The Law and Economics of Potential Competition in Digital Markets
Case Studies in Online Intermediation Platforms

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Abstract

This research aims to explore how authorities in different jurisdictions respond to potential competition in the online automotive classifieds platform markets. This is done by means of a review of cases in South Africa, the United Kingdom and Australia. Previous research and literature have identified the method to be used when defining a relevant potential competitor in a market. This paper evaluates how potential competition considerations should affect the evaluation of a merger or acquisition, specifically in the online automotive classifieds platform markets. Potential competition issues arising in intermediation platform markets exists as more firms are developing their own intermediation platforms and competition authorities are seeking to regulate these firms that bring about novel competition issues compared to those experienced by a traditional firm. This research seeks to provide an understanding to its readers and authorities on how potential competition concerns should be addressed and handled in platform markets, particularly those including a digital element.

Keywords: Potential Competition, Merger Control, Digital Markets, Killer Acquisitions, Market Definition, Online Automotive Classifieds, Intermediaries, Platform Market.

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1. Introduction

Platforms raise several competition challenges, specifically in merger control. The issues surrounding potential competition concerns have often been cited. For example, when a potential competitor is set to enter a market, but instead is acquired by an incumbent of that market. Thus, reducing the innovation efforts, a target firm could have provided the market had that target firm been allowed to successfully enter and compete in the market. Alternatively, potential competition concerns may be raised in cases of a 5-to-4 merger, where the acquiring and target firms are attempting to merge with the intention of becoming a more effective competitor to the market leader. This paper seeks to deal with understanding issues of this nature, and the potential competition concerns raised by authorities in several jurisdictions.

Firms design platforms to operate under many different circumstances, forming the basis of many different markets. The online intermediation market is broad, ranging from online marketplaces for new goods to second-hand or used trading platforms. The market for online intermediation in general is too great to be dealt with in enough detail within this paper, thus the scope has been narrowed to focus on the online intermediation classifieds market, specifically the classifieds market for second hand / used cars and other vehicles.

To provide an example of the business model under consideration in this paper, the firms operate in the used-vehicle e-commerce market. These firms can operate in both the online and physical realms. Where a firm has a physical location to take control and ownership of the stock (vehicles) between transactions, but interactions with their customers occur in the digital or online space. For example, the platform will interact with a buyer or seller of the vehicle online, but the transaction of handing the car over to the firm, or buyer, will take place in person.

Competition authorities worldwide are dealing with mergers and acquisitions involving platforms. Several have dealt with mergers and acquisitions for the online intermediation platform market specifically. The authorities have found it challenging to define the relevant markets and to involve the concept of potential competitors into their definitions. This has recently become of great concern as a larger portion of firms now involve a digital element, whether it be data processing or an e-commerce element to their business. This all needs to be accounted for and repercussions considered when the market is assessed.

Many authorities acknowledge there has been chronic underenforcement in markets involving digital firms undergoing mergers and acquisitions. It has often been attributed to firms not meeting the turnover thresholds which trigger mandatory notifications to the authorities. The authorities have realised this is due to the firms designing and operating platforms are not revenue generating but have the potential to be. These firms are acquired without any consideration by local authorities on the potential anti-competitive nature simply as the thresholds requiring firms to notify are not met. In recent years, this notification threshold has been amended by some authorities requiring notification based on the price paid for the acquisition or considering the share of supply criterion. This allows many more digital mergers to be addressed by the relevant authorities (Motta & Peitz, 2020).

This paper will define the relevant market dealt with in this paper below. It will further discuss the cases under review, namely the WeBuyCars/MIH eCommerce Holdings, Gumtree/Cox Media and eBay/Motors/co.uk. Lastly, some insights will be provided from the case studies.

2. The Online Automotive Classifieds Platform Market

The OECD describes an online platform as:

> *"A digital service that facilitates interactions between two or more distinct but interdependent set of users (whether firms or individuals) who interact through the service via the internet."*
>
> (Competition Commission, 2020:14).

The platform model represents a firm connecting two groups without expecting payment in exchange for the service of connecting these groups. The act of connecting buyers and sellers through a platform could be equivalent to the process within a classic production firm that turns raw materials into manufactured products. These classic economic models of firms often do not account for demand of one customer group being determined by the demand of another customer group served by the same firm (Evans & Schmalensee, 2016). Belleflamme & Peitz (2010) offer an extended description, by describing an intermediary that offers access to a platform where buyers and sellers can interact. This is without the risk of an intermediary gaining control of the 'seller's' goods, while in the process of transferring the ownership to the buyer.

The industry of online used-vehicle classifieds intermediation is based on using platforms to trade used vehicles between private sellers and dealers. This market is a multi-sided 'platform' market that can be delineated through a selling-side and a purchasing side. On the selling side, it covers private sellers, often looking to sell a singular vehicle versus the dealers on this side of the market looking to list multiple vehicles in the hopes of reaching an interested consumer. On the purchasing side of this intermediary, the dealers often interact here too, searching for specific cars on behalf of their clients, or to stock up on specific cars they know are popular and will sell on easily.

There are also private buyers to this market, who interact with the intermediary on the purchasing side, often using the platform to compare prices across platforms and find themselves the best deals. These buyers often interact with the dealers to fulfil the transaction of purchasing a used vehicle. The user groups on the purchasing side are not expected to provide any form of compensation to using the platform service.

The ACCC (2020) determined that while the buyers and sellers of the classifieds' services do form part of the same market, the private sellers and the dealers represent distinctive segments within this market. Firms operating solely on the supply-side or the demand-side of the platform could still constrain the existing firms within market, even if only on one side of the market. It should not be the case that another firm should intend to compete fully on both sides of the market to be considered a potential competitor that could constrain the market. This then ignores the cross-market effects a single side of the firm can impose on the others within that market.

Most times, these intermediary platforms operate solely as a match-making platform between the sellers and the buyers. However, more recently some firms have started to differentiate themselves through offering after-sales service and other additional services to consumers as a way to gain more market power, capture more of the market share and potentially overtake their rivals.

There are several pricing strategies and structures employed by platform firms. Some firms may opt to charge dealers a subscription fee to list numerous vehicles on their sites. Others offer a 'per listing' fee, which is aimed at attracting private sellers who tend to only make use of the platform on a single occasion.

On the other side of the platform, for private buyers and dealers who purchase stock held by the platform firm or intermediary, the private buyers will receive a price set by the platform and the dealers may receive this same price as well unless an arrangement for discount is made for a bundle or grouping of vehicles sold together in one transaction. This differentiates platforms from one another as a customer has the choice to list on the platform that best suits their needs. Similarly, this enables a platform to price discriminate and charge better prices to the other consumer, the one purchasing the vehicle.

The pricing mechanism employed by the firms under consideration are very advanced. Having the ability to accurately price a car competitively, and accounting for all the different variables such as make, model, year, added features, colour and transmission type in a car all influence the ultimate asking price for the vehicle. The larger players in these online classifieds intermediation market for vehicles can price with ease based off a pricing model. These models are guided by a vast amount of data collected from transactions in the past and having a good understanding of the market. These pricing mechanisms rely on vast amounts of data to be efficient and generate accurate forecasts on the price the vehicle should be sold for. When two firms in the same market merge, and thus their databases merge, it may have an anticompetitive outcome. In that the other competitors remaining in the market simply do not have access to as much data and will struggle to determine effective prices on which to compete.

In general, these car-buying platforms are considered disruptors to the traditional used car dealership market. It enables owners to use the platform to sell their vehicles at a competitive price, without expending large amounts of effort to find the best deal with an individual dealer. The platform will interact with a dealer and provide an inventory that is readily available either to off-load to the dealers to sell on to the public, or for private buyers to approach the platform to purchase a vehicle directly.

The central issue within the development of regulation and policy regarding potential competition is the difficulty in outlining the counterfactual scenario. It is not observable, thereby forcing the authorities to speculate as to how the market will likely develop in the future (Yu, 2020). It appears merger cases are allowed through if the result and impact post-merger does not reduce competition in the relevant market or raise further barriers to entry such that no new entrant will be able to enter or gain the scale needed to enter and effectively compete against the incumbent in this market.

The online automotive classifieds platform industry has been the focal point of this research. This industry has been developed off the model of used car dealerships, a traditional brick-and-mortar firm, now involving a digital element. Creating a platform that does not limit its reach to consumers within a certain geographic radius, but any consumer accessible through a device connected to the internet, provided some transportation costs for delivery of vehicles are accepted by these consumers and within a national boundary.

In both the Australian and United Kingdom cases, the mergers were allowed as both firms party to the merger were considered competitors of the market leader but did not have sufficient scale to impose a constraining effect individually. Post-merger, it has been noted in both cases, that the newly merged entity has a better chance of being a constraining competitor to the market leader. It also became evident that there was minimal concern of concentration in the markets post-merger, as the merged entity would be afforded an opportunity to enhance competition in the market. The firms in position 2 and 3 in the markets merged to provide the opportunity for the newly merged firm to compete effectively with the firm in the top market position.

The South African case concerns a holding company with ties to an external multinational incumbent attempting to purchase a dominant firm in the market, WeBuyCars. Frontier Car Group, a German based online automotive classifieds platform firm, desired to enter the market without having to compete to enter and gain market share themselves. The merger was ultimately prohibited as Frontier Car Group, has the means to enter the South African market themselves and provide effective competition to WeBuyCars. These cases will be discussed below in more detail.

3. Case Studies

This section seeks evaluate a merger in South Africa between MIH eCommerce and WeBuyCars, an acquisition in the United Kingdom between eBay and Motors.co.uk and an acquisition in Australia between Gumtree and Cox Media. The discussion will progress as follows; first by considering how a firms market shares are decided in cases involving platforms, and whether this changes if a potential competitor is considered from outside of the relevant market. Second, it will discuss how the courts identified the potential competition concerns within the platform markets for the purposes of merger control.

3.1. MIH eCommerce Holdings and We Buy Cars Merger

In this case, MIH eCommerce Holdings intended to acquire 60% of the share capital of WeBuyCars. As MIH eCommerce Holdings is controlled by the Naspers Group, the competition authority brought other acquisitions and firms within the Naspers portfolio into consideration. For example, AutoTrader and OLX. Frontier Car Group is included in this list but have not yet entered the South African market. Entry by Frontier Car Group did not materialise as a deal through this acquisition rather was a more appealing option than aggressively competing to enter this market.

WeBuyCars operates in the online classifieds market for used cars. Acting as an intermediary between private sellers, dealers, and buyers. WeBuyCars operates a hybrid-model within this market, accepting responsibility and ownership of the vehicles, acting as a warehouse and distribution centre between transactions. For example, a private seller will sell their vehicle to WeBuyCars, that will then store the vehicle at their premises until a dealer or private buyer shows interest in purchasing the vehicle from WeBuyCars. The model is currently optimised to acquire used cars and off-load them to dealers, but there is some progress being made in a direct B2C (business to customer) route to sell directly to the end-consumers.

The markets considered by the Competition Tribunal were those of the

> *"used minibus taxis as a whole and specifically in Gauteng province, the market for used light commercial vehicles in South Africa as a whole and in Gauteng province, the market for used vehicle in South Africa as a whole and Gauteng Province and finally, the market that provides for ancillary services; insurance products / services, stolen vehicle recovery services and vehicle finance"*

(CC v MIH eCommerce Holdings (Pty) Ltd and We Buy Cars (Pty) Ltd, 2021).

The Competition Tribunal ultimately decided to prohibit the proposed acquisition on grounds that it would lead to significant unilateral effects through the removal of potential competition and that it would additionally give rise to conglomerate effects. These conglomerate effects would ultimately be able to further entrench WeBuyCars existing dominance. It would raise barriers to entry for any other actual or potential competitors of WeBuyCars and there may be reciprocal benefits flowing between the Naspers Group and WeBuyCars. These will be instrumental in entrenching the dominance experienced by WeBuyCars in the online automotive classifieds platform market.

3.1.1. Actual Competition Considerations for Online Classifieds Intermediation Platforms

This subsection will consider how the CCSA dealt with determining the levels of actual competition in this market and why the competition assessments should be broadened to consider potential competition arguments.

The CCSA, in their decision, indicated that if the market is defined solely as a 'car-buying service' then WeBuyCars has a market share above 80%. The CCSA (2020:43) calculated this by "*dividing the number of used cars that WeBuyCars purchases per month by the total number of used cars purchased across a number of competitors*". The merging parties in turn pushed for a more broadly defined market, that includes all used car dealers, the traditional vehicle dealerships, and the car-buying services. With this broader market definition, it is estimated that WeBuyCars has a market share between 0% and 10%.

The CCSA has determined WeBuyCars as a dominant firm in the car-buying services market in South Africa. In this industry, the market power of a firm can be determined by the number of unique leads generated for a specific platform, and the number of consumers that will multi-home between platforms. If a user is found to multi-home it is unlikely that the lead is unique to either platform. This highlights why authorities are reluctant to rely on the metrics normally considered for the determination of actual competition as they are unable to account for multi-homing by consumers and therefore do not provide an accurate reflection of the levels of competition within the market.

A consumers ability to multi-home between platforms skews the numbers on the share of audience as a single viewer can be counted multiple times. There is no way that individual users can be identified by the different firms as the firms mainly tend to make use of aggregated data.

The CCSA thus turns to identifying potential competitors to try gain an understanding of the market. The reason for identifying the potential competitors to these markets is that there are external constraining effects on this market, and the competition authorities need to consider these in delineating the market. The following subsections will evaluate how this authority identified potential competitors and how these potential competitors were ranked.

3.1.2. Identifying Potential Competitors to this Platform

Identifying competitors in this market depends entirely on the model the firm employs to move or keep hold of their stock. Many of these platforms facilitate consumer to business (C2B) transactions, where dealers can simply list their stock on the platform and the platform elects not to hold any stock themselves. These companies continue to compete with WeBuyCars offering private sellers a fast, convenient, and trustworthy sale of their vehicle. In addition, these competitors may follow the same approach as WeBuyCars in adopting a large-scale marketing campaign and making use of indicative pricing in their models. There are evidently many other elements that firms can compete on with WeBuyCars, even though there are no other firms that offer a service identical to that of WeBuyCars.

A critical success factor is based on the ability of a firm to accurately price, which is not easy to achieve as a new firm attempting to enter the market. Weelee, a competitor of WeBuyCars, has asserted that access to data is a very important element of this case. In the modern digital economy, any access to consumer behavioural data is paramount to achieving a competitive edge. It is often used as a tool to exclude competitors who simply do not have the scale to match up to the data WeBuyCars has amassed. A firm of this nature having access to sales data on their products is also important as a more accurate price can allow for a firm to achieve a higher profit margin.

The WeBuyCars model highlights issues around price competition from competing firms, that the existence of direct competitors has a material impact on the spread of buying and selling prices. It is not possible for private sales at small physical dealerships to impose pricing constraints on WeBuyCars.

Entrants to the platform market will face costs the first mover never had to experience as well as simultaneously competing with the first mover to achieve their scale or network advantages. These firms can severely constrain WeBuyCars upon gaining traction in the market. Potential entrants at the edge of the market, that have not yet entered, can only provide limited competitive constraints.

Frontier Car Group is a German based firm that has found much success in entering the online automotive classifieds markets in many emerging economies. The model Frontier Car Group implements is to engage with customers on the buy-side of the platform. The firm will inspect the vehicle but will not make a cash offer. It does not run a guaranteed purchase model as WeBuyCars does. It simply matches these inspected vehicles up with dealers looking to expand their range on offer.

Frontier Car Group becomes a trusted intermediary that facilitates a transaction between a customer (seller) and the dealer (buyer). This model operates well in emerging market economies as Frontier Car Group can provide financing throughout this process to either party, which is the most complex part in an emerging market economy as often there is limited access to capital to conclude such processes.

It was evident in the WeBuyCars case that Frontier Car Group was willing to enter emerging markets and develop their platform as the firm had done so in several other emerging markets before entering South Africa through a Naspers acquisition. Frontier Car Group has developed the knowledge and expertise on what is required of them when starting to enter other developing countries, and this knowledge can be applied and expanded on when trying to enter South Africa. The Competition Commission decided Frontier Car Group would be able to enter the South African market but have opted to rather buy out the incumbent and withhold their own entry.

The Naspers recommendation committee had evidence showing Frontier Car Group had intended to enter the South African market, with these plans being at an advanced stage. The intention to enter indicates a potential competition concern. The holding firm, MIH eCommerce, decided rather to purchase the incumbent to gain entry into this online automotive classifieds platform market, rather than following through with their own intended entry to compete with WeBuyCars.

3.2. Gumtree and Cox Media Acquisition

This case resulted in the acquisition of Cox Australia Media Solutions by Gumtree AU. Both entities offer online automotive classified advertising to automotive sellers, either dealers or private sellers, and buyers. In addition, offering third party display advertising on their platforms. With the merger completed the firms should be experiencing an increase in sales and attracting more dealers to a unified platform, increasing their available inventory and audience reach.

3.2.1. Actual Competition Considerations for Online Classifieds Intermediation Platforms

The ACCC’s assessment has determined there to be a national market for the supply of online display advertising. While it has been concluded that there is no single accepted definition for market share for calculation purposes in these platform markets, it can be decided based on the share of audience held by the firm, the share of inventory held by the firm, or the share of revenue earned by the firm in relation to the relevant market. The decision made by the ACCC stated that this case may result in an increased market concentration and a removal of competition between the parties to this transaction. With the question remaining as to how much of an anticompetitive effect this merger will impose on the whole market.

A metric such as inventory of listings can highlight the success of a classifieds platform to attract sellers to list on their platforms and be representative of market shares. As dealers multi-homing their listings across sites and syndicate arrangements between one platform and another, such as Carsales and Facebook Marketplace, the listings are often duplicated across different platforms. This shows the amount of inventory listed on a platform is not the clearest indicator of the competitive constraint the firm imposes on the market or their position within the relevant market.

Many online classifieds platforms operate different business models with different pricing structures. Thus, the revenue share generated by each firm may underestimate the strength of the firms' competitiveness. The share of revenue should be indicative of the relative success each platform has in capturing a share of the audience. By having a larger audience attracted onto the platforms it will allow a firm to have an additional, lucrative stream of revenue through paid advertisements.

The share of audience metric might be a better way to determine the market share of each firm than the share of inventory. However, there are issues that arise when trying to factor in the audience can multi-home and make use of several platforms simultaneously. It begs the question of which firm their view should be allocated to in determining the share of the market. There is no way to allocate a single unique view, reflecting that the share of audience is not a good measure of actual competition (ACCC, 2020).

It is confirmed the market leader, Carsales, has significantly more total page views and time spent on their platform by the audience, than Gumtree and Cox Media. Carsales also maintains the largest inventory of total listings and generates significantly more revenue compared to competitors. Recently, Facebook Marketplace has entered the online automotive classifieds advertising market and expanded their reach in a very short space of time. They have become increasingly competitive to the incumbents of the market and gained market share as an effective competitor (ACCC, 2020:24).

Dealers have an incentive to multi-home between these platforms to ensure the widest reach possible to viewers and consumers on the other side of the platform. This creates increased competition, as every platform wants to be the secondary platform for dealers to use alongside the market leader. This acquisition will serve to place the parties in a better position to be the secondary choice to list with, once merged, they will be a more effective competitor to Carsales (ACCC, 2020).

3.2.2. Identifying Potential Competitors to this Platform

The ACCC identified two types of online classifieds platforms present in this market. Firstly, a horizontal online advertising site with classified advertising for a broad range of products across various categories. Secondly, a vertical online classified advertising site, more suited to specialised search categories. Gumtree claims the parties to this acquisition are not considered close competitors as

Gumtree caters more towards the private sellers, while other platforms such as Carsguide and AutoTrader cater for dealers' listings.

In this case, Cox Media is considered as a vertical online classified advertising site, as it caters to advertisements for various makes and models of cars. It is evident that the focus of this firm is narrower as compared to Gumtree where the focus lies with creating a single platform upon which once can locate a large range of goods and/or services being advertised. It is for this reason that Gumtree is considered a horizontal online advertising platform.

Carsales and Facebook Marketplace both pose as strong competitors post-merger. In addition, the threat of entry remains from other strong competitors operating internationally. The ability of consumers to multi-home on these competing platforms also constrains this market further.

Market participants have indicated apprehension to the of loss of potential competitive from this acquisition and how it might have an impact on online display advertising. Those participants also note the market will continue to be restrained by Facebook and Google post-merger. The cost to consumer to switch post-acquisition between various platforms will be low, encouraging a more competitive environment.

The ACCC (2019) determined the proposed acquisition of Cox Media by Gumtree would result in the removal of one of the five main competitors in the market. It would seem that this market is relatively concentrated and that an acquisition of this nature is unlikely to be allowed through. This was not the case here, the ACCC stated the proposed acquisition was likely to go through on the basis that it would not substantially lessen the level of actual competition within this market.

3.3. eBay and Motors.co.uk Acquisition

This case entails an acquisition of Motors.co.uk by eBay Incorporated in the United Kingdom. The CMA notes that these entities will not be distinct from one another post-merger. There was evidence presented in this case that neither firm is the other's closest competitor. There is no appearance that this merger will result in a substantial lessening of competition due to the strong constraints imposed by rivals in the market and the limited increment in market position by the newly merged entity. For these reasons mentioned above, the CMA has approved this acquisition.

3.3.1. Actual Competition Considerations for Online Classifieds Intermediation Platforms

In their evaluation of this merger, the CMA elected to review the service proposition, the perception of lead quality and the customer overlap in determining the closeness of competition for this market. In terms of service proposition, both firms (eBay and Motors) offer relatively similar services with differences in their pricing models. For the perception of lead quality, both firms are highly established and have good brand recognition. When considering customer overlap, the CMA found that each party had a greater overlap with AutoTrader, the market leader, than with each other.

Both parties to this merger have regularly referred to AutoTrader in internal documents as their main rival. It is well understood that AutoTrader is a market leader. The parties state that CarGurus is the next closest competitor after AutoTrader. The market players have noted that CarGurus has been aggressive in their attempts to grow their market share. The CMA's access to AutoTrader's internal documents lead them to understand that AutoTrader considers CarGuru a key threat. The market appears saturated with many firms offering similar services, these firm range from CarWow, AA Cars and Exchange & Mart to Facebook Marketplace alongside some other smaller firms.

Table 1: Parties and rivals' estimated shares, 2018

Provider	**Shares by listing revenue (%)**	**Shares by number of unique visitors (%)**	**Shares by number of dealers (%)**
Gumtree Motors	[0-5]	[20-30]	[5-10]
eBay Motors	[10-20]	[10-20]	[10-20]
Motors	[0-5]	[5-10]	[10-20]
Combined	[20-30]	[40-50]	[30-40]
AutoTrader	[70-80]	[30-40]	[30-40]
CarGurus	[0-5]	[5-10]	[20-30]
Pistonheads (now part of CarGurus)	[0-5]	[10-20]	[5-10]

Source: CMA, eBay and Motors.co.uk, 2018:10

Estimates in the table above highlight how difficult it is to discern market shares for any given shares for any given firm in such an intricate and complex market. Only considering the share of listing revenue per firm gives one view of the market, but to consider the share of number of unique visitors of share of number of dealers individually paints different pictures. It is seldom that these measures would concur on the share of the market held by any of the firms. Platforms using the internet to be operational adds to the complexity in determining the amount of market share held by any one firm, especially in cases where consumers to the platform can multi-home.

It becomes evident from reviewing the table above that the merging parties' individual share of listings revenue is moderate in comparison to what is earned by AutoTrader, 70-80% of the market, even after considering the combined share of listings after the acquisition. The CMA does concede the shares by revenue provide a limited amount of insight into the competitive conditions within the market.

These shares do indicate, post-acquisition, the combined entity will enjoy a large proportion of unique visitors and a high number of dealers to their platform relevant to the remainder of the market. One should remain cognisant that figures in this table capture a historical and static view of the competition in the market at a very specific point in time.

3.3.2. Identifying Potential Competitors to this Platform

The CMA acknowledges the parties in this case are differentiated to some extent but are nevertheless competitors to one another pre-merger. The incremental increase in market position resulting from this acquisition will help the parties maintain competitive pressure on market leaders AutoTrader and CarGuru.

It has been said by the user-groups, the buyers, dealers, and sellers, that AutoTrader is expensive to list on. This encourages participants to multi-home between platforms to extend the reach of their advertisements or listings. It is likely that a firm with an already established platform would be well placed to enter this market or threaten to enter as a potential competitor from outside the market.

The CMA considers AutoTrader to be the main competitive constraint on these firms based on dealers allocating the main proportion of their spending towards this firm with the remainder being divided among the rest of the market. If the dealers feel those firms in the remainder of the market can generate sufficient leads from consumers, they may be more inclined to portion up spending more evenly among the competing firms.

At the end of the analysis, the CMA has determined the loss of the potential competition eBay and Motors.co.uk could impose on the market individually is outweighed by the gain in competitive constraint the new merged entity could impose on the market. This highlights that the loss of potential competition in this case is not significant enough to create an anticompetitive effect on the whole market.

3.4. Summary of Case Insights

From the review of these cases there are two different types of cases that emerge. The first is an acquiring firm attempting to purchase the incumbent of the market so as not to exert the effort and capital it would need to enter the same market on competition merits. The second case is where two firms that already exist within the same market merge with one another to provide a greater competitor to the market leader, a combined level of competition they are unable to exert as individual firms.

These cases all provide different insights into the elements that will cause a court to determine whether the loss of potential competition is anticompetitive or not. The first case indicated that a firm attempting to enter a market that it could reasonably enter and compete in by itself should not be allowed to acquire the incumbent of that market. It results in an anticompetitive act that could reduce the constraining effect their potential competition imposes on the market. The other two cases reveal that even though the potential competition each of the firms could impose on the market would be lost, it would not have an anticompetitive result. This is due to the newly merged entity being able to provide a higher constraining effect on the market leaders.

The courts across jurisdictions appear hesitant in allowing a merger as in the first type of case through as it results in an anticompetitive practice. It would encourage unintended consequences where firms with enough capital will be allowed to buy their way into a market they are looking to enter. On the other side, the second type of case is generally allowed through, despite it potentially resulting in a more concentrated market as two firms merge to one. This shows how the effect of an increase in market concentration would be outweighed by a heightened competitive constraint resulting from the merger. Authorities concerns surrounding increased levels of concentration will be subdued in cases where a merged entity will provide a more effective competitor to a dominant market leader.

4. Comparative insights and implications

Given the rapid increase in interest over digital or technological firms merging or acquiring one another, there are many competition issues that arise. Firstly, there should be stricter enforcement of merger control with a specific focus on any foreclosing strategies that may be attempted by some of the larger incumbents over smaller potential competitor firms. Courts should keep a watchful eye over data mobility, interoperability, open standards, and data openness in these proposed merger transactions (Calvano & Polo, 2020).

Yu (2020) proposes an attempt to shift the economic analysis in merger control to a regime that focuses on the anticompetitive effects that can result from mergers taking place in the digital sphere. His concerns revolve around the decisions on potential competition cases on purely legal standards built for actual competition cases may result in underenforcement to the detriment of consumer welfare and the markets.

We can think of potential competition as being the level of competition each firm could impose independently in the market if the firms continue to operate. This potential competition is what is then lost when the two firms merge with one another. The authorities need to consider whether the level of potential competition lost post-merger is greater than the constraint the new merged entity could impose on the market. If this is the case, the merger should be prohibited as it would result in a less competitive market, less consumer welfare and an anticompetitive outcome. It is difficult for authorities to assess this counterfactual scenario with limited resources.

In terms of a potential policy response, and response from the courts, Cabral (2020) recommends shifting the burden of proof onto the incumbent to indicate the pro-competitiveness of the merger or acquisition. The reversal of this burden of proof from the authorities onto the merging parties may have the necessary effect of raising the merger-approval bar considerably.

Wu (2010) however acknowledges that antitrust laws should not solely carry the burden of regulation over these information industries. Rather a stricter approach would be better suited to restrict a dominant platform from operating within a specific market where it also provides the infrastructure that other firms depend on while simultaneously competing with these firms.

This section identifies that while there is much work to be done by competition authorities to develop their rules and regulations to adapt to the new challenges faced within digital markets and platform markets, it should not solely be their responsibility. It is also dependent on market players being aware of their surroundings, whether in a competitive or concentrated market and acting in accordance with the development of a more perfectly competitive environment.

5. Conclusion

As globalisation and innovation within markets persists, many more industries will encapsulate a digital element in the services or goods produced. This in turn will inevitably result in more digital competition issues arising. The authorities need to be prepared for this eventuality, and this paper seeks to clearly define how issues surrounding potential competition have been approached in online intermediation platform markets by the authorities.

The courts have identified two different scenarios that may involve potential competition concerns. The first arises in the WeBuyCars case, wherein a holding company with ties to a similar international firm had the potential to enter the market themselves. Instead of the firm competing for entry into the South African market, it opted to purchase an incumbent from this market as their form of entry. The authorities prohibited this move, as it is understood Frontier Car Group has the capacity to enter the market and should not remove the effect of potential competition it can bring to the market. The second scenario happened in the United Kingdom merger between eBay and Motors.co.uk and in Australia's merger of Gumtree and Cox Media, is where competing firms in the market merge to compete with the market leader effectively and efficiently in their respective markets. In these last two cases, the mergers were allowed as none of the firms' party to either merger were considered the market leader by the respective authorities investigating the case.

Firms that may be potential competitors to these markets would require a large amount of capital to enter and effectively compete in this market. In the WeBuyCars case, the Commission was aware that Frontier Car Group had successfully entered other emerging markets like South Africa. Proving they have the technological capability and should be able to enter and successfully implement their products into the South African market. Authorities allowing a merger resulting in the loss of potential competition to the market would be anticompetitive.

The key takeaway from the case studies is that the questions surrounding potential competition and platforms will become more frequent in competition investigations. The courts deal with these matters on a case-by-case basis and set minimal precedent for future investigations. The competition authorities worldwide are paying more attention to the competition issues that arise from platform markets, especially those with a digital element.

The purpose of this research was to create an understanding on how authorities deal with and identify potential competition issues in platform markets, specifically the online automotive classifieds market. Based on the analysis conveyed, it can be concluded that there are different aspects to potential competition considerations. It can either be that firms merging risk reducing the competitive constraints imposed on the market if the merger fails, and the synergies of the merging firms are not aligned. The alternative is a merger of a firm that operates a platform outside of the relevant market to enter this market without developing the technologies themselves. Allowing the acquiring firm to obtain a share of the market without investing the capital and resources to achieve the equivalent outcome on their own merits.

Future exploration into this topic could be useful to apply across various sectors and alternative platforms to the online automotive classifieds platforms that were considered in this paper. These cases revolving around the online automotive classifieds platform will not be the only type of platform affected by these issues. Authorities worldwide need to be cognisant of this and develop their legislation and precedent in a way that will align with the most competitive outcome for their economies.

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