The Autorité has published a study on competition and e-commerce

Published on June 05, 2020

The growth of e-commerce is profoundly changing distribution. The physical distribution model is facing strong competition from the growth of online sales, which may be the result of “pure play” online retailers and strategies using alternative distribution channels. Sales conditions in physical stores are also evolving, increasingly incorporating digital technologies (use of smartphones, tablets, augmented technologies, etc.), to the point that there is now a “phygital” (physical and digital) model. Finally, these developments raise many questions for the *Autorité de la concurrence*, sometimes leading it to redefine market boundaries, focus on restrictions on Internet sales, and increase the new power held by online platforms, especially structuring platforms that hold strategic or preeminent positions.

In view of the prominent place that the distribution sector occupies in the French economy, the *Autorité* has sought to provide an overview of these various issues and explain its vision so businesses have a clear understanding of them.

In 2018, together with La Documentation française, the *Autorité* created a collection, Les Essentiels, to further education about competition. After an initial work devoted to loyalty rebates and a second on behavioural remedies, in May 2020 it published a new study, *Competition and E-commerce*, covering the *Autorité*'s action in areas relating to online sales.

The publication is now available on the website of the *Autorité de la concurrence*

A study on the impact of e-commerce on competition policy

More and more consumers are turning to online sales: online purchases now account for just under 10% of retail trade[1] in France, with rapid growth of around 14% per year between 2014 and 2018[2]. On the supply side, offline or brick-and-mortar retailers have responded to consumers' growing appetite for online shopping by developing or acquiring websites and/or applications to market their products and services online, thus becoming click-and-mortar or phygital operators. At the same time, new "pure play" retailers, almost exclusively active in Internet sales, have significantly increased their presence. Finally, the emergency resulting from the Covid-19 pandemic has shown the key role now played by online sales in the economy, and has pushed a large number of consumers and businesses to turn to e-commerce. This exceptional health emergency could lead to a lasting change in the habits of certain consumers and thus contribute to increasing the share of online sales in the retail trade in coming years.

The rise of e-commerce is bringing about lasting change in market functioning and business strategies. The *Autorité de la concurrence* sought to review the way in which it views online commerce: **how does the growth of online commerce in markets impact the competitive dynamics and the behaviour of consumers and businesses that the *Autorité* is called upon to study?**

Provide clarity to companies on their online practices and merger preparations

In many cases, the *Autorité de la concurrence* must first assess the extent to which online sales compete with in-store or agency sales. Where online sales are an important component of competition in a sector, the *Autorité* may need to

adapt certain tools for assessing market power, such as calculating market shares. Thus, since Fnac's decision to acquire Darty, the *Autorité* was the first European competition authority to identify single relevant markets combining online and physical sales[3].

In addition, the study also presents the framework used by the *Autorité de la concurrence* to analyse the different types of behaviour of companies involving online sales that it has examined (e.g. restrictions on Internet sales and price parity clauses) and thus enable it to distinguish between legal and illegal restrictions.

By analysing its decision-making practice in the field of e-commerce, the *Autorité* aims to provide tools to companies to assist them in their preparations for mergers and when they question the lawfulness of practices involving online sales. In presenting its analytical framework, the *Autorité* seeks, more generally, to provide clarification for companies and all stakeholders.

Inclusion of digital platforms and markets in the Autorité's analytical tools

The study forms part of a broader deliberation by the *Autorité* on adapting its means of intervention to the specific nature of digital markets[4]. In this respect, the *Autorité* is charting the way forward on the changes it considers necessary in its tools and prerogatives to take account of the growth of digital platforms and markets. First of all, it seems necessary to develop capabilities in numerical analysis for algorithms and big data. In order to respond to the acceleration of changes and cycles of technological innovation, the *Autorité* then considers that there is justification for a wider use of interim measures in a framework that will be amplified by the transposition of the ECN+ Directive. Finally, in order to gain a better understanding of the market power of the major digital platforms, it would seem justified to supplement the powers of competition authorities so that they can control the acquisition policies of these platforms.

The introduction of obligations or prohibitions specific to structuring platforms may also be considered.

[1] The French Federation of E-commerce and Distance Selling (FEVAD), Key Figures 2019.

[2] FEVAD, Key Figures 2019, 2018, 2017 and 2016.

[3] Decision 16-DCC-111 of 27 July 2016 (in French) concerning Fnac's acquisition of sole control of Darty.

[4] Autorité de la concurrence, The Autorité de la concurrence's contribution to the debate on competition policy and digital challenges (February 2020).

STUDY ON COMPETITION AND E-COMMERCE

Access the study

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