Can Antitrust Authorities' Intervention to Pricing Strategy of Multi-Sided Platforms Enhance Competition in the Market?

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Digital markets have been among the fast-growing businesses over the last three decades. Compared to traditional offline markets, network effects lead to non-traditional pricing behaviour in digital markets; namely, setting prices above the marginal cost on one side while implementing zero price for the others. This pricing strategy has attracted the attention of competition authorities as it addresses excessive and predatory pricing behaviour in competition law terminology. Whether competition authorities' intervention ends up enhancing competition in the market should be debated. The latest decision of the Turkish Competition Authority regarding sahibinden.com, one of the biggest platforms of vehicle and real estate trade, would be a good laboratory for discussion.

Introduction

Online-based multi-sided markets, or digital platforms, have become increasingly prominent businesses over the last three decades and have attracted the attention of economists and also governments in terms of regulatory requirements.

According to the OECD (2018), by taking the common elements of various definitions, a multi-sided platform can be defined as: "*a market in which a firm acts as a platform and sells different products to different groups of consumers, while recognizing that the demand from one group of customer depends on the demand from the other group(s)*."

Platforms are convenient ground for two or more groups of users to get together for goods, services or information exchange. Apart from the traditional offline markets, the evident feature of the platforms is the so-called network effect, a phenomenon through which a good or service gains additional value as more agents use it.

Maxwell and Penard (2015) underlined four economic features of digital platforms that can both constrain and stimulate competition. Firstly, such platforms have a specific cost structure – namely, high fixed costs and relatively low marginal costs of production – which creates economies of scale and induces a market structure dominated by few firms. They create large direct and indirect network effects. Thirdly, platforms provide positive feedback; economies of scale and network effects work together to create positive feedback or self-reinforcing diffusion processes, which causes strong platforms to become stronger and weak platforms to become weaker. Lastly, platforms are characterised by a fast pace of innovation, which can rebalance market power and facilitate entry. The dominant firms can never feel protected and must change continuously to preserve their position and prevent other firms from innovating more quickly.

One of the main benefits of platforms is that they reduce transaction cost. Transaction costs are associated with trade of goods or services and incurred in overcoming market imperfections. Since platforms bring all sides in an interactive single place (such as a computer or mobile phone screen), asymmetric information is largely eliminated. Platforms offer a wide variety of products to consumers and make it easier for them to find the goods they are looking for. Consumers often feel attracted by the presence of other consumers because it offers opportunities for social interaction and drawing benefits from each other's experience (Martens 2016).

Compared with offline markets, network effects lead to non-traditional pricing behaviour. Platforms may resort to setting prices below cost or mostly zero price to one group of users in order to make themselves more valuable to the other groups. This is likely to lead to them expanding their market share and revenue by leveraging network effects. The damages stemming from having below-cost prices are paid off through cross-subsidisation depending on the supply and demand elasticities. This has led to a variety of platform business models with fixed and variable pricing, cross-subsidisation for various parties in function of their measured behaviours and market power.

The strategy of setting prices above the marginal cost for one side while implementing zero-price for the others has drawn the attention of competition authorities because such a strategy addresses excessive and predatory pricing behaviours in competition law terminology. Competition authorities are disposed to think that high concentration ratios and dominant positions being observed in the markets are the consequence of such a pricing strategy, together with economies of scale and scope, which results in "winner-takes-all" or "lock-in" situations. Such reasoning may end up with authorities using competition law instruments to intervene in platforms' pricing strategies.

As Martens (2016) noted, traditional competition policy assumes that a welfare-maximising competitive equilibrium exists as long as prices reflect social value. In that

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case, competition policy aims to alleviate the inefficiencies caused by market power and price distortions. However, this approach does not fit well into digital platforms. Pricing on two sides of the market may not reflect social value and pricing practices may hurt some users but benefit others. Still, the overall price structure may be welfare-enhancing. When competition authorities consider an intervention to digital platforms, they should be aware that intervention on one side would affect the other side. A case-by-case overall analysis that includes all sides of the market is required.

Discussion on Turkish Competition Authority's Latest Case on Digital Markets

In the abovementioned context, the question of whether competition authorities' intervention results in enhancing competition in the market, thereby serving social welfare maximisation, deserves to be debated. The latest controversial decision by the Turkish Competition Authority (TCA) regarding sahibinden.com (Turkish Competition Authority, Decision Number 18-36/584-285, 1.10.2018), a leading digital platform for vehicle and real estate trading in Turkey, would be a good laboratory for debating.

The Turkish Competition Board ruled that sahibinden.com abused its dominant position by implementing excessive pricing to real estate agents and car dealers. The decision had not been made by consensus. On the other hand, four out of five rapporteurs argued that although sahibinden.com had a dominant position in the market and its prices against the vehicle and real estate traders in 2014–2017 were higher than those of its rivals, sahibinden.com cannot be deemed to have abused its dominant position on the grounds that there is no evidence of negative effect of pricing on consumer welfare; also, thanks to the financially robust and strong national and international newcomers, the price of sahibinden.com is to converge to the level of competitive markets.

In the early part of the decision, the TCA spelled out the peculiar features of digital multi-sided markets and underlined that the market definition for digital platforms show considerable differences from traditional one-sided markets. According to the TCA, that is why the classical methods, such as SSNIP, could be insufficient when the relevant market is determined. By taking digital markets' specific features, the TCA define two relevant markets as the on-line service market for real estate trading and the on-line service market for vehicle trading.

Following the market definition, excessive pricing behaviour is handled in the context of theory and Turkish competition law jurisprudence. By reference to the Turkish Council of State's decisions, the TCA underlined that the main parameter to be taken into consideration in competition law enforcement should be consumer welfare. However, the decision contains no analysis of the effect of excessive pricing on the consumer welfare. The matter of consumer welfare is discussed very briefly, only in the evaluation of the legal defence of sahibinden.com. In its legal defence, sahibinden.com alleged that the consumers were not negatively affected. In other words, there was neither welfare transfer from consumers to sahibinden.com nor welfare lost due to its pricing.

Against this argument, the TCA argued, sahibinden.com misinterpreted the concept of consumer by limiting it to final consumers. By their nature, multi-sided digital platforms have different consumer groups. From this point of view, the real estate and vehicle traders are the consumers of sahibinden.com and they were exposed to lost welfare because of sahibinden.com's excessive prices. This is a controversial interpretation in terms of economic theory.

In the part of dominant position analysis, the TCA examine various parameters such as market share, number of visitors, number of corporate customers and income from corporate customers and ruled that sahibinden.com holds the dominant position in both markets. The TCA also highlighted that sahibinden.com has retained relatively high market shares in both market over the years despite its higher prices, mostly thanks to a network effect creating entry barrier in digital markets.

In order to determine whether sahibinden.com abused its dominant position during 2014–2017, the TCA applied the "economic value test", which is also known as the "united brand test" and focuses on price-cost margin and benchmark prices. In that sense, the TCA compared the prices of sahibinden.com and its main rivals and concluded that sahibinden.com's were significantly higher (the exact numbers are not presented in the decision because of trade secrets). In terms of profit ratio, the TCA compared the profit ratio of sahibinden.com with the firms operating in different digital markets on the grounds that the price-cost margin is not opaque because the total cost of the sahibinden.com is hard to distribute among specific services. A profit-ratio comparison shows that the equity profitability of sahibinden.com was significantly higher than that of its counterparts in different digital markets.

Upon the said analyses, TCA ruled that sahibinden.com has infringed Turkish Competition Law by abusing its dominance through excessive pricing. In the decision, TCA did not propose any specific remedy for terminating the infringement. Hence, sahibinden.com should determine the price level, which is not deemed to be excessive and pull its price to this level.

This decision has the potential to raise some questions with respect to whether it results in enhancing competition in the market. According to the decision, there were significant differences between the prices of sahibinden.com and its rivals at both markets. On the other hand, the network effect has led sahibinden.com to maintain its dominance. So, what is expected to happen when sahibinden.com reduces its price? Can the current rivals and newcomers gain market share or vice versa? What will be the reaction of potential rivals thinking about entering the market?

Why did the TCA not consider potential competition? Various national and international digital platforms such as Letgo, Facebook Marketplace and zingat.com had just entered into market or prepared to enter at the time of investigation. The TCA alleges that those newcomers cannot create competitive pressure on sahibinden.com due to the network effect. However, the risk of entrenched monopolies is very limited. For example, MySpace was the leading social media platform in the mid-2000s but has now almost disappeared. Nokia/Symbian was the leading technology platform for mobile phones but has now been replaced by a de facto oligopoly between Android, Apple iOS and Windows. Windows' dominant position in the operating systems market is under increasing pressure from Apple iOS and other operating systems. Google AdWords' strong position in the online advertising market is under pressure from Facebook advertising (Martens 2016).

Why didn't TCA pay regard to specific features of digital markets in its dominant power analysis as it did in the market definition analysis? As Evans and Schmalensee (2014) explained, "methods used in traditional markets are not adapted or reliable for 'platform-based' industries. Reliance on market share or price-cost margins in assessing market power is questionable. A platform serves multiple groups of customers with interdependent demands and uses complex price strategies. Market shares are not the best instrument or index to measure market power."

The last critical question to be asked is how TCA came to the decision without conducting welfare analysis. As touched on above, the reasoning behind TCA's decision is based on the argument that the real estate and vehicle traders are the consumers of sahibinden.com and they suffered lost welfare. Is the TCA aware that such an approach clashes with welfare economics?

Conclusion

All of the questions above have implied answers. Sahibinden.com is expected to increase its market share after price adjustment. On the other hand, while some players will have to leave the market, potential rivals thinking about entering the market will give up. As a result, the market power of sahibinden.com will be strengthened by the TCA's decision.

By reference to Shelansky (2013) and Manne and Wright (2011), Maxwell and Penard (2015) raise an important issue in antitrust remedies. The risk of regulatory error is high when dealing with new Internet-based business models. Regulators have a systematic bias toward seeing anticompetitive conduct in new business models. More importantly, the cost of error is much higher in the case of a so-called "Type I" error (that is, when a regulator mistakenly imposes a remedy) than for a "Type II" error (that is, when a regulator mistakenly fails to impose a remedy). This leads to the conclusion that where there is significant uncertainty due to rapid technological and market changes, regulators should err towards doing nothing rather than imposing a remedy.

Accordingly, Maxwell and Penard (2015) warned, the error costs of over-enforcement of antitrust laws in digital markets would be much higher than the error costs of under-enforcement. It can be very costly to regulate digital platform markets given the rapid pace of change in these markets. The guidelines in digital markets should be "first do no harm" to avoid counterproductive effects. The consequence of the TCA's over-enforcement will be observed and evaluated in the upcoming years.

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