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The European Union's E-Commerce Sector Inquiry: Findings and Lessons

Third Arab Competition Forum:
24-25 May 2022, Oman

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Outline

- Background to the EU e-commerce sector inquiry
- Process of the sector inquiry
- Findings of the sector inquiry
- Follow up action
- Conclusions and developing-country perspectives

EU E-Commerce Sector Inquiry – Background

- European Commission launched a sector inquiry into e-commerce in 2015 as part of its [Digital Single Market Strategy](#).
- **Sector inquiry:** investigation that the Commission may carry out in sectors of the economy (or types of agreements) when it has indications that a sector is not working as competitively as it should.
- Sector inquiry is a **systematic investigatory tool** used to [obtain a better understanding](#) of the functioning of a sector and types of agreements used in the sector.
- **Contrast market study:** [research](#) to investigate issues that have an impact on the functioning of the market for consumers such as choice, quality, safety, health, sustainability, prices and information, as well as consumer understanding, behaviour and decision making. [Study findings can inform policymaking.]

EU E-Commerce Sector Inquiry – Background

- **Aim:** to identify possible competition concerns affecting European e-commerce markets.
- Preliminary observation: Number of ‘regulatory barriers that hinder e-commerce’, as well as private (eg contractual) barriers to cross-border e-commerce.
- Particular focus on potential barriers erected by companies to cross-border online trade in goods and services where e-commerce is most widespread such as electronics, clothing and shoes, as well as digital content.
- Context: in 2014, around half of all EU consumers shopped online, but only around 15% of them bought online from a seller based in another EU Member State. *[The cross-border focus is potentially unique to the EU.]*

EU E-Commerce Sector Inquiry – Process

- **Large-scale fact finding exercise** - questionnaires were sent to over 1,000 retailers, 34 marketplaces, 89 price comparison tool providers, 17 payment system providers, 259 manufacturers, 248 digital content providers, etc.
- Thousands of distribution and licensing agreements submitted by respondents.
- Sept 2016 – Preliminary Report and launch of public consultation
- Nov 2016 – end of public consultation
- May 2017 – Final Report
- Inquiry covered **consumer goods** (those product categories most sold online) and **digital content**.

EU E-Commerce Sector Inquiry – Findings

- Sector inquiry enabled the Commission to obtain an **overview of ‘prevailing market trends’**; gather evidence on competition barriers to the growth of e-commerce; understand the prevalence of certain business practices and their rationale, and **identify priorities for enforcement** of competition rules.
- Main finding: growth of e-commerce has had a **significant impact on companies’ distribution strategies and customer behaviour**.
 - **Price transparency** increased due to e-commerce. Good news (consumers can easily obtain product/price information and compare) and bad news (free-riding across online and brick-and-mortar).
 - **Increased price competition**. Good news (lower prices) and bad news (possibly lower quality, innovation, brand image, etc).

EU E-Commerce Sector Inquiry – Findings

- **Competitors can easily monitor prices.** 2/3 of retailers use **automatic software** to change prices when competitors' prices change. Potential for **collusion** and enforcing 'recommended retail prices'.
- **Alternative distribution methods** (eg online marketplaces) make it easier for **small retailers to access large customer base**.
- Increased price transparency and price competition have led **manufacturers** to seek greater control over distribution.
- Increased prevalence of manufacturers at retail level and increased use of **vertical restraints**, affecting 'intra-brand competition'.

EU E-Commerce Sector Inquiry – Findings

- Manufacturers are increasingly competing with their own independent distributors.
- Increased use of ‘**selective distribution systems**’ where only authorised retailers can sell the products.
- **Vertical restraints** in the form of **pricing restrictions**, **marketplace bans**, **restrictions on use of online comparison tools**, and the **exclusion of pure online players** from the distribution network.
- Regarding digital content, main finding is that the key determinant for competition is the availability of the **relevant rights**.

EU E-Commerce Sector Inquiry – Findings

- Findings do **not** indicate a high level of **concentration** at the manufacturing or retail level regarding covered product categories.
- Different players value parameters of competition differently:
 - **Product quality and brand image** most important parameters of competition for **manufacturers**;
 - **Price** is most important parameter for **pure online and hybrid retailers**.
 - **Range** of available products, marketplace **image**, **user-friendliness** and **price** are the most important parameters for **marketplaces**.
- **Increased price transparency** online is **the** feature that most affects the **behaviour of consumers and retailers**.

EU E-Commerce Sector Inquiry – Findings

- Main online costs: delivery, platform commissions and payment transaction fees.
- Main offline costs: showroom and staff costs.
- Majority of retailers offer an equivalent choice of brands offline and online.
- Majority of retailers adopt a multichannel distribution strategy (evolution to a true ‘**omni-channel strategy**’ whereby sales channels fully complement each other).
- **Collection, processing and use of large amounts of data** is becoming increasingly important in e-commerce.

EU E-Commerce Sector Inquiry – Main competition concerns

Selective distribution

- Certain provisions in selective distribution agreements may exclude competition (eg requirement for selective distributor to have a **brick and mortar shop**).
- Although these aim to usually enhance competition on distribution quality, some may be **excluding pure online players** without enhancing competition on non-price parameters.

Restrictions on selling and advertising online

- **Pricing limitations/recommendations** by manufacturers (unlawful in EU if ‘minimum’ or ‘fixed’ resale price maintenance)
- Use of **software** to monitor prices – potential to facilitate collusion.

EU E-Commerce Sector Inquiry – Main competition concerns

Restrictions on selling on online marketplaces

- Range from absolute bans to restrictions on selling on marketplaces that do not meet quality criteria.
- Mainly found in selective distribution agreements and concern branded goods.
- Marketplace bans do not appear to amount to *de facto* prohibition to sell online, but **affect smaller and medium-sized retailers more than others**.

Geographic restrictions to sell or advertise online

- ‘Geo-blocking’ (form of discrimination based on location) - blocked access to website, re-routing customers to Member State website, refusal to deliver cross-border/accept cross-border payment, etc.

EU E-Commerce Sector Inquiry – Follow-up action

Enforcement action

- The Commission opened several investigations into potential competition infringements in e-commerce after the sector inquiry. [All culminated in findings of violation and fines.]
 - *Guess* (restrictions on cross-border sales)
 - *Asus; Denon & Marantz; Philips; and Pioneer* (restrictions on the ability of online retailers to set their own prices for consumer electronics)
 - *Nike; Sanrio; Universal Studios* (restrictive licensing and distribution practices in relation to licensed merchandise)
 - *Video games* (geo-blocking)

EU E-Commerce Sector Inquiry – Follow-up action

Regulatory action - new/revised regulations to further facilitate effective e-commerce throughout the EU

- Geo-blocking Regulation
- Portability Regulation (for digital content)
- Regulation on cross-border parcel delivery services
- Directive on contracts for the supply of digital content and digital services and a directive on contracts for the sale of goods.
- *[Revised Verticals Block Exemption Regulation and Guidelines informed by findings.]*

Broader regulatory initiatives

- Platform to Business Regulation (fairness and transparency)
- Digital Markets Act (specific rules for ‘gatekeepers’)

Conclusions and developing-country perspectives

- New developments in e-commerce markets may lead to **new types of contractual restrictions** that require scrutiny in the future.
- Use of **data** can make operations **more efficient**, but exchange of commercially sensitive data between marketplaces and third party sellers or manufacturers and retailers may lead to **competition concerns** where these parties compete with one another.
- In **developing countries**, **markets** and **infrastructure** may not be at a stage of requiring intervention.
- An important concern is also to **attract investment** in technology and innovation.
- Need for balancing **competitive rivalry** vs prospect of **monopoly profits** (which attract **investment** and facilitate risk taking).

Conclusions and developing-country perspectives

- Trade-off between attracting foreign investment by, for example, big tech (eg the Philippines) vs regulating foreign platforms to help domestic SMEs to compete against them (eg Indonesia, India)
- In developing countries, digital markets may be less mature, more dynamic, not-yet-profitable, etc.
- Regulations adopted in developed countries may not be suitable/appropriate in a developing-country context.
- Competition policy should be particularly attuned to **platform access and entry**, and the **trading conditions** between platforms and businesses.
- Important **balance** to be struck between attracting investment and innovation and ensuring that the markets remain open and competitive as they develop.