

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

Working Party No. 3 on Co-operation and Enforcement

Executive Summary of the Roundtable on Consumer-facing Remedies

Annex to the Summary Record of the 127th meeting of Working Party No 3 on Cooperation and Enforcement

5 June 2018

This Executive Summary by the OECD Secretariat contains the key findings from the Roundtable on Consumer-facing Remedies held during the 127th Meeting of the OECD Working Party No. 3 on Co-operation and Enforcement of 5 June 2018.

More documentation related to this discussion can be found at www.oecd.org/daf/competition/consumer-facing-remedies.htm

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JT03444263

Executive Summary

By the Secretariat*

Working Party No. 3 of the OECD Competition Committee held a roundtable on the subject of consumer-facing remedies in June 2018. Based on the background paper prepared by the UK Competition and Markets Authority (CMA), written submissions from delegates, and the contributions by expert panellists and delegates to the discussion, the following key points emerged:

1. While competition authorities often focus their efforts on ensuring that the supply side of a market is functioning competitively, significant problems may also emerge on the demand side. These problems limit the ability of consumers to access information on a product, assess the information, or act on the information.

Limitations to consumers' ability to access, assess, and act on relevant product information can come from three sources. First, consumers may face, or at least perceive that they will face, costs to exercising their choices. Search costs include the time, effort, and money required to obtain product information and compare different options. When search costs are high relative to the expected value of the product in question, they can disincentivise comparison-shopping by consumers. Switching costs may also give rise to problems, especially in markets where a large proportion of consumers are locked in and the availability of discounts for switching declines.

Second, consumer decision-making may be affected by a range of behavioural biases or contextual factors that give rise to demand-side concerns. These biases include a tendency to favour payoffs in the present, and sensitivity to how choices are framed. Consumers may prefer to maintain the status quo even if they could benefit from other options, due to loss aversion and "choice overload." Thus, the costs and complexity of switching decisions could mean that doing nothing is a rational response for consumers, something competition authorities must recognise, rather than assuming irrational consumers are the source of the problem. The specific context of a product choice may also affect consumer behaviour – decisions involving emotional distress (for example, placing an elderly parent in a care home), or significant uncertainty about costs and benefits, could also result in demand-side problems in a market.

Third, there are circumstances in which suppliers may exacerbate underlying demand-side problems in a market to their benefit. They may seek to increase search and switching costs, either by making the information available to consumers more complicated, by limiting comparability with competitors, or by imposing costs on consumers switching suppliers. There is also a risk that suppliers will be aware of consumer behavioural biases or contextual factors, and exploit them to weaken competition.

2. Several different types of consumer-facing remedies have been implemented by competition authorities to address demand-side market problems. These range from

* This executive summary does not necessarily represent the consensus view of the Working Party No 3. It does, however, identify key points from the discussion at the roundtable on Methodologies for Conducting Market Studies, including the views of a panel of experts, the delegates' oral and written contributions, and the background note prepared by the OECD Secretariat.

relatively simple measures requiring suppliers to improve disclosure, to more extensive remedies that facilitate switching.

Disclosure remedies are among the most common consumer-facing remedy, aiming to address information asymmetries, improve consumer awareness and facilitate product comparisons. Some such remedies, such as text message alerts for overdrafts in the UK, have proven effective, but others have had more limited effects. Monitoring suppliers' implementation of the remedy, and clear rules regarding the form and content of disclosure, are required.

Shopping around remedies are aimed at facilitating the comparison of different suppliers by organising relevant information in an accessible way, and triggering opportunities for consumers to consider switching providers. For example, remedies can pave the way for the introduction of privately developed digital comparison tools. Creating incentives for commercial entities to facilitate comparison could be a more effective approach than a competition authority developing its own tools. However, some jurisdictions have reported success from offering consumer tools such as consumption simulators to compare the cost of different offers. Authorities considering these remedies should be aware that not all consumers will use these tools, and that proper governance of these tools is needed to prevent manipulation, while ensuring consumers can access their user data to obtain personalised results.

Switching remedies can reduce switching costs, either by removing contractual restrictions or facilitating the switching process. Experience shows that reducing the hassle of switching can be particularly effective, and can prevent suppliers from hampering switching, although consumer awareness is key.

Finally, outcome control remedies are relatively prescriptive measures seeking to limit how a product is sold, product characteristics, and price structures. These remedies have produced mixed results, and should be pursued with caution given their significant impact on markets.

The design of remedies should minimise the burden on consumers, leverage available technological solutions, and take into account the likely supply-side response to the measures being considered. Multiple iterations of remedies may be required, and so competition authorities should not overestimate the ease with which demand-side problems can be addressed. Consideration should also be given to whether a measure will stimulate competition, or if it is more properly in the domain of consumer protection or sector regulators. Synergies can be found for competition authorities by cooperating with these regulators in the design of consumer-facing remedies.

3. Prior to implementation, consumer-focused remedies should be tested carefully, as the actual response of consumers may differ from what is expected.

Testing consumer-facing remedies is essential to identify whether their design has successfully taken into account consumer behaviour (e.g. the strength of inertia as a factor limiting switching), as several jurisdictions have reported challenges in the efficacy of consumer-facing remedies. It can also be helpful to compare the test results of different potential remedies. Testing methods include qualitative research, surveys, experiments (including laboratory testing), and field trials (also known as randomised control trials). Each method reflects different trade-offs between time required, resource requirements, and rigour in terms of results.

Supply-side remedies can also be tested to determine the likely demand-side response. For example, one delegation reported that the effectiveness of a merger remedy was undermined by the inertia shown by consumers in one market. Consumer-facing remedies may therefore be required as a complement to supply-side remedies.