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Connecting policies: competition, trade and investment*

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Session on Competition in the online market: e-commerce and digitalization

Robert D. Anderson

Honorary Professor, School of Law, U. of Nottingham (UK)

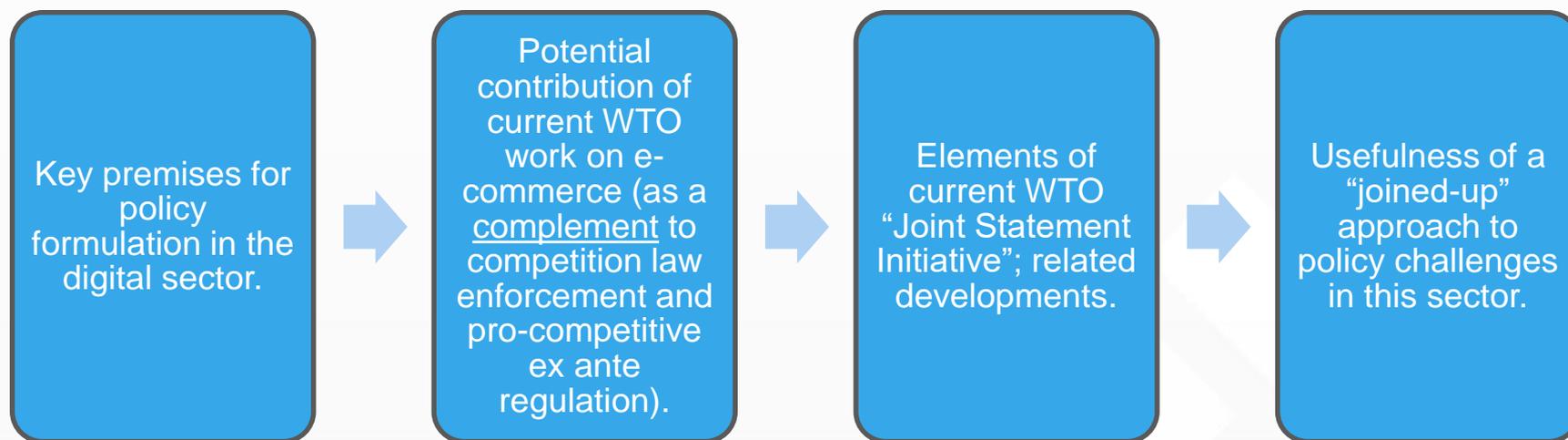
ITC International Expert on Competition and Procurement Policy

Formerly: Senior Counsellor and Team Leader for Competition Policy and Government Procurement, WTO Secretariat

* **NB: This presentation is given in a personal capacity. The views expressed are solely the responsibility of the presenter.**



Overview of presentation



Key premises for policy formulation in digital trade/the e-commerce sector (presenter's perspective)

Mixed nature of impediments to competition/market failures in e-commerce and digital trade (business practices and government measures):

- Premise of EU Sector Inquiry: large number of 'regulatory barriers that hinder e-commerce' as well as private (e.g., contractual) barriers to cross-border e-commerce" (see Pinar slide 4).
- Specific concern re: "Geo-blocking" (discrimination based on location) - blocked access to websites, re-routing of customers to other websites, refusal to deliver cross-border/accept cross-border payment, etc. (see Pinar slide 12).
- Potential impact of intellectual property rights (recent Cambridge-WTO-WIPO book).

Cross-border impact of resulting harms to competition, trade and investment. Impact on developing country exporters and small businesses.

Inability of competition law enforcement by itself to address all concerns (resulting need also for pro-competitive ex ante regulation).

Downsides to "regulatory cacophony"/conflicting standards across jurisdictions (OECD).

Potential contribution of international trade policy and usefulness of a "joined-up" approach to policy issues in this area.

Potential contribution of WTO work on e-commerce as a complement to competition law enforcement and pro-competitive regulation): foundational considerations



Broad agreement across jurisdictions on need for compatible national approaches in this area

Elements of current WTO “WTO Joint Statement Initiative on E-commerce” (involves 86 WTO Members)

From Statement by Ministers of Australia, Japan and Singapore (December 2021):



“We have achieved good convergence in negotiating groups on eight articles – **online consumer protection; electronic signatures and authentication; unsolicited commercial electronic messages; open government data; electronic contracts; transparency** [subject to developments]; **paperless trading; and open internet access**. The outcomes already achieved in these areas will deliver important benefits including boosting consumer confidence and supporting businesses trading online.”

Above conditions highly complementary to competition policy objectives!

Further background on current WTO “WTO Joint Statement Initiative on E-commerce”

Japan, in particular, advocates the concept of “Data Free Flow with Trust (DFFT)”

Singapore’s Minister of Trade and Commerce observes as follows:

- “The initiative will provide a stable regulatory environment for digital trade by enhancing rules and streamlining regulations. The initiative, which involves 86 members, will also contribute towards bridging the digital divide and encourage the adoption of digitalisation, which positions our economies well to harness the benefits of new opportunities in the digital economy.”

Related developments concerning new “Indo-Pacific Economic Framework for Prosperity” (*announced Monday of this week!*)



From (US) White House Press Release:

- “We will pursue high-standard rules of the road in the digital economy, including standards on cross-border data flows and data localization. We will work with our partners to seize opportunities and address concerns in the digital economy, in order to ensure small and medium sized enterprises can benefit from the region’s rapidly growing e-commerce sector, while addressing issues is such as online privacy and discriminatory and unethical use of Artificial Intelligence.”

Concluding observations:



Key sources:

Anderson, Robert D., William E. Kovacic, Anna Caroline Mueller, Antonella Salgueiro and Nadezhda Sporysheva, "Competition Policy and the Global Economy: Current Developments and Issues for Reflection," The George Washington Law Review, Vol. 88 No. 6, November 2020, pp. 1421-1476

Anderson, R.D., A. Taubman and N. Pires de Carvalho, Competition Policy and Intellectual Property in Today's Global Economy (Cambridge U.P, WTO and WIPO, 2021)

OECD, (2021), Ex ante regulation of digital markets, OECD Competition Committee Discussion Paper, <https://www.oecd.org/daf/competition/ex-ante-regulation-andcompetition-in-digital-markets.htm>

WTO, Joint Statement Initiative on E-commerce Statement by Ministers of Australia, Japan and Singapore (Dec. 2021), https://www.wto.org/english/news_e/news21_e/ji_ecom_minister_statement_e.pdf.

WTO Chairs Programme, Adapting to the digital trade era: challenges and opportunities (2021)

Thank you for your attention!

For more information, please contact:

Giles Chappell

Programme Officer

International Trade Centre (ITC)

Geneva, Switzerland

gchappell@intracen.org

