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English - Or. English

19 May 2022

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Integrating Consumer Behaviour Insights in Competition Enforcement – Note by South Africa

24 June 2022

This document reproduces a written contribution from South Africa submitted for Item 9 of the 138th OECD Competition Committee meeting on 22-24 June 2022.

More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/behavioural-insights-in-competition-enforcement.htm>

Antonio CAPOBIANCO
Antonio.Capobianco@oecd.org, +(33-1) 45 24 98 08

JT03495614

South Africa

1. Introduction

1. Understanding consumer demand behaviour is an essential element of the economic analysis underpinning competition law enforcement. Historically, consumer demand behaviour insights have found most application in the market definition exercise, with a focus on more traditional industrial organisational theory such as actual or likely product substitution behaviour, consumer shopping journeys to determine geographic markets and the extent of switching costs. The typical sources of evidence for this demand behaviour has been used, including consumer research by respondents, data on actual consumer consumption and switching behaviour, natural experiments and the occasional consumer survey.

2. Behavioural economics insights into consumer heuristic decision-making¹ and how these impact on competition has typically found less application except in quite specific cases such as the role of category management in influencing consumer choice in brick & mortar retail. That said, how consumers limit the stores or geographic areas within their purchase journeys is itself likely to be the result of heuristic decision-making.

3. However, with the advent of digital markets where heuristic decision-making by consumers is far more prevalent given the vastly greater choice and access to information, the behavioural economics insights have become more important in the economic analysis to improve enforcement decisions. This importance is reinforced by the fact that firms specifically seek to exploit the decision-making heuristics of consumers in their online business models, making the behaviour central to competition, conduct and remedies in online markets.

4. To understand online consumer behaviour, the Competition Commission of South Africa (“CCSA”) has utilised a wide range of evidence including academic studies, consumer research by respondents including consumer surveys and focus groups, consumer online tracking data by the respondents and by third party web traffic services, sales pitches by online platforms, and surveys in respect of business users rather than consumers. The primary focus of this submission is to provide illustrative examples of where consumer behaviour insights have been used to improve enforcement.

2. Role of consumer behaviour insights in digital market enforcement

5. In digital markets, consumers are seemingly able to easily access vast amounts of information, compare pricing and product reviews across a wide range of stores (both online and brick & mortar) and purchase from many alternatives without leaving their couch. This might lead to the potentially erroneous conclusion that consumers conduct extensive research in making all online purchase decisions and that the extent of competition is very broad. As behavioural economics has shown, when faced with overwhelming choice, consumers may adopt heuristic decision-making to simplify decision-making. Decisions may also be shaped by time scarcity and behavioural biases. It

¹ Heuristics are commonly defined as cognitive shortcuts or rules of thumb that simplify decisions, especially under conditions of uncertainty.

has therefore been important to understand consumer behaviour to assess competition and conduct accurately.

6. In the recent *MIH-WeBuyCars* merger prohibition case and the ongoing *Online Intermediation Platforms Market Inquiry* (“Online Platforms Inquiry” or “Inquiry”), the CCSA has sought to establish consumer online behaviour through various forms of evidence in respect of market delineation, unilateral conduct and remedial action.

2.1. MIH-WeBuyCars

7. The *MIH-WeBuyCars* merger transaction² involved the acquisition of the largest car buying service by Naspers, a company with the largest vertical automotive classifieds (Autotrader) and horizontal classifieds (OLX) platforms in South Africa. The merger raised concerns of potential entry and conglomerate effects. This made prominent the issues of market definition, in car buying and classifieds, as well as the ability and impact of self-preferencing. Interestingly, evidence of apparent consumer behaviour was frequently put forward by the merging parties but with misleading interpretation. This highlighted the need to complement consumer behaviour data with business and consumer engagement in order to understand what the data was telling us. A few examples are provided below.

2.1.1. The car buying service funnel and competitors

8. Specialist car buying services took online queries for valuations and then offered the convenience of providing instant valuations and concluding the transaction within hours at the consumer’s home. A key question for the merger assessment was the extent to which specialist car buying services were constrained by car dealers that accepted trade-ins and private sales channels (such as horizontal classifieds). This would determine whether potential entry of another car buying service would lessen competition or not.

9. The merging parties put forward that many car dealerships now advertised their car buying services on their websites. Further, of all the valuation queries on the merging parties own platform, only 15% led to purchases, inferring that the balance were sold elsewhere (as queries are associated with the intent to sell). This provided a version of consumer behaviour which was important to test.

10. Consumer web browsing behaviour in the form of website traffic, along with other evidence, was used to demonstrate that consumers were not visiting dealers in any significant numbers. This was reinforced by the high marketing spend on Google Search by car buying services and their prominent ranking on the Google search engine results page (SERP), known to drive more traffic through other consumer behaviour research. A consumer survey by the consumer to consumer (C2C) (or horizontal) classifieds platform also revealed that whilst consumers may use private listings and other car buying services, it was only once they failed to sell through private listings that they turned to car buying services. Private listings were no longer a constraint at that point. Evidence also indicated that car buying services do not seek to compete for trade-ins as the car dealers are able to combine the sale with a purchase to make the sale more convenient and attractive. In that context consumer behaviour is driven by the purchase not the sale.

11. Understanding the car buying funnel and the consumer behaviour that resulted in only a fraction of queries being bought required the insights of other car buying services. It turned out that many consumers do periodically check valuations to see if a sale is

² Competition Tribunal Case no. LM183Sept18 MIH eCommerce Holdings and We Buy Cars, available at <https://www.comptrib.co.za/case-detail/8539>

possible given their financial debt on the vehicle and car dealers may also request valuations to check prices offered with no intent to sell a vehicle to the car buying service. Car buying services then use a variety of filtering mechanisms to weed out non-serious sellers, those who are ‘under-water’ on debt payments and those with vehicles that may be difficult to resell. This was done to reduce the overall costs of successful purchases which involves visiting consumers to conclude transactions. A high proportion of those consumers visited resulted in a purchase indicating the success of car buying services for those consumers that they actively targeted. This was a very different understanding of consumer behaviour to that put forward by the merging parties.

2.1.2. Classifieds vs own websites

12. For the conglomerate effects analysis, such as self-preferencing and the use of data, the extent to which automotive classifieds competed with dealer websites and other sources of leads for the sale of motor vehicles was relevant. The merging parties submitted that consumer’s online behaviour included direct traffic to dealer websites, indicating that consumers search beyond aggregator sites. The merging parties also submitted that because consumers visited multiple sites in a journey, this demonstrated the strong constraints on classifieds platforms and the ease of entry for new platforms.

13. The CCSA relied extensively on the consumer research commissioned by the automotive vertical platform itself to understand the consumer online journey, the share of traffic and unique users of classified platforms, and the reasons consumers made use of aggregator platforms. The consumer research provided important insights behind the apparent multi-homing conduct of consumers. The research revealed that consumers will frequently have a preferred aggregator, where the multi-homing was often used as a check on pricing, a check on whether there were any missing listings and if they failed to find what they were looking for. Consumers did not undertake extensive search across multiple platforms and over time often did not search beyond their preferred platform as previous checks revealed that their platform had all the listings at the same price. Loyalty and unique platform users was therefore a growing feature of the market.

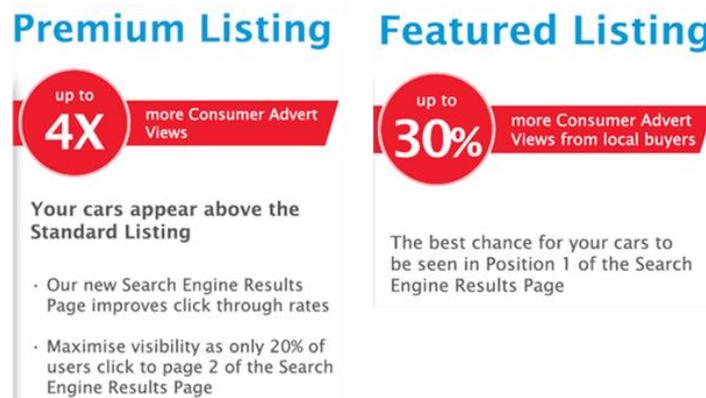
2.1.3. The ability and effect of self-preferencing

14. A concern raised was whether post-merger the automotive vertical classifieds could self-preference the car buying service in the sale of vehicles on its classifieds platform. The merging parties argued that there was no incentive to self-preference as this would degrade the consumer experience by placing less relevant search results before them, which in turn would result in consumers leaving the platform, making it less valuable to dealers and putting the platform into a death spiral.

15. However, the evidence that informed likely consumer behaviour was that Autotrader had introduced and grown extensively the use of promotional slots within its search results page that were not clearly marked as adverts. This was a form of preferencing, involving adjustments to the most relevant results to insert paid ads, that had not resulted in consumers leaving the platform. Consumer traffic had continued to grow, also in the context where the main rival did not offer promotional slots. This evidence strongly suggested that search ranking results could be adjusted without degrading the consumer experience. Under cross-examination, the merging parties confirmed that placing a Volvo listing following a search for BMW would degrade the consumer experience but where a platform had a large number of BMW listings then adjusting the listing order was not degrading.

16. In determining the potential impact of any potential self-preferencing conduct, the CCSA relied on the automotive vertical classifieds consumer search and click through behaviour to support its efforts to sell promotional slots to dealers. As illustrated in the examples below, that promotion identified how often consumers went to page 2 of the SERP and the higher click through rates (CTRs) associated with the top positions.

Figure 1. Autotrader sales pitches for premium and featured listing



2.2. Online Intermediation Platforms Market Inquiry

17. The Inquiry has focused on business-to-consumer (B2C) platforms, including eCommerce, travel, accommodation, app stores, food delivery, price comparator sites and online classifieds, as well as the role of search in platform competition. The Inquiry was initiated based on concerns related to platform competition tipping in favour of leading platforms and the potential distortion of competition between business users, as well as their exploitation by dominant platforms.

18. Given the focus on B2C platforms, insights into the online behaviour of consumers have been an important element in analysing the various issues that have arisen. This includes, but is not limited to, the following:

- Delineating the set of close competitors and competitive constraints through understanding the consumer journey and online search behaviour for goods and services from platforms as well as direct channels of businesses;
- The importance of general search in the consumer journey and the extent to which it may be influencing consumer traffic and hence competition amongst platforms;
- The importance of visibility and ranking in consumer search on platform for consumer choice and the likely heuristics that play out in selecting from a search result; and
- The likely impact of certain remedial action given the behaviour of consumers in their online search journey.

19. The Inquiry has drawn extensively on the internal consumer behavioural research of platforms (including commissioned research), granular online tracking data of consumer search and click behaviour (including platform's data and web traffic analysis) and in some cases natural experiments where conduct has changed or differs across jurisdictions or platform experiments conducted to understand how consumers respond to changes in the

choice architecture. The vast amount of data on revealed consumer behaviour and company research has provided the basis for understanding consumer online behaviour.

20. Where the Inquiry has sought to undertake surveys is in respect of business users that sell through the platforms as many of the key issues in relation to these users are not readily measured through online behavioural data. Surveys have also been useful given the large number of small and medium enterprises (SMEs) using the platforms, rendering direct approaches to individual users less informative than surveys.

3. Consumer behaviour outside of online markets

3.1. Consumer behaviour during a pandemic

21. The recent pandemic has also brought to the fore the role of consumer decision-making in disaster situations where either their movements, and hence choices, may be more constrained than usual, or where considerations such as immediacy or securing essential goods drives decision rather than price comparison in search. Prosecutions for price gouging by the CCSA during the pandemic were largely based on understanding the change in consumer behavioural dynamics at critical points in the pandemic.

22. In the *Babelegi*³ and *Dischem*⁴ cases which focused on the retail of face masks, the restrictions on movement and the dynamics of panic buying were used as part of the evidence in determining that retailers that might otherwise not be dominant, may have market power in a pandemic. This is in part due to a far narrower geographic market for consumer movement and shopping, but also that consumers will likely purchase where stocks are available despite a high price for fear that the essential goods may sell out if they looked to shop around. This is rational behaviour where there is scarcity of supply for essential goods.

23. In the recent *Tsutsumani*⁵ case which involved price gouging in the supply of face masks to the South African Police Services (SAPS) following the announcement of a State of Disaster, the same behavioural dynamics played out. The SAPS was faced with securing sufficient masks within days to protect their force of 197,000 officers to police the lockdown and support citizens during this period. Whilst the SAPS went out on a request for quotation, they had many contracted suppliers fail to deliver given the scarcity and competing demands of corporates and other government departments. This resulted in the SAPS procurement officers purchasing what they could at whatever price for fear that if they pass over the offer then they may fail to find other stock, putting operational requirements at risk.

3.2. Historic use of consumer insights

24. Outside of digital markets and pandemics, evidence on consumer behaviour has most frequently been used to understand geographic and product markets. For geographic markets the aspect of interest is typically the radius of consumer travel for the specific type

³ Competition Tribunal case no. CR003Apr20 Competition Commission v Babelegi Workwear, available at <https://www.comptrib.co.za/case-detail/9098>

⁴ Competition Tribunal case no. CR008Apr20 Competition Commission v Dis-Chem Pharmacies, available at <https://www.comptrib.co.za/case-detail/9112>

⁵ Competition Tribunal case no. COVCR113Sep20 Competition Commission v Babelegi Workwear, available at <https://www.comptrib.co.za/case-detail/19320>

of shopping journeys. For product markets it is the extent to which consumers consider alternatives as substitutable.

25. For markets that are often the subject of merger filings, the CCSA may rely on precedent drawn from an earlier decision of the Competition Tribunal (the adjudicative body in South Africa) rather than engage in a new consumer survey. For instance, based on case precedent it is common to use a 50km radius for farmers accessing grain silos, an 80km radius for consumers purchasing motor vehicles, and a 5–10-minute drive time or 5km radius for grocery shopping and other retail excursions like pharmacy.

26. However, whilst some of these behavioural ‘rules of thumb’ may remain relevant over time, it is also possible that some have become dated especially where online research takes place or online purchasing is an alternative. Furthermore, frequently the ‘rules of thumb’ are applied to consumers more broadly rather than a subset of consumers that may warrant closer competition law scrutiny such as lower income households. In such cases, the CCSA merger team has reassessed the precedent with new surveys or other behavioural insights from internal documents or outside research. For example, in some recent merger cases where the investigative teams have reassessed the consumer conduct, revisions have had to be made:

- In the *Senwes-Suidwes*⁶ merger that raised the issue of grain silo storage competition, engagements with farmers and a review of delivery data demonstrated that a 30km radius was more appropriate than the previously held 50km radius resulting in the need for structural remedies.
- In the *Shoprite-Massmart* grocery retail merger focused on low-income consumers, a narrower 2-3km radius was found to be appropriate rather than a precedent of a 10-minute drive time. Engagements with an NGO tracking female shoppers in informal settlements suggested a 1km walking distance or a short R10-R15 (\$1) taxi ride as consumers do not own motor vehicles.

27. The CCSA will run surveys for markets that are analysed less frequently and where market definition is a material element of the analysis and the potential decision to prohibit or not. However, the CCSA experience is also that consumer surveys are hotly contested in formal hearings because they are easy targets for creating doubt over the statistical significance of the results, or the potential for ambiguity or bias in the way questions have been framed. These challenges are exacerbated by a lack of experience amongst domestic survey companies in designing and administering surveys for the purpose of competition law issues, and experience in defending the results in litigation. This typically means that consumer surveys on their own are insufficient to draw conclusions in contested mergers or unilateral conduct cases and there is a need to sense-check the results against other evidence.

- In the *Massmart-Finro*⁷ merger involving the market for wholesale grocery, the CCSA conducted a survey of customers of the target and acquiring firms in the geographic area of overlap. The survey results suggested a high diversion ratio between the merging parties which would then likely result in a substantial lessening of competition. However, the survey came in for heavy criticism in the proceedings before the Tribunal whose decision ultimately found that there was

⁶ Competition Tribunal case no. LM001Apr20 *Senwesbel and Suidwes Holdings*, available at <https://www.comptrib.co.za/case-detail/9094>

⁷ Competition Tribunal case no. LM113Jan09 *Massmart Holdings and Finro Enterprises*, available at <https://www.comptrib.co.za/case-detail/5328>

extreme uncertainty over the statistical significance of the results, that the survey results in respect of diversion and price effects were implausible and that the questions and way the survey was administered played a role in the results being unreliable.

- In the *Van Schaik/Juta* merger involving the market for academic books, the CCSA undertook a survey to provide insights from university students on the effective competitors and the extent to which the merging parties are considered as close competitors in the market for academic books. The survey also provided insights on the purchasing journey of students and how far they are willing to travel – which informed the geographic market radius ultimately decided on. The CCSA had learnt from the previous survey’s to ensure that the results were more reliable. The merger was prohibited by the CCSA and that decision was not contested further at the Tribunal.

4. Concluding remarks

28. A review of individual cases the Commission has worked on shows that consumer insights are incorporated into the analytical framework, including understandings of biases and heuristics, for more important cases. However, there may be a need to deepen our understanding of consumer behaviour across income groups, geographic areas and the role of decision-making heuristics and biases in the brick and mortar economy where these no doubt play a role in consumer choice.

29. For this reason the CCSA’s Economic Research Bureau has initiated a project to pre-emptively research and update the CCSA’s understanding of consumer behaviour in markets that are frequently the subject of merger filings or conduct investigations. The project will also seek to understand consumer behaviour in different income groups and geographic areas (i.e. metro vs secondary cities, urban vs peri-urban areas). The research aims to make use of consumer surveys and focus groups to establish reliable evidence to direct investigations and enforcement decisions.

30. In conclusion, the CCSA is of the view that consumer behavioural insights are an essential element to informed and effective competition law enforcement. It is important to focus on both the revealed consumer substitution and switching cost that informs the traditional industrial organisation literature but also the decision-making heuristics and biases that simplify the decision-making that has been the subject of behavioural economics. Increasingly companies are using the behavioural insights to shape conduct and compete in markets, and competition agencies need to be doing the same if they are to properly understand competition in these markets. Consumer behavioural insights also need to inform potential remedial action to ensure that it is effective in addressing conduct without unintended consequences. Competition agencies may also benefit from the type of experimentation that companies routinely conduct on a sample of consumers to trial and design effective remedies.