Competition and Gender

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Note
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1. TERMS AND DEFINITIONS

Gender a social structure. It is not an expression of biology, nor a fixed dichotomy in human life or character. It is a pattern in our social arrangements, and the everyday activities shaped by those arrangements.

Competition in economic terms means: Rivalry in which every seller tries to get what other sellers are seeking at the same time: sales, profit, and market share by offering the best practicable combination of price, quality, and service. Where the market information flows freely, competition plays a regulatory function in balancing demand and supply.

Entreprises A term in the commercial world used to describe a project or venture undertaken for gain. It is often used with the word "business" as in "business enterprise". Usually, by extension, it refers to the business entity carrying out the enterprise and is thus synonymous with "undertaking", "company" or "firm".

Abuse of dominant position A company can restrict competition if it is in a position of strength on a given market. A dominant position is not in itself anti-competitive, but if the company exploits this position to eliminate competition, it is considered to have abused it.

Examples include:
- charging unreasonably high prices
- depriving smaller competitors of customers by selling at artificially low prices they can't compete with
- obstructing competitors in the market (or in another related market) by forcing consumers to buy a product which is artificially related to a more popular, in-demand product
- refusing to deal with certain customers or offering special discounts to customers who buy all or most of their supplies from the dominant company
- making the sale of one product conditional on the sale of another product.

Acquisitions refers to obtaining ownership and control by one firm, in whole or in part, of another firm or business entity. As distinct from a merger, an acquisition does not necessarily entail amalgamation or consolidation of the firms. An acquisition, even when there is complete change in control, may lead the firms involved to continue to operate as separate entities. Nevertheless, joint control implies joint profit maximization and is a potential source of concern to antitrust authorities.

Merger an amalgamation or joining of two or more firms into an existing firm or to form a new firm. A merger is a method by which firms can increase their size and expand into existing or new economic activities and markets. A variety of motives may exist for mergers: to increase economic efficiency, to acquire market power, to diversify, to expand into different geographic markets, to pursue financial and R&D synergies, etc.

Relevant market combines the product market and the geographic market, defined as follows:
- a relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer by reason of the products' characteristics, their prices and their intended use;
- a relevant geographic market comprises the area in which the firms concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous.

Regulations refers to the various instruments by which Governments impose requirements on enterprises and citizens. It thus embraces laws, formal and informal orders, administrative guidance and subordinate rules issued by all levels of government, as well as rules issued by non-governmental or professional self-regulatory bodies to which Governments have delegated regulatory powers.

Regulatory barriers to competition as differentiated from structural and strategic barriers to entry, regulatory barriers to entry result from acts issued or acts performed by governmental executive authorities, by local self-government bodies, and by nongovernmental or self-regulatory bodies to which Governments

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have delegated regulatory powers. They include administrative barriers to entry into a market, exclusive rights, certificates, licenses and other permits for starting business operations

**Cross-Borders Spill Overs** relate to activities resulting in effects or externalities taking place in jurisdictions other than the one originally concerned

2. **PURPOSE**

The report on gender and competition is part of UNCTAD’s ongoing commitment to support Arab countries’ national efforts and policies to protect women’s access to fair, equitable and transparent markets. It provides an evidence-based approach on formulating, evaluating and assess gender-responsive competition practices and policies from a gender perspective in the context of selected Arab countries. The main objective of these guidelines is to enable selected countries to evaluate, assess and enhance existing competition laws and policies towards a transparent and gender responsive policies.

Gender inequality remains one of the most pervasive forms of discrimination globally. A growing wealth of evidence on women as traders, businesswomen, and consumers demonstrates that gender equality and equity in business cannot be achieved without advancing gender equality in society. Real socio-economic transformation for women and society goes hand in hand. In turn, when the public and private sector adopt policy frameworks that champion gender equality, it can be among the most powerful drivers of inclusive socio-economic growth. It can be achieved by tackling the structural and systemic barriers standing in the way of women’s economic advancement and a relevant identification of the influential actors of change can leverage women’s access to markets and finance.

Gender responsive competition frameworks is often recommended as an effective tool to protect women’s rights in markets against dominance and abuse. Developing said policies requires both transformative and mitigation policy interventions to address inequalities and violations of human rights where they exist.
3. **A BI-DIRECTIONAL RELATIONSHIP**

The relationship between gender and competition is a two-fold one: gender can affect competition while also competition can affect gender dynamics. Advocates of mainstreaming gender in competition policy point to a “double dividend”: competition authorities may reduce market distortions in a particular market (first dividend) and contribute to reduce gender inequality (second dividend).

Promoting competition in specific markets such as childcare, elderly care, infrastructure and financial markets can help promote female economic participation and reduce gender inequality. Another feature of women’s economic activity relates to their relative propensity to engage in activities within the informal sector. Tackling the issues that make women more prone to accept occupation in the informal domain, it is important to ensure that women do not face discrimination and poor working conditions. Considering gender may influence product market definition and the tools that competition authorities use to incentivize firms to refrain from making anti-competitive agreements.

Competition authorities can either follow the strict enforcement of competition law provisions or can engage in a more sweeping approach, favoring and acting in accordance to the public interest. It is not inconceivable that some competition authorities may find themselves with mandates that extend beyond efficiency.

Public interest refers to the consideration of non-economic goals related to consequences other than efficiency. The inclusion of public interest in merger control regimes may involve either an explicit requirement for consideration of public interest in a competition authority’s assessment, exemptions from competition authority assessment, or allowing other bodies to override the authority of competition authorities in specific cases. Governments can extend the mandate of a competition authority, to include gender inequality. This would recognize that women have been historically disadvantaged in many countries and socio-economic contexts.

Public interest considerations may also vary across countries and over time. It should also be noted that the inclusion of any public interest risks increasing legal uncertainty by reducing the predictability in enforcement. It may also lead to room for political pressure and an impact on the relevant time horizon of competition policy.

4. **ENTRY, TRANSACTION COSTS AND OUTCOMES**

One of the reasons why women fail to enter a market is that they face barriers to entry. Women are legally banned from working in specific industries such as construction, transportation, or manufacturing, and face legal obstacles to acquiring property, which has negative consequences for the accumulation of collateral and business entrepreneurship. Sometimes married women cannot register a business. Absence of sexual harassment laws, acts as a barrier and correlates negatively with female business ownership.

When entry by more efficient female entrepreneurs is restricted formally (or informally), incumbent firms or less efficient male entrepreneurs may fill the gaps. Competition advocacy that decreases barriers to entry for everyone (both men and women) would benefit both the competitive process and gender equality, by benefiting women more in relative terms given their unequal starting point in their historical conditions to market entry.

Female participation in a market may also depend on their opportunity cost - the foregone alternative. Women may choose not to participate in the formal market because of a lack of complementary infrastructure services, unaffordable substitute services to household labor, such as childcare or elderly care services, and because the informal economy may provide more flexible working conditions.

Women and men are inherently different in their inclination to compete. Niederle and Vesterlund (2007) find that female participants are less likely to enter tournaments when given the choice. This behavioral peculiarity can affect the functioning of the market as the pool of entering entrepreneurs in a competitive environment may place weaker constraints on the incumbent players, deteriorating the benefits from competition. This behavioral evidence may imply that levelling the playing field may require not only to decrease barriers to entry for women but also to introduce affirmative action measures.

Besides Gneezy et al. (2009) posit that gender preferences are culturally determined, and context depended. It is thus not clear-cut whether women lag the competitiveness drive. Their study shows that in the patriarchal society, women are less competitive than men and yet this result reverses in the matrilineal society, where we find that women are more competitive than men.

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Research has tried to understand what drives gender to influence sorting across occupations and industries. Goldin (2014) shows that women select into occupations that allow them to have temporal flexibility. Women move away from occupations and industries where long and specific hours of work are required. The gap exists because hours of work in many occupations are worth more when given at particular moments and when the hours are more continuous. In many occupations earnings have a nonlinear relationship with respect to hours. A flexible schedule often comes at a high price, particularly in the corporate, financial, and legal world. Technology, science, and health have been shifting towards more relative flexibility that it is not punitive for working women.

Akerlof and Kranton (2000) price differential is sustainable because individuals’ choices depend on their perceived identity. In a world of social difference, one of the most important economic decisions that an individual make may be the type of person to be. The reservation price—the willingness to pay—can therefore be a function of one’s perceived identity. Firms can then set different prices for versions of a product that differ only slightly in some way that appeals to a consumer’s gender identity, and then let consumers self-select. Consumer choices may be driven not only by the intrinsic characteristics of a product but also by the gender identity payoffs associated with consuming a product, leading to a utility gain (loss) when such action is prescribed (or not) as corresponding to one’s own gender.

Transaction costs are the costs associated with participating in a market and include searching, information and bargaining costs. Search costs in the labor market may be higher for women due to expected discrimination but also to time constraints leading to monopsony power of employers and consequently to lower wages.

Psychology and economics research suggest women and men may process good and bad news differently and seek feedback at different rates. Women and men may process information differently according to marketing and consumer research. Experimental research and labor market research suggest that there exist gender differences in the propensity to bargain, with women exhibiting a lower propensity to bargain.

In summary, female economic participation in formal markets may be impeded or reduced by barriers - legal, regulatory, lack of collateral; wrong incentives - unfit complementary infrastructure services, unaffordable substitute services to household labour such as caring services, opportunities in the informal economy; behavioural and cultural factors; taste for competition, gender norms and gender identity. When women participate in markets they may suffer from discrimination - higher prices, gender wage gap; transaction costs - bargaining, information processing; behavioral and organizational factors - homophily risk-aversion, demand for flexibility.

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5. APPLICATIONS: COMPETITION AND GENDER

Competition law enforcement practice at the Community level (EU) but also by national competition authorities goes through the first step of defining the relevant market for investigation. Sometimes, gender plays an important role in defining the boundaries of the market given their distinct preferences for a product which makes it imperative to consider women’s demand as a separate market. Such characteristics are exemplified in the market definition in case No COMP/M.5721 concerning the PRIMONDO assets acquisition by OTTO.

In December 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Otto GmbH & Co KG ("Otto", Germany) and its subsidiaries of the undertakings Primondo GmbH (in liquidation) (Germany).

The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion and each of them has a Community-wide turnover in excess of EUR 250 million. Otto does not achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The proposed transaction therefore has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

The parties submitted that the relevant product market is the broad non-food retail market, which includes retail through home-shopping as well as high street shops (so-called "brick and mortar"). The parties refer in this regard to the decision practice of several national competition authorities.

The market investigation confirmed that the non-food retail segment should be sub-divided according to product categories. In particular, the following product categories were identified: (i) clothing and footwear, (ii) furniture and furnishing, (iii) electronics and appliance, (iv) home improvement and garden centres, (v) health and beauty, (vi) toys and games, (vii) sport goods and camping.

Furthermore, the market investigation revealed that some of the above-mentioned product categories could be sub-divided even further according to sub-categories, e.g. clothing could be distinguished from footwear and possibly further discerned into women’s, men’s and children’s apparel, underwear or furniture could be distinguished from home textiles.

On the basis of classifications, the following product categories were discussed in the decision: "Women's apparel", "Men's apparel", "Children's apparel", "Underwear", "Shoes", "Leather goods", "Sports textiles", "Sport shoes", "Electronics", "Large electronic appliances", "Small electronic appliances", "Home improvement / Gardens", "Furniture", "Home textiles", "Lighting" and "Toys".

The products belonging to one of the above-mentioned categories cannot be considered as substitutes to products from any other category. Moreover, the competitive conditions in these segments differ significantly given that there are a large number of market players that are specialised in one or some of the various product categories. Jumbling together women’s and men’s apparels would have entailed that the Commissions further competition analysis would have started with a bias. This merger case, cleared by the Directorate General for Competition, it is however only one of the cases where gender played a role in defining the boundaries of the market.

Briefly, in Case No COMP/M.5658 involving the merger between UNILEVER and SARA LEE, the Commission’s relevant market definition by way of affirming that:

- Male deodorants are marketed differently from non-male deodorants and have different features
- Gender differentiation between male-deodorants and non-male-deodorants is strong across Member States and is increasing
- Unisex deodorants are marketed distinctly from male deodorants
- Retailers distinguish between male and non-male deodorants and present them separately in retail outlets
- Price differences between male and female deodorants
decided that gender in this case was a consideration in defining the relevant market.

Another more tangential, less direct connection between competition law and gender relates to compliance with Competition Law. The assumption is that women and men may differ in their likelihood to whistle-blow, or to request leniency. Given this, the aim is to define and design tailored tools differing in the nature and level of punishment for women/men that by acting on a professional capacity have engaged in anti-competitive acts or agreements.

Research has found that women are more likely to whistle-blow to law enforcement on corporate misconduct or financial fraud, as well as on environmental misconduct.10 It is also suggested that women tend to be more risk averse and therefore focus more on the potential penalties for misconduct.11 If this research is robust, whistle-blow programs can be enhanced by strengthening and

emphasizing sanctions against individuals to increase the perceived risk of colluding, increasing the proportion of women in board and senior leadership positions, and/or increasing the diversity of representation in board and senior leadership positions.

Another avenue to explore the intersection of gender and competition law, relates to the potential role that certain markets may play in fostering or hampering female labour force participation. Promoting competition in sectors in a sector that provides services that can substitute for unpaid work in the household may contribute both to market efficiency and consumer surplus maximization, and to boost female labor force participation. Competition authorities may wish to prioritise market studies and investigations in such markets in order to obtain a “double dividend”.

In 2014, the Japan Fair Trade Commission undertook market study on the childcare sector in Japan. It surveyed users to identify the reasons for the lack of supply and the key issues for competition policy. It concluded that facilitating competition would be critical to improving the quality and availability of service.

The Competition and Market Authority announced the launch of a market study of UK care and nursing homes for the elderly. This sector is considered as particularly important because individuals in need of elderly care are often making choices in a highly vulnerable situation and because of expected increases in life expectancy, as acknowledged in the report. Furthermore, these choices often involve third parties such as family members or informal care providers, often women, within the home.12

6. GUIDING PRINCIPLES

6.1. The criteria, terms and conditions of gender responsive fair competition and transparency policies and frameworks must be written in clear, concise, gender sensitive and nondiscriminatory manner, and accessible to all citizens equally without any constraints pertaining to age, race, religion, gender or geographic location;

6.2. Its objectives, scope and structure must be clear in its mandate, synthesized and concise, and to avoid using technical jargons, complex industrial terms or legal acronyms and abbreviations. If necessary, a detailed description must be provided as an annex to be part of the policy;

6.3. In particular, the scope of the policy must recognize the existing gender gap in access to education, markets, financial services and trade where it operates, and at the national, regional and international level;

6.4. The terms, conditions and requirements must be clearly linked to the objectives, scope and specifications of policies. It shall provide specifically tailored clear terms, conditions, requirements and specifications that in turn correspond to the trade environment where it operates;

6.5. Sections and subsections must delineate specifications clearly, and in sufficient details the requirements of compliance, standardization, licensing and regulations;

6.6. It must be available in print and on the website for free, at national, regional and international levels. It must be translated into the national language and at least one foreign language;

6.7. It must take into consideration local conditions in each country in which the policy operates. “one size fits all” approach must be avoided. Furthermore, policies must indicate to what extent their requirements in line or go beyond the relevant legal requirements, international trade agreements and national policies and frameworks;

6.8. It must recognize the value of relevant and broad stakeholders (e.g National Council for Women, Ministry of Women and Family, grassroots women advocacy groups etc.) involvement in both the development of its scope, objective, terms, conditions, specifications and requirements, as well as in the determination of thresholds for penalties, sanctions and fines of non-compliance;

6.9. It allows attempts to harmonization, adaptability and replicability with international laws and treaties on competition and trade;

6.10. It requires feedback mechanisms to be put in place through which beneficiaries, policy participants, public and private sector, and other stakeholders can review the rules and requirements of the policy;


6.11. It required established communication through publishing the contact details on the website, media forums and other communication mediums. Feedback forms for comments must be made available in print and electronically, and free of any administrative charges.

6.12. It must take into consideration specific legal context, international conventions protecting the rights of women such as, but not limited to

- Article 11 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states that all appropriate measures shall be taken to eliminate discrimination against women in the field of employment and to ensure, on a basis of equality of men and women, the same rights in working life. CEDAW has been ratified by 189 countries, of which 60 with reservations
- The political declaration from the UN’s Fourth World Conference on Women in Beijing in 1995 stressed the importance of promoting women’s economic empowerment by taking measures against the structural causes of poverty

7. BENCHMARKING PRINCIPLES

7.1. When warranted, prioritize conducting a gender analysis as a starting point. This step shall ensure to provide in-depth insights into the existing gender power structures and its effects on the assignment of roles, responsibilities, duties, rights, division of labour and practices in market and household;

7.2. Understanding the extent of how gender norms influence the way that women and men from various socio-economic/cultural groups in selected countries gain access to market and services to support their livelihoods and their families;

7.3. A gender analysis begins with collecting comprehensive gender baseline data (sex-disaggregated). It includes information on women, men, girls and boys in terms of their division of labor, status, access to, and control over, resources, and other relevant condition influencing their equal economic participation;

7.4. Given the gender disparity in MENA context, gender analysis must aim to involve equal participation between women and men as stakeholders and in practice, to address underlying social and gender inequalities from the start of the project while ensuring the best data and knowledge is made available, accessible and free of charge;

7.5. Develop gender-sensitive indicators and collect sex-disaggregated data both quantitative (statistics) and qualitative data (analytical and relative). The main purpose of this exercise is to track the extent to which outcomes correspond to the identified issues, targets, objectives and reality, to be included for the gender impact assessment;

7.6. A specific focus of the gender analysis is to highlight specific vulnerabilities of women and men in relation to market dynamics. Understanding the concept of vulnerability, as a public interest consideration pursued by Competition agencies with broad enforcement powers, will allow a clear definition on how gender in competitive practices is represented, constructed, deconstructed and contested in complex and subtle ways through scholarly, marketing, and popular discourse and through media systems such as advertising;

7.7. A gender perspective needs analysis to be included when defining both the major problems to be addressed and the long-term objectives;

7.8. Effective gender-sensitive fair competition policy recognizes that women and men do not belong to homogenous groups, and therefore shall not constitute merely including women in the process but requires a wide array of actions to ensure women and men from rural and urban areas fully and equally participate in, and equally benefit from gender-sensitive competition protection policy interventions.
Bibliography


