
OECD Gender Inclusive Toolkit May Inform Competition Policy

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Gender equity and other social justice issues are gaining prominence with competition authorities around the world, including in the U.S., Canada and other member nations of the Organization for Economic Cooperation and Development.

From concerns about potential biases in algorithmic decision making to factors that contribute to challenges to women's participation in labor markets, competition authorities are increasingly becoming cognizant of the potential for gender-related factors to influence certain market outcomes.¹

Reflecting this trend, in September, the OECD released its Gender Inclusive Competition Toolkit designed to help competition authorities apply gender-inclusive considerations to their work.²

The toolkit is a culmination of the OECD's partnership with the Canadian Competition Bureau, alongside competition researchers and practitioners from around the globe, to explore "whether a gender lens might ... deliver a more effective competition policy by identifying additional relevant features of the market, and of the behaviors of consumers and firms, as well as whether a more effective competition policy can help address gender inequality."³

The authors of this article contributed to one of seven research studies selected and partly funded by the OECD and the Canadian government to provide insights into gender considerations in competition policy.

The topics addressed in these studies ranged from the use of surveys and publicly available data in the analysis of market definition to gender-related factors in cartel behavior, gendered public-interest considerations and gender as a prioritization principle for competition agencies.

Our particular study⁴ sought to contribute to ongoing conversations about the role of gender in competition policy by proposing a practical framework for how gender-based considerations could be investigated in the early stages of market definition analysis and evaluation of competitive effects, including how one might bring a gender lens to data collection efforts to enable such considerations where they may be relevant.

Several elements of our study were featured in the toolkit — these may serve as potential starting points for assessing cases where gender-based considerations might be relevant for the analysis of competitive effects, including potential data sources for conducting these initial analyses.

To the extent that such preliminary analyses suggest that the nature of competition or potential competitive effects of a merger — or a conduct under investigation — may vary along gender lines, more systematic and in-depth analyses may be warranted.

Factors That Could Point to the Relevance of Gender-Based Considerations in the Analysis of Competitive Effects

Economic theory and research on gender-based variations in consumer preferences or behavior suggest that different supply- and demand-side factors can affect the extent to which gender might affect market outcomes.

The toolkit describes general categories of supply- and demand-side factors that could be evaluated to inform further investigations into the impact of gender on competition.

On the supply side, the toolkit outlines the types of factors that could be examined to evaluate whether products or their variants are targeted to a specific gender, including product attributes, marketing and sales locations, and channels.

For example, assessment of variations in relevant product attributes such as color, specific features and size could be useful in understanding the extent to which product characteristics may be differentiated along gender lines.

Similarly, assessment of companies' marketing choices and efforts — such as packaging, product descriptions and ad placements, e.g., choice of certain websites, or print or digital media — could inform the degree of gender targeting.

Sales locations and channels — such as geographic location of stores, product placement within stores and means by which products are sold, e.g., sales representatives and certain online distributors — could also be relevant.

The toolkit also outlines several demand-side factors that may inform the potential relevance of gender for market definition and analysis of competitive effects. For example, if there are clearly gendered patterns to consumer purchasing decisions, then the market for that product may have a gender dimension that may need to be considered in a more systematic and complete analysis of market definition.

Gender, similar to other consumer attributes such as age, race, and income, can affect consumer preferences, demand sensitivity to price changes, and propensity to switch between products. As such, salience of gender in supply- and demand-side factors could lead to differential pricing of products along gender lines.

For example, some researchers have observed the existence of a so-called pink tax — higher prices for otherwise equivalent products targeting women — in a variety of products or services.^[5] Certain jurisdictions in the U.S., including California and New York City, have proposed or passed laws aimed at eliminating such a "pink tax."⁶

Types of Data That May Be Useful for Evaluating the Role of Gender in Competition Analysis

Although assessment of certain supply- and demand-side factors may help identify relevant features of a market that may have been overlooked in initial analysis of market definition and competitive effects, the feasibility, direction and focus of such evaluations will be shaped by the availability of data and evidence.

Drawing on our research, the toolkit identifies four broad categories of data sources and evidence that could be considered in the application of a gender lens to competition analysis: (1) transaction-level data, (2) information from the parties in a merger investigation, (3) publicly available data, including information from online retailers, and (4) survey data.

Figure 1: Categories of Data That Could Be Considered in the Application of a Gender Lens to Competition Analysis

| Data Category | Examples |
|---|---|
| Transaction-Level Data | Sales data on relevant product characteristics and sales location/channel; purchase/sales data with information on gender or other information that could potentially be a proxy for gender (e.g., name); historical price and sales quantity information |
| Other Information from Merging Parties | Business documents or internal market studies on the gendered nature of products and marketing strategies |
| Publicly Available Data, Including Information from Online Retailers | Information from online retailers on product prices, attributes, user reviews |
| Survey Data | Consumer surveys on gender variations in preferences for certain product attributes or sales channels |

As noted by the toolkit, regulations and laws designed to protect data privacy and identity may limit or otherwise affect the utility of the available data.

Where data on gender are unavailable, it may be possible to infer gender from other data fields, such as the given name of the purchaser or reviewer, which may be more readily available.

While economists have relied on such proxies for research, identification of gender based on information such as given name or sales outlet will necessarily be imperfect.

The usefulness and relevance of a particular data source will depend on the product and/or the type of analyses that are conducted. It may be helpful to gather complementary data from a variety of sources that could be assembled to gain a more complete understanding of consumer behavior and product markets.

The desire for completeness, however, needs to be balanced with practices that can promote efficiency and consider the burdens to the relevant parties.

Example Using Publicly Available Data to Apply Gender Considerations in Early Stages of a Merger Investigation

In our study, we provide an illustrative example of how publicly available data could be applied in bringing a gender lens to early stages of a merger investigation.

After collecting data on prices, product brands and descriptions, and online reviews on disposable razor products sold by a major online retailer, we assigned each product to a target gender category: women, men or unisex.

Using the number of online reviews for a given product as a proxy for quantity sold, we calculated market shares for different manufacturers among all disposable razors and separately for products targeted for women and men.

Using this information, we calculated and compared the pre- and post-merger Herfindahl-Hirschman Index, a common measure of industry concentration for a hypothetical merger of two manufacturers, under gendered and nongendered market definitions.

A simple merger simulation⁷ using these data allowed for the estimation of post-merger prices and market shares when all disposable razors were considered to be in one market in comparison to when they were in separate markets for products targeting men and women.

Results from this illustrative exercise showed that the hypothetical merger between two manufacturers we selected — a larger one and a smaller one — could lead to a substantially larger price change for women's disposable razors than for men's.

This example, while highly stylized and involving a set of products with a clearly gendered dimension, illustrates how a gender lens could be applied to early stages of market definition analysis and evaluation of competitive effects. Results from such an analysis could suggest that a more systematic and in-depth analysis of gender effects may be warranted.

Conclusion

As noted by the OECD, the toolkit is not aimed to be universally applicable to all antitrust analyses, and its intention is not to overhaul the work of competition authorities.

Rather, it offers a potential framework for guiding regulators and practitioners "to gain a better understanding of market dynamics and their differential impact"⁸ on different gender groups.

Aside from insights into potential supply- and demand-side factors and data sources that could be considered in bringing a gender lens to competition analysis, the toolkit addressed a number of other topics, including the relevance of gender for assessment of remedies, cartel formation and investigations, compliance and advocacy, and ex-post evaluations.

Multiple social and equity issues beyond gender have been gaining prominence and attention with competition authorities, researchers and practitioners around the world.⁹

The toolkit may provide useful tools that could potentially be extended to investigations of the impact of competition enforcement on any distinct consumer groups.

For instance, the consideration of demand- and supply-side factors and the collection of data could be applied to other key demographic dimensions, including, among others, race, mental and physical disability, and income.

The importance of applying a gender — or other demographic — lens in the context of competition policy is widely debated among practitioners. Some believe that gender inequality issues are best addressed outside the boundaries of competition law, while others have advanced that a gender lens could help reduce market distortions.^[10]

No matter one's views, the desire for completeness and thoroughness should be balanced with considerations of efficiency and an understanding of the burdens to the relevant parties, particularly in light of competition authorities' resource constraints.

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Endnotes

- 1 In this article, we use the terms "women" and "men" to refer to people who identify as female or male, respectively, as illustrative examples of how gender could be incorporated into antitrust analysis. However, as noted by the Canadian Institutes of Health Research, "Gender refers to the socially constructed roles, behaviours, expressions and identities of girls, women, boys, men, and gender diverse people. It influences how people perceive themselves and each other, how they act and interact, and the distribution of power and resources in society. Gender identity is not confined to a binary (girl/woman, boy/man) nor is it static; it exists along a continuum and can change over time. There is considerable diversity in how individuals and groups understand, experience and express gender through the roles they take on, the expectations placed on them, relations with others and the complex ways that gender is institutionalized in society." See Canadian Institutes of Health Research, "What is gender? What is sex?" <https://cihr-irsc.gc.ca/e/48642.html>.
- 2 OECD, Gender Inclusive Competition Toolkit, OECD Publishing, Paris (2023) <https://doi.org/10.1787/0d789043-en>.
- 3 OECD, Gender Inclusive Competition Toolkit (2023).
- 4 Lisa Pinheiro, Anne Catherine Faye, Marissa Ginn, Jee-Yeon Lehmann, and Johanna Posch, "Gender Considerations in the Analysis of Market Definition and Competitive Effects: A Practical Framework and Illustrative Example," Antitrust Report 2-23, [LexisNexis](#) (August 2023).

- 5 See, e.g., de Blasio, Bill and Julie Menin, "From Cradle to Cane: The Cost of Being a Female Consumer," *New York City Department of Consumer Affairs* (2015) <https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Study-of-Gender-Pricing-in-NYC.pdf>.
- 6 "California's Gender Tax Repeal Act of 1995 and New York City's bill related to gender pricing specifically target services (e.g., haircuts and dry cleaning)," California Senate Rules Committee. (August 31, 1995, California Bill No. AB 1100. http://leginfo.ca.gov/pub/95-96/bill/asm/ab_1051-1100/ab_1100_cfa_950831_152302_sen_floor.html. "Mayor Giuliani Signs City Council Bill No. 804-A Into Law, Prohibiting the Public Display of Discriminatory Pricing Based on Gender," Archives of the New York Mayor's Press Office (1998, January 9) <https://www.nyc.gov/html/om/html/98a/pr019-98.html>.
 In April 2019, California US Representative Jackie Speier introduced the Pink Tax Repeal Act for the first time, seeking to prohibit pricing differences for products deemed to be "substantially similar," such as those only differing in color or target gender. See "Pink Tax Repeal Act of 2019, H.R.2048, 116th Congress," US Congress (2019) <https://www.congress.gov/bill/116th-congress/house-bill/2048/text?r=8&s=1>. As of this writing, the Pink Tax Repeal Act has been unsuccessful but has been reintroduced on multiple occasions. However, some academics have questioned the existence of a "pink tax" and have attempted to show that observable price differentials are due to economic factors. See, e.g., Moshary, Sarah, Anna Tuchman, and Natasha Bhatia, Gender-Based Pricing in Consumer Packaged Goods: A Pink Tax? (2023) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3882214.
- 7 As we note in our article, we relied on the Proportionally Calibrated Almost Ideal Demand System (PCAIDS) model developed by economists Roy Epstein and Daniel Rubinfeld for this illustrative exercise. There are alternative methods available for merger simulations, including logit models. One advantage of the PCAIDS model is that it can be implemented using limited data, with the only required inputs being market shares and market- and own-price elasticities. One limitation of our merger simulation example is that data collected from product postings of an online retailer are not sufficient to estimate market or own-price elasticities. We start with elasticity estimates from the academic literature (market elasticity of -2.00 and own-price elasticity of -1.00) as our base case scenario for our merger simulation, then evaluate the impact of different assumptions about price elasticities on the simulation results.
- 8 See, e.g., Ezrachi, Ariel, Amit Zac, and Christopher Decker, "The effects of competition law on inequality — an incidental by-product or a path for societal change?," *Journal of Antitrust Enforcement*, Vol. 10, Issue 1, pp. 51-73 (March 2023).
- 9 OECD, Gender Inclusive Competition Toolkit (2023).
- 10 See, e.g., Santacreu-Vasut, Estefania and Chris Pike, "Competition policy and gender," *Concurrences Competition Law Review* 4 (2019).

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