



Consumer Harms in Digital Platforms and antitrust concerns

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Introduction

- ▶ A recent UNCTAD paper reports that large technology companies have changed the global business landscape. The top 10 global companies by market capitalization in 2018 included five technology companies.
- ▶ Technological developments have provided consumers with new products and services, often provided free of charge. Digital platforms are at the centre of such developments.
- ▶ Digital platforms providing a variety of services including marketplaces (Amazon), application stores (Apple), social networking sites(Facebook) and search engines (Google).
- ▶ While digital platforms can benefit consumers in certain instances, there are a range of new consumer harms to users from its unregulated use by increasingly centralized platforms.

Consumer protection legal framework in Tunisia

- ▶ Law 92-117 dated 7 December 1992 related to consumer protection.
- ▶ Law 2015-36 dated 15 September 2015 reorganizing competition and prices.
- ▶ Law 41-1994 regulating foreign trade.
- ▶ Law 86-1994 regulating agricultural and fishing products distribution channels .
- ▶ **Law 69-2009 regulating retail trade.**
- ▶ Law 70-1994 regulating the establishment of a national accreditation system for conformity assessment bodies .
- ▶ Law 39-1998 regulating sales with deferred payment terms,
- ▶ Law 40-1998 on sales techniques and commercial advertising,
- ▶ **Law 83-2000 regulating e-commerce.**
- ▶ Law 62-2002 regulating promotional games.
- ▶ Law 12-2008 regulating legal metrology, modified and supplemented by law.
- ▶ Law 10-2007 regulating the protection of trademarks, service and trade marks.
- ▶ Law 16-2016 regulating the national standardization.

Consumer protection institutional framework in Tunisia

1. **The Ministry of trade:** department of Quality and Consumer Protection/ department of Competition and Prices/ regional offices.
2. The Ministry of Agriculture and Water Resources: the department of Veterinary Services/ the department of Protection and Control of Agricultural Products.
3. The Ministry of Public Health: Department of Environmental Hygiene and Protection/ regional health offices/ Department of Pharmacy and Medicines.
4. The Ministry of the Interior: municipal police.
5. **Tunisian Competition council.**
6. **National Institute of Consumption.**
7. National Council of Consumer Protection.
8. **National authority of personal data protection.**
9. **Civil society** mainly Tunisian Consumer protection organisation.

Consumer well-being and welfare in Tunisian antitrust law

- ▶ Indeed, the goals of Tunisian competition law centre around, and are primarily consistent, with consumer welfare, but are not limited to it. It has consistently been applied in a manner to protect consumer well-being, consumer welfare and general market equilibrium.
- ▶ So, for the first time the new law of 2015 mentioned that enhancing consumer welfare is the main and ultimate aim of the antitrust enforcement → the incorporation in the new council board of 2 members having chosen for their competence in the field of consumer protection and consumption.

Digital platforms in Tunisia

- ▶ Population of **11582075** in 2018. Statistics show;
 - ▶ 7,300,000 facebook accounts in Tunisia.
 - ▶ 7,300,000 Messenger users in Tunisia.
 - ▶ 1,900,000 Instagram accounts in Tunisia.
 - ▶ 1 million Tunisian LinkedIn users.
 - ▶ 100,800 twitter accounts.
 - ▶ more than 96% of Tunisians use Google search.
 - ▶ 6 million Tunisian watch YouTube per day and around 25 million views per day and a peak in the holy month of Ramadan 150 million views.
 - ▶ E-commerce sales reached 1.5 billion\$, according to National Institute of Consumption.
 - ▶ The Tunisian e-commerce market includes a total of 1,423 sites with 1 million visitors per day.

Digital platforms market failures

- ▶ Market power.
- ▶ Barriers to switching.
- ▶ Information asymmetry and Imperfect information.
- ▶ Behavioural biases.
- ▶ Externalities.

Consumer Harms from digital platforms

- ▶ Where digital platforms exhibit one or several market failures, this can harm consumers in a variety of ways :
 - ▶ Competition harms.
 - ▶ Fraudulent or unfair business practices.
 - ▶ Harm to privacy.
 - ▶ Data breach.
 - ▶ Security and resilience issues
 - ▶ Content and conduct harms

Competition harms

- ▶ Competition concerns harm consumer welfare when digital platforms:
 - ▶ Abuse market power: e.g. by pricing excessively, limited range of services, lack of quality or otherwise setting exploitative terms (such as excessive data collection).
 - ▶ Entrench market power by foreclosing rivals: e.g. by imposing terms limiting multi-homing by its users.
 - ▶ Expand (or ‘leverage’) their market power : e.g. by using ‘self-preferencing’ to prioritising their own vertically integrated services and therefore foreclosing rivals.
 - ▶ Limit consumer switching by exploiting behavioural biases (such as the effect of framing) or information asymmetry (such as unclear termination clauses).

Fraudulent or unfair business practices

- ▶ Unfair practices abusing vulnerable users arise from the use of;
 - ▶ Different 'nudges' to direct consumers to make a choice that is not in their best interest.
 - ▶ Highly personalised and sophisticated services or prices.
 - ▶ Unfair practices may include:
 - ▶ pressure selling,
 - ▶ misleading discount claims,
 - ▶ hidden charges,
 - ▶ Using data to targeted pricing.
 - ▶ Fraudulent business practices involve unlawful and dishonest conduct that can imply;
 - ▶ financial harms to consumers (e.g. pension scams),
 - ▶ consumption decisions distortion (for example, misrepresentation of product features),
 - ▶ harms in health and wellbeing.
-  Lack of competition, barriers to switching, behavioural biases and asymmetries may possibly facilitate this harm.

Harm to privacy

- ▶ Loss of privacy and associated distress for people (e.g. stress from others having access to their data, distaste for surveillance).
 - ▶ Nuisance from targeted services that rely on a person's data (e.g. advertising) .
 - ▶ Use of data to personalize and target harmful content.
 - ▶ Shift in the balance of economic power from consumers to providers.
 - ▶ Under-utilization of online services if people forego using (aspects of) services because of privacy concerns.

 - ▶ Behavioural biases and imperfect information are likely used to influence agreements with consumers about data collection and use this to their benefit.
-  Market power or switching barriers can also lead to privacy harms, as Digital platforms may underinvest in consumer privacy protection.

Data breach

- ▶ The ability of online providers to collect and store user data increases the risks of, and harms from, personal data breaches. Harms that can outcome;
 - ▶ Cybercrime; financial crime, identity theft and blackmail .
 - ▶ Distress or cost to prevent cybercrime; costly measures (like cancelling bank cards) or distress from the increased risk of crime.



Data breach threats may arise when;

- ▶ Externalities lead to under-investment in guarding against these threats As their costs not fall entirely on businesses.
- ▶ Consumers information asymmetry or behavioural which may limit the incentive for digital platforms to compete on this feature.
- ▶ Digital platforms having market power may under-invest in data security due to a weak threat that consumers could switch to alternative providers offering greater security.

Content and conduct harms

- ▶ Content and conduct online can harm consumers in a variety of ways.
 - ▶ Conduct that can cause harm, including abuse, bullying, controlling or intimidating behaviour or harassment;
 - ▶ Content that can cause harm, including illegal content (for example, child sexual abuse), material advocating self-harm, violence or extremist ideologies and under-age exposure to age-sensitive content;
 - ▶ Disinformation, including falsely manipulated content intentionally created or shared to deceive citizens or cause harm.



Preventing this harms could increase the cost of engaging with online platforms (e.g. by accessing fact-checker websites or using parental control)

Security and resilience issues

- ▶ Consumer harm can arise if cybercrime, malpractice, or negligence causes a disruption to this access.
- ▶ Harms from security and resilience vulnerabilities may arise from externalities, if businesses or governments do not sufficiently internalise the general cost of a breach in cybersecurity to society. This would be particularly the case where consumer decision making is subject to behavioural bias or information asymmetries, which limits consumers' ability to recognize, and penalise, such under-investment.

Thank you

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