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Comments of the International Center for Law & Economics

Public Consultation – COFECE Report on Marketplace Competition (IEBC-001-2022)

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Authored by:

Geoffrey A. Manne (President and Founder, International Center for Law & Economics)

Mario Zúñiga (Senior Scholar, Competition, International Center for Law & Economics)

Executive Summary

We are thankful for the opportunity to submit our comments to the Preliminary Report (hereinafter, the Report)[1] published by the Investigative Authority (IA) of the Federal Economic Competition Commission (COFECE, after its Spanish acronym) following its investigation of competition in the retail electronic-commerce market. The International Center for Law & Economics ("ICLE") is a nonprofit, nonpartisan global research and policy center founded with the goal of building the intellectual foundations for sensible, economically grounded policy. ICLE promotes the use of law & economics methodologies to inform public-policy debates and has longstanding expertise in the evaluation of competition law and policy. ICLE's interest is to ensure that competition law remains grounded in clear rules, established precedent, a record of evidence, and sound economic analysis.

The Report stems from a procedure included in the Mexican Competition Act, known as "Investigations to Determine Essential Facilities or Barriers to Competition". COFECE can initiate such investigations "when there are elements suggesting there are no effective competition conditions in a market." The IA is responsible for issuing a preliminary investigative report and proposing corrective measures. COFECE's Board of Commissioners can later adopt or reject the proposal.

Our comments respectfully suggest to COFECE Commissioners not to follow the recommendations of the IA concerning competition in the retail electronic-commerce market. While the Report is a laudable effort to understand the market and to protect the competition upon it—competition that has been beneficial to Mexican consumers—its conclusions and recommendations do not follow the evidence and the generally accepted methods and principles of Antitrust laws and best practices.

In first place, under the Mexican Competition Act, investigations should aim to eliminate *only* "restrictions to the efficient operation of markets", the purpose of According to publicly available information, however, Amazon and Mercado Libre (MeLi), the two companies identified as "dominant" in the report, owe their success to consumer preferences and trust, rather than "barriers to competition". Indeed, if these were present, they would lead to consumer dissatisfaction that is simply not the case here. The report also ignores the consumer benefits provided by Amazon and MeLi's business models (i.e., cheaper products and services, fast delivery, easier access to information to compare products, etc.).

Second, the Report defines an unreasonably narrow relevant market that includes only "online marketplaces in multiple product categories and operating at the national level". This market definition ignores other online retailers (like Shein or Temu) because they sell a narrower selection of goods?, e-commerce aggregators (like Google Shopping) because they are merely intermediaries that connect buyers and sellers, seller-owned websites (like Apple or Adidas) because they do not sell

[1] The full text of the report (public version), *available at* https://www.cofece.mx/wp-content/uploads/2024/02/Dictamen_Preliminar_Version_Publica.pdf.

as many distinct product categories, as well as brick-and-mortar stores. By artificially narrowing the market in this way, the report drastically overstates Amazon and MeLi's market shares.

Third, this gerrymandered relevant market leads to an artificial finding that Amazon and MeLi are "dominant" marketplaces—a key requirement for subsequent enforcement. This finding is problematic because the Report considers any costs faced by new entrants as "barriers to entry" that insulate the two marketplaces from competition. As we argue below, however, these "barriers" are merely regular business costs that do *not* prevent new players from entering. To wit, the record shows that new firms regularly enter the market.

Finally, the proposed remedies would harm rather than benefit consumers. The Report suggests forcing Amazon and MeLi to separate their streaming services (like Amazon Prime) from their loyalty programs. This would hurt consumers who currently enjoy bundled benefits at a lower price. Additionally, requiring the platforms to interoperate with other logistics providers would stifle innovation and investment as these platforms wouldn't reap the benefits of their digital infrastructure. This mandated interoperability could also harm consumers who may attribute delivery-related failings to the marketplaces rather than logistics providers responsible for them, thereby creating a standard free-rider problem.

I. Introduction

The Report has been issued in the context of a procedure contemplated in Article 94 of the Mexican Competition Act, known as "Investigations to Determine Essential Facilities or Barriers to Competition". According to this provision, COFECE shall initiate an investigation "when there are elements suggesting there are no effective competition conditions in a market". The investigation should aim to determine the existence of "barriers to competition and free market access" or of "essential facilities".

An IA is responsible for issuing a preliminary investigative report and to propose corrective measures. The Report must identify the market subject to the investigation with the purpose of allowing any person to provide elements during the investigation. Once the investigation is finished, the IA shall issue a Report, including corrective measures deemed necessary to eliminate the restrictions to the efficient operation of the market. Economic agents potentially affected by corrective measures proposed have the opportunity to comment and provide evidence. COFECE's Board of Commissioners can later adopt or reject the proposals.

We understand and commend COFECE's concerns for competition in the marketplaces market, but any investigation should aim to eliminate "restrictions to the efficient operation of markets", the purpose of the Mexican Competition Act, according to its Article 2[2]. The conclusions and

[2] Mexican Competition Act. Article 2. "The purpose of this Law is to promote, protect and guarantee free market access and economic competition, as well as to prevent, investigate, combat, prosecute effectively, severely punish and eliminate monopolies, monopolistic practices, unlawful concentrations, barriers to entry and to economic competition, as well as other restrictions to the efficient operation of markets."

recommendations of the Report do not appear to consider the efficiency of the leading marketplaces, which may explain why consumers routinely choose them over rivals.

Indeed, according to publicly available information, Amazon and MeLi, the two companies identified as "dominant" in the report, owe their success to consumer preferences and trust. According to one source[3], for instance:

> The popularity of the Amazon marketplace in Mexico is largely based on customer satisfaction. **Amazon is the second most appreciated e-commerce platform in Mexico, according to a Kantar survey, with a satisfaction index of 8.5 out of 10**. Consumer feedback is also essential to the success of the Amazon marketplace, as it allows buyers to make successful purchases. Consumer reviews are also essential to the success of the Amazon marketplace, allowing buyers to make informed purchases. Good reviews highlight Amazon's speed and reliability [emphasis added].

According to a study published by the Federal Institute of Telecommunications (IFT, after its Spanish acronym) about the use of digital platforms during the Covid-19 pandemic, 75.8% of users claim to be satisfied or very satisfied with the applications and webpages they use to buy online. Moreover, MeLi and Amazon were the most mentioned platforms with 67.3% and 30.3% of mentions, respectively.[4]

The report also appears to ignore the consumer benefits provided by Amazon MeLi's business models (i.e., cheaper products and services, fast delivery, easier access to information to compare products, etc.).

The Report finds preliminary evidence to support the notion that "*there are no conditions of effective competition in the Relevant Market of Sellers and in the Relevant Market of Buyers,*" as well as the existence of "*three Barriers to Competition*" that generate restrictions on the efficient functioning of said markets.

The alleged barriers consist of:

1. "Artificiality" in some components of the marketplaces' loyalty programs (services embedded in loyalty programs that—without being directly linked to the marketplace's ability to carry out or

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[3] *¿Qué Tan Popular es el Marketplace de Amazon en México?*, LA PATRIA (Apr. 23, 2023), https://www.lapatria.com/publirreportaje/que-tan-popular-es-el-marketplace-de-amazon-en-mexico. Free translation of the following text in Spanish: "La popularidad del mercado de Amazon en México se basa en gran medida en la satisfacción de los clientes. Amazon es la segunda plataforma de comercio electrónico más apreciada en México, según una encuesta de Kantar, con un índice de satisfacción de 8,5 sobre 10. Los comentarios de los consumidores también son esenciales para el éxito del mercado de Amazon, ya que permiten a los compradores realizar compras acertadas. Las opiniones de los consumidores también son esenciales para el éxito del mercado de Amazon, ya que permiten a los compradores realizar compras acertadas. Las buenas opiniones ponen de relieve la rapidez y fiabilidad de Amazon."

[4] Instituto Federal de Telecomunicaciones, *Uso y Satisfacción de las Aplicaciones y Herramientas Digitales para Compras y Banca en Línea, Videollamadas, Redes Sociales, Salud y Trámites Gubernamentales en Tiempos de Covid-19*, ADOPCIÓN (Jan 19, 2022), *available at* https://www.ift.org.mx/sites/default/files/contenidogeneral/usuarios-y-audiencias/aplicacionesyherramientasdigitalesentiemposdecovid19.pdf.

facilitate transactions between buyers and sellers, and coupled with "network effects"—affect buyers' behavior);

2. "Buy Box opacity"[5] (sellers on the marketplaces don't have access to the ways that Amazon and MeLi choose the products placed into the Buy Box); and
3. "Logistic solutions foreclosure," because Amazon and MeLi don't allow all logistics providers to access their platforms' Application Programming Interfaces (APIs), but rather bundle marketplace services with their own fulfillment services.

To eliminate these alleged barriers, the Report proposes three remedies, to be applied to Amazon and MeLi:

1. An obligation to "disassociate" streaming services from membership and/or loyalty programs (*e.g.*, Amazon Prime), as well as any other service unrelated to use of the marketplace (*e.g.*, games and music, among others);
2. An obligation to carry out all actions that are "necessary and sufficient" to allow sellers to freely adjust their commercial strategies with full knowledge of the Buy Box selection processes; and
3. An obligation to allow third-party logistics companies to integrate into the platform through their respective APIs, and to ensure that Buy Box selection doesn't depend on the choice of logistics provider unless it affects "efficiency and performance criteria."

We disagree with the findings and recommendations of the Report for the reasons stated below:

II. An Unreasonably Narrow Market Definition

Rather than an "abuse of dominance" procedure, the market investigation that led to the report was a "quasi-regulatory procedure." But the wording of Article 94 of the Mexican Federal Economic Competition Act (under which the investigation was authorized) strongly suggests that COFECE has to establish (not simply assert) an "absence of effective competition." This would entail either that there is a "market failure" that impedes competition, or that there is an economic agent with a dominant position. The report unconvincingly tries to show the latter.

To determine if any given company has a "dominant position" (monopoly power), competition agencies must first define a "relevant market" in which the challenged conduct or business model has an effect. Although it is common for antitrust enforcers to define relevant markets narrowly (often, the smaller the market, the easier it is to find that the hypothetical monopolist is, in fact, a monopolist), we think the Report goes too far in the case at hand.

[5] The "Buy Box" is a box, normally found on the right side of a marketplace product page after the clients search for a product. Being in this box is an advantage for the seller because it not only highlights its product, but also makes the payment process easier. This is, of course, also an advantage for consumers, who can find and buy products faster.

The Report appears to follow the bad example of its American counterpart, the Federal Trade Commission (FTC). As Geoffrey Manne explains in an Issue Brief about the FTC's recent monopolization complaint[6] against Amazon the agency:

> The FTC's complaint against Amazon describes two relevant markets in which anticompetitive harm has allegedly occurred: (1) the "online superstore market" and (2) the "online marketplace services market."
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> … the FTC's complaint limits the online-superstore market to *online* stores only, and further limits it to stores that have an "extensive breadth and depth" of products. The latter means online stores that carry virtually all categories of products ("such as sporting goods, kitchen goods, apparel, and consumer electronics") and that also have an extensive variety of brands within each category (such as Nike, Under Armor, Adidas, etc.). In practice, this definition excludes leading brands' private channels (such as Nike's online store), as well as online stores that focus on a particular category of goods (such as Wayfair's focus on furniture). It also excludes the brick-and-mortar stores that still account for the vast majority of retail transactions. Firms with significant online *and* brick-and-mortar sales might count, but only their online sales would be considered part of the market. [7]

The Report does something similar. It defines two relevant markets;

1. Sellers Relevant Market: consists of the marketplace service for sellers, with a national geographical dimension.
2. Buyers Relevant Market: consists of the service of marketplaces and multi-category online stores for buyers in the national territory, which includes marketplace business models (hybrid and non-hybrid) and online stores with multiple categories of products.

Both markets, however, are defined in an unreasonably narrow way. By alleging that large online marketplaces "have positioned themselves as an important choice," the agency ignores competition from other online and offline retailers. The Report ignores other e-commerce platforms—like China's Shein[8] and Temu[9]—that have gained both popularity and advertising-market share. The report also neglects to mention e-commerce aggregators like Google Shopping, which allow consumers to search for almost any product, compare them, and find competitive offers; as well as competition from e-commerce websites owned by sellers, such as Apple or Adidas.

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[6] *See* https://www.ftc.gov/legal-library/browse/cases-proceedings/1910129-1910130-amazoncom-inc-amazon-ecommerce.

[7] Geoffrey A. Manne, *Gerrymandered Market Definitions in FTC v. Amazon*, (Jan. 26, 2024), https://laweconcenter.org/resources/gerrymandered-market-definitions-in-ftc-v-amazon.

[8] *See, e.g.*, Krystal Hu & Arriana McLymore, *Exclusive: Fast-Fashion Giant Shein Plans Mexico Factory*, REUTERS (May 24, 2023), https://www.reuters.com/business/retail-consumer/fast-fashion-giant-shein-plans-mexico-factory-sources-2023-05-24.

[9] *See, e.g.*, *Rising E-commerce Star: The Emergence of Temu in Mexico*, BNN (Sep. 25, 2023), https://bnnbreaking.com/finance-nav/rising-e-commerce-star-the-emergence-of-temu-in-mexico.

This exclusion seems wrong. To compete with and "online superstores", online stores do not need the scope of products that Amazon or MeLi have, because "consumers buy products, not store types"[10]:

> Indeed, part of the purported advantage of online shopping—when it's an advantage—is that consumers don't have to bundle purchases together to minimize the transaction costs of physically visiting a brick-and-mortar retailer. Meanwhile, another part of the advantage of online shopping is the ease of comparison shopping: consumers don't even have to close an Amazon window on their computers to check alternatives, prices, and availability elsewhere. All of this undermines the claim that one-stop shopping is a defining characteristic of the alleged market.[11]

The Report also appears to ignore the competitive constraints imposed by brick-and-mortar retailers, especially if Amazon or MeLi tried to exploit their market power. Of course, how many consumers might switch, and the extent to which that would affect the marketplaces, are empirical questions. But there is no question that *some* consumers might switch. In that respect, it is important to remember that competition takes place on the margins. Accordingly, it is not necessary for all consumers to switch to affect a company's sales and profits.

The report does *mention* selling through social media but does not include such sales in the relevant market. We think that social media should as a sales channel should be considered as reasonable substitute for Amazon and MeLi, considering the fact that 85% of small and medium enterprises turned to Facebook, Instagram, and WhatsApp during the Covid-19 pandemic to advertise and sell their products.[12] The Commercial Guide for Mexico published by the U.S. Department of Commerce's International Trade Administration reports that "Mexican buyers are highly influenced by social networks when making purchases. Forty-three percent of eCommerce buyers have bought via Conversational Commerce or C-commerce (selling via Facebook or WhatsApp), and 29 percent through "lives" or livestreams".[13]

There is also empirical evidence that Amazon not only competes, but competes intensively with other distribution channels, and has a net-positive welfare effect on Mexican consumers. A 2022 paper[14] found that:

1. E-commerce and brick-and-mortar retailers in Mexico operate in a single, highly competitive retail market; and

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[10] Manne, *supra* note 7.

[11] *Id.*

[12] *El 85% de las Pymes USA Redes Sociales para Vender en Línea*, EXPANSIÓN (Jul. 28, 2021), https://expansion.mx/tecnologia/2021/07/28/el-85-de-las-pymes-usa-redes-sociales-para-vender-en-linea.

[13] *Mexico – Country Commercial Guide*, INTERNATIONAL TRADE ORGANIZATION (Nov. 5, 2023), https://www.trade.gov/country-commercial-guides/mexico-ecommerce.

[14] Raymundo Campos Vázquez *et al.*, *Amazon's Effect on Prices: The Case of Mexico*, CENTRO DE ESTUDIOS ECONÓMICOS, Documentos de Trabajo, Nro. II (2022), *available at* https://cee.colmex.mx/dts/2022/DT-2022-2.pdf.

2. Amazon's entry has generated a significant pro-competitive effect by reducing brick-and-mortar retail prices and increasing product selection for Mexican consumers.

The paper finds the market entry of products sold and delivered by Amazon gave rise to price reductions of up to 28%.[15] In light of this evidence, we think that is wrong to assume that marketplaces like Amazon and MeLi do not compete with other retailers. The latter should thus be included in the relevant market.

As if this narrow definition were not enough, the report conflates Amazon and MeLi's market shares, to conclude that, together, both hold more than 85% of the sales and transactions in the Relevant Seller Market during the period analyzed and the Herfindahl-Hirschman Index (HHI) exceeds two thousand points (therefore, the market is highly concentrated). Likewise, in the "Relevant Buyers Market," the HHI was estimated, for 2022, at 1,614 units and the main three participants concentrate 61% (sixty-one percent) of the market. In both markets, the other participants have a significantly smaller share.

But why combine the market share of Amazon and MeLi, as if they were acting as a single firm? Given the IO's market definition, it must at least be the case that Amazon and MeLi at least competing with each other. The market's continuous growth and the evolution of the companies' respective market shares indicate that they do. A news article from 2020, for instance, reports that:

> Supermarkets, department stores and digital-native chains have a common goal: to be the one that captures the most market in electronic commerce in Mexico. In this battle, Amazon and Mercado Libre take the lead, as they are the two firms that concentrate almost a quarter of the total market in this area.
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> At the end of 2019, Amazon had a market share of 13.4%, which placed it ahead of other competitors. That same year, Mercado Libre was with 11.4%.[16]

Also inconsistent with the hypothesis of a market with "barriers to competition" is the fact that the e-commerce market is continuously growing (and adding market players) in Mexico, which is now the second-largest e-commerce market in Latin America.[17]

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[15] *Id.*, at 23.

[16] *Amazon y Mercado Libre se Disputan la Corona del Comercio Electrónico en México*, El CEO (Mar 17, 2020), https://elceo.com/negocios/amazon-y-mercado-libre-se-discuten-la-corona-del-comercio-electronico-en-mexico. Free translation of the following text, in Spanish: "Cadenas de autoservicios, departamentales y nativas digitales tienen un objetivo en común: ser quien acapare más mercado en el comercio electrónico en México. En esta batalla, Amazon y Mercado Libre se ponen a la cabeza, pues son las dos firmas que concentran casi un cuarto del total de mercado de este rubro. Al cierre de 2019, Amazon contaba con un cuota de mercado del 13.4%, que lo colocaba al frente de los demás competidores. Ese mismo año, con 11.4% se encontraba Mercado Libre."

[17] Stephanie Chevalier, *E-commerce Market Share in Latin American and the Caribbean 2023, By Country*, STATISTA (Mar. 25, 2024), https://www.statista.com/statistics/434042/mexico-most-visited-retail-websites ("Over the last few years, online buying and selling have gained considerable ground in Mexico, so much so that the country has positioned itself as the second largest e-commerce market in Latin America. With a rapidly increasing online buying population, it was forecast that nearly 70 million Mexicans would be shopping on the internet in 2023, a figure that would grow by over 26 percent by 2027.").

It is only on the basis of this distorted depiction of the market that the Report reaches the conclusion that Amazon and MeLi have "the power to fix prices" (another form of saying "monopoly power"). Given what precedes, that conclusion should be rejected.

III. An Unwarranted Finding of a 'Dominant Position'

Even if one accepts the Report's market definition, and Amazon and MeLi thus have a significant market share, both firms could still face competition from new entrants, attracted to the market by the higher prices (or other "exploitative" conditions) charged to consumers. According to the Report, alas, there are various barriers to hinder "the entry and expansion" in both relevant markets. Among them, the Report mentions, for instance:

1. Barriers to entry related to the high amounts of investment for the development of the marketplace, as well as for the development of technological tools integrated into it.... In addition, high investment amounts are required related to the development of logistics infrastructure and in working capital related to funds necessary to cover operating expenses, inventories, accounts receivable and other current liabilities; and
2. Barriers to entry related to considerable investments in advertising, marketing and public relations. To attract a significant number of buyers and sellers to the platform that guarantees the success of the business, it is imperative to have a well-positioned, recognized brand with a good reputation.

Contrary to what the report claims, however, these are **costs**, not "barriers to entry." As Richard Posner convincingly explained, the term "barrier to entry" is commonly used to describe any obstacle or cost faced by entrants. [18] But by this definition (embraced by the Report, apparently), any cost is a barrier to entry. Relying on George Stigler's more precise definition, Posner suggested defining a barrier to entry as "a condition that imposes higher long-run costs of production on a new entrant than are borne by the firms already in the market."[19] In other words, properly understood, a barrier to entry is a cost borne by new entrants *that was not borne by incumbents*.

The authority's definition of barriers to entry is also at odds with the definition given by the Section IV of Article 3 of the Mexican Competition Act, according to which a barrier to competition is:

> Any structural market characteristic, act or deed performed by Economic Agents with the purpose or effect of impeding access to competitors or limit their ability to compete in the markets; which impedes or distorts the process of competition and free market access, as well as any legal provision issued by any level of government that unduly impedes or distorts the process of competition and free market access.

Of course, Amazon and MeLi have *some* advantages over other firms in terms of their infrastructure, know-how, scale, and goodwill. But those advantages didn't fall from the sky. Amazon and MeLi

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[18] RICHARD POSNER, ANTITRUST LAW (2nd. Ed. 2001), at 73-74.

[19] *Id.*, at 74.

built them over time, investing (and continuing to invest) often *enormous* amounts to do so. Even "network effects" often considered as an inevitable source of monopoly, are not a definite obstacle to competition. As Evans and Schmalensee, have pointed out:

> Systematic research on online platforms by several authors, including one of us, shows considerable churn in leadership for online platforms over periods shorter than a decade. Then there is the collection of dead or withered platforms that dot this sector, including Blackberry and Windows in smartphone operating systems, AOL in messaging, Orkut in social networking, and Yahoo in mass online media.[20]

The notion that Amazon and MeLi are shielded by barriers to entry is also contradicted by the *entry* of new rivals, such as Shein and Temu.

As explained above, the Report also erroneously conflates the market shares of Mercado Libre and Amazon, to reach a combined market share of 85% (eighty-five percent) of sales and transactions in the Sellers Relevant Market; and then combines the market share of the main three market participants in the Buyers Relevant Market to reach a market share of 61% (sixty-one percent) of the market. This is highly problematic as those firms are not a single economic entity, they thus presumably compete against each other.

If anything, the market shares produced by the Report only lead to a high HHI, which in turn shows that the market is "highly concentrated" (if one accepts the Report's narrow market definition). But concentration is a poor proxy for market power. Economists have been studying the relationship between concentration and various potential *indicia* of anticompetitive effects—price, markup, profits, rate of return, etc.—for decades, and the empirical evidence is more than enough to say that concentration *could* lead to competition problems. [21] It is not per se evidence of a lack of competition, let alone a dominant position.

As Chad Syverson recently summarized:

> Perhaps the deepest conceptual problem with concentration as a measure of market power is that it is an outcome, not an immutable core determinant of how competitive an industry or market is… As a result, concentration is worse than just a noisy barometer

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[20] David S. Evans & Richard Schmalensee, *Debunking the "Network Effects" Bogeyman*, REGULATION (Winter 2017-2018), at 39, *available at* https://www.cato.org/sites/cato.org/files/serials/files/regulation/2017/12/regulation-v40n4-1.pdf.

[21] For a few examples from a very large body of literature, *see*, *e.g.*, Steven Berry, Martin Gaynor, & Fiona Scott Morton, *Do Increasing Markups Matter? Lessons from Empirical Industrial Organization*, 33J. ECON. PERSPECTIVES 44 (2019); Richard Schmalensee, *Inter-Industry Studies of Structure and Performance*, in 2 HANDBOOK OF INDUSTRIAL ORGANIZATION 951-1009 (Richard Schmalensee & Robert Willig, *eds*., 1989); William N. Evans, Luke M. Froeb, & Gregory J. Werden, *Endogeneity in the Concentration-Price Relationship: Causes, Consequences, and Cures*, 41 J. INDUS. ECON. 431 (1993); Steven Berry, *Market Structure and Competition, Redux*, FTC MICRO CONFERENCE (Nov. 2017), *available at* https://www.ftc.gov/system/files/documents/public_events/1208143/22_-_steven_berry_keynote.pdf; Nathan Miller, *et al.*, *On the Misuse of Regressions of Price on the HHI in Merger Review*, 10 J. ANTITRUST ENFORCEMENT 248 (2022).

of market power. Instead, we cannot even generally know which way the barometer is oriented.[22]

IV. The Proposed Remedies Would Harm, Rather than Benefit, Consumers

Even if one accepts the Report's suggested market definition and its assessment of market power, the report's proposed remedies—which could be summarized as the mandated unbundling of Amazon's and MeLi's streaming services from their loyalty programs (like Amazon's Prime) and to make (at least part of) their platforms "interoperable" with other logistic services—would harm consumers, rather than benefit them.

Amazon Prime, for instance, provides consumers with many attractive benefits: access to video and music streaming; special deals and discounts; and last, but not least, two-day free shipping. According to the Report, "this is an artificial strategy that attracts and retains buyers and, at the same time, hinders buyers and sellers from using alternative marketplaces."

It's not entirely clear what "artificial" means in this context, but it appears to imply something outside of the bounds of "normal" competition. Yet what the Report describes is the very *definition* of competition. Firms competing in a market always choose to combine a "bundle" of features into a single product. They to some extent "bet" on a bundle of features (functionality, materials, terms and conditions) that imply assuming some costs, that they later offer at a given price, that may be met by willing customers (or not). Even with imperfect information, markets (that is, sellers and customers) are the best qualified agents to "decide" the appropriate level of "bundling" on a product, not competition agencies or courts.

A mandate to unbundle streaming services would degrade the online experience of consumers, who would instead have to contract and pay for those services separately.[23] The independent provision of such services would not benefit from Amazon's or MeLi's economies of scale and scope and would, therefore, be more expensive. And providing more benefits for consumers at a given price is what we *want* competitors to do. Treating consumer benefit as a harm turns competition enforcement—and, indeed, the very notion of competition itself—on its head.

The report also proposes to open the Buy Box and modifying its rules so as to be neutral to all logistics providers. This effectively amounts to treating Amazon and MeLi as "common carriers," like regulators did with telephone networks from the 20th century onwards. Unfortunately, this classification and the rules that follow from it (neutrality and price regulation, among others) was designed for markets with natural monopolies—where competition is not possible or even

[22] Chad Syverson, *Macroeconomics and Market Power: Context, Implications, and Open Questions* 33 J. ECON. PERSP. 23 (2019), at 26.

[23] *See*, relatedly, Alden Abbott, *FTC's Amazon Complaint: Perhaps the Greatest Affront to Consumer and Producer Welfare in Antitrust History*, TRUTH ON THE MARKET (Sep. 27, 2023), https://truthonthemarket.com/2023/09/27/ftcs-amazon-complaint-perhaps-the-greatest-affront-to-consumer-and-producer-welfare-in-antitrust-history.

undesirable[24]—but there is no evidence to suggest this is the case in the case at hand. Instead, Digital platform markets are far more competitive. Given this, common-carrier rules would only foster free riding and dampen incentives to invest and innovate (for both incumbents and new entrants). Sellers and logistics providers have many other options to access consumers. There is no economic or legal justification to mandate their access to Amazon or MeLi's platforms.

In sum, the Report's flawed findings lead to even worse remedies. Such remedies would neither promote competition in Mexico nor benefit consumers.

[24] *See*, *e.g.*, Giuseppe Colangelo & Oscar Borgogno, *App Stores as Public Utilities?*, *Truth on the Market* (Jan. 19, 2022), https://truthonthemarket.com/2022/01/19/app-stores-as-public-utilities.