DOI: https://doi.org/10.54477/LH.25192353.2024.2.pp.18-25

LEGAL REGULATION OF COMPETITION IN ONLINE TRADE AND THE ROLE OF MARKETPLACES AS TRADE ADMINISTRATORS

Volodymyr Bezditnyi
International Law Firm "4B Ukraine"
02000, 4B Parkovo-Syretska Str., Kyiv, Ukraine
e-mail: volodymyr_bezditnyi@pltch-sci.com
https://orcid.org/0009-0009-1592-7670

Abstract
Competition is an essential attribute of the capitalist market. The United States has created laws and policies that promote fair competition, preventing monopolistic behaviours. The online trade segment that incorporates bigwigs like Amazon and eBay has not been left out. Federal authorities like the Federal Trade Commission (FTC) demand that these companies refrain from anticompetitive practices. The paper aimed to investigate the legal regulation of competition in online trade and the role of marketplaces as trade administrators. Through a well-conducted review of the literature of 20 sources, the articles make several groundbreaking discoveries. The online environment is regulated using policies and laws like the Sherman Antitrust Act, the Consumer Review Fairness Act of 2016 (CRFA), the Clayton Act, and the Antitrust Criminal Penalty Enhancement and Reform Act (ACPERA) of 2004. Furthermore, this research has shown that online marketplaces are instrumental in trade administration through efforts such as enhancing privacy, promoting transactions, and providing a framework for conflict resolution.

Keywords: online trade; competition; monopoly; trade administrators; regulation.

1. Introduction

In the capitalist market economy, competition serves as a fundamental driving force, ensuring innovation, efficiency, and consumer choice. The United States has historically enacted a range of laws designed to uphold fair competition and prevent monopolistic practices. As the market has evolved, so too have the arenas of commerce, with online trade emerging as a dominant and transformative force. Online trade has expanded since the advent of the Internet and Internet 2.0. Today, the United States online market has taken over trade, threatening to replace traditional brick-and-mortar sales. Most companies that operate traditional stores have also transitioned to the online platform to remain competitive and align with the consumers' needs (Inoue & Hashimoto, 2022). America has some of the biggest firms occupying the online trade space. Examples include Amazon, eBay, Etsy, Target, and Walmart (Yarova & Yurchenko, 2023

As e-commerce platforms and digital marketplaces become central to global trade, understanding the legal frameworks that govern competition within these spaces is crucial. The rapid expansion of online trade has necessitated new approaches to regulation, as traditional competition laws often fall short in addressing the complexities of digital marketplaces. These platforms operate at the intersection of various regulatory challenges, including antitrust issues, consumer protection, and data privacy.

Federal authorities, including the Federal Trade Commission (FTC), have sought to extend competition laws to the online domain, addressing issues such as monopolistic behavior and anti-competitive practices. As trade administrators, online marketplaces wield significant influence over market access, pricing strategies, and the visibility of goods and services. Their dual role as both facilitators and regulators of trade introduces unique regulatory challenges that differ markedly from those faced by traditional brick-and-mortar retail environments. This article seeks to illuminate these challenges by examining how existing legal frameworks apply to online marketplaces and exploring the need for tailored regulatory approaches that address the specific characteristics of digital trade.

As trade administrators, online marketplaces wield significant influence over market access, pricing strategies, and the visibility of goods and services. Their dual role as both facilitators and regulators of trade introduces unique regulatory challenges that differ markedly from those faced by traditional brick-and-mortar retail environments. This article seeks to illuminate these challenges by examining how existing legal frameworks apply to online marketplaces and exploring the need for tailored regulatory approaches that address the specific characteristics of digital trade.

The article critically evaluates the legal regulation of competition in online trade while also interrogating how the marketplace has become an influential trade administrator.

By analyzing case studies, current legal practices, and emerging trends, this study aims to provide a comprehensive overview of the regulatory landscape governing online competition. The discussion will highlight the balance between fostering innovation and ensuring fair competition, ultimately contributing to a more nuanced understanding of how legal regulation can evolve to meet the demands of the digital marketplace era.

2. Web traffic in online trade: A regulatory perspective

The significant disparity in web traffic among leading online trade firms not only reflects their market influence but also underscores critical legal and regulatory considerations. Understanding how traffic volumes relate to competition and market power is essential for assessing the effectiveness of existing legal frameworks and identifying areas requiring regulatory attention.

The data reveals that Amazon, with 4.81 billion monthly visits, stands as a dominant force in the online marketplace. This level of web traffic signifies a substantial market share, raising important antitrust concerns. Under U.S. antitrust laws, particularly the Sherman Antitrust Act and the Clayton Act, practices that may hinder competition or create monopolistic conditions are scrutinized. Amazon's dominance necessitates careful examination to ensure it does not engage in anti-competitive practices such as predatory pricing, unfair competition, or exclusionary tactics that could stifle competition and harm consumers.

The substantial web traffic of other major players, such as eBay (1.18 billion visits) and Walmart (387.2 million visits), also positions them as significant market entities. While their competitive practices are subject to scrutiny, their relatively lower traffic compared to Amazon suggests a less pronounced market dominance. However, their competitive strategies, including exclusive partnerships or platform policies, are still relevant in assessing their impact on market competition and consumer choice.

The considerable web traffic of platforms like Etsy (373.2 million visits) and Wayfair (98.98 million visits) highlights their substantial role in their respective market segments. Consumer protection laws, such as the Consumer Review Fairness Act of 2016 (CRFA), play a critical role in ensuring that these platforms maintain fair practices. The CRFA, for example, prohibits businesses from using non-disclosure agreements to suppress negative reviews, ensuring that consumer feedback remains transparent and reliable.

With significant traffic, these platforms are also tasked with upholding privacy and data protection standards. The Federal Trade Commission (FTC) enforces regulations that require platforms to secure consumer data and provide clear privacy policies. The volume of visits implies a large amount of consumer data, which necessitates stringent adherence to data protection laws and practices.

DOI: https://doi.org/10.54477/LH.25192353.2024.2.pp.18-25

The Antitrust Criminal Penalty Enhancement and Reform Act (ACPERA) of 2004 and other regulatory frameworks play a crucial role in addressing anti-competitive behaviors. As online platforms continue to evolve, regulatory bodies must adapt existing laws to address emerging challenges such as algorithmic bias, platform monopolization, and data monopolies. The significant web traffic of leading platforms suggests a need for updated regulations that account for the unique dynamics of digital trade.

Table 1. Firms in Online trade and their visits per month

Name	Category	Visits Per Month
Amazon	General	4.81B
eBay	General	1.18B
Walmart	General	387.2M
Etsy	Arts, Crafts, & Gifts	373.2M
Target	General	165.9M
Wayfair	Homewares	98.98M

The web traffic data for prominent online trade firms underscores the importance of rigorous legal and regulatory oversight. As these platforms wield substantial market power and influence, ensuring fair competition and consumer protection remains paramount. The analysis highlights the necessity for ongoing evaluation and adaptation of legal frameworks to address the evolving landscape of online trade, ensuring that regulatory measures effectively safeguard competition and consumer interests in the digital marketplace.

3. Legal regulation of competition in online trade

Antitrust laws are central to the regulation of competition in online trade. The United States has a well-established legal framework that encourages market competition and restricts monopolistic behaviours. In 1890, the US government passed the Sherman Antitrust Act that made it illegal to run monopolies, trusts, and cartels, with the ultimate objective of increasing competitiveness in the market (Johnson & Green, 2021). The Federal Trade Commission (FTC), with the help of the Department of Justice Antitrust Division, is responsible for the implementation of the Sherman Antitrust Act. In light of the online trade sector, the antitrust regulation prevents monopolies, prohibits anticompetitive behaviours, and safeguards consumer rights.

The US antitrust laws regulate the market by preventing monopolies and anticompetitive practices. Monopoly occurs when a single firm has excessive power to control all the market dynamics, including the demand, supply, and pricing (Kumar & Stauvermann, 2021). Like in physical businesses, the FTC is responsible for monitoring large e-commerce organisations to avoid activities that prevent competition with their smaller and less dominant counterparts (Wörsdörfer, 2022). Some of the most powerful entities in the online market include companies like Google, Amazon, and Facebook. Over the last decade, these mega companies have been accused of engaging in predatory and anticompetitive practices that exploit their market power with little consideration for the interests of the consumers. For instance, in 2023, the FTC and 17 other states sued Amazon for violating antitrust policies (Hebda, 2023). The lawsuit accused Amazon of many things, including controlling its third-party partners' prices, hiding cheaper listings, and charging exorbitant fees to sell on its platform. Although the case is ongoing, «FTC v. Amazon» 2023 is a classic example of how the federal government regulates competition in online trade.

The FTC also controls mergers and acquisitions as part of its strategies to prevent monopolies and anticompetitive practices. Through the Bureau of Competition, the FTC prevents unnecessary mergers and acquisitions that are likely to reduce competition in the market, inadvertently leading to higher prices. The control of mergers and acquisitions occurs in line with the Clayton Act. In 1914, Congress passed the landmark Clayton Act 1914 to regulate anticompetitive practices, such as mergers and acquisitions, that deliberately increased the market size of dominant companies (Agulhon & Mueller, 2023). For instance, Facebook acquired Instagram and WhatsApp in 2012 and 2014, respectively, expanding its market share (Morton & Dinielli, 2022). Although Facebook is not traditionally an online trader, it has features that allow customers to market and sell their products. The FTC unsuccessfully challenged the decision, citing that Facebook has engaged in acquisitions that potentially violated the Clayton Act. In 2020, the DOJ filed a case against Google for potential antitrust practices when the company made a deal with Apple to make Google the default search platform (Adams, 2022). Although this agreement was not a bona fide acquisition or merger, it was a practice aimed at reducing the online search market in a manner that favoured Google against any other competitors.

The Consumer Review Fairness Act of 2016 (CRFA) has played an instrumental role in enhancing fair competition in the American online market. Consumer feedback is central in a capitalist system where different organisations share the market. The CRFA allows customers to share honest opinions regarding services, products, or conduct in any forum, including social media or other review sites (Zhang et al., 2023). Product reviews are essential in empowering the consumer or potential customer to make the right decision. Congress passed the CRFA due to reports that some organisations deliberately prevented individuals from providing honest feedback regarding their products (Zhang et al., 2023). For instance, some firms put in place clauses in their terms and conditions that allowed them to penalise or take legal action against customers who provided negative reviews of products (Zhang et al., 2023). Adversarial reviews are essential in a capitalist system because they allow companies to compete fairly based on merit, competence, and quality. However, some companies take a cautionary attitude toward the feedback due to the possibility of malicious intent. Regardless, CRFA is important, especially for online companies, as it allows customers to review products and services based on merit (Zhang et al., 2023). Therefore, this framework is essential in enabling free competition where demand and supply determine market conditions rather than the size or dominance of the organisation.

Another fundamental legal framework that guides competition in the online markets is the Antitrust Criminal Penalty Enhancement and Reform Act (ACPERA) of 2004. ACPERA is one of the most extensive legal policies that strengthen antitrust behaviour among organisations (Marvão & Spagnolo, 2023). The legal provision serves two fundamental roles, including providing a framework for punishing antitrust violations. Secondly, the law offers organisations incentives, including leniency extensions, if accused companies agree to cooperate with antitrust investigations (Marvão & Spagnolo, 2023). Thus, online firms that engage in antitrust acts are likely to face punitive actions, especially when they fail to cooperate in line with the provisions of ACPERA.

4. Role of marketplaces as trade administrators

As trade administrators, online marketplaces facilitate transactions by creating a virtual space where buyers and sellers can connect virtually. Unlike the traditional brick-and-mortar model, online marketplaces are unique because they allow customers to interact with many buyers and diverse products (Tang et al., 2021). One distinctive element of the online marketplace is that it restores the power to the consumer by giving them the advantage of choice and alternatives. Rather than fixating on one product, customers can access different options, ensuring they purchase the most

DOI: https://doi.org/10.54477/LH.25192353.2024.2.pp.18-25

effective product or service that aligns with their unique interests (Kleisiari et al., 2021). The convenience further extends to processing the payments. Online marketplaces provide an effective payment method that guarantees security and safety (Williams, 2021). Moreover, customers have diverse ways of payment, from card payments (credit and debit) to digital transactions such as PayPal. Accordingly, besides merely acting as enablers for transactions, online marketplaces provide a high level of convenience that consumers in the brick-and-mortar model cannot achieve.

Online marketplaces serve a critical role as trade administrators by ensuring customer trust and safety. Online marketplaces have a strict way of verifying the credibility of traders to protect them from scams and other fraudulent activities. For instance, Amazon has made concerted efforts to prevent scammers from taking advantage of gullible customers (Crane, 2022). Some of the steps that Amazon has taken include detecting and responding to fraudulent attempts and creating educational initiatives that can assist consumers in differentiating between legitimate and illegitimate businesses (Crane, 2022). Furthermore, Amazon has a team of well-trained professionals, including software developers, machine learning scientists, and investigators, who protect customers from potential scams and proactively deactivate questionable websites from the platform. The reviews and feedback left on the platforms can aid future customers in making effective decisions, leading to the safety of the customers, especially the new ones (Kim & Kim, 2022). The implementation of the Escrow services in the online marketplace has also played a critical role in promoting trust and safety. An Escrow account is a platform whereby commodities are held in trust as parties complete a transaction, in most cases, an online transaction where face-to-face interaction is non-existent (Tan & Saraniemi, 2023). Through such measures, the online marketplaces manage themselves, earning trust and legitimacy among the users.

Furthermore, most marketplaces have ratings and review systems to enhance accountability for the products and services given. Customer feedback is an essential element in determining a competitive edge (Wu et al., 2022). Negative reviews and poor rating scores can have a detrimental impact on the seller on the online trading platform, adversely affecting their reputation and competitive edge. Narciso (2022) argued that the online review system is an essential source of information for customers. From a legal standpoint, online reviews can aid a consumer in gaining sufficient information needed to enter into a contract (Narciso, 2022). The customer feedback acquired from the online platforms is accessible and easy to understand. However, one of the most significant challenges in customer review is the possibility of dishonesty, especially by malicious actors. Moreover, Narciso (2022) noted that information overload can have more negative than positive impacts on the customer. Thus, despite the benefits of the reviews, failure to control them could have adverse implications for the consumer.

The online marketplaces also provide customers with frameworks for conflict resolution. Disputes can result from various causes due to the nature and characteristics of the online trading platform. Aspects like anonymity, trust deficiency, and the inability to interact with the commodity remain a significant threat to the peace and coexistence of the customers and the sellers (Liu & Wan, 2023). The nature of commodities in the online trading sector can also increase the likelihood of conflict. For instance, Liu and Wan (2023) noted that the online second-hand marketplace is prone to many wrangles due to uncertainties regarding the sellers and their products. In this regard, Liu and Wan (2023) proposed an online dispute resolution (ODR) mechanism that utilises internet-related technology. In the US, several online marketplaces have made concerted efforts to ensure that they create platforms for resolving conflicts. For instance, in 2000, eBay established a third-party platform called Square Trade for dispute settlement (Liu & Wan, 2023). A decade later, eBay improved the platform by allowing stakeholders to solve their issues more efficiently and urgently. Some of the most common conflict resolution mechanisms used on these platforms include online arbitration, online meditation, and online negotiation (Liu & Wan, 2023). Depending on the method chosen, the goal is to guarantee justice to all the parties involved. Thus, dispute resolution restores confidence in the online markets due to the self-sufficiency involved.

5. Conclusions

In conclusion, while the online trade segment presents unique challenges related to anticompetitive practices, government authorities are actively deploying a range of mechanisms and strategies to address these issues and promote a fair and competitive marketplace. Central to these efforts are key legal frameworks such as the Sherman Antitrust Act, the Antitrust Criminal Penalty Enhancement and Reform Act (ACPERA), and the Consumer Review Fairness Act (CRFA). Each of these laws plays a distinct role in curbing anticompetitive behavior and protecting consumers, thereby fostering a more equitable environment for both businesses and consumers.

The Sherman Act remains a cornerstone of antitrust regulation, designed to prevent anticompetitive mergers and acquisitions that could stifle competition and harm consumers. By scrutinizing and, where necessary, blocking such mergers, the Sherman Act aims to maintain a competitive market structure. However, the Act's effectiveness is challenged by the evolving nature of digital markets, where dominant players like Amazon and Google can leverage their scale and market power to influence competition.

To complement the Sherman Act, ACPERA enhances the legal tools available to combat anticompetitive practices by extending criminal liability. This act imposes harsher penalties for firms engaged in anticompetitive behavior, thereby deterring such practices and promoting compliance with antitrust laws. Despite these measures, the sheer scale of dominant players and their complex strategies often find ways to circumvent traditional regulatory approaches, indicating a need for more nuanced and adaptive regulatory mechanisms.

The CRFA addresses another critical aspect of consumer protection by prohibiting companies from using legal action to suppress negative reviews and honest consumer feedback. This law ensures that consumers can freely share their experiences and opinions about products and services, which is vital for maintaining transparency and accountability in the marketplace. The ability to access and act on genuine consumer feedback empowers buyers and contributes to a healthier competitive environment.

Despite these advancements in regulation, significant disparities remain between large and smaller firms in the online trade sector. Larger players, with their vast resources and market influence, can often outmaneuver smaller competitors, highlighting the need for additional policy measures. Congress should consider enacting new policies that enhance the competitive capabilities of smaller firms, ensuring that they can compete on a more level playing field with industry giants. Such policies might include support for innovation, targeted subsidies, or regulatory adjustments designed to reduce the competitive advantages of dominant players.

Moreover, the role of online marketplaces as trade administrators introduces another layer of complexity. These platforms not only facilitate transactions but also play a critical role in maintaining market integrity by controlling transaction processes, enhancing safety and security, and providing mechanisms for conflict resolution. Their ability to manage these aspects effectively helps build consumer trust and ensures a smooth business experience that often surpasses the capabilities of traditional brick-and-mortar markets.

In summary, while existing regulatory frameworks have made strides in addressing anticompetitive practices and protecting consumers, the dynamic nature of online trade necessitates ongoing adaptation and innovation in legal and policy approaches. Strengthening the competitive position of smaller firms and enhancing the regulatory oversight of dominant market players will be crucial for ensuring a fair and competitive online marketplace. As the digital economy continues to evolve, continued vigilance and reform will be essential to uphold the principles of competition and consumer protection that underpin a thriving capitalist market.

References

Adams IV, R.B. (2022). United States v. Google: Why the Department of Justice should drop its case against the tech giant. *Cumberland Law Review, 52*, 525.

Agulhon, S., & Mueller, T. M. (2023). How the drafting of the Clayton Antitrust Act helped spread the managerial approach to efficiency. *Administration & Society, 55*(3), 591-612.

Crane, J. P. (2022). Trust in the digital marketplace: Amazon, third-party sellers, and information fiduciaries. *Notre Dame Journal on Emerging Technology, 3*, 136.

Hebda, K. (2023). What is the FTC actually claiming in its Amazon lawsuit? *Business Law Today.*

Inoue, Y., & Hashimoto, M. (2022). Changes in consumer dynamics on general e-commerce platforms during the COVID-19 pandemic: An exploratory study of the Japanese market. *Heliyon, 8*(2).

Johnson, C. D., & Green, B.N. (2021). Looking back at the lawsuit that transformed the chiropractic profession, Part 7: Lawsuit and decisions. J*ournal of Chiropractic Education, 35*(S1), 97-116.

Kim, Y. J., & Kim, H. S. (2022). The impact of hotel customer experience on customer satisfaction through online reviews. *Sustainability, 14(*2), 848.

Kleisiari, C., Duquenne, M.N., & Vlontzos, G. (2021). E-Commerce in the Retail Chain Store Market: An Alternative or a Main Trend? *Sustainability, 13*(8), 4392.

Kumar, R.R., & Stauvermann, P.J. (2021). Revisited: Monopoly and long-run capital accumulation in two-sector overlapping generation model. *Journal of Risk and Financial Management, 14*(7), 304.

Liu, Y., & Wan, Y. (2023). Consumer satisfaction with the online dispute resolution on a second-hand goods-trading platform. *Sustainability, 15*(4), 3182.

Marvão, C., & Spagnolo, G. (2023). Leniency inflation, cartel damages, and criminalisation. *Review of Industrial Organization, 63*(2), 155-186.

Morton, F. M. S., & Dinielli, D. C. (2022). Roadmap for an antitrust case against Facebook. *Stanford Journal of Law, Business & Finance, 27,* 268.

Narciso, M. (2022). The unreliability of online review mechanisms. *Journal of Consumer Policy, 45*(3), 349-368.

Strandell, J. (2024). The World's Top Online Marketplaces. Retrieve from: https://besedo.com/blog/the-worlds-top-online-marketplaces-2022/

Tan, T. M., & Saraniemi, S. (2023). Trust in blockchain-enabled exchanges: Future directions in blockchain marketing. *Journal of the Academy of Marketing Science, 51*(4), 914-939.

Tang, H., Rasool, Z., Khan, M. A., Khan, A. I., Khan, F., Ali, H., ... & Abbas, S. A. (2021). Factors affecting e-shopping behaviour: Application of theory of planned behaviour. *Behavioural Neurology, 2021*(1), article number 1664377.

Williams, M. D. (2021). Social commerce and the mobile platform: Payment and security perceptions of potential users. Computers in Human Behavior, 115, article number 105557.

Wörsdörfer, M. (2022). What happened to 'Big Tech ' and antitrust? And how to fix them! *Philosophy of Management, 21*(3), 345-369.

Wu, D. C., Zhong, S., Qiu, R. T., & Wu, J. (2022). Are customer reviews just reviews? Hotel forecasting using sentiment analysis. *Tourism Economics, 28*(3), 795-816.

Yarova, I., & Yurchenko, A. (2023). Marketplaces as a key driver of global E-commerce. *Socio-Economic Relations in the Digital Society, 4*(50), 61-71.

Zhang, Q., Patel, P., & Lowery, C. M. (2023). Protecting low-income consumers in the era of digital grocery shopping: Implications for WIC online ordering. *Nutrients, 15*(2), 390.