Trade Me's Poster Child Commerce Commission loss

March 2018

Speed Read

The Commerce Commission stopping Trade Me last week from buying Motorcentral, the major software platform used by independent car dealers, is something of a poster child for how regulators are dealing with large online platforms. They're getting quite some focus internationally. We can make a good guess at the Commission's reasons yet to come out:

- Trade Me is in the centre of a "two sided market", as a platform between advertisers (car dealers) and buyers (eyeballs). There are feedback loops between both sides of the platform, by which more eyeballs means more advertisers and vice versa, so that the large platform here – Trade Me – spirals away to increase its market power and reduce competition.
- Not even the prospect of an even bigger player such as Facebook entering the market can change the assessment of adequacy of competition.
- Hard copy newspaper advertising isn't a material competitive constraint.
- Even tiddler competitors can be a useful constraint on a big player.
- If they don't merge, Trade Me may end up competing with Motorcentral and that is pro-competitive.
- There's an increasing move away from a 2 year future period to assess the competition position to longer, such as 4 years.

So, broadening out the Trade Me service by acquisition of Motorcentral's software platform will further expand Trade Me's market power and reduce competition. Hence the clearance application is declined (for that and other reasons).

Detail

For independent car dealers, Motorcentral supplies a software package, as do some others, that helps them keep track of inventory, provides a CRM, and enables uploading of vehicle listings to online platforms. Pretty important functionality for car dealers with close synergies with Trade Me. Integrating software with Trade Me's platform enables, among other things, great use of rich data etc. But the Commerce Commission reckons it might reduce competition and so the clearance for Trade Me to acquire Motorcentral was declined. The full decision is not out, but, in line with laudable trends by the Commission to put out more draft decision material for comment during the process, we can figure out the likely reasons, as follows.

Trade Me's
Poster Child
Commerce Commission loss

Central is the scale of the Trade Me car sales platform, as it sits between car dealers advertising on one side and consumers (eyeballs) on the other: to economists, a "two sided market". Other examples of two sided markets are online media platforms (readers and advertisers, as in the NZME / Stuff merger appeals) and online taxi and Uber services (drivers and riders). There are circular "cross-platform feedback loops" between dealers and eyeballs. Increase the eyeballs and that increases the wish of dealers to advertise (and so, the dollars). And as the number of dealers increases, the Trade Me platform becomes more attractive to buyers who get to see more vehicles on Trade Me. That gives a big advantage to incumbents, as new entrant competitors need critical mass to be effective. The feedback loops from both sides of the platform can tip a market toward the large incumbent platform, killing or reducing competition and new entrants.

Add to that the conclusion that dealers regard advertising on Trade Me as "must have", even if they can or would also use other online platforms. The Commission is likely to say that puts Trade Me into a strong market position. Summarising some complexity, this means that adding another layer to the Trade Me service (the Motorcentral service) might produce reduced competition. Trade Me / Motorcentral might effectively lead to dealers having to stop using a competitor's software; might lead to having to use Trade Me instead of other platforms; might stop new entry of competitors (as the challenges of entering the market are too big); and so on. I say "might" as the Commission must decline if there is a "real chance" of competition problems: it is not necessary, for example, to show a likelihood of that happening.

Even the prospect of a Facebook coming in to compete with Trade Me isn't enough to show there may be sufficient competition, as the merger itself would reduce the prospect of that happening.

A merger might only cut out competition from tiddlers, but tiddlers, the Commission is likely to say, can still put some competitive constraints on dominant players.

Among the things that happen if the merger doesn't go ahead, the Commission says, is that Trade Me might end up competing in the Motorcentral space (beyond its small footprint there); that may be pro-competitive.

A trend for online platforms is the increasing rejection of non-online competition as a competitive constraint. Rejected here is hard copy newspaper advertising of cars as a competitive constraint, as the markets are different for various reasons (for example, different age groups using newspapers and online, and the limited car type search functionality of hard copy differentiates).

Another facet of the decision is likely to be that the future period to assess impact on competition is pushed out to around 4-5 years instead of the historically normal two years: that happens more now. Here, the anti-competitive effects may be a slow burn, so the longer period is appropriate.

These are the types of issues faced by international online platforms such as Facebook, and by large local online platforms such as Trade Me.

Wigley+Company
PO Box 10842
Level6/23 Waring Taylor Street, Wellington
T +64(4) 472 3023 E info@wigleylaw.com
www.wigleylaw.com