



**HEARINGS ON
COMPETITION AND
CONSUMER PROTECTION
IN THE 21st CENTURY**

Federal Trade Commission

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1. THE CATALAN COMPETITION AUTHORITY

1.1. Who we are

The Catalan Competition Authority (ACCO) is an independent body aimed to guarantee, improve and promote competition in Catalonia, ensuring that the benefits of the competitive functioning of the market extend to society as a whole.

The ACCO was created by the Catalan Parliament and regulated by Law 1/2009 dated 12 February 2009 on the Catalan Competition Authority (the ACCO Act).

The ACCO enforces competition regulation when the effects of the infringements do not extend beyond Catalonia's geographical area.

Catalonia has a population of 7.5 million people and a GDP of EUR 223.629 billion (valued at current prices). Therefore, it is an important economy within the EU, on par with the economy of some of its member states.

1.2. Advocacy

Regarding our advocacy activities, they cover two main spheres of action. On the one hand, the ACCO analyses Catalan regulations ex ante (before being in force) or ex post (after being in force) and publicly issues its opinions in view of competition and better regulatory principles. The ACCO has issued its opinions in relation to different fields of activity, including commercial services, tourism, industrial security and taxi services.

On the other hand, the ACCO also produces studies on those fields of economic activity that are presumably not working properly from a competition point of view and suggests the reasons behind this malfunctioning and what should be modified.

In fact, lately the ACCO has been especially focused on providing responses to new phenomena that may have a relevant impact on consumers, such as the following documents on:

BIG DATA

[The Data-driven Economy. Challenges for Economy](#)¹.

SHARING ECONOMY

¹ http://acco.gencat.cat/web/.content/80_acco/documents/arxiu/actuacions/Eco-Dades-i-Competencia-ACCO-angles.pdf



[Peer-to-Peer \(P2P\) Transactions and Competition](#)²

This paper was mentioned several times on the 2016 FTC Sharing Economy report³.

[P2P Transactions and Competition and Peer-to-Peer Transactions \(P2P\) - A Step Forward](#)⁴.

URBANISM AND TOURISM

[A Dynamic Regulation in the Field of Tourist Accommodations and Note on the Initial Approval of the Special Town Planning Regulation on Tourist Accommodations \(PEUAT\) in Barcelona](#)⁵.

ELECTRICITY

[Electricity Self-consumption and Competition and Relevant Aspects from the Competition Perspective in Relation to 'Smart-meter Electricity Consumption Data Access and Usage'](#)⁶.

PAYMENT SERVICES

[Report on the Prior Public Consultation for the Draft Bill on Payment Services in the Internal Market and Payment Systems](#)⁷.

2. DISCLAIMER

All these contributions are only preliminary considerations on areas of research and, therefore, are on continuous development. So, they are not showing the Catalan Competition Authority view on such issues, but only the work of an internal think tank⁸.

² http://acco.gencat.cat/web/.content/80_acco/documents/arxiu/actuacions/ES_7_2014_TRANSACTIONS_BETWEEN_EQUAL_S_AND_COMPETITION_ENG.pdf

³ https://www.ftc.gov/system/files/documents/reports/sharing-economy-issues-facing-platforms-participants-regulators-federal-trade-commission-staff/p151200_ftc_staff_report_on_the_sharing_economy.pdf

⁴ http://acco.gencat.cat/web/.content/80_acco/documents/arxiu/actuacions/P2P-Transactions-and-competition-a-step-forward.pdf

⁵ http://acco.gencat.cat/web/.content/80_acco/documents/arxiu/actuacions/Observacions-26-2016-PEUAT-Barcelona-versio-angles.pdf

⁶ http://acco.gencat.cat/web/.content/80_acco/documents/arxiu/actuacions/20170419_CONCLUSIONS-ON-ELECTRICITY-CONSUMPTION-DATA-ACCESS.pdf

⁷ http://acco.gencat.cat/web/.content/80_acco/documents/arxiu/actuacions/20171120_es_16_2017_03_eng.pdf

⁸ This document is authored by Mr. Xavier Puig who has been assisted by Mr. Jaume Martí.



3. CONTRIBUTION: COMPETITION ON INPUTS

3.1. The antitrust approach

Traditionally, antitrust authorities have been mainly focused on producer/seller behaviour from the consumers' perspective. This is most probably because they were especially interested in preserving consumer wellbeing which was supposedly achieved by means of preserving competition between producers and sellers when offering their products and services.

Less attention has been paid to sustaining competition among producers/sellers regarding their purchasing activity (i.e. for guaranteeing that producers compete for material inputs and workers – prohibition of “no poaching agreements”). In other words, monopolies have attracted very much more attention than monopsonies.

In fact, it should be highlighted that promoting competition between final offerors in relation to their input activity may reduce consumer wellbeing in terms of price. The reason is that the more the service offerors or goods sellers compete for their inputs, the higher their production cost is. And *caeteris paribus* the price for end users/consumers may also increase leading to a reduction in their wellbeing.

Therefore, the antitrust approach is not clear in this case and depends on what the final competition goal is. If it can be identified with short-term consumer wellbeing, the lack of competition between companies in relation to their purchasing activity should not be a cause for concern.

On the contrary, if the competition goal is to promote consumer wellbeing in the long term, any market dysfunction, such as the one mentioned, may be a source of concern. The reason is that the artificial decrease in price (consumer wellbeing gain) comes at the expense of the inputs' retribution. And this infra retribution will in the long run disincentivise innovation and quality improvement of these inputs which will in the end negatively affect consumers' wellbeing.

In fact, the same conclusion would be reached (need to make the inputs market competitive) if we were to think that consumers are also a workforce and that it is necessary to earn wages to really be a consumer.

All in all, promoting **competition between undertakings in their purchasing activity cannot be directly associated with an increase in consumer wellbeing in the short term**. Thus, working on promoting competition regarding such activity **ought to be justified by assuming that the competition goal is consumer wellbeing in the long run (that would benefit from a well-functioning market) or where it is taken into account that**



consumers are usually also workers, and so they benefit from enterprises competing for their services.

3.2. Abuse of dominant position (particularly in the labour market)

The new platform economy has changed the notion of worker. Such platforms have provided more flexibility as have significantly lowered entry barriers. However, this flexibility has reduced stability and thus one of the classical notions of “worker”. Hence in many jurisdictions there is controversy on whether those who offer their services through these platforms are to be considered workers or self-employed.

In the event that the courts determine that these platforms’ workers should be considered “workers” and not self-employed, if these platforms had a relevant market share we are assessing the possibility that a labour law infringement by the platforms (for example, determining the price of the service and their timetable but at the same time deeming them to be self-employed) could amount to an abuse of dominant position.

If a single transport network company was offering such services in a given city and it was considered that it infringed labour law, could it be considered as a kind of monopsony abuse?

Precisely having infringed labour regulations would make it easier to set the standard to consider it abusive behaviour, so the question would be focused on whether it is possible not only to conceive an abuse of dominant position towards users/consumers but also an abuse of using monopsony power towards workers/input providers.

So, while there has been some action against what are called “no poaching” agreements (bilateral behaviours), **less effort, from the competition point of view, has been put into addressing possible abuse of monopsony power** (unilateral behaviour).

3.3. Rebalancing value chain negotiating power

Once we have determined based on the first section – the antitrust approach – that it is important to preserve competition in relation to both sides (providers and end users), another question should be tackled: should antitrust bodies not react to extremely unbalanced negotiating powers unless the company with more power has a very high market share in the whole market? In other words, should a more relative approach not be adopted that takes into account the different bargaining powers?

The first example here is precisely the labour market where it is accepted that workers negotiate some basic conditions through their unions. However, the same reasoning that leads to acceptance of such collective bargaining may also apply in other markets and situations: when farmers have to negotiate with big food companies. We believe that the same notion of economic dependence may apply in both situations.



And if under some circumstances collective negotiation should be accepted, perhaps pricing agreements carried out by two self-employed individuals should also be assessed by this same approach and so merely consider it as a strategy to rebalance their negotiating power.

Finally, if competition should accept measures that rebalance negotiating power, perhaps it should also try to impede any agreements that may reinforce such different negotiating power: for example, common purchasing agreements by already big firms.

In conclusion, we **call for a more systematic approach that takes into account bargaining powers** in the whole value chain in all sectors of activity as significant imbalance in terms of bargaining power will pose a significant risk for considering it to be a well-functioning market. Hence **if workers can negotiate through unions, perhaps farmers could do the same with their products and even some self-employed people could be allowed to agree on their offers** without this raising any competition concerns. On the contrary, **more attention should be given to initiatives that may reinforce bargaining power** such as **common purchasing initiatives**.