



Third Arab Competition Forum

24-25 May 2022 - Oman

# COMPETITION IN THE ONLINE MARKET: E-COMMERCE AND DIGITALIZATION

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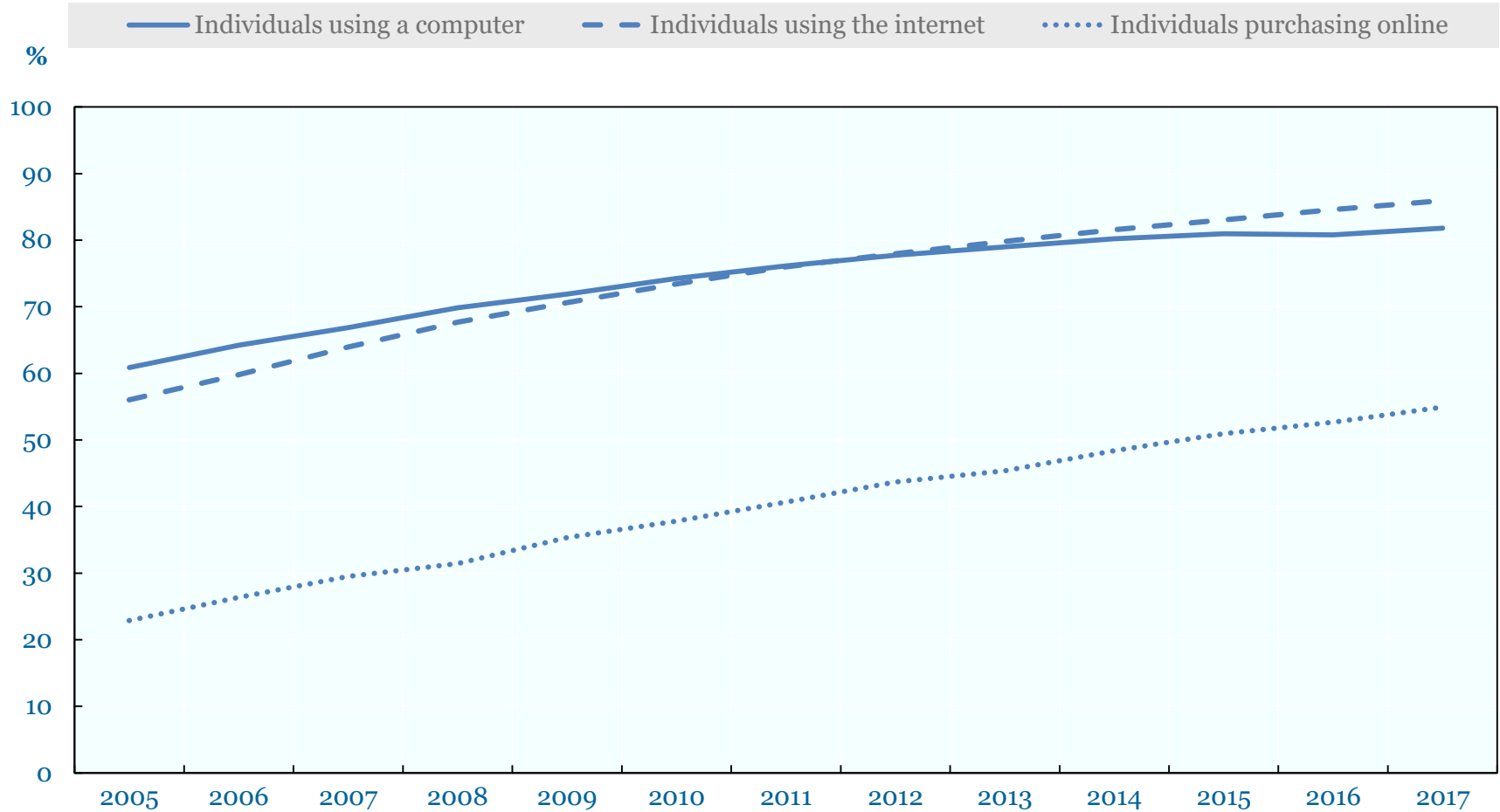
# Agenda

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- ICT, Internet and E-commerce
- What do we mean by E-commerce?
- How internet sales have changed the way consumers relate to suppliers?
- The “traditional” concerns related to vertical restraints in e-commerce
- But some concerns are horizontal or linked to abuse of dominance
- Competition law enforcement is not the only response



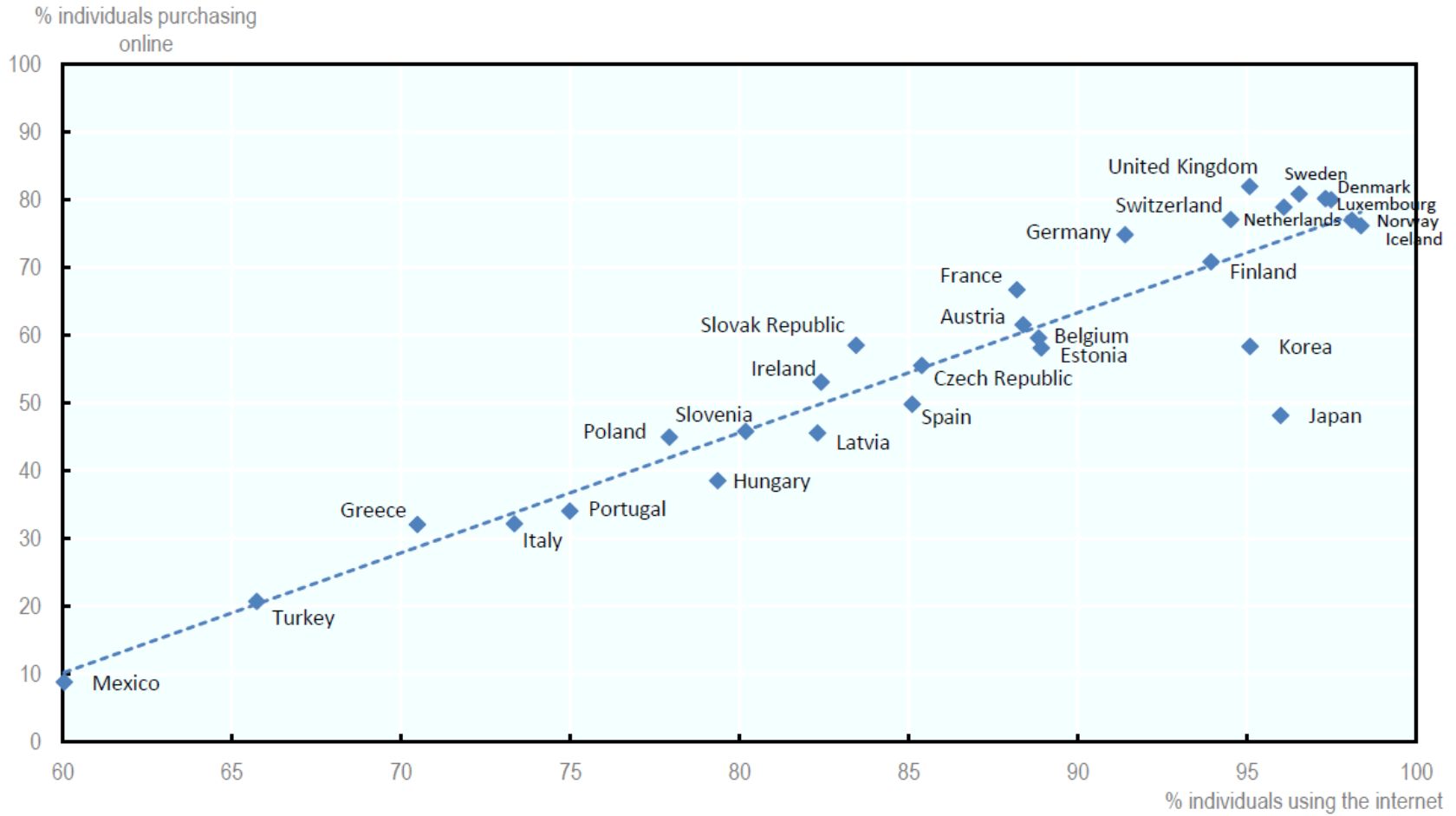
# Growing access to ICT in OECD countries



Source: OECD (2018), “ICT Access and Usage by Households and Individuals”, OECD Telecommunications and Internet Statistics (database),



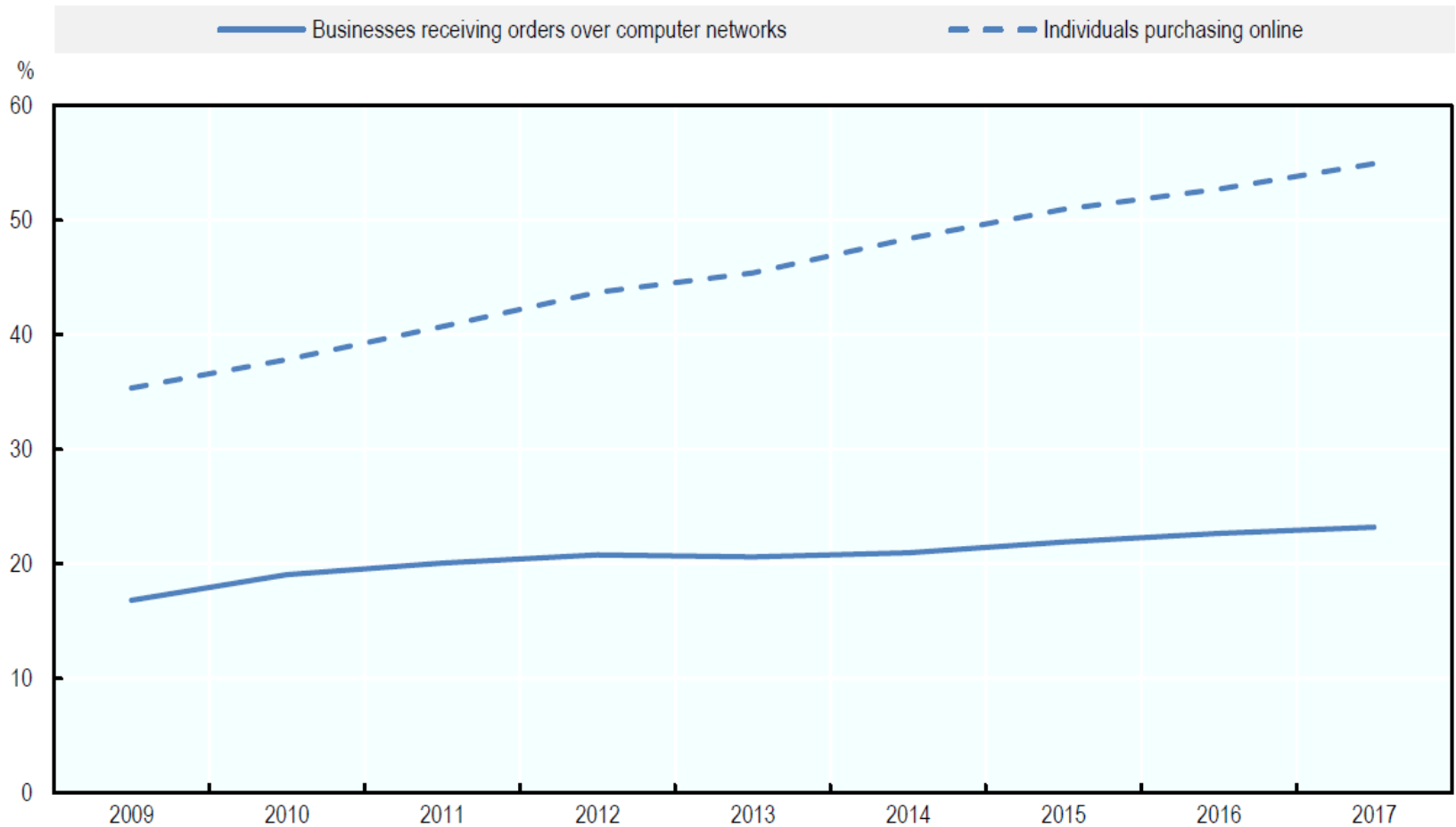
# E-Commerce and Internet penetration in OECD countries



Source: OECD (2018), “ICT Access and Usage by Households and Individuals”, OECD Telecommunications and Internet Statistics (database),



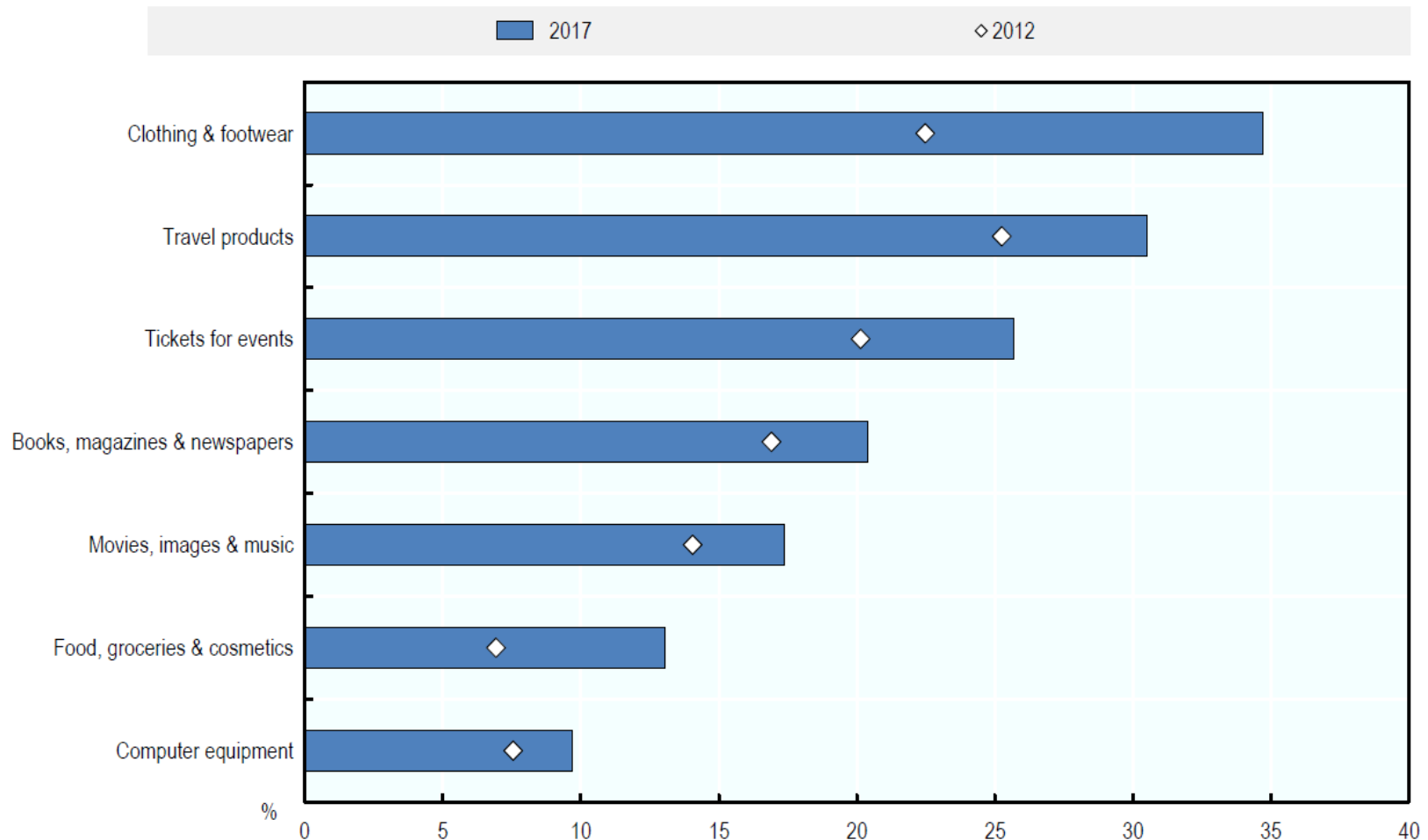
# Growth of E-commerce in OECD countries



Source: OECD (2018), “ICT Access and Usage by Households and Individuals”, OECD Telecommunications and Internet Statistics (database),



# Share of online purchasing by product category in OECD countries



Source: OECD (2018), “ICT Access and Usage by Households and Individuals”, OECD Telecommunications and Internet Statistics (database),



# E-commerce in the times of COVID-19

Figure 1. **The COVID-19 crisis has increased the share of e-commerce in total retail**

Figure 1.a. Share of e-commerce in total retail sales, United Kingdom and United States (2018-2020)

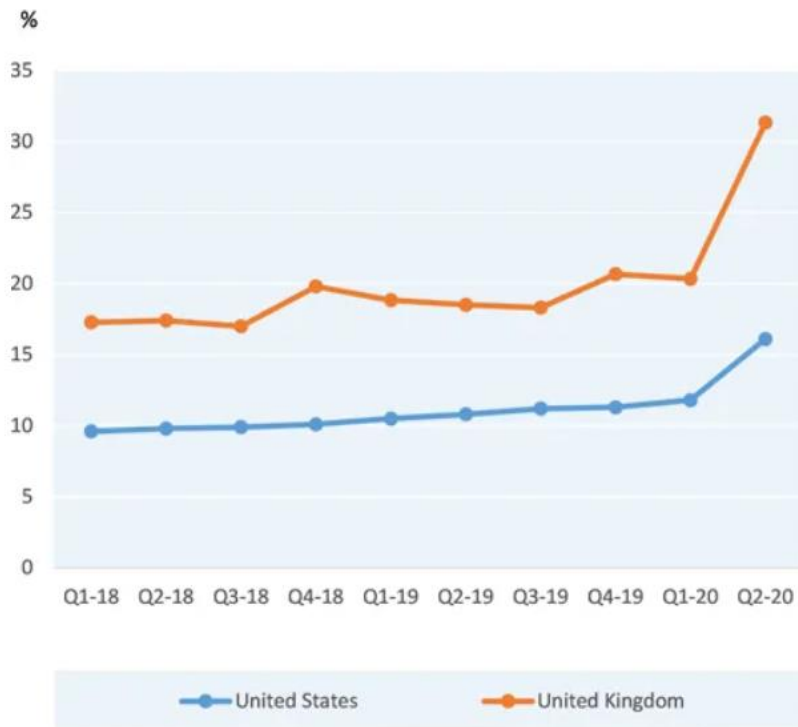
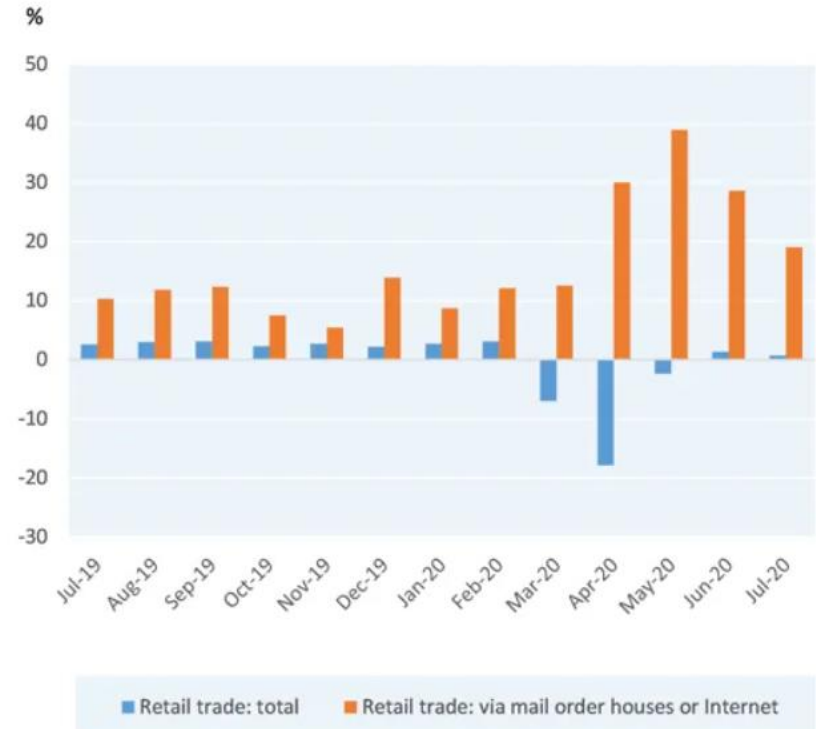


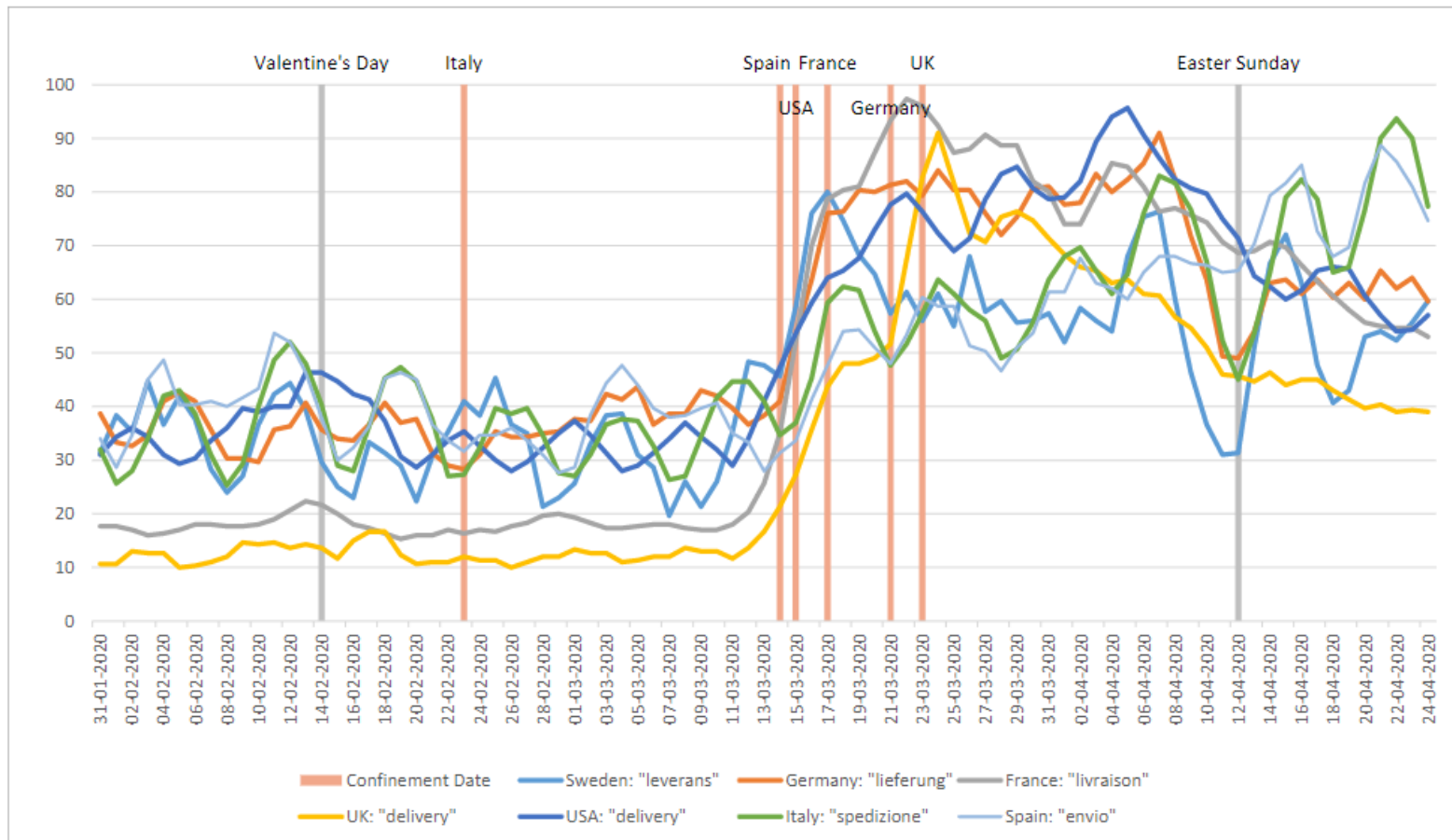
Figure 1.b. Retail turnover, year-on-year change, EU-27 (July 2019-20)





# E-commerce in the times of COVID-19

Figure 2. Google search interest in “delivery”, selected OECD countries (February to April 2020)







## Definition and varieties of e-commerce

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*“E-commerce would encompass all business activities occurring over electronic networks, including the sale of goods and services, the transfer of funds, online marketing activities, and the collection and processing of data”*

OECD (2018)



# Definition and varieties of e-commerce

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## Broad categories of products commonly sold online:

- *Tangible consumer goods:*
  - clothing and footwear, cosmetics and healthcare products, and consumer electronics.
- *Services for offline consumption:*
  - transport (plane or train tickets), accommodation (e.g. hotel bookings), tourist services (e.g. museum tickets) and cultural events (e.g. concert or cinema tickets)
- *Digital content services:*
  - films, television programmes, e-books and recorded music



# New business models & e-commerce channels

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- Vertical integration of manufacturers and service providers
- Expansion of online retail by manufacturers
- Development of “marketplaces”
  - Digital multisided platforms which facilitate transactions between sellers and buyers



# Importance of understanding the e-commerce markets

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- French and German Report on Big Data, 2016
- The EC's E-Commerce Sector Inquiry, May 2017
- Cofece investigation into the potential competition problems within e-commerce markets in Mexico, 2017
- French and German Report on Algorithms, 2019
- Cofece investigation on possible barriers to competition and essential inputs in retail e-commerce market, 2022
- EC sector inquiry into IoT, 2022
- OECD many reports



# Competition dynamics in e-commerce

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- *Upsides of e-commerce:*
  - Expands consumer choice
  - Reduces search cost
  - Increases buyer power
  - Facilitates market integration (e.g. EU)
  - Promotes trade between jurisdictions
  - Data-driven economy (targeted services)
  
- *Downsides of e-commerce:*
  - Excess of information increases search costs
  - Transparency may increase retailers collusion and RPM policies
  - Online/offline free-riding
  - Data-driven economy (personalized pricing, gatekeeping and dominance)



# Vertical restraints in the online world

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- Vertical price restraints
  - **Across-platforms parity agreements** (APPA) or use of **Most Favoured Nation Clauses** (MFN) – seller undertakes to charge on a platform a price that is not higher than the price charged on other platforms
  - **Resale Price Maintenance (RPM)** – maximum, *minimum* or *fixed* retail prices imposed by supplier on retailers
  - **Price discrimination between online and offline** (brick-and-mortar) sales
  
- Vertical non-price restraints
  - **Exclusive distribution agreements**
  - **Selective distribution**
  - **Territorial market partitioning**
  - **Sales quantity limits** (on-line/off-line proportions)
  - **Ban of on-line sale**



# But concerns go beyond verticals

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- Horizontal concerns
  - **Algorithmic collusion** – due to increased price transparency on selling platforms
  - **Hub & Spoke Cartels** - anticompetitive horizontal agreement between retailers is put into effect through a series of vertical contracts between an online platform and its users
  - **Price discrimination between online and offline** (brick-and-mortar) sales
  
- Unilateral conduct
  - **Refusal to supply**
  - **Tying**
  - **Predatory pricing**

But also

- **Forced free riding**
- **Discriminatory leveraging**
- **Personalised pricing**



# Correcting market failures in the e-commerce environment

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- The types of market problems that are likely to emerge in the e-commerce sector extend beyond the boundaries of competition law.
- Such market failures may also require the application of
  - sector-specific regulation,
  - consumer protection rules, or
  - data protection law.

.... which may be better suited than competition law to promote the direct protection of consumers.





# Conclusions

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- Developments in e-commerce have impacted the way competition works and the type of competition concerns that may arise.
- E-commerce in general does not require the application of a specific regulatory regime
- Most competition concerns raised by vertical restraints in the traditional commerce will also occur in e-commerce although they may have different implications
- Some novel types of competition could become particularly relevant for online markets and they raise their own specific competition concerns
- Responses to concerns raised by e-commerce will require responses going beyond competition law enforcement



# OECD references

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OECD (2008), Resale Price Maintenance

OECD (2012), The Digital Economy

OECD (2013), Vertical Restraints for On-line Sales

OECD (2015), Competition and Cross-Platform Parity Agreements

OECD (2018), Implications of E-commerce for Competition Policy

OECD (2018), Personalised Pricing in the Digital Era

OECD (2018), Rethinking Antitrust Tools for Multi-Sided Platforms

OECD (2019), Hub-and-spoke arrangements in competition

OECD (2021), Ex Ante Regulation and Competition in Digital markets

OECD (2022), Competition policy in the digital age

<http://www.oecd.org/daf/competition/roundtables.htm>



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