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Background note: **Competition in the online market:** e-commerce and digitalization

The present background note was produced by the Economic and Social Commission for Western Asia (ESCWA), the Organisation for Economic Co-operation and Development (OECD) and the International Trade Centre (ITC) for the session "Competition in the online market: e-commerce and digitalization" of the Third Arab Competition Forum 2022.

Introduction

Digital technologies are rapidly changing the way markets function, posing new challenges to the effective enforcement of competition policies and law. E-commerce generally refers to online retail activities and predominantly comprises of the sale of goods, services and digital content distribution over the Internet to retail customers, as well as other activities such as online advertising. E-commerce enhances consumer choice and purchasing power and facilitates innovation in product distribution. However, although existing competition laws and policies remain relevant to keeping markets open and competitive, the distinctive features of the digital market have given rise to new forms of anti-competitive practices. Regulators should be encouraged to consider the full range of regulatory tools available, which may require a multi-agency response to complex market problems.

Digital market growth and prospects in the Arab region

With the rapid growth of Internet users and online shoppers, especially as a result of the COVID19- pandemic, digital platforms are becoming a core element of the Arab retail market. In just five years, e-commerce contribution to retail growth in the Middle East and North Africa (MENA) region increased from 7 per cent in 2012 to 39 per cent in 2017, exceeding the global average and reaching a value of 8.3$ billion in 2017.[1] This trend accelerated in 2020 with the COVID19- pandemic, which disrupted traditional value chains and forced many businesses to move online.

In 2020, e-commerce grew by 52 per cent with a projected growth of 36 per cent in 2021.[2] The United Arab Emirates, Saudi Arabia and Egypt, which together accounted for 80 per cent of the e-commerce in the region in 2020, have been the main drivers behind the sector's growth.

Digital transformation across the region remains low and shows significant disparities. The Gulf Cooperation Council (GCC) countries have advanced levels across many information and communications technology (ICT) indicators, including Internet usage, smartphone penetration and secure Internet servers, all of which are essential for engagement in e-commerce. Some least developed countries, including Comoros, Mauritania and

Yemen, must overcome many structural challenges to bridge the gap of the digital divide before engaging and benefiting from e-commerce. This development gap is reflected in the United Nations Conference on Trade and Development (UNCTAD) Business-to-Consumer E-commerce Index 2020,[3] where the GCC countries lead across the region:

UNCTAD B2C E-commerce Index 2020 for ESCWA Member States

Country Name	Index Value 2020	Rank 2020
United Arab Emirates	78.2	37
Saudi Arabia	72.3	49
Qatar	72.1	50
Oman	70.6	54
Kuwait	68.7	58
Lebanon	60.4	64
Bahrain	59.7	66
Jordan	54.7	76
Tunisia	54.6	77
Algeria	52.2	80
Libya	49.7	85
Morocco	44.8	95
Egypt	36.6	109
Djibouti	27.7	125
Iraq	25.4	129
Sudan	21.7	132
Syrian Arab Republic	21.1	133
Yemen	18.5	138
Mauritania	15	145
Comoros	12	149

The relatively lower penetration of e-commerce in Arab subregions shows great potential for growth. As countries develop sound policies that create favourable conditions for the development of digital environments and consumers increase their engagement in online consumption, the region is likely to experience considerable growth in the e-commerce sector. Among these policies, Arab countries should encourage the adoption of safe digital payments; facilitate access to secure Internet servers; build strong infrastructure capable of adopting ICT systems; remove regulatory barriers; support logistics/infrastructure development; and ensure fair competition in the market environment.

On the demand side, the growing online shopping trend will increase in the following years, a pattern that will likely be maintained in the long run. In 2020, a regional survey found that 47 per cent of consumers in the United Arab Emirates, Saudi Arabia, Egypt, Jordan, Kuwait and Bahrain (and Pakistan) expected to increase online purchases in 2021 .[4] This is particularly true for younger generations. Another survey conducted by the Arab Youth Survey in 2020 showed that 80 per cent of Arab young people frequently shop online, an increase of 27 per cent since 2018. [5]

Competition enforcement in the online retail market[6]

Online retailing provides considerable benefits to businesses and consumers, offering important pro-competitive effects. It has the potential to increase retail competition, enhance consumer choice and facilitate innovation in product distribution. Consumers have access to wider varieties of products and services, greater convenience for shopping, and higher accessibility and information, which in turn allows for greater transparency and comparison across products, and thus, more dynamic pricing. Businesses, instead of sticking to traditional value chain models, can benefit from alternative income sources such as the provision of intermediation services to other online retailers, the supply of online advertising on digital platforms, and the accumulation of valuable consumer data.

As e-commerce continues to grow, competition authorities are faced with new challenges in the enforcement of competition law. While traditional competition rules may prove to be effective in the online market, certain dynamics of e-commerce that differ from the traditional brick-and-mortar market need special consideration so as to ensure the effective enforcement of competition law and policy. A clear understanding of the functioning of digital markets and their players has become essential. Furthermore, as business models have grown significantly more conglomerate, customized and diverse as a result of digitization, a universal competition policy practice no longer exists.

The task of market definition is particularly complex in the digital market and is highly context-specific. Competition authorities should take into account the rise of multi-sided markets; the relationship between offline and online retail activities; and the high capacity for innovation on online platforms. Previous experience has shown that the outcomes of market definition exercises can have significant implications on the types of business models deemed to be competitors in the same market. As a result, market definition is a fact-based exercise that necessitates a case-by-case examination. Knowing how the relevant business models operate becomes a critical component of competition analysis.

In the online retail market, competition authorities can face a large array of anti-competitive practices. While vertical restraints that limit competition have been the most commonly recurrent issue for competition authorities, other recurrent anti-competitive behaviours take the form of unilateral conduct by dominant firms, horizontal collusions and mergers. The existing tools within the established enforcement mechanisms may prove to be sufficient to capture such behaviours. However, competition enforcement in the online market is particularly context-specific. Therefore, in many cases, competition authorities may need to adjust their information-gathering techniques, assessment models and solutions and should attempt to base their activities on solid evidence against anti-competitive practices.

1. **Vertical restraints.** Most vertical restraints that are of concern to competition authorities are those that involve supplier-imposed restrictions upon online retailers. Manufacturers aiming to balance the offline and online retail experience typically set these restrictions. They can take the form of price restrictions, bans on price comparison tools on the online platforms, or prohibitions from selling in specific online marketplaces. Contractual constraints imposed by online retail platforms, such as exclusivity agreements, requirements that vendors offer their lowest pricing through the platform, or imposing "most-favoured nation" clauses, are key categories of potential vertical restraints in the e-commerce sector. Debates continue as to the best antitrust approach for vertical restraints. Some jurisdictions have imposed a "rule of reason" and context-specific assessment of such constraints, while other jurisdictions have opted for a per se rule in certain specific cases of vertical constraints where antitrust laws are presumed to have been violated.
2. **Unilateral conduct by dominant firms.** As opposed to vertical restraints, there has been comparatively less enforcement against unilateral conduct. However, as big e-commerce platforms acquire market shares, it is likely to become a recurrent issue. In the online retail market, special characteristics of the market such as the existence of network effects or the accumulation of valuable consumer data may give an advantage to large players and enable them to hold a dominant position in the market. Because only the misuse of dominance is prohibited under competition law, identifying the form of the anti-competitive activity is a crucial component in the investigation of unilateral conduct. For this, scholars have identified a number of well-established theories of harm in the e-commerce sector, including the refusal to supply on a specific platform, tying customers to buy more than one product together, and predatory pricing.

Considerations for the Arab region

Given the great diversity within the Arab region, the activity of competition authorities should also reflect the degree of e-commerce uptake in each country. In countries with low e-commerce penetration, authorities should work with other regulators to create the conditions that encourage the growth of e-commerce through multi-agency regulatory solutions, financing, small and medium-sized enterprise incubators, the removal of regulatory barriers, support for logistics/infrastructure development (small package delivery services), and by ensuring competitive neutrality. Countries with well-established and sophisticated digital retail markets should carefully analyze the existing market structure and safeguard against potential anti-competitive conflicts that might develop. 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 laws, which may be better suited than competition laws to ensure consumer protection. Regulators should be encouraged to consider the full range of regulatory tools available, which may require a multi-agency response to complex market problems.[4]

References

Access Now. (2021). Exposed and Exploited: Data Protection in the Middle East and North Africa. https://www.accessnow.org/cms/assets/uploads/01/2021/Access-Now-MENA-data-protection-report.pdf.

Bain & Company, Inc. (2019). E-commerce in MENA: Opportunity Beyond the Hype. https://www.bain.com/contentassets/2b078686303045ffa1d1207130ab5d79/bain_report__ecommerce_in_mena.pdf.

Chan, J., Dayal, V., Denecker, O., and Jain, Y. (2021, August 26). The future of payments in the Middle East. McKinsey & Company. https://www.mckinsey.com/industries/financial-services/our-insights/the-future-of-payments-in-the-middle-east.

Checkout.com. (2020). Seizing opportunity in MENA and Pakistan. https://www.checkout.com/resources/research/menap-report?utm_medium=content_syndication&utm_source=press_release&utm_campaign=gl_menap_report#contact-text-form.

Forty per cent of Arab youth plan to start own business. (2020). Wamda. https://www.wamda.com/10/2020/cent-arab-youth-plan-start-business-says-arab-youth-survey.

ITU. (2021). Digital trends in the Arab States region in 2021. https://www.itu.int/dms_pub/itu-d/md/18/rpmarb/c/D-18RPMARB-C0002-!R1!PDF-E.pdf.

OECD. (2020). Consumer Data Rights and Competition – Background note. https://one.oecd.org/document/DAF/COMP(1(2020/en/pdf.

OECD (2022). OECD Handbook on Competition Policy in the Digital Age. https://www.oecd.org/daf/competition-policy-in-the-digital-age.

The Economic Research Forum, and Sami Mahroum. (2021). Digitalization, E-Commerce, and Private Sector Development in Arab States. https://erf.org.eg/app/uploads/1487_865541_106_1632908901/09/2021.pdf.

UNCTAD. (2019). The UNCTAD B2C E-commerce Index 2019. https://unctad.org/system/files/official-document/tn_unctad_ict4d14_en.pdf.

Wamda – MIT Legatum Center. (2021). How COVID19- Unlocked the Adoption of E-commerce in the MENA Region. https://legatum.mit.edu/wp-content/uploads/-170321/03/2021MIT-Wamda-E-Commerce-COVID-19 report-EN01-.pdf.

World Bank Group. (2019). Reaching New Heights: Promoting Fair Competition in the Middle East and North Africa. https://thedocs.worldbank.org/en/doc/0280022019-660811570642119982/original/ENMEMReachingNewHeightsOCT19.pdf.

Endnotes

1. https://www.bain.com/insights/ecommerce-in-MENA-opportunity-beyond-the-hype/.
2. https://legatum.mit.edu/wp-content/uploads/2021/03/170321-MIT-Wamda-E-Commerce-COVID19-report-EN-01.pdf.
3. https://unctad.org/system/files/official-document/tn_unctad_ict4d17_en.pdf.
4. https://www.checkout.com/newsroom/news/connected-payments-seizing-opportunity-in-mena-and-pakistan-report-launch.
5. https://arabyouthsurvey.com/pdf/downloadwhitepaper/AYS%202020-WP_ENG_0510_Single-Final.pdf.
6. See OECD (2018). https://www.oecd.org/competition/e-commerce-implications-for-competition-policy.htm.
7. See OECD (2018) https://www.oecd.org/competition/e-commerce-implications-for-competition-policy.htm.