



CMA Digital Taskforce
Call for Information

Comments from the BRC

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The BRC

The BRC represents the majority of retailers, online, offline, omnichannel and pure players. In developing these comments we wish to acknowledge we have also drawn on material from the EuroCommerce response to the European Commission consultation on the Digital Services Act. EuroCommerce represents the retail and wholesale sectors at the EU level and the BRC Chairs its Internal Market and Consumer Affairs Committee which developed the EuroCommerce response.

Retail remains one of the largest private sector employers and the presence of bricks and mortar stores on the High Street continues to create a vibrant community while the growth of ecommerce has provided more choice and price competition for consumers.

Our remit as BRC is to represent the interests of the retail sector in the broadest sense. As such our comments below will be directed to the role of platforms as marketplaces and direct sellers of goods rather than the broader role of social media platforms and platforms as providers of other services.

Given the time available for the consultation and the timing of it, the comments are an informal contribution based on broader discussions including in relation to the EU ex ante proposal rather than a formal contribution based on discussion on the specific call for information. As such it raises issues for consideration but does not bind the BRC or its members to a particular approach to any future proposal or legislation.

Context

1. Digitalisation has increased competition in the retail sector and most retailers have some form of online offering which creates convenience, choice and value for consumers. Covid 19 has accelerated the trend towards online sales and while the future cannot be predicted with certainty the evidence suggests this trend will continue.
2. Nevertheless the **proportion** of both food and non-food sales made online is still far less than other forms of sales.
3. **Non-food** online **growth** was at its highest in May 2020, with 60.2% year on year. By comparison, for 2019 non-food online **growth** was 3.3%.
4. In April 2020, the **proportion** of **non-food** sales made online was at its highest, with 69.9% of all non-food sales. For comparison, in 2019 the average **proportion** of sales made online was 31.0%.
5. The ONS **growth** figure for online **food** sales was 127% in May but it recorded a decline on average for 2019, at around -1.5%.
6. However, even in May the ONS recorded only 11.3% of **food** sales made online. This was above the 2019 average of 5.4% using the same basis for the figures.
7. Digitalisation has helped many small and medium sized business to enter the market and access new customers online way beyond their local base either directly or through marketplaces where they have often needed to rely upon marketplaces to help them navigate the complexity of selling online and meeting their legal obligations. Many smaller businesses survived the lockdown by switching to online selling in one form or another very quickly.
8. The process is not one way. Some online marketplaces have established or are about to establish actual stores.
9. Marketplaces have the opportunity to offer an almost unlimited range of products to consumers.
10. To some extent the internet and digitalisation of commerce have fundamentally changed the retail sector from a local to a national, European and even global market. However, while the global dimension gives consumers access to a wider market, the global and non-national aspect should not, at least as yet, be exaggerated. All the evidence points to very limited cross border sales even within the EU.
11. Having said that, growth in purchases from China in the EU grew from 38 million people making a purchase in 2017 to 54 million people in 2018 (PostNord E-commerce in Europe 2018). While small in the context of 500 million people, it does suggest the potential for a long term increase year on year.
12. It is clear that most international sales to consumers are facilitated by Platforms/marketplaces which thereby perform a consumer service as part of their business model including, in some cases, providing guarantees to consumers for the delivery of the product and the safety of payments or reimbursement as necessary.
13. In addition, manufacturers - often with margins of 20% or more compared with 3% or less in retail - are also using e-commerce to sell to consumers (either directly or via marketplaces) and thus interact directly with them - including in computers and footwear for example. They sometimes restrict the sale of their products online by third party sellers in seeking greater control over the distribution of unique brands.

14. In other words, digitalisation has increased the competitive pressure on incumbents from innovative new entrants – often to the benefit of consumers, competition and access to the market for smaller businesses. It has expanded the market for selling some products and blurred the distinction between online and offline selling with omnichannel offers from retailers combining online and offline in one offer, and marketplaces selling goods both directly and facilitating the sale from other businesses and consumers to consumers.

Underlying approach of the Taskforce

1. Against that background the BRC acknowledges the important role played by the CMA in balancing the key elements of its role in making markets work not just for businesses and the economy but also most importantly for consumers.
2. We understand and support the intention to pay close attention to proposals for the regulation of digital markets being developed in other jurisdictions, including the DSA proposals advanced by the European Commission. As we will comment later, the digital world including that of Platforms and Marketplaces is to a large extent not national but international. This is one area where it would be unwise for the UK to decide upon a national approach simply to demonstrate its new-found independence from the EU. It must take into account the very pro-business approach in the USA and the more consumer-centric, slightly protectionist approach in the EU because both will have an influence upon its capacity to act and its capacity to introduce enforceable regulation should that be determined to be necessary.
3. We are less sure of the desire 'to protect and ***promote competition and innovation*** in digital markets and to address the anti-competitive effects that can arise from the exercise of market power in those markets'.
4. Here we question whether the CMA or the Government in general is best placed to ***promote*** (as opposed to laying the foundations and providing the regulatory context to protect) ***competition and innovation*** in digital markets. We would simply observe that innovation in these markets has grown at pace without government intervention and Government should only intervene if there is clear evidence of market failure or problems and only then to address specific issues.
5. We therefore support the recognition that it is vital that any action does not have a negative impact. We would conclude that the need is for a regulatory approach that facilitates (rather than drives) competition and innovation, enables disruptors to bring new services to market and ensures fair access to digital platforms.

A new regime?

Is there real evidence of need for a new approach?

1. The Taskforce should assess the impact of any suggested measures against the specific objectives it is seeking to achieve - i.e. ensuring that markets remain competitive in the interests of consumers, businesses and the economy.
2. We are concerned that any new proposals on competition should be based on real evidence of need. In the section on the impact of digital platforms, there is extensive use of the words '**CAN**' and '**COULD**' rather than 'do' or 'does' in relation to potential problems or issues they could cause.
3. In considering any new regulation it is important that not only should there be real evidence of need but that the new regime can actually address that specific need. It is therefore important that any regime be targeted to the specific issues identified by previous studies and takes into account the varying nature of different Platforms so that the basis is the role they perform rather than the generic title. In many ways this points to the need for a case by case approach.
4. In the section on the impact of digital platforms the impacts suggested refer considerably more to the impact of search engines and the use of data by Platforms to improve user services than marketplace style activities. It notes the evidence of considerable concentration in online search, mobile operating systems and social media and draws the conclusion that digital markets can tip towards one or a small number of players leading to market power and influence. It then suggests that in that event, the incentive for innovation and high-quality services declines and access to market is restricted as the platform develops products that compete with those of potential suppliers on its platform. In turn this COULD give the platform market power over other businesses that use the platform.
5. It suggests that the consequence CAN be a lack of competitive pressure leading to higher prices and/or lower quality and less innovation with users having to accept the conditions set by the Platform including data collection (data monetisation) from consumers and short notice of changes to algorithms for business users. Other barriers it notes are behavioural biases, information asymmetries, and barriers to switching which would not normally apply to marketplaces, if at all.

A variety of Platforms all different – and marketplaces are very different

6. As has been indicated, our remarks are addressed to marketplaces rather than all the services and roles that Platforms perform. Of course, any one Platform may perform a multitude of different roles – but we would suggest the Taskforce should consider whether it would be better to address Platforms by the roles they perform rather than only as entities.
7. We think the Taskforce should consider whether a one size fits all definition of a Platform is appropriate and/or whether the overall regime proposed should be so broad it can encompass all the different contexts within which Platforms operate or whether it would be better to deal with different types of Platform differently and through a case by case approach.
8. In practice, online platforms come in many diverse forms, provide many different services and undertake many different activities. Online marketplaces are very different from lodging and online hotel booking, social media platforms, search engines, hosts for app developers or operating systems. Marketplaces themselves work on the basis of different services and revenue schemes and compete on that basis. Business models differ greatly between platforms - some providing free services in return for collecting data which is later monetised and some working on the basis of a commission/fee such as hotel reservation platforms or those paid by subscriptions.

9. While noting the terms of reference definition of platforms as 'online services that intermediate between different groups to buy, sell, share and exchange different goods and services, typically collecting vast amounts of data to deliver their services' we wonder whether there has been a lack of attention to the different types of Platform in drawing up this definition. In one sense it seems to refer to marketplaces but in another it seems to point to other types of Platform.
10. Many of the remarks in the paper – including the problems identified – refer to Platforms that provide social media services and monetise data to develop algorithms for digital advertising.
11. Marketplaces are different. They either sell goods and services themselves and/or provide the means by which others – both businesses and consumers - can sell goods directly to consumers. In retail, marketplaces represent a limited share of total retail sales and their impact on competition depends on the specificities of the relevant market.
12. In considering its approach, we believe that the Taskforce needs to consider the total context in which a marketplace operates and ensure that any new rules are relevant to that context – even if other activities of the same marketplace draw it into rules around other aspects of Platform activity.
13. Thus we would note that a marketplace competes with other forms of retail both online and offline where it directly sells goods while also uniquely providing competition to other forms of retail by providing the means by which other businesses and consumers can sell their goods through the marketplace.
14. To some extent the marketplace competes with other marketplaces beyond the jurisdiction of the UK – and any competition reform needs to take that into account and consider how to ensure there is a level playing field both for the UK marketplace (meaning a marketplace established in the UK one way or another) vis a vis other marketplaces outside the UK and for other UK retailers vis a vis the UK and other marketplaces.
15. A UK marketplace that sells goods will be subject to consumer protection, safety and all the other rules that retailers are subject to – to establish a level playing field in competition terms for both marketplaces and retailers would require consideration of how to ensure other marketplaces not UK established can be required to also follow the rules and that those rules can be and are enforced. For example, a study by the Danish Chamber of Commerce has found that by disregarding product safety and consumer protection rules Chinese based marketplaces have a considerable price advantage over compliant Danish sellers. In other words the considerations cannot just be related to whether a marketplace platform is dominant in the UK market but the other aspects of definition of the market and its position in that context – and the position of other types of competitor.

Could Competition Law cope or be redesigned to cope?

16. It is important to emphasise the words that the Taskforce will provide the government with practical advice to inform its decisions on what intervention, **IF ANY**, is necessary to protect and promote competition and innovation in digital markets.
17. We have some concerns that the Taskforce has already concluded that ex ante action is necessary rather than action targeted at specific problems in specific circumstances based on evidence of need.
18. The paper notes a number of expert reviews have concluded the existing ex-post competition rules are inadequate for dealing with issues in the fast moving digital world and that an ex ante

approach is needed. While we are not opposed in principle to such an approach, we do believe that the Taskforce should not take this approach as read for all the issues under consideration.

19. What works for the digital advertising context may not work elsewhere. While the introduction of ex ante rules might give some businesses in some sectors more confidence to invest and innovate and to understand the limitations, unless very carefully crafted those rules could themselves be a barrier to those very objectives by limiting the options for further innovation either in reality or in terms of perceptions by the key innovators
20. It is clear from the remit that the Taskforce believes that a definition of Strategic Market Status that it proposes as the basis for the focus of a change to ex ante (presumably another name for the EU's 'large online gatekeeper Platform') can be developed to cover a marketplace. The Furman Review having proposed the idea seems to have bucked the opportunity to define it other than that it is a business having a position of enduring (sic) market power over a strategic bottleneck or gateway market where a firm controls others' market access and where there are many dependent users on either side.
21. While that definition or approach towards a definition might work for a social media platform, we note that the Taskforce indicates it wishes to consider how to extend it to all types of Platform. The fact that it has to do that suggests that it might not be a sensible or practical approach - though it is wise to try to stay in tune with any EU definition.
22. We are yet to be convinced that for marketplaces there would be such a SMS if viewed in the wider retail context given the extent of competition across the market as a whole, the availability of other channels for selling consumer goods, and the actual level of online sales by all forms of ecommerce – yet it may be that for other reasons there is a need to consider whether competition is working fairly either for the marketplace vis a vis other marketplaces or for other retailers vis a vis the marketplace. In this case a more targeted consideration and approach might be preferable.
23. As we have noted, the term SMS” is used in the consultation and the proposed approach, but, in contrast to dominance, it is not clearly defined. The criteria suggested aim to help identify players that could be captured by the legislation. However, given the variety of business models and platforms, it is very hard to find a one size fits all approach which can properly reflect the diversity of platforms and not risk impacting inappropriately one business model with measures aimed at another.
24. In turning to the appropriate criteria for assessing whether a firm has SMS status – were one to be introduced – we foresee a number of risks precisely due to the diverse nature, differing business models and the impact of online Platforms across markets.
25. Is significant market power in the context of a marketplace selling or facilitating the sale of goods to be interpreted in the same way as in the Telecoms sector where there are limited players? Is the market definition to be other similar players in the *national* market or similar players in the *international* market or is it to be just other Platforms with the potential to be similar? Is it to take into account access for consumers to other forms of selling? Is it to take into account access for businesses to other methods of selling online either directly or indirectly should there be any barrier to selling on any particular marketplace? These are very specific issues specifically related to marketplaces.
26. For example, in retail, as opposed to many other sectors, customers suffer no switching costs. If they do not find the brand that they are looking for, or they do not find the price offered sufficiently attractive, they will go elsewhere. In retail it is in the interest of online marketplaces to help merchant partners to succeed precisely because they have so many ways to reach customers, including through their own stores, traditional retail relationships, and the many stores operated by third parties.

27. The concept of “gateway” in the SMS would suggest that business users are dependent on the platform to enter the market, but this may not always be a reflection of the real market situation. Marketplaces and search engines play an increasing role in the consumer journey alongside other options including brick and mortar shops, suppliers and retailers’ own online selling sites. Furthermore, a number of sellers operating on platforms may be multihoming and be present on different platforms and other sales channels.
28. In addition, smaller sector or product specific marketplaces exist which offer products to a very specific audience. The presence and importance of such marketplaces makes the development of reliable criteria based on the number of users even more difficult.
29. Competition law is there to address any conduct engaged in by market operators, including online services, that may interfere with the proper functioning of a market.
30. Sector specific regulation has been introduced in cases of proven structural market failure e.g. to liberalise sectors traditionally reserved to public monopolies (e.g. telecoms) . By contrast, online market-places operate in markets that already exist and are vibrant and open.
31. Competition law is specifically designed to protect competition based on a case-by-case assessment that takes a wide range of factors into account and which could be adjusted for different types of platforms operating in different contexts. After decades of case law, concepts such as “dominance” and “abuse” have defined meanings, as opposed to “large” and “gateway” and ‘SMS’. The envisaged approach does not seem to allow targeting specific and identified market failures that require a regulatory response and it singles out some providers of online services on the basis that they are “large” and are perceived to act as gateways because they have many users.
32. Unlike the notion of “gateway”, the concept of dominance is clearly defined and has shown its flexibility in existing case-law. It is anyway very unlikely for a company to be considered as a gateway without being dominant. Dominance is a broad term incorporating criteria such as barriers to entry, network effects, lock-in effects, number of users etc. where relevant to the specific case. In particular the ability to multi-home and the specific role of data are important factors to be taken into account in the competition assessment. On the other hand, geographic coverage and the impact on a sector could be less relevant. Competition law is specifically designed to protect competition based on a case-by-case assessment that takes a wide range of factors into account, including the variety of business models.
33. While complexity is not a reason to reject attempting a solution, nevertheless we are concerned that a tried and trusted approach that has stood the test of time in many changed circumstances and for many different types of businesses including near monopoly markets is being set aside because people have assumed that digital is so different that it must *inevitably* require something different.
34. Alongside considering the creation of an *entirely* new set of rules, we would urge the Taskforce to consider an alternative approach allowing a case-by-case approach, based on dominance and refining UK competition law and enforcement to address new business models and practices based on digitalisation – even if this is determined to be only part of the answer.
35. This might include:
 - Tightening the definition of markets e.g. in respect of product substitutability and developing a methodology to assess zero-price markets.

- Updating the existing guidance on abusive exclusionary conduct by dominant players to reflect the digital environment.
 - Strengthening existing interim measures to ensure that infringements of the competition law are suspended or reversed while a regulator comes to a final decision.
 - Updating the horizontal guidelines on information exchange, particularly with regards to data sharing, signalling and the risk of collusion in the context of algorithmic pricing.
36. It should consider whether a case-by-case approach might in fact be better able to capture the specific differences of online markets. The variety of online platforms means that the economic incentives and dynamics of one may differ fundamentally from those of another, reflecting different business models and practices. Can it be sure a one-size-fits-all approach will not in fact risk stifling innovation and undermining growth?

The B2B issues

37. In terms of the business to business relationship, as a general principle, businesses should remain free to negotiate their commercial relationships and regulatory intervention should remain limited to what is necessary and avoid inhibiting operators from entering into legitimate, efficiency-enhancing agreements.
38. In the EU the relationships between marketplaces and their business users is already regulated under the Platform to Business Regulation (P2B regulation) which only recently entered into force. The P2B Regulation provides far-reaching transparency obligations on data sharing, ranking criteria and platforms' terms and conditions and aims to address many of the concerns often raised. It or something similar could provide a solid basis to address potential frictions in the online economy and gain insights and experience into the functioning of various types of online models and the existence of market failures.
39. Dependency of start-ups and/or scale-ups on "large" platforms is often cited as a problem for competition. The Taskforce should analyse the relationships of business users with platforms taking account of the following points relevant in a marketplace environment
- as stated above, brick and mortar sales still represent a significant share of total sales and market places only represent a part of online sales ; increasingly, retailers and wholesalers are becoming omnichannel; these dynamics need to be reflected when assessing markets;;
 - online marketplaces represent an opportunity for SME retailers and wholesalers as they provide access to certain consumer groups as well as an infrastructure covering logistics and regulatory compliance;
 - multihoming is common, both amongst business users and consumers, as switching costs and entry barriers remain low;
 - access to marketplaces remains a key issue for retailers who are facing restrictions from brand owners on selling on third party marketplaces. Retailers and wholesalers should be free to sell their products across various online and offline channels to meet the consumers need for a seamless multichannel experience
 - prohibiting practices widely recognised as mutually beneficial economically on the basis of an economic dependency will result in a de-facto prohibition of these practices in dealings with SME suppliers.

Other Broader issues

40. Within the market there is a whole range of broader issues that might need consideration to protect competition in the widest sense.
41. The Taskforce should consider whether a case-by-case approach could be the most effective option to protect consumer welfare. Due to the specific features of online markets, online market players' conduct typically generates significant consumer benefits. A case-by-case approach could enable a regulator to take such benefits into account and balance them against any consumer or competition harm.
42. The impact of practices such as tying and self-preferencing very much depends on the specificities of individual markets and thus need to be analysed in their own context and circumstances. As indicated in the draft report of the EU platform observatory on differentiated treatment, differentiated treatment is present in many markets and is not problematic in itself. There is no basis in case law for establishing a presumption that harm is caused whenever an online platform gives preference to its own products and services on its site. Such a rule would discourage investment and create disincentives to opening up the platform to third parties.
43. Data plays a key role in the functioning of online platforms and eco-systems and the basis for competition and innovation in retail and wholesale as in many other sectors of the economy. Again the Taskforce should consider the need for a case by case analysis, the possibility of adapting existing competition law tools and ensuring consistency in policy making. Competition rules help identify where requiring a dominant firm to grant access to specific data can be justified and where interoperability is indispensable to ensuring effective competition. They already allow for obligatory data access if it can be shown that the dominant player, or the data it holds, amounts to an "essential facility" in competition law terms.
44. With regard to data the Taskforce should consider whether there is a better alternative by dealing with B2B data access and use in its own right. Mandatory data sharing obligations should only be a last resort in clear cases of market failure which competition law cannot address. The scope of a data access right should take into account legitimate interests of the data holder. Leveraging data to create new services in related markets is not a problem in general; it is an inherent part of competition and should be analysed on its merits and a case-by-case basis.

In summary, the Taskforce paper seems to be based on the premise that an ex ante regulatory tool is needed to address conduct engaged in by "gateway platforms". We however urge the Taskforce to question whether there is a need for any such general instrument before committing itself to such a path. Instead of seeking to create an entirely new enforcement system based on novel concepts, we would encourage the Taskforce to consider further the possibility of refining existing competition rules to address new business models and practices enabled by digitalisation and to assess whether the benefits of a tried and tested system adapted to take account of the need for greater speed could be preferable to something entirely new with its inevitable lack of certainty and potential for teething problems.

At the very least we believe the Taskforce will need to consider how any regime, new or old, can address the wide diversity of Platforms and, from our perspective, the very different nature of Marketplaces.

Remedies for addressing harms

1. Whether or not the Taskforce goes down the ex ante route or the Competition Law plus reform route or any other route, it will be necessary for any regulatory system to be relevant to a wide range of different types of Platforms, be adaptable to changing needs and for it to be able to stand the test of time in the same way that the Competition law approach substantially has. This means that it needs to be capable of evolution as new markets and challenges materialise.
2. With the best will in the world it seems unlikely that any assessment of future developments in technology, business growth or market structure will be sufficiently accurate and stable for any length of time to underpin a change that lacks the capacity to be flexible and that is largely based on just the current ever changing assessment of the issues that need to be addressed. As with Competition law, the underpinning principles need to be applicable to a wide variety of situations and businesses.
3. There is limited experience with online regulation and markets are still very dynamic. With only a few competition cases involving specific business models even in the EU as a whole, there may not be enough enforcement experience confirming that certain practices are **always** likely to be harmful in the competition context – (though perhaps they could be more readily identified in a broader unfair practices context) - and that they should be prohibited without a case-by-case analysis of the specific platform and market context.
4. The proposed contents of a Code – fair trading; open choices; and trust and transparency – would seem to be relevant requirements for a marketplace to succeed in its dealings with consumers to succeed in business. These high level principles can be lasting but they need translating into specific application in specific circumstances and to come with relevant remedies. Those that are suggested in the paper include access to data, wider interoperability, data portability, and removing barriers to switching. At first sight none of these would seem relevant to marketplaces and their relevance anywhere may be transient.
5. In our view, when considering regulatory reform to meet new challenges the Government – and in this case the Taskforce - should consider the widest range of options. Information requirements, reporting requirements, co-regulation, self-regulation and ethical business regulation are all part of the regulatory toolkit that has been deployed elsewhere in the UK and overseas. Indeed the paper itself acknowledges that there is a need for any pro-competition approach to interact with other consumer and data protection measures and action on matters such as online harms and online advertising. Neither an ex ante approach nor a reformed ex post competition law approach is likely to be sufficient in itself.
6. There are various existing approaches that already exist in other areas that could be used in combination with the normal competition approach and definitions or as part of a new approach.
 - If there is a problem of Platforms dealing with suppliers, could there be a code along the lines of the GSCOP with its requirements and operation similar to that in the GSCOP. This already applies to some retailers and provides for some clear relationships between suppliers and retailers; transparency; and reliability on the part of the retailer – all of which is enforceable?
 - Could the self-regulatory ASA approach to advertising regulation bringing together the key players in support of a voluntary but enforceable code alongside some statutory requirements also provide another model beyond advertising itself?
 - Could a co-regulatory approach work – with a regulator acting as a backstop to guarantee the effectiveness of self-regulation?
 - Could an approach similar to the Unfair Commercial Practices Directive work with some principled rules and requirements for which breaches have to be considered on a case by case basis, supplemented by a blacklist of absolutely banned practices, and the potential for enforcement by either a Code or regulator?;

- Could there be a system similar to a Primary Authority approach where a regulator such as the CMA would provide assured advice on whether the procedures and systems of a specific business correctly apply the principled rules contained in a statutory code which can be amended more easily than primary legislation – or if preferred in legislation - in the circumstances of that business and its situation?
7. We would welcome consideration of these options by the Taskforce. Most could be adapted to either a tailored ex ante approach adaptable to different situations and different types of Platform if the basic legislation is right or to running alongside existing Competition law approaches and definitions combined with some unfair practices type legislation.
 8. The Taskforce should consider the desirability of retaining as the regulator a body that has experience of competition and market issues which it could use either in the context of existing rules or any new approach rather than setting up a new body which may lack experience or simply be the old body with a new title.

Final comments and considerations

1. In any consideration it should be remembered that consumer confidence and acceptance drives change and that in the case of marketplaces at least consumer loyalty is very similar to consumer loyalty to a particular retailer perhaps enhanced by a loyalty programme.
2. The marketplace environment is moving very fast and consumers preferences are constantly changing. The successful companies will be those that are able to meet customers demand for a seamless multichannel experience. A recent study undertaken by VVA for DG COMP concludes that online channels have become an integrated part of the buying process from information research and evaluation to purchase completion and the post-purchase phase. The consumer journey is a fluid omni-channel process whereby they switch easily online between retailers and platforms, as well as between online and bricks and mortar, and within bricks and mortar and between mono-brand and multi-brand.
3. Today's consumers make parallel and complementary use of various channels and information sources – online as well as offline – for a single purchase. The combination of multiple channels and especially the combination of offline and online channels has a positive impact on the quality perception of the consumer, on the purchase decision and the consumer's experience.
4. Any recommendations for change should ensure the end result does not inhibit innovative approaches that benefit consumers for the sake of a desire to intervene to rein in innovators in the name of competition – unless it is clearly shown that such innovation is using unfair or anti-competitive practices to prevent other players from introducing other innovations to the market or even to prevent them entering the market in the first place. The balance has to be between adapting a tried and tested system that is well understood to new circumstances on the one side and a new approach on the other that is perceived to be more relevant to dealing with what are perceived to be challenges that are so different from anything that has gone before, they can only be overcome with a totally new approach.