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**Competition and Consumer Policy in Digital Markets – Note by Poland**

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## Poland

### The Interaction Between Competition Law and Consumer Policy in Digital Markets: Exploitative Practices and Behavioural Barriers

#### 1. Introduction

1. In this contribution prepared by the Polish Office of Competition and Consumer Protection (pol. *Urząd Ochrony Konkurencji i Konsumentów*, hereinafter: “PCA” or “UOKiK”), we share our current considerations on the interaction between competition law and consumer policy in digital markets.

2. Digital markets have significantly reshaped the relationship between competition law and consumer protection. Large online platforms<sup>1</sup> not only influence market structures and competitive dynamics, but also affect the conditions under which consumers access services, share data, and interact online. As a result, practices harming consumers may simultaneously raise competition concerns, while weak competition may facilitate new forms of consumer exploitation.

3. The durability of incumbent platforms’ market position is evidenced not only by the size of their end-user base, but also by the engagement of business users – in the case of marketplaces, independent sellers. According to the latest OECD report on online marketplaces, a high concentration of the seller side of core general online marketplaces has been observed in Poland, Lithuania and Latvia.<sup>2</sup> This appears to be driven by factors such as indirect network effects, the need to reach a critical mass of users, vertical integration and brand awareness.

4. At the same time, digital markets challenge many of the analytical assumptions underlying traditional competition law enforcement. Classical indicators and methods for assessing exploitative conduct may prove insufficient or outdated for instance in the face of complex pricing mechanisms, aggressive data collection or technological and behavioural lock-in effects.

5. This contribution examines the interaction between competition law and consumer policy in digital markets, with particular focus on exploitative practices and behavioural barriers to competition. It argues that switching costs, lack of multihoming, network effects, and data-driven lock-in mechanisms not only strengthen incumbents and limit market contestability, but may also facilitate the exploitation of users. The relationship between competition law and consumer policy in digital markets is increasingly close and, in many respects, inseparable.

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<sup>1</sup> A multi-sided platform is a business model or digital intermediary that facilitates interactions between two or more distinct but interdependent groups of users, where the value for each group depends on the participation of the others.

<sup>2</sup> OECD, “*Market Study of Online Marketplaces in Poland, Latvia and Lithuania*”, 2026, p.172.

## 2. Switching cost and lack of multihoming

6. Digital markets are particularly dependent on maintaining very large user bases, often significantly larger than in traditional markets. Providers of digital services frequently serve millions of users, which means that interventions of competition authorities may have significant implications for large groups of consumers. Consequently, the interaction between competition law and consumer policy is especially visible in this context.

7. One may therefore ask why, in such innovative markets, it remains so difficult to challenge incumbents that have already secured a significant user base. In other words, why are these undertakings often not threatened by potential competitors and therefore able to engage in exploitative conduct which may affect consumers?

8. In order to answer this question, it is necessary to examine the characteristics of digital markets, in particular the factors that may be classified as barriers to entry.<sup>3</sup> There are many ways of categorizing barriers to entry, but one useful distinction classifies barriers by sources, i.e. between structural (often also called natural), artificial (strategic), and legal (regulatory).<sup>4</sup> From the perspective of the interaction between competition law and consumer policy in digital markets, however, particular attention should also be devoted to an additional category: behavioural barriers, namely barriers closely connected with users' decisions, habits, and experience. It is precisely in this area that one can most clearly observe how platform-driven mechanisms influencing user experience affect the competitive position of rival platforms. In other words, behavioural barriers constitute the point at which consumer-related practices directly affect competition.

9. A key behavioural barrier may consist in switching costs and the lack of multihoming, which ultimately becomes a source of incumbency advantage.<sup>5</sup> Competition authorities should therefore pay particular attention to practices employed by platform providers that artificially hinder users from changing service providers. Switching costs refer to the obstacles users face when attempting to move from one service to another. In digital markets, these costs may arise from data lock-in, loss of social connections, or the need to relearn interfaces. Even when services are nominally free, switching can be costly in terms of time, effort, and lost functionality. High switching costs reduce user mobility and weaken competitive pressure on incumbents.

10. The lack of multihoming – where users engage with only one platform rather than multiple competing ones – further amplifies this effect. For some services users tend to concentrate their activity on a single platform because the value of the service depends on where others are. This creates coordination problems that discourage the use of alternative providers.

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<sup>3</sup> Barrier to entry could be defined as “anything that prevents an entrepreneur from instantaneously creating a new firm in a market. A long-run barrier to entry is a cost necessarily incurred by a new entrant that incumbents do not (or have not had to) bear”; Carlton D., Perloff J., “*Modern Industrial Organization*”, Reading, New York, NY: Harper Collins College Publishers, 1994, p. 110.

<sup>4</sup> OECD, Directorate for Financial and Enterprise Affairs, Competition Committee, “*Barriers to entry. Policy Roundtables*”, DAF/COMP(2005)42, 2005, p. 128, p.194.

<sup>5</sup> Siciliani P. and Giovannetti E. “*Platform Competition and Incumbency Advantage under Heterogeneous Switching Cost — Exploring the Impact of Data Portability*” (December 20, 2019). Bank of England Working Paper No. 839, December 2019, Available at SSRN: <https://ssrn.com/abstract=3508658> or <http://dx.doi.org/10.2139/ssrn.3508658>, p. 4-5.

11. Network effects are also important to this dynamic, because together with switching costs they create similar lock-in mechanisms.<sup>6</sup> A platform becomes more valuable as more users join, which in turn attracts even more users. These positive feedback loops can rapidly lead to market tipping, where one firm achieves a dominant position that is difficult to challenge. Once tipping occurs, competitors may struggle to gain traction, even if they offer superior features.

12. High switching costs discourage multihoming, which in turn strengthens network effects. Together, these forces can lock markets into stable but highly concentrated equilibria. On the other hand, strong network effects increase the benefits of users staying on a dominant platform, thereby raising switching costs. These phenomena are not only interconnected but also mutually reinforcing.

13. Importantly, switching costs, lack of multihoming, network effects, and market tipping can also function as barriers to entry and expansion. New entrants must overcome not only technological and financial challenges but also entrenched user bases. Even innovative firms may fail to attract users if they cannot replicate the network benefits offered by incumbents.<sup>7</sup>

14. These barriers are often compounded by data advantages. Incumbent platforms accumulate vast amounts of user data, which can be used to improve services, target advertising, and refine algorithms. This creates a positive feedback loop where more users generate more data, which improves the service and attracts even more users – further strengthening the incumbent’s position.

15. Moreover, these barriers can be strategically reinforced by incumbents. Firms may design their systems to increase switching costs, for example by limiting data portability or making interoperability difficult. They may also engage in practices that discourage multihoming, such as exclusivity arrangements or technical restrictions. Additionally, incumbents can leverage their ecosystem control to favour their own services, thereby strengthening network effects in adjacent markets.

16. An example of market position leveraging was self-preferencing of its own retail activity on the Allegro platform. As a provider of marketplace services, Allegro enabled independent sellers to reach consumers through its platform, but also operated as a retailer itself, favouring its own offers by granting itself a better positioning of its offers and displaying them in a more favourable manner in the search results visible to consumers. Such practice in a strategic manner affected competition and impeded market expansion of independent sellers. UOKiK imposed a fine of over PLN 206 million on Allegro for abusing its dominant market position.<sup>8</sup>

17. UOKiK is now also conducting explanatory proceedings (case no. DOK-7.400.1.2025) concerning possible favouring of Allegro’s own logistics services, including deliveries to Allegro One Box parcel lockers and services rendered by entrepreneurs

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<sup>6</sup> Czajkowski M., Sobolewski M., *"Switching Costs and Network Effects – How Much Do they Really Matter in Mobile Telecommunications?"*, Working Papers No. 29/2013 (114), p.2.

<sup>7</sup> It is also worth noting that the number of users itself constitutes a central dimension of competition between platforms. A larger user base not only increases the value of the platform for users, but also enhances the platform’s ability to sell advertising space at higher prices.

<sup>8</sup> See: *"President of UOKiK issued two decisions concerning Allegro's practices"* Site: [https://archiwum.uokik.gov.pl/aktualnosci.php?news\\_id=19185](https://archiwum.uokik.gov.pl/aktualnosci.php?news_id=19185)

belonging to the Allegro Delivery programme, on the allegro.pl e-commerce platform.<sup>9</sup> The suspected actions could put courier companies not belonging to that programme at a disadvantage by steering consumers to Allegro's own services.

18. UOKiK observes that barriers to entry present in digital markets not only could contribute to the exclusion of competitors, but could also facilitate consumers' exploitation. This therefore constitutes another example of the synergy between competition law and consumer policy, since "*the higher the entry barriers, the larger the monopolist's portion of the total welfare created by the transaction and the smaller the consumer's*".<sup>10</sup>

### 3. Exploitative practices in digital markets and new measuring methods

19. One important dimension of the interaction between competition law and consumer policy concerns the use of competition law to address exploitative conduct. Although competition authorities most often focus their intervention on exclusionary conduct, it should not be omitted that exploitation also occurs in digital markets.

20. Exploitation in digital markets may take various forms. The most evident example is, of course, exploitation based on the imposition of unfair prices. This constitutes the classical and most common form of exploitation.

21. Polish Office of Competition and Consumer Protection has investigated such cases, for example assessing whether prices charged by platforms for car listings were excessive.<sup>11</sup> For the purposes of these proceedings, UOKiK applied the classical methods of assessing unfair pricing, relying on comparative and cost-based methodologies.<sup>12</sup> Accordingly, the PCA examined whether similar services were offered at comparably high prices (e.g. listing fees), and whether prices in other countries — including when adjusted for purchasing power — were similarly high. Under the cost-based approach, the costs and profits of the investigated platform provider were also analysed.<sup>13</sup>

22. However, such an analysis must reflect the characteristics of the digital economy. In particular, it should take into account the multi-sided nature of online platforms, where operators typically need to attract and retain distinct groups of users simultaneously. In many cases, the initial price level on one side of the platform is intentionally set very low – or even at zero level – as part of a strategy aimed at building network effects and achieving sufficient scale and user engagement on both sides of the platform.

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<sup>9</sup> See: "*Does Allegro restrict competition? Search conducted by UOKiK*" Site: <https://uokik.gov.pl/en/does-allegro-restrict-competition-search-conducted-by-uokik> Case no. DOK-7.400.2.2025.

<sup>10</sup> Gal M.S. "*Abuse of dominance – exploitative abuses*," in: Lianos I. & Geradin D. (ed.), "*Handbook on European Competition Law*", chapter 9, pages 385-422, Edward Elgar Publishing, 2013, p. 3.

<sup>11</sup> Case no. DOK-2.400.5.17.MJ aimed to determine whether the shaping of the terms and conditions, including pricing, for publishing automotive advertisements on online platforms may have resulted in a breach of competition rules.

<sup>12</sup> Akman P. "*The Role of Exploitation in Abuse under Article 82 EC*", Cambridge Yearbook of European Legal Studies. 2009;11:165-188. doi:10.5235/152888712802730684, p.13-15. See also Lyons B., "*The Paradox of the Exclusion of Exploitative Abuse*", CCP Working Paper No. 08-1 20, 2008, section 1.3.1.

<sup>13</sup> These explanatory proceedings were concluded without formal antitrust proceedings being instituted.

23. UOKiK is also currently conducting explanatory proceedings concerning a real estate advertising platform.<sup>14</sup> The case concerns the examination of the transparency of the rules for setting fees, as well as the differentiation of cooperation terms with real estate agencies.

24. While in most cases, particularly concerning traditional markets, comparative and cost-based methodologies can be applied without major difficulties, digital markets present situations in which exploitation escapes classical methods of analysis.<sup>15</sup> This is particularly the case with the use of advanced pricing tools by platforms. Such tools may enable dynamic pricing that in aggressive form may exploit targeted groups of users.

25. At times, functionalities of platforms provided to business users - for instance, tools facilitating currency conversion and price calculations - may result in the exploitation of end users. Such a case is currently being examined by UOKiK in explanatory proceedings concerning the gaming market.<sup>16</sup> The platform provider offered game publishers a currency conversion mechanism in which the exchange rate of the Polish currency had not been updated following the depreciation of the US dollar against the Polish złoty. The ability of a platform to maintain such pricing conditions may reflect lack of effective competitive constraints.

26. It should therefore be expected that, alongside increasingly sophisticated forms of exploitation in digital markets, new methods for their assessment will also emerge. Consequently, the legal standards and analytical frameworks for demonstrating exploitation — as developed in past case law — are likely to evolve.

27. It is worth emphasizing, however, that price exploitation of platform users is not the only possible form of exploitation. In digital markets, harm often does not take the classical form of higher prices. As it was already noted, many platform services are offered at a “zero” monetary price, which may obscure the real burden borne by users. Consumers may instead “pay” through the surrender of personal data, reduced privacy, exposure to behavioural profiling, attention capture, or acceptance of opaque and unfavourable terms of service.

28. In terms of non-monetary effects of exploitation on consumers, harm may also arise through reduced freedom of choice, particularly where users become locked into a platform ecosystem, face significant switching costs, or are confronted with self-preferencing practices that distort visibility and access to competing services. In addition, the concentration of data and control over digital infrastructures may weaken innovation

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<sup>14</sup> Case no. DOK-7.400.1.2026 aims to determine whether the shaping of the terms and conditions, including pricing, for publishing real estate advertisements on online platforms may have resulted in a breach of competition rules.. See: "Changes to the terms and conditions of the Otodom portal. The President of UOKiK says: 'We're taking a closer look'" site: <https://uokik.gov.pl/en/changes-to-the-terms-and-conditions-of-the-otodom-portal-the-president-of-uokik-says-were-taking-a-closer-look> .

<sup>15</sup> Botta M., Wiedemann K. “*Exploitative Conducts in Digital Markets: Time for a Discussion after the Facebook Decision*” *Journal of European Competition Law & Practice*, 2019, Vol. 10, No. 8, p.467-469. See also “Botta M. “*Exploitative Abuses: Recent Trends and Comparative Perspectives*”, Available at SSRN: <https://ssrn.com/abstract=3909894> or <http://dx.doi.org/10.2139/ssrn.3909894>, 2021,

<sup>16</sup> Case no. DOK-7.400.3.2023.MM aims to determine whether the activities of undertakings in the areas of sales, online intermediation services, and distribution of video games, including PC games, console games, and mobile games, may have resulted in an infringement of competition rules. See: “*Video game market - preliminary investigation*” <https://uokik.gov.pl/en/video-game-market-preliminary-investigation> .

incentives, reduce quality, transparency, and diversity of services, and ultimately undermine consumer welfare even in the absence of directly observable price increases.

29. One can already observe that platforms increasingly rely on users' data as an important source of economic value. It is often argued that data and privacy are becoming particularly sensitive assets in the digital economy. While users benefit from access to innovative technological tools and personalized services, these advantages may also involve broader collection and processing of personal information. For example, repeated interactions with AI systems may enable service providers to infer increasingly detailed information about users' preferences, behaviour, or interests.

30. The collection and use of personal data is only one aspect of the broader issue. Platforms possessing vast datasets not only enjoy a significant competitive advantage over rivals, but may also derive additional economic benefits from such data, for example by combining data across services, improving targeted advertising, or sharing data with third parties. As a result, access to large volumes of user data may strengthen market power and further reinforce the position of incumbent platforms.

31. There may be cases where the protection of privacy is invoked as a feigned reason for conduct that, in substance, could constitute an infringement of competition law. UOKiK in 2025 brought charges of abuse of a dominant position against Apple, suspecting that the way the App Tracking Transparency Framework policy is implemented in Apple's operating systems could lead to unfair restrictions on competition.<sup>17</sup> Conditions for obtaining consent to provide personalised advertising may have particularly affected independent mobile app publishers, including Polish entrepreneurs. Restrictions on access to data could limit their ability to offer personalised advertising, reduce the value of advertising space sold within their applications, and weaken their negotiating position with advertisers.

32. Accordingly, UOKiK recognizes emerging forms of exploitation as an area requiring careful and timely intervention. Competition law becomes relevant here because these harms may be sustained by market power as well as new types of misconduct. In other words, the fact that a platform can impose exploitative conditions at scale may indicate that competition in the market is not functioning well. Competition enforcement can therefore play a corrective role by targeting the structural conditions and new form of behaviours that allow exploitation to persist.

#### 4. Conclusion

33. Digital markets have fundamentally transformed the relationship between competition law and consumer protection. In platform-based economies, consumer harm and competitive harm increasingly overlap, as dominant undertakings may exploit users precisely because market structures and behavioural barriers weaken competitive constraints. Consequently, the interaction between competition law and consumer policy becomes particularly visible in digital environments characterized by strong network effects, data concentration, switching costs, and user lock-in.

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<sup>17</sup> Case no. DOK-7.411.1.20 covers suspected abuse of a dominant position consisting in the imposition of unfair contractual terms, set out in the policy known as the 'App Tracking Transparency Framework', regarding the use of user data for advertising purposes. See "Is Apple restricting competition? President of UOKiK brings charges" <https://uokik.gov.pl/en/is-apple-restricting-competition-president-of-uokik-brings-charges>

34. The analysis presented in this paper demonstrates that exploitative conduct in digital markets extends beyond classical excessive pricing. Digital markets therefore require more dynamic analytical frameworks, including approaches capable of capturing the specific characteristics of innovative services and products.

35. Behavioural barriers — particularly switching costs and the lack of multihoming — play a central role in sustaining platform dominance and facilitating exploitation. Such barriers not only impede market entry and expansion, but also reduce users' ability to discipline dominant firms through switching behaviour. As a result, exploitative practices may persist even in highly innovative sectors that appear competitive on the surface.

36. Against this background, competition enforcement in digital markets should not focus exclusively on exclusionary practices. Competition authorities must also pay increasing attention to exploitative forms of conduct that could emerge from structural market power and behavioural lock-in. Ultimately, effective protection of both competition and consumers in digital markets may require a combination of competition enforcement, consumer protection mechanisms, and other regulatory measures<sup>18</sup> aimed at fostering innovation, restoring contestability and reducing excessive concentrations of digital power.

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<sup>18</sup> See Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).