

Competition authorities to empower consumers, employees, and smaller businesses in 2019

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Protecting consumers, small and medium-sized enterprises (SMEs) and employees is expected to be a top priority for several competition authorities across Europe in 2019. This means that all producers of consumer goods, providers of services to consumers, and larger companies doing business with SMEs, will be in the supervisory spotlight. The ACM, the Dutch competition authority, demonstrated this priority a bit early (late December 2018), by carrying out several [dawn-raids](#) in order to collect evidence for suspected retail price fixing of consumer goods.

Additionally, we expect that competition authorities and policy makers will continue to focus on online markets. Finally, throughout the EU, all regulators and authorities will be bracing for the impact of Brexit in 2019.

Consumers: dual enforcement approach

When it comes to consumers, many competition authorities do not only rely solely on their vested powers under competition law, but also on those based on consumer protection legislation. This dual enforcement approach gives competition authorities a broader variety of instruments to address problematic issues. For example, the German competition authority recently finished its sector inquiry into [comparison websites](#), and in 2019 it will push for measures on the basis of consumer protection laws. The Italian competition authority fined [Facebook](#) EUR 10 million for using its subscribers' data for commercial purpose. The same authority suspended the cabin bag surcharge levied by low-cost air carriers such as [Ryanair](#), and it fined [Apple and Samsung](#) for software updates that reduced the functionality of mobile phones. All these actions were based on consumer protection laws. In contrast, the Swiss competition authority recently started two cases, rooted in competition law, to guarantee a level playing field between consumer payment apps. The first case was against a number of [Swiss banks](#) suspected of blocking Apple and Samsung Pay in favour of their own payment app. The second case, against [Apple](#), led to Apple committing itself to not automatically launch Apple Pay, as this would exclude other payment apps. In 2019, we expect to see an increase in dual enforcement to protect the interests of consumers.

Small and medium-sized enterprises

SMEs operating in the face of unfair trading practices by larger business partners has been an outstanding issue on political agendas for some time. Now, it is also a priority for European competition authorities, especially when it comes to unfair trading practices on the purchase side. The German competition authority recently started an investigation into [furniture purchasing collaborations](#), which tend to expand in size while furniture

makers are predominantly SMEs. In 2019, the ACM is also expected to focus on unfair trading practices on the purchasing side of markets. This trend coincides with the proposal for an EU [directive](#) on unfair trading practices in business-to-business relationships in the food supply chain; the legislative [process](#) relating to this directive will continue in 2019.

In addition, the Commission has proposed a [regulation](#) on promoting fairness and transparency for business users of online intermediation services, such as platforms. The regulation is specifically aimed at protecting SMEs, for which online intermediation services are often an important means to reach consumers. The legislative [process](#) will continue in 2019. In the meantime, competition authorities are targeting online intermediation service providers on the basis of competition law. At the end of 2018, the German competition authority started an investigation into [Amazon](#). The online platform is suspected of abusing a dominant position towards retailers using the platform, by imposing unfair terms of business and practices. In parallel, the [Commission](#) is investigating Amazon's data collection policy, which might also be to the detriment of small and medium-sized retailers who sell through that platform.

Employees

The ACM is expected to give priority to cases concerning employment conditions. It does not stand [alone](#) in this. For example, in 2018 the [Antitrust division](#) of the U.S. Department of Justice had already indicated that it would step up protection of employees' interests through competition law, arguing that companies must freely compete for employees. No-poach, wage fixing and non-hiring agreements are being considered illegal under the cartel prohibition.

Competition policy in the digital economy

There are already a number of enforcement cases against big online players, and competition policy regarding online platforms has been a hot topic for a couple of years now. Still, public debate will be refuelled by the [public consultation](#) carried out by the Dutch Department of Economic Affairs and Climate, and by the report on the future challenges of digitisation for competition policy. This report is to be delivered by an [expert panel](#) appointed by Competition Commissioner Vestager by 31 March 2019. The primary question to be answered is whether current competition law instruments provide sufficient tools to address challenges that are specific to online markets.

Two remaining [investigations](#) by the Commission following its e-commerce sector inquiry are expected to conclude in 2019. One concerns the game distribution platform Steam and five PC video game publishers suspected of geo-blocking practices. The other investigation concerns the hotel chain Meliá and the four largest European tour operators, which are suspected of differentiating hotel prices offered to consumers based on their nationality or residence (price discrimination).

Brexit

The most obvious development will be Brexit on 29 March 2019. Whether the UK's membership of the EU will come to an end with or without a deal remains uncertain. Whatever the outcome, Brexit's impact will be felt for many years to come. For more information on the possible consequences of the various

scenarios being considered, please see our [Brexit: Deal or No Deal](#) publication.

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