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A Fair Deal for Everyone: How to Ensure Fairness, Competitiveness, and Consumer protection on Online Market Places?

E-commerce did not exist 30 years ago. Online market places only began growing in the 1990s (both Amazon and Ebay, for example, were launched in this period). Nowadays, they have evolved into major players in e-commerce. The internet is widely populated by larger (e.g. eBay, Amazon, Taobao) and smaller online market places (e.g. Etsy, Otto). Large online market places dwarf the number of customers of traditional brick-and-mortar retailers. Amazon, for example, has more than 300 Million active users worldwide. Its current market value is estimated at 750 billion US dollars. We have thus witnessed the creation of truly global online market places that possess large economic power, and offer smaller sellers and buyers more possibilities to conduct business, more choice, and cheaper prices. They allow global e-commerce to flourish. At the same time, however, online market places create risks that have come to the attention of policy makers.

First, there are risks to consumer protection. Are consumer interests sufficiently protected in cross-border trade on online market places, where the protection offered by national consumer laws is only limited to ensure that consumers are treated fairly? Can online market places themselves offer sufficient consumer protection through, for example, review and rating systems, or dispute settlement mechanisms? Second, there are risks to brand protection. Do online market places offer enough safeguards against counterfeits? Is the brand value of branded goods sufficiently protected? Third, there are risks to small sellers that sell their goods on online market places. Is there an equal playing field for small sellers when selling on online market places?

While each of these topics has been addressed in several academic publications, policy makers look for a more holistic picture of how fairness on online market places can be promoted. This paper looks at the issue of ensuring fairness and protection of various players on online market places from an EU law perspective. It first starts out by setting out how the interests of various stakeholders, i.e. consumers, sellers, and branded good manufacturers are protected under EU law (in particular under EU consumer law, EU competition law, EU IP law, and the recently proposed Regulation on promoting fairness and transparency for business users of online intermediation services). It seeks to bring together and distil the responses by EU policy makers, legislators, competition authorities to the risks created by online market places. Secondly, it looks into the terms and conditions for sellers and users of a sample of larger (Ebay, Amazon) and smaller (Etsy) online market places, as well as their rating and dispute resolution systems. This exercise is conducted to determine which measures platforms themselves take to protect the interests of various players. It then brings together both the responses of legislators and policy makers in the EU, and the responses that the market itself, i.e. online market places, have provided to ensure a fair business environment that protects consumers, brand manufacturers, and smaller sellers on online market places. It then seeks to assess whether the responses provided by the law and by markets are sufficient to ensure fairness, competitiveness, and consumer protection on online market places.