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## E-COMMERCE AND COMPETITION LAW: CHALLENGES IN THE AGE OF DIGITALIZATION

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**Abstract:** *THE RAPID EXPANSION OF ELECTRONIC COMMERCE AND THE CONSOLIDATION OF DIGITAL PLATFORMS HAVE LED TO SIGNIFICANT LEGAL CHALLENGES IN THE FIELD OF COMPETITION LAW, RAISING ISSUES RELATED TO MARKET MONOPOLIZATION AND ANTI-COMPETITIVE PRACTICES. IN THIS CONTEXT, THE PRESENT ARTICLE EXAMINES THE IMPACT OF DIGITALIZATION ON THE LEGAL FRAMEWORK OF COMPETITION, WITH PARTICULAR ATTENTION TO THE ANTI-COMPETITIVE BEHAVIOR OF ELECTRONIC COMMERCE PLATFORMS AND THE ABUSE OF DOMINANT POSITION IN THIS SECTOR.*

*THIS ANALYSIS FOCUSES ON EUROPEAN AND INTERNATIONAL COMPETITION NORMS, HIGHLIGHTING THE LIMITATIONS OF TRADITIONAL REGULATIONS IN THE FACE OF THE UNIQUE CHARACTERISTICS OF DIGITAL MARKETS. THE CASE STUDY ON MAJOR PLATFORMS ILLUSTRATES HOW THESE ENTITIES CAN AFFECT COMPETITIVE BALANCE THROUGH SELF-PREFERENCING PRACTICES, ALGORITHM MANIPULATION, OR THE IMPOSITION OF DISADVANTAGEOUS CONDITIONS ON THIRD PARTIES. RELEVANT RULINGS BY THE EUROPEAN COMMISSION AND THE COURT OF JUSTICE OF THE EUROPEAN UNION ARE ALSO ANALYZED, OFFERING INSIGHT INTO HOW JURISPRUDENCE ATTEMPTS TO REGULATE A CONTINUOUSLY EVOLVING FIELD.*

*THROUGH A CRITICAL EVALUATION OF EXISTING LEGISLATION AND PERTINENT CASE LAW, THE ARTICLE IDENTIFIES GAPS AND THE IMPERATIVE NEED FOR REFORM IN THE REGULATORY FRAMEWORK APPLICABLE TO DIGITAL PLATFORMS. THE CONCLUSIONS EMPHASIZE THE NECESSITY OF A FLEXIBLE LEGAL REGIME CAPABLE OF KEEPING PACE WITH TECHNOLOGICAL DYNAMICS TO PREVENT COMPETITIVE DISTORTIONS AND PROTECT BOTH MARKETS AND CONSUMERS. THE RECOMMENDATIONS PROPOSE DIRECTIONS FOR LEGISLATIVE DEVELOPMENT THAT ENSURE FAIR REGULATION ADAPTED TO THE NEW CHALLENGES OF THE DIGITAL ECONOMY.*

**Keywords:** *E-COMMERCE, COMPETITION LAW, REGULATION, DIGITIZATION, ONLINE PLATFORMS.*

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## INTRODUCTION

The accelerated evolution of electronic commerce has redefined not only the global economic landscape but also the applicable legal framework. In the past two decades, digitalization has facilitated the emergence of e-commerce platforms that have transformed commercial interactions, enabling cross-border transactions at an unprecedented pace. In this context, major online platforms have acquired considerable market power, leading to a significant shift in the structure of global markets. These transformations present new and complex challenges in the application of competition law, as the specific nature of the digital environment can facilitate abuses of dominant positions and other anti-competitive behaviors that are difficult to regulate.

The main legal issues arising in this context concern how digital platforms exert a disproportionate influence over the markets in which they operate. Through their ability to control merchants' access to consumers and manipulate commercial conditions, these platforms can severely affect competition, limiting the ability of other economic actors to enter the market or compete fairly. Consequently, there has emerged a need to reassess how traditional competition rules are applied in the digital era. Another noteworthy aspect relates to the use of algorithms and artificial intelligence technologies, which can facilitate anti-competitive agreements or perpetuate abusive behaviors without direct human intervention.

The purpose of this article is to delve into the interaction between competition law and electronic commerce, highlighting the main legal challenges and gaps in the existing legislative framework. In this endeavor, we will analyze the extent to which current regulations are capable of responding to the new realities imposed by electronic commerce and whether they are sufficient to protect a healthy competitive environment.

One of the primary contributions of this research lies in highlighting the unique challenges that digitalization brings to traditional competition regulations. Additionally, the article will propose legislative adaptation solutions and analyze how competition authorities, both at the national and European levels, can develop new tools to counter anti-competitive practices in electronic commerce.

## Research Methodology

The methodology used in this article is anchored in legal and comparative analysis, aiming to evaluate the competition law norms applicable to electronic commerce in the European Union and other relevant jurisdictions such as the United States and China. This approach allows for a detailed examination of how different legal systems manage the challenges posed by digital platforms, as well as a comparison of legislative and jurisprudential responses to anti-competitive practices in this sector.

The first stage of the research involves a detailed analysis of the existing legal framework in the European Union concerning competition and how it applies to electronic commerce. The E-Commerce Directive, the General Data Protection Regulation (GDPR), and Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) are examined to understand how current regulations apply to major digital platforms. In this regard, the article seeks to highlight the essential aspects of competition law, such as the prohibition of anti-competitive agreements and the fight against the abuse of dominant positions.

The comparative analysis will extend to other significant jurisdictions, such as U.S. antitrust legislation and specific regulations applicable in China. These jurisdictions are of special interest, given that many of the world's largest digital platforms originate from these countries, and the way their respective laws address competition issues in electronic commerce provides a relevant perspective on global challenges in this field.



To substantiate the analysis, the research is based on a comprehensive evaluation of the legal norms applicable to digital platforms, emphasizing how they have evolved in the context of electronic commerce. Both primary legislation and secondary acts, relevant regulations, and directives will be analyzed.

The evaluation of legislative documents will be complemented by an analysis of relevant case law, focusing on landmark cases from the European Union and the United States that have marked the application of competition law in the context of electronic commerce. For example, decisions by the European Commission regarding the practices of Amazon and Alibaba are examined to identify the nuances and limitations of applying traditional legislation in the face of new digital realities.

## **I. The Evolution of Electronic Commerce: From Traditional Transactions to Global Digital Platforms**

Electronic commerce has had a significant impact on the way businesses and transactions are conducted globally. (Kenneth C. Laudon, 2021, pp. 34-36) In the early 1990s, online transactions were limited to specialized platforms and were mainly used for selling specific products such as books or electronics. (Dave Chaffey, 2019, pp. 45-48) The evolution of technology, internet infrastructure, and digital financial services has facilitated the growth of electronic commerce, allowing global platforms like Amazon, Alibaba, and eBay to become major players in the world economy.

Essentially, the shift from traditional transactions to online ones has changed not only the way sales are conducted but also the economic structure of markets. In electronic commerce, market entry costs are lower, and access to consumers is no longer restricted by geographical barriers. These changes have led to increased competition but have also favored the consolidation of power among major platforms that now control access to digital markets.

E-commerce platforms have become essential infrastructures for modern commerce, offering not only meeting places between buyers and sellers but also payment, logistics, and marketing services. (OECD, 2019, pp. 20-25) This intermediation of digital markets has granted these platforms a dominant role, which, however, is not without risks to competition and market integrity.

## **II. Case Study: The Impact of Major Online Commerce Companies**

Major companies in online commerce, such as Amazon, Alibaba, and eBay, have redefined how global markets function and have imposed new economic and logistical standards. They now represent the backbone of the digital economy, offering complex services and global platforms that connect consumers and producers from all corners of the world. However, this economic power has brought significant challenges to traditional regulations regarding competition and fair trading practices. The case study on the impact of these companies reveals multiple facets of their influence on markets, competition, and consumer rights, highlighting the legal and regulatory challenges posed by these giant entities.

### **1. Amazon: Monopoly in the Online Commerce Market in the USA and Europe**

Amazon is the most evident example of market power and how a digital platform can distort competition. Founded in 1994 as an online bookstore, Amazon rapidly expanded its portfolio, becoming a giant that sells and distributes virtually any type of product. The platform operates on multiple levels: direct seller, intermediary for third-party sellers, and provider of logistics and cloud computing services.



Amazon exerts significant influence over markets through a business model based on economies of scale and advanced technologies. This market power has raised concerns regarding the abuse of a dominant position, especially concerning its relationship with third-party sellers. An example of abuse is the alleged practice of Amazon favoring its own products over those of third-party sellers, particularly in the case of "*Amazon Basics*" goods. (Comisia Europeană, 2020) Thus, the company has access to data about third-party sales and can use it to adjust its own offerings, gradually eliminating competition from the platform.

Additionally, the algorithms used by Amazon to suggest products based on consumer behavior raise serious questions about anti-competitive practices. (Camera Reprezentanților a SUA, 2020) These algorithms have the capacity to manipulate search results, favoring products that bring the company the highest profit, to the detriment of more diverse options or competitors.

### **Effects on Prices and Small Entrepreneurs**

Furthermore, the prices set by Amazon pose a problem for competition in the online market. Due to its control over the logistics chain and access to detailed sales data, Amazon can drastically reduce prices to eliminate competition or attract more consumers. However, this behavior carries a high risk of "*predatory pricing*" practices (subsidizing short-term losses to eliminate competitors). (Comitetului Stigler privind platformele digitale, 2019, pp. 57-61)

Small businesses that choose to sell their products through Amazon also face a dilemma: although they have access to a global market, they are forced to comply with the terms and conditions imposed by the platform, including high fees and price constraints. Often, small merchants become so dependent on Amazon that they lose control over their own business, as Amazon can unilaterally change the rules of the game.

### **2. Alibaba: The Giant Ecosystem in Asia and Competition Regulations in China**

Alibaba is the equivalent of Amazon in Asia, with a major impact on the online market globally, especially in China. The company rapidly expanded its operations, becoming a conglomerate with activities covering online commerce, digital payments (Alipay), logistics, and cloud computing.

Alibaba's business model is based on its vast ecosystem, which includes platforms like Taobao, Tmall, and AliExpress. Through these platforms, Alibaba facilitates the sale of goods by both large companies and small merchants, and even individual consumers. However, similar to Amazon, Alibaba has been accused of anti-competitive practices, especially in the context of its dominant position in the Chinese market. (Reuters, 2021)

One of the most discussed practices is forcing merchants to sell exclusively on its platforms, a practice that led to the opening of an investigation by China's antitrust authorities in 2020. (The Wall Street Journal, 2020) This tactic, known as "*choose one out of two*," resulted in the exclusion of significant competitors and significantly restricted competition.

In addition to its influence on the Chinese market, Alibaba also plays a major role in international markets, especially through the AliExpress platform, which facilitates sales to consumers outside of China. The company takes advantage of regulatory differences between international markets, thus managing to expand its global influence without having to fully comply



with the strict standards imposed in other jurisdictions.( Financial Times, 2020) This raises issues regarding the uniform application of antitrust regulations at a global level.

### 3. eBay: A Platform for Second-Hand Commerce and Online Competition Challenges

eBay, one of the first globally successful online commerce platforms, has evolved from a simple online auction site to a complex platform that facilitates the sale of new and second-hand goods between individual users and companies. Although eBay does not have the same scale as Amazon or Alibaba, its influence on the electronic commerce market is considerable.

#### 3.1 Competitive Practices and Challenges Associated with Peer-to-Peer Platforms

One of eBay's main advantages is that it offers an open platform where any user can sell goods without eBay directly participating in the sales process. However, this openness comes with certain competitive risks. Peer-to-peer (P2P) platforms like eBay can generate market distortions due to the lack of direct price regulation and the absence of clear consumer protection measures against abuses of dominant position by large sellers.( European Commission, 2019)

#### 3.2 Relationship with Large Companies and Impact on Individual Merchants

While eBay remains a popular platform for small sellers, its relationship with large companies is also an issue of interest. Merchants on eBay have to compete not only with other individual sellers but also with companies that offer products in large quantities and at reduced prices. This creates considerable pressure on small entrepreneurs, who are forced to adjust their prices or specialize in niche products to survive.

## III. Legal and Regulatory Challenges in Online Commerce

The case study of these three major companies highlights the complex challenges that online commerce giants pose to regulatory authorities. Although each of these companies operates in different markets and faces specific challenges, their impact on competition and the market is similar.

Firstly, there is an issue related to the informational asymmetry between platforms and users. Large companies like Amazon or Alibaba have access to detailed data about consumer behavior and third-party merchants operating on their platforms. This informational advantage can be used to eliminate competition without users being fully aware of the anti-competitive practices.

Secondly, cross-border regulation of these companies is a major challenge. Due to their global nature, these companies take advantage of regulatory differences between various jurisdictions, thus avoiding sanctions or strict regulations in certain countries. This phenomenon undermines national regulatory efforts and makes it difficult to uniformly apply competition laws.

The impact of major online commerce companies is profound and complex, generating both immense economic opportunities and considerable challenges for regulation and competition in global markets. Therefore, closer international collaboration is necessary to regulate anti-competitive behaviors and to ensure a fair and transparent market environment.

## IV. Existing Regulations: Legislative Framework in the European Union and Antitrust Regulations Applicable to Electronic Commerce

In the face of these challenges, the European Union has developed a solid legislative framework for regulating electronic commerce and applying antitrust rules. Competition law in the EU is based on the Union's treaties and has two main objectives: protecting consumers and promoting healthy competition in the internal market. In the case of electronic commerce, these

regulations are applied to prevent abuse of dominant position and anti-competitive practices that could affect the functioning of the digital market.

The E-Commerce Directive (Directive 2000/31/EC) establishes the legal framework for the operation of online platforms and digital services in the European Union. It imposes obligations on platforms to provide clear and accessible information about their products and services and to comply with certain consumer protection standards. However, the directive has limitations regarding control over the anti-competitive behavior of large platforms.

One of the most relevant provisions concerning competition is Article 102 of the Treaty on the Functioning of the European Union (TFEU), which prohibits abuse of dominant position. (TFUE, 2012) This is applied when an electronic commerce platform uses its market power to exclude competitors or impose unfair prices. Recent cases against technology giants like Google and Amazon have highlighted how the European Commission can sanction these practices. For example, Google has been fined multiple times for abusing its dominant position in the online search and digital advertising markets.

Another important instrument is the Digital Markets Act (DMA), which has been adopted to regulate the activities of very large digital platforms, known as "gatekeepers." The DMA introduces strict rules for these platforms, including prohibitions on "self-preferencing," exclusive use of merchants' data, and mandatory interoperability between platforms. These measures are intended to create a fair competitive environment in the digital market and to limit the power of large platforms to exclude competition.

Another regulation that has a significant impact on electronic commerce is the General Data Protection Regulation (GDPR). It imposes strict obligations on online platforms regarding the collection, storage, and use of users' personal data. In the context of electronic commerce, the GDPR protects consumers against the abusive use of their data, thus reducing the risk of platforms using their dominant position to manipulate consumer behavior.

## **V. Forms of Abuse of Dominant Position: How Does It Manifest in the Online Environment?**

An inevitable consequence of digital platforms accumulating a dominant position is the risk of abusing that position. In the digital environment, abuse of dominant position manifests in specific forms, tailored to the unique characteristics of electronic commerce and the digital economy. A frequently encountered form is the favoring of one's own products or services over those offered by competitors. This type of behavior has been identified in several investigations by competition authorities in the European Union and the United States.

A notable example is the Google Shopping case, in which the European Commission found that Google favored its own price comparison service in search results to the detriment of its competitors. (Comisia Europeană, 2017) This was considered an anti-competitive practice because it distorted competition in the electronic commerce market, and users did not have fair access to competitive alternatives. Manipulating search results or recommendation algorithms is a practice that can have devastating effects on third-party merchants who rely on digital platforms to promote their products and services.

Another form of abuse of dominant position is the imposition of discriminatory conditions for access to the platform or the use of essential functionalities. For example, Apple has been accused by several app developers of imposing onerous conditions for using the App Store, including requirements related to high commissions and restricting the use of alternative payment methods.



(Comisia Europeană, 2020) Such practices affect competition because small developers do not have the necessary resources to compete successfully under these conditions.

## **VI. Reform of Antitrust Regulations in the United States**

In the United States, debates regarding the necessity of reforming antitrust legislation have become increasingly intense in recent years, especially against the backdrop of the rise of technology giants. American antitrust legislation, based primarily on the Sherman Act and the Clayton Act, has long been oriented toward preventing anti-competitive behavior in traditional markets. However, the complexity of digital markets has called into question the effectiveness of these norms in the modern context.

In recent years, several legislative proposals aimed at reforming antitrust laws have been introduced in Congress. Among the most notable are the "American Innovation and Choice Online Act" and the "Platform Competition and Opportunity Act," which seek to limit the ability of dominant platforms to favor their own services or to acquire smaller companies to eliminate potential competition. (U.S. Congress, 2021) These proposals aim to create a regulatory framework similar to that of the DMA but with particularities adapted to the American legal system.

Another important aspect of antitrust reform in the United States is the emphasis on strengthening the competencies of regulatory agencies such as the Federal Trade Commission (FTC) and the Department of Justice (DOJ). This strengthening is essential, given that digital platforms operate in an extremely dynamic environment, and detecting and combating anti-competitive practices require technical expertise and considerable resources.

## **VII. Strengthening International Cooperation in Competition Regulation**

As digital markets become increasingly global, it is evident that competition challenges cannot be effectively addressed solely at the national or regional level. For this reason, international cooperation between regulatory authorities becomes essential. In recent decades, several international platforms and initiatives have been created to facilitate the exchange of information and coordination of efforts in the field of competition.

Organizations such as the Organisation for Economic Co-operation and Development (OECD) and the United Nations Commission on International Trade Law (UNCITRAL) have played an important role in promoting constant dialogue between competition authorities from different countries. These organizations have issued guidelines and recommendations regarding the application of competition law in the digital economy, encouraging the convergence of norms and regulatory standards.

A notable example of international cooperation is the collaboration between the European Commission and the Federal Trade Commission (FTC) of the United States, which have initiated several joint investigations against some technology giants. (Comisia Europeană, 2020) This cooperation not only increases the efficiency of investigations but also helps prevent legal gaps that could arise due to regulatory differences between jurisdictions.

## **CONCLUSION**

The present article highlights the complexity of regulating electronic commerce in the digital era, focusing on how competition law responds to the new challenges generated by global digital platforms. In particular, it has been demonstrated that major companies in this sector, such as Amazon, Alibaba, and eBay, have acquired dominant positions that raise significant legal issues regarding the abuse of market power, informational asymmetry, and anti-competitive practices.



Comparative analysis of the legislative frameworks in the European Union, the United States, and China shows that there are significant differences in the approach to regulating digital platforms, especially concerning the application of antitrust norms. However, both in the EU and other jurisdictions, current regulations face difficulties in keeping up with the rapid pace of development in electronic commerce and associated technologies, such as artificial intelligence and recommendation algorithms.

This study reveals the necessity for continuous review and adaptation of competition regulations to ensure the maintenance of a fair competitive environment, consumer protection, and the prevention of power abuses. International collaboration is essential to standardize standards and combat anti-competitive tactics that transcend national borders, given the global nature of electronic commerce.

Thus, the future of competition regulation in electronic commerce will depend on the ability of authorities to innovate and collaborate at the international level, ensuring effective and equitable enforcement of legal norms in the face of these increasingly complex digital challenges.





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