



# The Role of Digital Comparison Tools for Competition

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# Digital Comparison Tools

"Digital content and applications developed to be used by consumers primarily to compare products and services online, irrespective of the device used (e.g. laptop, smartphone, tablet) or the parameter(s) on which the comparison is based (e.g. price, quality, user reviews)"

*Key principles for comparison tools*

- Important role in consumers' decision-making
  - 74% of consumers had used comparison tools – at least once – in the past 12 months (*Study on the coverage, functioning and consumer use of comparison tools and third-party verification schemes for such tools, EC, 2013*)
  - 85% of UK consumers with access to the internet have used a DCT at least once (*DCT study, CMA, 2017*)

# Search costs

*"Prices change with varying frequency in all markets, and, unless a market is completely centralized, no one will know all the prices which various sellers (or buyers) quote at any given time. A buyer (or seller) who wishes to ascertain the most favorable price must canvass various sellers (or buyers) - a phenomenon I shall term "search."*

Stigler 1961

- Search costs
  - arise from the need to spend time and effort to learn about opportunities (e.g. available product offerings, prices, quality)
  - source of market power
  
- Search costs and the internet
  - lower per-search cost
  - significantly expanded consumer choice set
  - search frictions due to the large number of available offers and due to sellers' strategies

## DCTs and search costs

- DCT facilitate search and comparison → reduce search costs
- Consumer benefits from reduced search costs
  - More intense competition and lower prices
  - Better matching of products with consumer preferences
- Suppliers' strategies to make search and comparison more difficult
  - Proliferation of product versions
  - Complex/ opaque pricing and product descriptions
  - Design products to require add-ons; upgrades
- Consumers' incentives to become informed



## DCTs and competition

- Practices that reduce the effectiveness of DCT and/ or competition between DCTs
  - Restrictions on the use of DCT imposed by manufacturers on distributors
  - Parity/ MFN clauses between suppliers and DCT
  - Keyword restrictions: non brand-bidding, negative matching
  - Exclusionary practices by dominant companies

## **E-commerce sector inquiry: vertical restrictions on the use of PCTs and Marketplaces**

Restrictions imposed by manufacturers on retailers on the

➤ Use of PCT:

- range from prohibition to use any PCT or those targeting customers in other territories to restrictions on the use of the brand name
- reported by 9% of responding retailers
- Main justifications – little room for differentiation along non-price parameters; protection of brand image

➤ Use of Marketplaces:

- range from absolute bans to restrictions to sell on those that do not fulfil certain quality criteria
- reported by 18% of responding retailers (12% - absolute bans)
- Main justifications - protection of brand image (quality of selling environment; counterfeit products); ensure sufficient pre- and post-sale services

## E-commerce sector inquiry: vertical restrictions on the use of PCTs and Marketplaces

- Absolute marketplace bans:
  - Not a de facto prohibition to sell online independently of the markets concerned - importance of marketplaces as an online sales channel differ across e.g. member states, product categories, size of retailers
  - The strength of potential justifications depends on the product
  - Concern HOW retailers sell and not TO WHOM/ WHERE -> not a 'hardcore restriction'
- Absolute bans on the use of Price Comparison Tools:
  - PCT differ from marketplaces in important ways – promotional channel (redirect traffic to retailer website)
    - Limit retailers' online promotion opportunities and their ability to attract traffic to their own websites
    - May make it more difficult for customers to find the retailer online
    - May make it more difficult for retailers to target customers outside the home country

# Vertical Restrictions on the Use of Price Comparison Tools and Marketplaces: recent developments

- ECJ judgement: C-230/16, Coty Germany GmbH v Parfümerie Akzente GmbH
  - Selective distribution systems, including for luxury goods, can comply with Art 101(1)
  - Platform ban is appropriate and does not go beyond what is necessary to preserve the luxury image of those goods
  - No restriction of the customers (Art 4(b) VBER) or of passive sales (Art 4(c) VBER) - does not prohibit the use of the internet as a means of marketing
- ASICS - decision by the Higher Regional Court Düsseldorf (2017)
  - The prohibition within a selective distribution system to cooperate with price comparison engines constitutes a hardcore restriction within the meaning of Art. 4 (c) of the VBER

# Parity clauses in agreements between platforms and sellers

- Prevent sellers to set lower prices outside the platform:
  - narrow parity clauses – require that the price set by a seller on the platform is not higher than the price set on retailer's own website
  - wide parity clauses – require that the price set by a seller on the platform is not higher than the price set both on the retailer's own website and on other platforms
- Competition concerns:
  - Reduced competition among platforms (higher commissions and final prices)
  - Raise barriers to entry for new or innovative platforms
- Potential efficiencies:
  - Mitigate free-riding and maintain platform's investment incentives

## DCTs and Parity clauses

- E-commerce sector inquiry
  - Parity agreements between retailers and PCT exceptional
  - Parity agreements between retailers and marketplaces more common but still limited
  - Parity clauses to be assessed on a case-by-case basis
  
- Online Hotel Booking cases in several EU Member States
  - Parity clauses imposed by OTAs on hotels
  - Competition concern:
    - Reduce competition among OTAs
    - Raise barriers to entry for new or innovative OTAs
  - Prohibition of parity clauses (by the NCA or by legislation) or scope limited to narrow parity clauses via commitments decisions
  - Monitoring of the two types of remedy

## Exclusionary practices: Google shopping

- Conduct – in its general search results, Google promotes its own comparison shopping service to the detriment of rivals
  - Through more favourable positioning and display
  - And demotion of rivals
- "Leveraging" abuse – Google uses its dominance in one market (general search) to get an undue advantage in a neighbouring market (comparison shopping services), instead of competing on the merits
- Harm – the conduct foreclosed competition, reduced choice and innovation
- Based on detailed effects analysis
- Cease and desist remedy: core principle - equal treatment between Google Shopping and rival comparison shopping services
- Monitoring ongoing