

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

This document reproduces a written contribution from Consumers International submitted for Item 5 of the 129th OECD Competition committee meeting 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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1. Introduction

1. Competition agencies are increasingly dealing with e-commerce retailers as part of existing retail markets. There are relatively few cases of mergers between pure e-commerce platforms of retailers. To date the existing approaches used by authorities have been flexible enough to adapt to these new forms of operators.
2. Consumers' organisations are concerned about the combination of two factors in e-commerce, firstly, the extraction of data from consumers, often without their knowledge and secondly, the increasing concentration among those that control that data. In combination we are concerned that the normal operation of the market, through reference pricing and bid-offer transparency, may be impaired to the dis-benefit of consumers.

2. Summary

- E-commerce firms extract significant data from consumers in the normal part of business
- Consumers rely on reference pricing to judge prices that are offered to them
- Data collection and market power combined by undermine reference pricing, allowing discrimination against consumers, including on price.

3. Treatment of market problems in e-commerce

3. We would be concerned that the assumption behind the question suggests that there is something unique about e-commerce that requires a rethinking of existing approaches. We would rather assume that e-commerce presents similar problems to existing markets, but in a manner that may differ in some aspects. E-commerce is so deeply integrated into existing markets in a number of sectors that it is more an alternative fulfillment and delivery mechanism for activities that can be carried out less efficiently offline. We have seen few cases come before agencies that have been of such a different nature that they have been unable to analyze them within existing frameworks, or in a manner where existing frameworks can be adapted.

4. Market definition in the e-commerce area

4. We have seen few examples of agencies unable to apply existing market definition methodologies to markets with significant e-commerce involvement. Significant e-commerce activity can make a difference in entry barrier assessment. There can be significant challenges with data collection from e-commerce companies, particularly if they are administratively small enterprises without significant numbers of staff or legal advisers. Significant E-commerce activity in a market can also lead to a

proliferation of smaller businesses often trading across borders with greater regularity and in a less visible manner than offline retailers. This can pose challenges for data collection.

5. Cartels or other collusive conduct in e-commerce markets

5. We have no specific experience in this area, although we would observe that cartelists and others engaged in anti-competitive behavior seem particularly able to deploy new technologies over time to facilitate collusion.

6. Vertical restraints in e-commerce markets

6. Consumers' organisations have long taken a skeptical view of the benefits of vertical restraints in retail markets. We recognize the theoretical benefits of such restraints, but often only see the choice and competition restricting effects of such agreements. The most troubling form of restriction, networks of selective and exclusive distribution, when applied in e-commerce markets are particularly troubling. Consumers tend to view e-commerce markets as offering greater choice and availability. If brands are allowed to restrict access of e-tailers to their products then consumers will lose one of the key potential benefits of e-commerce. We see no particular reason to treat offline and online restrictions on commerce differently.

7. Providing that the market analysis is flexible enough to cover both offline and online commerce, we see no obvious reason to treat those restrictions differently.

7. Abusive dominant or monopoly firm conduct in e-commerce markets

8. We can obviously only provide observations in this instance, but we would point agencies and authorities to concerns consumers' organisations have in relation to the control and ownership of consumer data. In instances where e-commerce providers or platforms have considerable consumer data and act as gatekeepers for other retailers, we think that any considerations on dominance or market restrictions would need to take account of this convergence of factors.

8. Merger control involving firms active in e-commerce markets

9. We have no specific comments on this matter.

9. Market practices intended to limit access to online advertising or comparison shopping services, to the detriment of e-commerce operators or customers

10. We would observe that the markets for online advertising and the control of the data to make that advertising market function appear to be becoming increasingly concentrated. We would again, draw the attention of participants the importance of data extracted from consumers for the dominance in those markets, and the lack of understanding by consumers of the sort of data that is extracted from them.

10. Market studies or other non-enforcement focused investigations into the operation of competition in e-commerce or related markets

11. We would consider one of the benefits of some agencies' structures is the combination of consumer and competition powers in the one agency. We think that having combined powers allows agencies to focus on market and consumer problems in the first instance and then worry about which division the solution lies under in the second instance. Having both sets of powers, either inside the organisation or in cooperation across organisations allows agencies a larger toolkit to solve the problems identified in investigations.

11. Market problems in the e-commerce sector subject to regulatory efforts outside the realms of competition law (e.g. data protection, consumer protection laws)

12. We consider this question to be slightly skewed. The management of data, privacy and consumer protection issues is a shared responsibility often across a large number of different agencies. The laws, enforcement practices and norms within those areas will affect the operation of the market. Any intervention by a competition agency will have to be cognizant of the different laws and responsibilities of other agencies. Crafting remedies in cases involving e-commerce will almost certainly involve disciplines outside of the normal scope of competition agencies and mandate cooperation across these disciplines in ways that competition agencies may not be comfortable or conversant with.

12. Competition challenges in e-commerce markets in the next five to ten years

13. Consumers' organisations are increasingly looking at the personalization of products and services in e-commerce markets. For consumers to be able to operate effectively in markets they need to be able to judge the offers that are made to them against both the offers made to others and the offers made to them in the past. Reference pricing is key to a transparent and effective market. If increasingly intrusive data collection allows e-commerce operators with market power, or tied to those with market power, to fully understand the willingness to pay of individual consumers on a good-by-good and service-by-service basis, the normal role of pricing in the market economy will change. If consumers are unable to assess published prices in the normal manner, they will effectively be facing a manifestation of market power in almost every transaction. Combined with actual market power and an ability to restrict arbitrage and consumer welfare losses could be significant.