

18 November 2021

**Report of the UNCTAD webinar “Making Digital Markets Work for
Consumers: Competition, Consumer Protection and Data”**

Held on 5 Nov 2021

Introduction

The webinar “Making digital markets work for consumers: competition, consumer protection and data” was held online on November 5, 2021. 146 participants attended the meeting.

Summary

The webinar discussed emerging challenges in competition and consumer protection in relation to data privacy and governance in the data-driven digital economy and possible solutions to address those challenges. Representatives from Governments and international organizations as well as scholars presented their experience of current practices and perspectives on future work. It was concluded that government authorities in competition, consumer protection and data protection needed to work together towards coherent law and policies and finding common grounds internationally to avoid fragmentation.

Opening statement

The Head of the Competition and Consumer Policies Branch of the Division on International Trade and Commodities at UNCTAD stressed the two internationally agreed instruments on competition and consumer protection under the custodian of UNCTAD. She highlighted the important role that data had been playing in the thriving digital economy and elaborated on the implications for both competition and consumer protection.

Control over a large amount of data confers significant market power to companies, particularly digital platforms. Highly concentrated digital markets raise concerns about monopolization if they remain unregulated and dominant digital platforms can take their data advantage to engage in abusive and anti-competitive practices.

The collection and use of personal data raise growing concerns about data privacy and security, and data protection is critical to consumer trust in digital markets. The revised United Nations Guidelines for consumer protection (UNGCP) recognized privacy as a basic consumer right, but currently data protection is still inadequate in practice.

Therefore, there is need to adapt competition and consumer protection laws and policies to the realities of the data-driven digital economy. UNCTAD, through its intergovernmental machinery, namely the Intergovernmental Group of Experts (IGEs) meetings on competition, consumer protection and digital economy, provides the largest platform for international dialogue and cooperation in these areas. The goal is to make digital markets work for consumers and to promote competitive markets accessible to micro-, small- and medium-sized enterprises so that all countries can participate in and benefit from the data-driven digital economy.

Panel discussion

Panelists from different sectors shared their insights and experience on competition, consumer protection, and data privacy, and discussed the linkages between the three areas.

Panelists agreed that data had become increasingly important economic and strategic resources, with both economic and non-economic values and potentials. However, huge divides in digital readiness across

countries were preventing equitable distribution of gains from the rapidly evolving data-driven economy. Data advantage conferred market power to digital platforms, contributing to market concentration and disruption of traditional sectors such as retail and advertising. Therefore, public policies concerning data needed to balance between harnessing the power of data and protecting consumers and data privacy as well as promoting competitive and accessible digital markets.

Brazil presented its experience in enacting laws and policies concerning data privacy and security, particularly on preventing the collection and sharing of personal data without consent. Consumer authorities focus on market monitoring, consumer education, technical cooperation, and enforcement of fines and sanctions on abusive behaviors. Tools such as an online platform to address consumer complaints and to publicize business performance, which dealt with competition and consumer defense at the same time, played an important role during the pandemic. Partnership between consumer and data protection authorities is essential to effective protection of consumer data and reducing legal uncertainties in Brazil.

In the European Union model, data protection is a fundamental right and the objective of the European Union strategy is to give people full control over their personal data. Data protection is critical to open and contestable digital markets. The transparency obligations and users' full knowledge of the use of their data would empower consumers to choose services with more privacy protection. In this sense, fostering competition also supports data protection. Several panelists echoed that data portability and interoperability helped address switching costs for consumers and promote competition. To achieve that, the European Union established a regulatory framework governing data access and use by businesses and government administrations, providing practical and clear rules. New legislative proposals were also developed to complement the general framework, targeting platforms, artificial intelligence, and creation of data markets, etc.

Some panelists stressed that competition authorities needed to reconsider or adjust traditional market definition of relevant market and market share thresholds for the determination of market power, mergers and acquisitions in the digital economy, and entry barriers in competition enforcement, factoring in control over data and effects on future innovations. Several panelists emphasized the need to promote data sharing to establish a level playing field for businesses. In addition, policies and regulations needed to enhance access to capital by small and medium-sized enterprises (SMEs) and should not impose high regulatory compliance costs to businesses, which usually unfavorably affect smaller companies and new entrants.

Panelists noted that the data value chain was global and data protection cut across different legal areas that tended to act in silos and sometimes even competed. Legislative frameworks across the world differed broadly, making territoriality a main legal obstacle to effective protection of data privacy. Fragmentation and data localization tendencies would hamper development gains from data and could enlarge existing inequalities. Therefore, a balanced and holistic global approach to data governance is needed, which should reflect the multi-dimensionality of data and engage different stakeholders. Some panelists also argued that the current market structures incentivized a race to the bottom where businesses that complied with data protection laws were less competitive, which in fact removed choices from consumers and prevented switching. One panelist suggested a paradigm shift of harvesting data from opt-out to opt-in to better align the incentives for competition and to protect consumers more proactively.

The webinar called for joint efforts between government authorities in consumer protection, data protection, and competition, as well as a continuing international dialogue to make digital markets work for consumers and development.