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Prima stuk. Paar opmerkingen.

Groet,
Martijn

Offline retail markets are in double jeopardy. The ongoing longer trend of a shift to online distribution is amplified by Covid measures. Although the shift to online can be viewed as a natural phenomenon, potentially strong external effects are associated with the added impact of the lockdowns. This could be particularly the case when shopping areas become less attractive to both consumers and shops as a result of retail real estate vacancies. This in turn could have an undesired impact on cities and communities where shopping areas are attractive for other businesses and for citizens and visitors such as tourists.

Besides these external societal effects, there is simply the fact that that consumers do like to shop and that retail brands and manufacturers view offline outlets as important marketing and sales channels. In other words, the latter may very well have incentives to support offline stores in their distribution mix. We ~~are of the opinion~~ have indications that some prohibitions under competition law may actually hamper market solutions aimed at ~~alleviating-mitigating~~ this issue. Relaxing these prohibitions can be done without causing serious harm to competition prices, quality or innovation.

Currently dual pricing is listed as a hard core restriction and it does not benefit from the safe harbour in the VBER under any circumstance. Bringing it in this safe harbour means manufacturers and brands can, in the absence of market power ~~obviously~~, incentivize retailers to invest in physical outlets without having to rely on a 101 (3)-type self-assessment. The often cited drawback that these incentives may hamper online commerce (as retailers will try to shift consumers to offline sales with higher margins) is at this moment not a seriously threat dangerous. Clearly consumers do like to buy online and many market players, notably large platforms do invest heavily in offering online commerce to consumers. Hence the risk to the development of e-commerce is small.

A second point is the use of narrow and wide MFN clauses APPA. As things stand both will be forbidden in the near future for very large platforms under the DMA. For platforms not covered by the DMA the legal framework will remain competition law and the VBER. Especially for challenger platforms that do not have market power the use of narrow MFN clauses may be a desirable strategy to enter a market. Of course this can if a platform has a very strong position (nationally but not covered by the DMA. An (albeit regional) example in The Netherlands might be found in food delivery platform Thuisbezorgd .

Other competition law restrictions may stand in the way of maintaining a physical retail infrastructure but this is subject of an investigation the ACM is currently conducting.

Commented [SM1]: causes problems?