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Session 1: how can competition contribute to fairer societies?

TUAC contribution on market concentration of online platforms

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Introduction

The purpose of the first session of the Gobal Forum is to examine how competition can contribute to fairer societies. The OECD is asking whether fairness has a role to play in economic theory, and how competition authorities can rely on it. For the trade union movement, a lot is at stake. There is no neutral approach possible: competition does need to take responsibility in the fight againt inequality.

The OECD has evidenced the link between market concentration and inequality[i]. For its part, the TUAC shared views in a previous Global Forum on Competition on the direct and indirect impact on employment and jobs displacement of market deregulation if left unchecked and the need for competition policy to be looked at from a whole-of-society and government perspective[ii].

A fair treatment of consumers is traditionally seen as the ultimate goal of competition. Market power becomes dysfunctional where there no longer is incentive for quality and innovative products at a fair price. However, more is needed than the usual competition discourse. In this contribution, the TUAC is focussing on labour market monopsonies of online platforms[iii].

The dominant position of online platforms must have already alerted a number of competition authorities. What would happen if these platforms were to adapt and target selling techniques according to the huge collection of personal data that they have accumulated? Already, with price algorithms we are seeing the premises of abuses of dominant positions. However, it is also argued that considering the level of innovation required in the tech sector, considerable investment must be made into research and development. To do so, a solid financial position would be required. After all, dominant position is not prohibited per se; it is the abusive use that is.

In this contribution, the TUAC makes a case for breaking up the dominant positions of online platforms. As monopsonies, they indeed have adverse effect on workers' rights, and therefore consumers' wealth. At a time of deepening inequalities, the case for a fairer distribution of wealth no longer has to be made. The TUAC therefore makes some recommendations for the competition authorities to factor in employment in their competition analysis.

Evidence of labour market monopsony in online platforms sector

A monopsony is a situation where there is a single or dominant buyer on the market. In the case of labour markets, monopsony employers lead to lower wages and more precarious working conditions in the same way same than distributors struggle with an all powerful buyer. The individual cases abound:

- Mechanical Turk is one of the most popular online micro-task platform, on which workers compete for jobs. According to a 2018 study, should a requester (employer) pay a 10% lower wage, they'd only lose around 1% of workers willing to perform the task[iv]. This very high degree of market power is therefore linked to significant wage losses.

- Amazon: Workers in US and UK warehouses are subject to gruelling working conditions, poor health and safety, and aggressive anti trade unions policies. Wages in the US have recently increased. At the same time, benefits have been suppressed in the UK and there is no indication of fair wages in the rest of world.

- Uber: the business model relies heavily on self-employment. Drivers are paid less than if they were employees, and there is no formal employer to bear for workplace safety. The drivers nonetheless remain under the full control of the platform. Contribution to public finances for these types of relationship is also a source of concern.

In traditional competition law terminology, these deeply unfair conditions would translate as follows:

- unfair terms and conditions (e.g.: algorithm marking workers for "bad" behaviour without any redress possible);
- price fixing (e.g.: low wages, contractual arrangements preventing workers from simultaneously working for several platforms);
- linked to price fixing is the refusal to deal (no recognition of collective bargaining, aggressive anti unions tactics);
- limiting production (e.g: forced elimination of jobs[v]).

Integrating employment aspects

Competition authorities do not frequently point the finger at monopsonies. The preference usually goes to the dominant position of suppliers. The employment effects of monopsonies are even less popular. The general belief is that the savings made by the buyer will be passed on to the consumer. As a result, competition authorities continue to refuse to take into account employment aspects in their analysis.

However, a worker is a consumer. Where market concentration leads to labour market monopsony, the worker suffers a double penalty: as a worker its working conditions are worsening; as a consumer its purchasing power is shrinking.

This is not just a point of economic theory. By refusing to look at the employment aspects and other non traditional competition factors, the authorities are denying themselves effective tools to tackle the anti competitive effects of market power and indeed to contribute to fairer societies.

To regain ground, competition needs to build bridges with other parts of policy-making**.**

TUAC recommendations

- According to the OECD Employment, Labour and Social Affairs Committee, competition law does have a role to prevent the abuse of monopsony power on labour relations[vi]. The first challenge for competition authorities is to develop a well functioning methodology**,** which needs **to take into account employment in order to assess the existence of a dominant position.** The ability of online platforms to impose lower wages and poor working conditions without losing all their workforce should become relevant.

- **Develop policies to strengthen labour law and collective bargaining**. A central TUAC recommendation in its recent statement on Future of Work is that collective bargaining allows workers to address assymetries by raising collective voice to set standards[vii]. As the lines between dependent employee and independent worker are often blurred when it comes to online platforms, competition law can come as an obstacle to collective bargaining on behalf on self employed workers. Abusive price fixing must in fact be looked at from a labour market monopsony perspective. Collective bargaining is an effective counterbalance to dominant position.

- **Assess the potential impact of mergers & acquisitions on employment**. Most types of mergers and acquisitions are usually followed within two years by major restructurings. When it comes to online platforms, potentially adverse impact on employment is decupled because of the market concentration aspect. When competition authorities are to be notified of a pending concentration, careful consideration should be given to labour market monopsonies before approval is granted.

- **Recommend good corporate governance regime.** Digital giants, including some online platforms, are not only diminishing their responsibilities towards workers, they are also shielding their corporate governance from the scrutiny of investors, and the public in general.[viii] Policies designed to increase the transparency and accountability of such companies should be part of an effort to bring the spotlight on unfair business practices.

- **Coherence with trade and tax policies**. Well designed domestic policies that aim at facilitating the entry of smaller competitors on the market should not be treated as a form of trade protectionism. The concerns around the artificially low taxation of large digital companies should also put competition authorities on alert.

Competition analysis of the volume and handling of data by online platforms would usefully feed into the discussions on if and how to tax intangible assets.

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[i] *Inequality: a hidden cost of market power,* (2018) OECD*.* According to this research, out of each dollar of monopoly profits, there is a transfer of USD 0.37 from the 90 percent poorest to the 10 percent richest. The research goes on demonstrating that market power benefits essentially the top 5 percent richest, and in particular, the top 1 percent.

[ii] Hearing on "*Does competition kill or create jobs?*" Global Forum on Competition, 29-30 October 2015 Comments by the TUAC, Paris, 26 October 2015, https://tuac.org/wp-content/uploads/2017/12/1510t_comp.pdf

[iii] For the purpose of this contribution, an online platform is defined as a digital service which facilitates interactions between two or more distinct but independent sets of users (whether firms or individuals) who interact through the service via the Internet (see the work of the OECD Working Party on Measurement and Analysis of the Digital Economy).

[iv] *Monopsony in online labour markets (*March 2018), A. Dube, J. Jacobs, S. Naidu, S. Suri, https://www.nber.org/papers/w24416

[v] See *Amazon's stranglehold,* (November 2016), ILSR. At the end of 2015, Amazon had 146,000 employees in the U.S. but had displaced enough sales at stores to force the elimination of 295,000 retail jobs. That works out to a net loss of 149,000 jobs. https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf

[vi] See for instance *Issues paper: labour relations in the future world of work* (2 July 2018)

[vii] OECD Focus on the Future of Work – TUAC Recommendations, 26 October 2018 https://tuac.org/news/oecd-focus-on-the-future-of-work-tuac-recommendations/

[viii] See for instance 2017 Fenwick corporate governance survey demonstrating how technology giants are challenging traditional practices in corporate governance: https://www.fenwick.com/publications/pages/corporate-governance-survey-2017-proxy-season-results.aspx