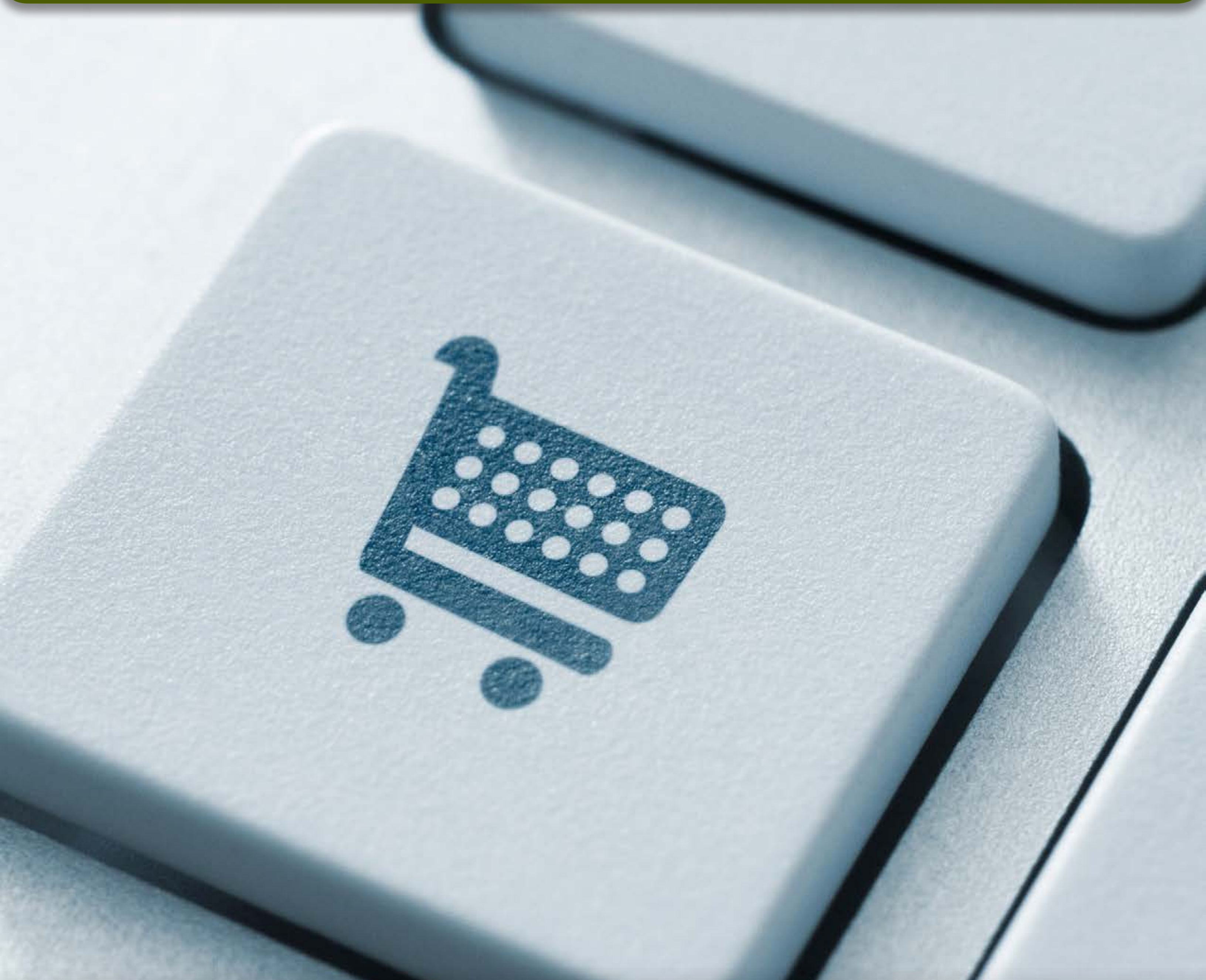
# STRENGTHENING BUYER POWER AS A SOLUTION TO PLATFORM MARKET POWER



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# I. INTRODUCTION

Online platforms play an important role in the development of the online world and open new market opportunities, notably for SMEs. Online platforms also bring benefits for consumers, for example by reducing search costs and making greater choice available. Almost half (42 percent) of SME respondents to a recent Eurobarometer survey on online platforms use online marketplaces to sell their products and services. Eighty-two percent of firms that sell online rely on search engines to promote their products and/or services.[2] As the European Commission notes, online platforms are now the main gateway to market for the majority of smaller businesses in the digital economy – be it online market places for small sellers, app stores for game developers, or online travel agents for hotels.[3]

This led the Commission to identify that many small, but also some larger businesses, have come to depend on platforms that provide such easy access to customers and markets. The Commission found that this dependency entails a certain imbalance of bargaining power between online platforms and their business users, causing friction in platform-to-business relationships, and giving scope to unfair behavior on the part of platforms.[4] This may indirectly lead to harm to consumers.[5] This reflects the growing concerns about the strong position of digital platforms.

A digital platform may acquire a position of market power for a number of reasons. As noted, they tend to act as a key gateway for businesses engaged in online sales or marketing. In addition, there may be powerful network effects at work. These mean that the value of the platform to one group of users, say online businesses, increases as the platform gains a greater number of other types of users, here online consumers, and typically vice versa. These effects will tend to create barriers to entry and favor incumbents, increasing the risk of increased concentration of markets in which platforms operate.

2 Inception Impact Assessment, http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-5222469_en.

3 Ibid.

4 Ibid.

5 The Commission has listed a variety of issues which may arise due to this imbalance in power. The Commission concludes that, "In light of the increasing dependency of businesses users on online platforms to reach markets, these unresolved issues can have significant direct negative effects on a large number of EU business users, some of which may choose to disengage from online platforms. Where they hamper the business users' ability to reach markets, these issues can also indirectly harm consumers by leading to a more limited choice of products and services. In addition, the prevalence of these issues could have significant negative effects on the viability of the wider platform business model and the innovation that their ecosystems drive, including on potential new entrant platforms." Ibid.

The increasing market power of some digital platforms has led to calls for greater regulation.[6] Here we discuss whether there may be more market-orientated solutions to platforms holding very strong market positions, or market power. In particular, we explore whether, and why, greater collective bargaining by user groups on platforms may temper the power of some digital platforms and lead to better outcomes.

## II. EXAMPLES OF COLLECTIVE BUYER POWER FROM THE PROPERTY PORTAL, AUCTION HOUSE, AND PAYMENT CARD SECTORS

In order to motivate the discussion, we identify some examples where businesses selling through platforms have collectivized to exercise outside options when dealing with major platforms in what appear to be fairly concentrated markets. In particular, the launch of the "OntheMarket" platform by a collective of estate agents provides an example of how business users might respond to their reliance on powerful incumbent platforms to reach consumers using platforms to search for properties to buy.[7]

OnTheMarket claimed that:[8]

a) There were two major incumbents in the UK and estate agents felt obliged to list on both of them to reach consumers. This increased overall costs to estate agents. OnTheMarket described the incumbents as a duopoly who did not provide a rivalry which would benefit consumers and agents. It was claimed that the incumbents had increased listing fees, reduced the quality of service, and imposed adverse conditions on listing.

b) Following an initiative by one agent, a number of agents came together to create "a true competitor" to the incumbents. "Whilst barriers to entry are substantial and potentially insurmountable to non-agent ventures, a new portal owned by agents and run with the aim of improving service and reducing costs to them, their customers and the property seeking public can win through in the medium term."[9]

Another example of buyers coming together to launch a platform is TheAuctionRoom. This is an online bidding platform created by three auctioneers who had previously used the large platform ATG Media.[10] The launch of TheAuctionRoom provided auctioneers with an additional outside option. However, given that the CMA recently found that ATG Media is likely to have a dominant position in the market for the supply of live online bidding auction platform services to auction houses in the UK,[11] the extent to which the launch of the new platform improved the bargaining position of auctioneers is less clear cut. This illustrates that launching an alternative platform successfully is challenging and may not, therefore, provide a strong outside option when negotiating with an incumbent platform.

A final example of buyers coming together to exercise buyer power in relation to powerful platforms was seen in the context of debit cards. There are two major (four party) schemes for debit and credit cards, Mastercard and Visa. The CAT recently assessed the ability of merchants to influence the interchange fees charged by issuing banks under the schemes. In doing so, it noted an example of collective bargaining by retailers. The CAT pointed to the British Retail Consortium, a trade association representing retailers, successfully rejecting an *ad-valorem* pricing

6 Aside from the initiatives of the European Commission, there have been two recent reports from the UK House of Lords suggesting that further regulation of platforms may be required.

7 OnTheMarket launched in January 2015. In February 2018 it had an IPO and was admitted to the AIM market of the London Stock Exchange. It is the third biggest property portal in the UK in terms of traffic and competes with Rightmove and Zoopla.

8 See para 69 of the CAT judgment of July 5, 2017, http://www.bailii.org/uk/cases/CAT/2017/15.html#para64.

9 By coming together to create a new competitor, sellers were able to create an additional outside option, which in turn, should have helped their bargaining power.

10 The Auction Room's website claims it is a "new search engine hub, portal and auction platform uniquely created by three of the top UK auctioneers for their buyers, with aspirations to be the best for live auction bidding in the UK. It is designed to deliver the experience of the true auction room atmosphere." https://www.theauctionroom.com/aboutUs.

11 See paragraph 3.2 of the CMA's decision to accept binding commitments offered by ATG Media in relation to live online bidding auction platform services, June 2017 https://assets.publishing.service.gov.uk/media/5954be5c40f0b60a44000092/auction-services-commitments-decision.pdf.

structure proposed by Mastercard.[12] Retailers were able to reject Mastercard's offer and, instead, go with the other major debit card provider, Visa. This illustrates how collective bargaining may be used to choose between existing platforms, which may generally be a more attractive way of exercising bargaining power than launching a new platform.

## III. AN APPLICATION TO HOTELS AND ONLINE TRAVEL AGENTS

To further motivate the discussion which follows, we identify an example of an industry where there appear to be powerful platforms and no collective bargaining. In particular, we consider the service supplied to hotels by online travel agents, such as Booking.com and Expedia.

This is an interesting sector because: (i) it is highly concentrated, with Booking.com and Expedia (and the sites owned by the same corporate groups) tending to account for a large proportion of bookings on OTAs; [13] (ii) there has been a lot of recent antitrust scrutiny of this sector as well as consumer law concerns; and (iii) the hotel industry is a fragmented sector and, even though there are some large hotel groups, they account for a very small proportion of all hotels. Therefore, this sector might provide a good example of where the bargaining power of individual hotels is rather weak relative to the bargaining power of the OTAs.[14]

Hotels face a coordination issue. An individual hotel could threaten to leave one OTA (e.g. Booking.com) and offer their rooms only through the other OTA (e.g. Expedia) unless the hotel was offered a better rate by Booking.com. However, if the hotel does offer its rooms only through Expedia, then it will lose those customers who search for hotels through Booking and do not use Expedia, or the hotel's own website.[15] Therefore, the threat to switch may not be credible. In addition, hotels also face a size problem – any hotel or hotel group (even the largest groups) are small relative to total hotel bookings on an OTA. This means that an OTA may have little incentive to adjust its commission rate significantly to keep that hotel group.

If hotels could coordinate their purchases from OTAs, they would be better placed to credibly threaten to switch. If all, or a large proportion of, popular hotels coordinated to leave a particular OTA, then consumers who previously used only that platform would face a strong incentive to also switch OTA (or go directly to the hotels' own websites or possibly search across multiple OTAs). A loss of hotels on the platform, which in turn leads to a loss of consumers, would make it easier for more hotels to switch away from the platform (and less painful for the group that initially left), which would lead to yet more consumers leaving. This could be very damaging to the OTA. Therefore, the threat may be credible and powerful.

A credible threat to switch would strengthen hotels' bargaining power, and, in turn would allow hotels to push down commission rates (and/or secure better standards of service). To the extent that the hotel sector is competitive,[16] a reduction in commission would likely be passed

12 See paragraph 261 of the CAT's Judgment of July 14, 2016, in *Sainsburys v. Mastercard*.

13 It has been estimated that Booking.com and Expedia had respective shares of 44 percent and 18 percent of bookings through online travel agents in Europe in 2016 (European Online Travel Overview, 12the Edition). OTAs account for about 60 percent of online bookings for hotels and 40 percent of all hotel bookings in the EU. Table 1. Report on the monitoring exercise carried out in the online hotel booking sector by EU competition authorities in 2016. http://ec.europa.eu/competition/ecn/hotel_monitoring_report_en.pdf. We note that these figures only provide a snapshot of concentration amongst OTAs and do not seek here to make any assessment of the dynamics of this industry.

14 The British Hospitality Association summarized the situation from its perspective as follows: "it is no longer feasible for the majority of hospitality and tourism venues to operate without online sales, as most searches for hotel, restaurant and other bookings are made online. Venues must therefore make agreements with online platforms and are obliged to choose the largest platforms, since these are the ones visited by customers. They are visible on the first pages of a customer's search, venues own websites appearing several pages on. As a result, venues, in particular SMEs have little bargaining power and agreement terms are controlled by the online platforms, resulting in contracts which include 'parity clauses' and 'most favoured nations' clauses. A myriad of other concerns arise as a result of this platform/industry/customer imbalance. These include excessive commissions and lack of transparency on the part of online platforms, whose websites are often confusing and misleading for the customer, for example, in not providing the customer with key information about pricing, how ratings are awarded to venues, terms of booking and so on. The need for answers to these problems is pressing as the most powerful online platforms have grown in strength very rapidly, in control of the market and in wealth, giving them enormous resources to consolidate their position." BHA written evidence to the House of Lords EU Internal Market Sub-committee.

15 Customers that only use one OTA are said to "single-home," whereas customers that use more than one OTA are said to "multi-home." Hotels may need to multi-home in order to reach those consumers than single-home.

16 We have made no assessment in this article as to how competitive the hotel sector is. We simply note that it is fragmented and therefore provides a useful illustrative example.

through to some degree to consumers (either through lower prices as one would expect that commission rates are included in the price of hotel rooms, or in other improvements to the offering). The commission rates of the major OTAs range from 10 percent to 20 percent of the price of a hotel room.[17] Therefore, where the downstream market in which the sellers operate is competitive, the potential benefits to consumers could be great.

## IV. THE DETERMINANTS OF BARGAINING POWER[18]

The availability of credible alternatives (or outside options) is a key factor in determining which parties will hold a strong bargaining position.[19] In its market study on Digital Comparison Tools (which are digital platforms), the CMA identified three factors which affect the strength of a platform's bargaining position *vis-à-vis* the sellers on this platform: (i) the significance of platforms overall as a sales channel for these sellers; (ii) the significance of an individual platform to one or more sellers; and (iii) sellers' ability to replicate the sales they make on the platform on other sales channels, such as their own websites.[20] A seller's threat to delist from a platform will be less credible if it is more dependent on that platform and, therefore, the platform will hold a stronger bargaining position.[21]

A seller's position will be stronger if they are able to replicate sales on other channels (including other platforms, or the seller's own website), if they were to delist from the platform, or steer consumers to these alternatives. This, in turn, will depend on the extent to which consumers are willing to use these other channels and how cost-effective these other channels are.

For a given structure in the supply of platform services, a seller will tend to be in a stronger negotiating position the stronger its brand is in the eyes of consumers and the larger its share of supply.[22] Similarly, the threat of switching away to another platform may also be more credible (and, clearly, have a far greater impact on the current upstream supplier) when buyers can coordinate on whom they purchase from. In this way, discounts may also be achieved through more active negotiation by the buyer group. The accretion of buyer power, through greater concentration, is often recognized as a potential benefit.[23] Therefore, if the platform holds a strong bargaining position and a position of market power, collective bargaining by businesses using that platform may lead to benefits to both those businesses and the customers to whom those businesses sell.

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17 In addition, the commission rates charged by OTAs have not fallen in recent years, despite the removal of wide price parity terms from OTA contracts with hotels which were believed, by competition authorities, to have sustained supra-competitive commission rates. Page 18. Report on the monitoring exercise carried out in the online hotel booking sector by EU competition authorities in 2016. http://ec.europa.eu/competition/ecn/hotel_monitoring_report_en.pdf.

18 This article focuses on a type of countervailing buyer power that buyers might achieve through collective bargaining. It does not examine buyer power stemming from the aggregation of purchases from a number of buyers which may lead to reductions in the costs of supply of the upstream supplier (or platform) due to the realization of economies of scale, leading to discounts on larger volumes being purchased.

19 The CMA noted that "a significant factor affecting prices paid by consumers on DCTs is the outcome of the negotiation between DCTs and suppliers. This depends primarily on whether the DCT and the supplier have credible alternatives they can exercise if an agreement is not favorable to that party. This is closely linked to how strongly DCTs compete with each other (and suppliers' direct channels) and to the strength of competition between suppliers." See Paragraph 2.37, Digital Comparison tools market study, Paper E: competitive landscape and effectiveness of competition. https://assets.publishing.service.gov.uk/media/59e093f5e5274a11ac1c4970/paper-e-competitive-landscape.pdf.

20 Paragraph 2.42, Ibid.

21 For example, the CMA found that platforms were a more important sales channel in motor and home insurance than in broadband and credit cards and that this was consistent with commissions following an upward trend in motor and home insurance. The CMA also found evidence of high levels of concentration of platforms within some sectors and high levels of consumer brand loyalty, both of which would strengthen the negotiating position of the platform.

22 As the CMA noted, "In markets with a low concentration of suppliers, we would generally expect DCTs to have a stronger negotiating position because there are potentially many other suppliers a DCT can contract with. In addition, where suppliers are relatively undifferentiated, this is likely to strengthen a DCT's negotiating position." See Paragraph 2.39, CMA market study on DCTs, Paper E.

23 For example, the CMA's Merger Guidelines note how greater buyer power due to the merger may lead to benefits to the customers of the merged firm. "Where the merger firms purchase the same products, the merged firm may enjoy greater buyer power (or monopsony power) than the merger firms could previously exert individually. In many cases, an increase in buyer power is not likely to give rise to unilateral effects; and some of the benefits to the firm from its greater buyer power may be passed on to the merged firm's customers." Paragraph 5.4.19, Merger Assessment Guidelines. https://www.gov.uk/government/publications/merger-assessment-guidelines. The European Commission's guidelines on horizontal agreements also recognize the benefits of collective purchasing to strengthen buyer power. See paragraph 194 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011XC0114(04)&from=EN.

## V. PLATFORM MARKET POWER AND THE POTENTIAL BENEFITS OF COLLECTIVE BARGAINING

As explained above, the bargaining strength of any customer will depend on the number and strength of the credible outside options available to that customer. A specific challenge for sellers on platforms in exercising outside options and achieving greater bargaining power *vis-à-vis* platforms arises from the multi-sided nature of platforms, which display indirect network effects. These effects mean that for a platform to succeed it must attract both sides of the market. These effects will also tend to strengthen the position of established platforms with loyal consumers.

If consumers are content to search across different platforms (i.e. multi-home), then the seller would only need to list on one platform – safe in the knowledge that these consumers will search sufficiently to find their offer.[24] In this context, an individual seller's threat to switch from a platform may be credible, and collective bargaining may not be very important in strengthening their credibility.

Sellers can only credibly threaten to switch or delist from one platform if they can also steer consumers to the alternative platform. This is more difficult if consumers single home (i.e. use only one platform, rather than searching across multiple/all platforms). If these single-homing consumers represent an important source of demand for sellers, to whom they would not be able to appeal to if not on the platform, the sellers may consider it necessary to sell through a platform to reach these consumers. This may give the platform a degree of market/bargaining power in relation to the seller, as the latter cannot switch away from the former if it wants to attract these consumers. Therefore, the sellers are likely to multi-home (i.e. choose to list a given product/service across multiple platforms) due to the single-homing behavior of some significant groups of consumers. Although there may be multiple platforms offering a similar service, each platform may have market/bargaining power in relation to the sellers on that platform due to single-homing by an important group of consumers.[25]

This provides sellers with a coordination problem. A single-homing consumer who has built up a preference for using a particular platform is unlikely to switch to another platform in response to only a few sellers switching to that platform. Therefore, in order for sellers to exercise bargaining power through a credible threat to switch, they may need to coordinate amongst themselves such that a sufficient number of important sellers[26] switch, providing sufficient incentives for the consumers to also switch.[27]

Sellers could coordinate to threaten to switch to an existing platform, or to effectively sponsor entry by creating a new platform. Once the threat to switch to an alternative becomes credible, the balance of power should shift away from the incumbent platform, which in turn could lead to lower commissions for the seller.[28] Provided that the sellers pass these cost savings on to consumers and do not coordinate on any aspect of competition between them on the selling market, this collective bargaining could benefit both sellers and consumers.

The nature of indirect network externalities means that it is more challenging for sellers to credibly threaten to switch. On the other hand, if a credible threat exists, the exercise of this threat could be particularly damaging to the platform. A sufficiently large switch by sellers may cause the platform to become unsustainable and go into a "death-spiral": as switching by sellers induces switching by consumers, this induces further switching by sellers which induces further switching by consumers, and so on until the platform no longer has sufficient business to be

24 This is a somewhat strict definition of multi-homing – consumers searching all platforms. In reality, some consumers may search more than one platform, but may not search all available platforms. Nevertheless, the arguments made here, regarding multi-homing consumers, are likely still to hold true (to a greater or lesser extent) if consumers visit multiple platforms.

25 As the CMA noted, "given that, in practice, a significant proportion of consumers single home, most suppliers choose to use multiple DCTs in order to get access to as many consumers as possible." See Paragraph 2.5, CMA market study on DCTs, Paper E.

26 The actual number of sellers switching need not be large if they are sufficiently differentiated and important in the eyes of consumers that they can affect the attractiveness of a platform.

27 Sellers multi-homing on platforms (in response to single-homing by groups of consumers) means that each seller is already on each platform. Switching does not necessarily mean moving to a new platform on which the seller was not previously listed. Rather, switching may mean no longer selling through a platform on which a seller was previously listed; instead, concentrating sales through an alternative platform.

28 Single-homing consumers suggests a lot of consumer inertia or resistance to switching from their current platform. A strategy to shift away from the platform only works if sellers can minimize the impact/overcome consumer inertia, which may mean some loss of profit or extra cost in the short term. The higher the proportion of sellers switching, the more these costs can be spread. In addition, the greater is the likelihood of switching consumers (and reducing these costs).

sustainable.[29] In addition, this dynamic could also mean that those sellers who switched are left with no other option to whom to switch in future, having effectively shifted market power from one platform to another, at least over the long run. Such concerns may not arise in reality: not all sellers may wish to switch, so a death-spiral might not occur.

Furthermore, it is possible that switching consumers from one platform to another would transform the behavior of these consumers from being single-homing consumers to being multi-homing consumers. These consumers may then, as part of their normal search activity, consider offers across multiple-platforms. So long as search costs are not significantly increased, and benefits are passed onto consumers, this would be a positive outcome. It would mean the coexistence of two or more platforms is more likely, as it weakens the indirect network externalities. In doing so, it would reduce both the coordination problem faced by sellers (in response to single-homing consumers) and also remove the threat of a death spiral for platforms. Whether consumer behavior would actually be transformed in this way, over the longer term, is unknown.

The key point of this section is that collective bargaining may play an even more important role in relation to platforms than in other types of markets, due to network effects and the single-homing nature of many consumers. This is because the sellers on the platform need to ensure that they can bring the consumer side of the market along with them in order to have a credible threat of switching and to exercise some degree of bargaining power.

## VI. POTENTIAL CONCERNS ABOUT GREATER COLLECTIVE BARGAINING BY USERS OF PLATFORMS

As explained above, collective bargaining can in certain circumstances benefit consumers and businesses that use digital platforms. However, it is important that when businesses come together to solve one type of coordination problem (such as not being able to switch to an alternative platform), this does not lead to coordination over any feature of competition between the businesses. Here, we discuss instances where greater collective bargaining by platform users may lead to consumer harm.

These theories of harm may include the following:[30]

a) Cooperation in the purchasing market may facilitate collusion in the selling market, which would be directly harmful to customers. There could be collusion on selling without cooperation in buying, but the latter could lead to the former. This might arise because, say, establishing the buyer group increases communication or transparency between the sellers on a platform. In particular, cooperation that leads to the sharing of private information could facilitate collusion in the selling market.

b) Cooperation by a subset of buyers may allow strategic behavior that harms the terms of supply for other buyers, which are not part of the group of cooperating buyers. This would, therefore, raise the costs of rivals and may weaken competition in the market in which the collective-buyers sell.

c) Platforms increase price competition by allowing consumers to search and compare across many providers selling through a platform.[31] If sellers were acting collectively when purchasing services from the platform, there may also be a collective realization that they would be better-off if all sellers chose no longer to list on the platform and thereby avoid the intensity of competition which listing on a platform may entail. Consumers would be made worse-off in the absence of platforms because they may face higher prices and would lose the ability to search and compare easily.

d) Cooperation in the purchasing market which lowers the price paid to the input suppliers may lead to the supplier being able to invest less in developing its products and, more generally, innovating.

29 Indeed, the issue of such death-spirals has pre-occupied, and continues to pre-occupy, competition assessments of credit card interchange fees due to the network externalities arising there. For example, see the Court of Appeal Judgment, July 4, 2018.

30 There are a number of other potential harms from buyer power, but they do not appear to be relevant when applied to users of platforms, particularly when the platform has a strong degree of bargaining power or market power.

31 The CMA found evidence in both its Digital Comparison Tools market study and its Private Motor Insurance market investigation that the price sensitivity of consumers on comparison sites is considerably higher than on other sales channels, which puts competitive pressure on the sellers listing on those sites.

The likelihood of harm in any case will depend on the specific facts of the case. However, these theories of harm are less likely to be significant concerns when the seller side is fragmented and more so when the platform side is concentrated and characterized by strong single-homing tendencies by many consumers. Indeed, we do not think that these theories of harm should lead one to ignore the potential benefits of collectivization of buyers in order to exercise buyer power. Buyer groups have always existed and have traditionally led to few concerns from competition authorities.[32] Moreover, we consider that there may be material benefits to customers if there is greater collectivization of buyers in response to significant market power in the input markets from which they purchase.

It is worth noting that it is not always clear who the (downstream) buyer is when assessing the commercial dynamics of platforms. For example, a hotel may be a purchaser of platform services from a powerful online travel agent, where collective bargaining might lead to an outcome that is more beneficial for consumers. Alternatively, one might characterize a hotel as a supplier of hotel rooms for sale through a (downstream) platform. In this scenario, collective bargaining by hotels might appear more like a seller cartel, agreeing on the terms of supply. This illustrates how upstream and downstream, buyer and seller, may not be obvious in relation to multi-sided platform markets. However, from an economics perspective this should not really matter. What matters is that the collectivization, which leads to increased negotiating power for the parties selling through the platform, is likely to bring net benefits to consumers. Tolerance of greater collectivization of groups using powerful platforms may well achieve these benefits.

## VII. THE ISSUE AND OUR RECOMMENDATION

Online platforms bring clear benefits to their customers, for example, by opening routes to consumers that SMEs might not have otherwise had access to and by providing more choice to consumers with reduced search costs. Nevertheless, there is a sense that, in some sectors, digital platforms are gaining increasing power and that this places the third parties which use them at a significant disadvantage. This may lead to harm to consumers, either indirectly through the treatment of the businesses using the platforms or more directly through the exercise of market power in terms of the commissions and prices platforms charge to the businesses selling/advertising through them, which will be passed on to consumers.

One way of tempering stronger market power in platform markets is through increased buyer power on behalf of the businesses selling through a platform with market power. We have offered some examples of where this has been used before, whether through the use of trade associations as a collective negotiator or through sponsored entry on an alternative platform by businesses selling through platforms.

However, it also strikes us as surprising how infrequently this collective action seems to take place given the apparent strength of some platforms. This may well be down to the nature of the agreements with platforms, which are individually negotiated and often long term. However, it may also be down to the differing objectives of buyers, such that it is too hard to coordinate to establish a stable buyer group and negotiate an outcome beneficial to all buyers. This is likely to be the case particularly when there is diversity in the size of the businesses and when negotiations relate to commercially sensitive input prices, such as commission rates. When these businesses then compete with each other quite directly, the incentive to negotiate collectively may also be reduced.

Another reason why we may not see a lot of collective bargaining with platforms may be because of competition law concerns about businesses who are competitors cooperating as buyers. We have outlined a number of theories of harm which may arise in this respect, in particular where such cooperation would facilitate or support anti-competitive collusion. However, there is a distinction between these two practices and businesses will be aware of the differences (as illustrated by the long existence of legal buyer groups). Another possible concern is that cooperation by businesses selling through platforms could lead to reduced use of platforms or long-term damage to the platform model.

We think that collective bargaining by sellers using platforms may provide a beneficial counter-balance in cases where platforms hold a particularly strong position. Moreover, while greater regulation of platforms appears to be gaining greater support, it seems to us that in certain circumstances, increased collective bargaining by sellers in the presence of platform market power may provide an alternative, more market-orientated, response to such concerns.

32 It is worth noting that the ACCC's recent discussion paper considers a class exemption to allow small businesses and franchisees to collectively bargain without prior consent from the competition authority. The ACCC notes that it has "generally not had concerns about collective bargaining applications by groups of small businesses, but collective bargaining by larger businesses has greater potential to raise competition concerns (for example, by reducing competition and leading to consumers paying prices above competitive levels). For this reason, our starting point is that a class exemption for collective bargaining should only be available to businesses below a certain size." https://res.cloudinary.com/gcr-usa/image/upload/v1535039648/ACCC_class_exemption_dclioa.pdf.