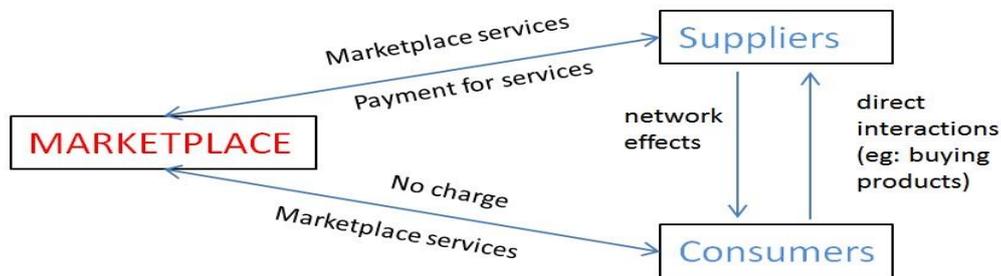
8. But there are also some arguments that support their separation:

- Geographic market differently defined between the two types of channels;
 - Lack of sales assistance;
 - The number of more online products than offline ones;
 - Possible price differences in favour of online stores due to lower operating costs.
9. The analysis was conducted both on the whole (online and offline) market, as well as on the online market. The geographic market has been defined as being national for online trade.
10. The analysis was done on product categories and subcategories. Following the analysis and taking into account post-merger market shares, over 40% on some product subcategories, the parties presented a series of structural and behavioural commitments.
11. The structural commitments undertaken by the purchaser on the retail consumer goods market consist of the transfer of some smaller online stores, which initially belonged to the acquired portfolio outside the buyer's operational control in favor of other buyers (one or more independent third parties).
12. Considering that the purchaser was vertically integrated with a consumer goods distributor, one of the main IT suppliers in Romania, the behavioral commitments assumed by the purchaser in the retail consumer goods market were imposed. These commitments consist of providing certain facilities to the companies that take over the divested assets. Thus, in order to ensure the proper functioning of the online shops subject to the divestiture, the purchaser was obliged to provide the companies that took over the four online stores that were sold, a product stock and the provision of traditional type products marketed on websites, that allows the activity to continue for a minimum period of 3 to 12 months. The purchase of products should be made under the same conditions as for the companies in the acquirer's group.

2. Investigation of possible abuse of a dominant position on the Exchange Platforms market

13. Exchange platforms involve two user groups: sellers and buyers. The platform facilitates these groups finding the right trade partners and the most convenient prices. The existence of a high number of sellers and buyers increases the likelihood that platform participants will find the right partners. Examples of exchange platforms include "online marketplaces" like Amazon, Booking.com or E-Bay, and collaborative economy platforms such as Airbnb, Uber and BlaBla car. Exchange platforms can generate revenue by charging a part of the multi-faceted platform (usually sellers) or multiple parts of the platform (third-party advertisers).

Figure 1.



14. The investigation concerns the discriminatory behaviour of the enterprise that owns the platform, as the manager of the online platform, in relation to other retailers that sell on the platform, its direct competitors in its capacity as a retailer. The investigation is taking place on the retail market of consumer products in Romania.

3. Online platforms study in Romania

15. In 2017, RCC conducted an internal study regarding platforms and their impact on competition. The study aimed to present an overview of the online platforms concept and the way in which these business formats are present on the Romanian market. It attempted to identify the main platforms, how they influence the economic development and eventually the economic efficiencies generated by them. At the same time, RCC tried to identify the risks and possible anticompetitive practices that can affect the online environment in Romania.

16. Following the study, it has been established that online platforms can create economic efficiencies derived from:

- Better allocation of resources and use of unused resources to date;
- Better interaction between groups, based on collected data;
- High dynamics of price formation;
- Reducing transaction prices by reducing information, search, comparison and trading costs.

17. Online platforms can create direct and indirect externalities because the more people participate in a platform, the more individual interest increases.

18. In the traditional market, there is an informational asymmetry between the groups of players: the bidder group and the consumer group. Online platforms can reduce the information asymmetry between groups because information costs are much lower and the speed at which information is circulated is very high.

19. On the other hand, online platforms affect the costs of competitiveness and may also have negative competitive effects such as dominant position abuses.

20. As far as Romania is concerned, an analysis of the most important existing online platforms has been carried out. This included travel intermediation services platforms, passenger transport platforms, online food order platforms, platforms for cultural and artistic events, and the platform for trading non-food products.

4. Online Marketing Sectoral study in Romania - Marketing Strategies

21. The Competition Authority analysed 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.

22. Considering the structure and characteristics of the e-commerce sector in Romania, the analysis showed that the e-commerce sector still presents the characteristics of a national market, not sufficiently mature (both in terms of demand and supply) and somehow isolated, but there is still a potential for opening and diminishing geographical barriers, based on the increased responsiveness and maturity of supply and demand. This sector is characterized by:

- Low entry barriers, but high development barriers (to qualify as major players);
- There is a dominant retailer (Dante, through emag.ro), which has created a number of competitive advantages in terms of exclusive online sales;
- There is a tendency to focus on this sector, and more and more gaps between important players and small players. However, it must be taken into account that, as the Romanian market opens, important foreign players will be able to make their presence noticed on the internal market, and there is therefore a prospect of an increased competitive pressure on the current internal market players.

23. The analysis followed in particular the price formation and various marketing strategies and focused on the online marketing component of electronic-IT products. The electronic-IT product category is the main category of products sold in Romania through e-commerce and has a number of distinct features such as the high comparability of the offerings of different merchants, a reduced sensitivity to seasonal changes compared for example to the fashion segment, as well as a clearer demarcation of various price components, by reference to the supplier / trader / manufacturer / trader relationship etc.

24. The analysis of how discount campaigns operate, including the reference to the legal provisions in the field, has highlighted the fact that many of the price reductions of major retailers have as a source additional discounts negotiated with suppliers. In addition, discount campaigns seem to be differentiated by volume and marketing efforts, not by the average reductions applied. This can also be seen by comparing the Black Friday campaign with other discount campaigns.

25. The analysis pointed out that the price-fixing mechanisms in the discount promotions are distorted, as long as the legal norms in the field (referring to the reference price) are not complied with and, as a consequence, price reductions are not correctly referenced, and low-priced sales prevail over normal sale.

4.1. The analysis carried out under Case Study 2016 highlighted the following:

- For 3 of the 6 target analysis platforms, more than half of the products were sold at a reduced price in more than half of the total days for which the products were in stock.
- At the level of the data analysed, very high percentages of products marketed by all the major online platforms under review were sold at low prices over long periods of time (over 75% of days).
- A reduced reference price dynamic was noted and its positioning near the final price, especially when the evolution of the two variables at product level was followed, which is in contradiction with the legislative provisions that are linking the reference price to the level of the final price in the previous period, for the same product.

4.2. The analysis carried out under Case Study 2017 highlighted the following:

- In about 82% of the processed price records (121 out of 147), the Black Friday reference price (2017) was higher than the actual price for the last 30 days, this being prohibited under Article 33 (1) (a) of Government Decree no. 99/2000.
- Moreover, in about 29% of the valid processed records (43 out of 147), the Black Friday reference price was higher than the maximum price over the last 30 days.
- Findings regarding violation of the provisions of art. Article 33 (1) (a) of Government Decree no. 99/2000 were also made in case study 2015.

26. Most online retailer sales are made at promotional prices. This trend seems to increase.

27. In conclusion, given that in Romania, e-commerce is an economic sector characterized by a high rate of innovation and growth, with an important impact on the economy, the fact that it presents specific structural and behavioural conditions that bring new challenges in the application of the competition policy, the authority aims to closely monitor the undertakings in the online environment.