



LIDC Webinar
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Merger Control in a Digital Environment

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Part 1 – Online constraints in retail mergers

- French Competition Authority case 16-DCC-111, *Fnac/Darty*, 27 July 2016:
 - Merger between the two main French retailers of consumer electronics ; high (>50%) market shares ; closest "physical" competitors
 - Market definition in prior cases: online and offline distribution channels are separate markets due to differences in customer experience, service and prices
 - Overhauled in *Fnac/Darty* to expand the relevant market to include both online and offline distribution channels

Evidence relied upon to expand market definition

- Convergence between online and offline distribution:
 - 15-30% consumers electronics sales are online
 - Competition from pure players drove traditional physical retailers to adopt a mixed online/offline business model (same products, same prices), so-called "click-and-mortar"
 - Increased online services (delivery time, consumer assistance)
 - Increased price transparency and limited price differences
 - Parties' internal organization did not distinguish online vs. offline commercial policies
- Survey evidence:
 - Authority commissioned, 21,000 recent buyers of consumer electronics
 - Significant diversion ratios between online and physical retailers

Competitive assessment

- Geographic scope of assessment:
 - Geographic markets remained local due to (i) importance of physical sales (70-85%); (ii) consumer purchasing behavior remains predominantly local; (iii) local competitive initiatives
 - Online competitive constraints on local stores better assessed at local level (rather than expanding geographic scope) so as to avoid ignoring local competitive interactions and artificially lower Parties' market shares
- Quantifying local constraints exercised by online retailers:
 - Market share estimates had limitations
 - "Weighted competitors" approach (inspired by CMA, *Poundland/99p Stores*, 18 September 2015), i.e., a scoring method based on (i) diversion ratios; and (ii) distance between competitors' stores and the Parties
 - Most competition concerns located in Paris area; six stores divestiture

Part 2 – Specific issues in digital mergers

- "Old" tools are adequate to deal with specific issues with digital mergers. Two examples: "big data" and free online services.
- Big Data issues:
 - Horizontal effects (data combination) assessed through traditional framework for analyzing elimination of competitive constraints and barriers to entry
 - Case M.8124, *Microsoft/LinkedIn*, at 179: two ways in which the combination of two datasets may raise horizontal issues: (i) by increasing the merged entity's market power in a hypothetical market for such data or barriers to entry to actual or potential competitors, and (ii) by removing the competitive constraints the parties exerted on each other through the datasets they owned
 - See also cases M.4731, *Google/DoubleClick* and M.8180, *Verizon/Yahoo*

Part 2 – Specific issues in digital mergers (cont'd)

- How to assess effects in "zero value" markets - case M.7217, *Facebook/WhatsApp*:
 - Challenge: consumer communications apps are made available for free: no sufficiently informative market share estimates
 - Reliance on qualitative analysis of key parameters of competition:
 - i. Closeness of competition
 - ii. Consumers' ability to switch suppliers
 - iii. Barriers to entry
 - iv. Network effects



Thank you for your attention.