Gender Inclusive Competition Toolkit



OECD

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Foreword

What has gender got to do with competition policy? The OECD raised this question with the goal of determining if certain approaches in competition law and policy could help reduce gender inequalities. Exploring the intersection between competition and gender is part of a trend questioning whether competition policy should play a role in promoting broader policy objectives and reducing inequalities in society. This trend has led to pressure on competition authorities who are asked increasingly to consider a wider range of issues that affect their work and inversely, that their work may affect.

In 2018, the OECD began to explore whether a gender lens might in fact help deliver a more effective competition policy by identifying additional relevant features of the market, and of the behaviour of consumers and firms, as well as whether a more effective competition policy can help address gender inequality. For that, the OECD partnered with Canadian Government and in particular the Canadian Competition Bureau to develop guidance for competition agencies in this area giving birth to the Toolkit and the OECD Gender Inclusive Competition Policy project, https://oe.cd/gicp.

The Toolkit is designed to help competition authorities apply gender-inclusive considerations to their work. It provides a practical approach that competition officials can incorporate in their daily operations. It does not aim to change drastically the work of competition authorities but rather to enhance their effectiveness. The Toolkit and the broader project draw inspiration from and build on gender research and mainstreaming efforts in related policy areas, such as, corporate governance and anticorruption. The approaches in this Toolkit help authorities to gain a better understanding of market dynamics and their differential impact on men and women. Where disparities exist, these distinctions can be factored into outcomes, to mitigate, rather than exacerbate, gender inequalities.

This Toolkit is timely as the COVID-19 pandemic has aggravated inequalities in society, and governments are looking at ways to build back better and address economic downturns. Competition is an important tool for economic recovery, and governments can choose to boost competition and gender equality at the same time.

Competition authorities are the primary audience for the Toolkit. It provides authorities with practical tips and guidance on how to include gender considerations in their work. Aspects addressed in the Toolkit include how to apply a gender lens to competition analysis, investigations, compliance work and broader institutional approaches like prioritisation.

The research related to gender-inclusive competition policy is relatively new and there is much more still to learn. Ideally, the Toolkit will be a catalyst for further research that generates additional practical approaches. These could then feed back into further iterations of the Toolkit. While this Toolkit focusses on gender, authorities could consider its application in a broader diversity and inclusion context.

This Toolkit is a result of work conducted primarily under the OECD Gender Inclusive Competition Policy project funded by the Government of Canada. The insights and evidence reported in this Toolkit are based on the seven research papers, along with OECD research, detailed in Chapter 1.

Acknowledgements

This work has been performed by the OECD Competition Division under the OECD Directorate for Financial and Enterprise Affairs. The Toolkit, funded by the Canadian Government, was prepared by Nadia Vassos, Lynn Robertson and Carolina Abate with comments from Ori Schwartz and Antonio Capobianco. Particular recognition goes to Chris Pike and Estefania Santacreu Vasut who launched this work at the OECD Global Forum on Competition in 2018 with their seminal paper on competition and gender. Infographics were created by Erica Agostinho who also prepared the toolkit for publication. The work was carried out under the supervision of Ori Schwartz. Valuable comments and support were provided by Ellen Creighton and her colleagues of Canadian Competition Bureau.

The OECD team would like to thank those who authored the over 60 proposals received when this project was launched. We would also like to extend our appreciation to the growing community who have picked up the work on competition and gender and keep us informed of their publications and progress.

Finally, the authors thank colleagues across the OECD who shared their work on gender and provided valuable insights into its application within the context of competition.

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Executive summary

Competition contributes to economic growth, innovation, and productivity, driving overall economic recovery but it can also contribute to gender equality. By actively incorporating gender considerations into their daily work, competition authorities have the potential to improve the effectiveness and impact of their initiatives while fostering a more competitive, resilient, and inclusive economy.

The Toolkit explores ten different ways of applying a gender lens to competition policy which are summarised below and explained in more detail in Annex A.

Key findings

1. Gathering data helps understand when and how diverse groups of people are harmed disproportionately by anti-competitive behaviours

Competition authorities require disaggregated data to understand when and how diverse groups of people are harmed disproportionately. Gendered data is a good starting point. However, having a broader set of data is even better, as additional demographic data can be used to control for other characteristics.

2. The use of surveys is key to better understanding consumer behaviour

Surveys can be used to better understand consumer behaviour, including factors such as: what product attributes are most valued; if there are differences in frequency of buying and differences in volume bought; price sensitivity and awareness; and overall switching levels. Collecting a range of data enables an authority to focus on certain characteristics and control for others. It is important to collect information on additional identity factors, as this can be used to control for various characteristics and confirm if an effect in a market is due to gender, or some other identity factor. Use and design surveys to gather disaggregated data for a range of identity factors, including gender.

3. Applying a gender lens to market definition and competitive effects analysis shows who is affected by anticompetitive conduct and to what extent

Thinking about market definition and competitive effects analysis along gendered lines helps competition authorities understand who is affected by anticompetitive conduct and to what extent. It is then possible to evaluate whether one group of consumers is better off than another, and if that needs to be corrected or prevented. Gender can influence consumer preferences, for example whether a consumer sees a product as complementary or substitutable; price-sensitivity; and switching behaviour.

4. Tailoring remedies correct or offset harm to a specific disadvantaged group

More effective consumer remedies are a result of a better understanding of who is harmed. Competition authorities could consider differences in behaviour, to determine the level of harm for specific groups and

tailor remedies to correct or offset that harm. Competition authorities can also consider outcomes that target and improve the consumer welfare of the most negatively affected groups.

5. Consider gender diversity in cartel investigations: Review the homogeneity of groups suspected of cartel behaviour and factor gender into forensic cartel analysis to aid in detecting cartelists

Cartels are often formed through the social interactions of people, who gather and exchange information seeking to replace competition with co-operation. When investigating and interviewing potential cartelists, competition authorities should seek to understand the broader range of interactions and history between suspected individuals and the gender dimension of those interactions.

6. Include gender considerations in compliance and advocacy

Industries that incorporate significant socialisation in the margins of business meetings, where participants are more homogenous and have repeated participation over time, will be at increased risk of cartel behaviour. Firms that opt to change representatives and pay attention to gender balances may be able to reduce the risk of cartel behaviour.

7. Consider diversity and inclusion at the institutional level of competition authorities

Competition authorities could benefit from a diverse workforce for many of the same reasons boards do. Those making important decisions benefit from a diversity of perspectives, and this leads to better governance.

8. Target stakeholder engagement to ensure inclusivity

Creating a two-way flow of information with relevant groups of stakeholders helps authorities to understand the impact of their work and decisions. This dialogue could lead to better or more complaints or tips for enforcement or compliance activities to address conduct affecting women.

9. Prioritisation decisions that are preventing women from gaining market access

Competition authorities have limited resources and need to prioritise some matters over others. Competition authorities can incorporate in their priorities enforcement and compliance work that address barriers that prevent women from gaining market access.

10. Apply a gender lens to ex-post evaluation

Ex-post evaluation is an important tool for understanding the impact of earlier work, including if an intervention achieved the intended objective, and if not, why it failed. Ex-post evaluation may reveal approaches and methods of analysis that are useful for gendered analysis and could be used in future matters.

Infographic 1. 10 ways to apply a gender lens to competition policy

1. **Gather data** to understand when and how diverse groups of people are harmed disproportionately by anti-competitive behaviours.
2. **Use surveys** to better understand consumer behaviour.
3. Apply a gender lens to **market definition** and **competitive effects analysis**.
4. **Tailor remedies** to correct or offset harm to a specific disadvantaged group.
5. Consider gender diversity in **cartel investigations**.
6. Include gender considerations in **compliance** and **advocacy**.
7. Consider **diversity** and **inclusion** at the **institutional level** of competition authorities.
8. **Target stakeholder engagement** to ensure inclusivity.
9. Consider gender in **prioritisation decisions**.
10. Apply a gender lens to **ex-post evaluation**.

1 Overview

This chapter describes the origins of the OECD Gender Inclusive Competition Policy project and the idea of a Toolkit to help competition authorities apply a gender lens to their everyday work.

Gender emerged as a competition policy issue in 2017, and subsequent discussions have shifted perspectives on how authorities can consider consumers and firms. (Hubbard, 2017[1]) helped kick off these discussions when she noted that monopolies make gender inequality worse by disproportionately harming women as workers and entrepreneurs. Shortly afterwards, an OECD blog[1] noted there was little to no literature on the intersection between gender and competition but outlined several areas where there could be a role for gender in competition policy.

Around the same time, the Canadian Government increased work related to the Gender-based Analysis Plus (GBA Plus), which aims to mainstream gender and inclusion considerations into policy making. In Canada's Budget 2018 (Government of Canada, 2018[2]), the government committed that more free trade agreements would be subject to GBA Plus. The Canadian Government then asked the Competition Bureau Canada (Bureau) to determine how competition policy chapters of trade agreements affect gender equality. With little to no research available on competition policy and gender, the Bureau turned to the OECD for help.

Looking at competition enforcement and policy through a gender lens is part of a long-standing effort by the OECD and its Competition Committee to explore the links between competition and the many aspects of inclusiveness, such as poverty and sustainability.[2] Responding to Canada, in 2018, the OECD began to explore whether a gender lens might help deliver a more effective competition policy. This work aimed to identify additional relevant features of markets, to take a more nuanced look at the behaviour of consumers and firms, and to see whether a more effective competition policy could help address gender inequality.

In November 2018, an initial discussion took place at the Global Forum for Competition.[3] The discussion provided a conceptual framework to mainstream gender considerations in competition policy, stating that gender can be considered by authorities in competition policy without compromising the consumer welfare focus, and that adopting a gender lens could help with efficiency-based objectives. Competition policy may influence gender inequality, and, at the same time, gender differences may have an impact on the competitive process and on the work of competition authorities. Several practical applications to incorporate gender were suggested, on matters such as product market definition, compliance with competition law, and prioritisation decisions. This Toolkit provides guidance for those, and other areas, related to competition policy and enforcement.

Between 2018 and 2020, several events and discussions on gender and competition generated further interest in the topic. This led to the OECD Gender Inclusive Competition Policy project, funded by the Canadian Government, under which the OECD launched a call for further research in 2020. Over 60 proposals from around the world were submitted, with seven selected by the OECD to generate new evidence. The research papers, along with the earlier research and discussions, are an important source of evidence, practical tips, and guidance in the development of this Gender Inclusive Competition Policy Toolkit.[4]

This Toolkit is a result of work conducted primarily under the OECD Gender Inclusive Competition Policy project funded by the Government of Canada. The insights and evidence reported in this Toolkit are based on the following seven research papers, along with OECD research:

1. Gender differences in surveys for market definition and merger analysis by Oxera.
2. Gender considerations in the analysis of market definition and competitive effects: A practical framework and illustrative example by L. Pinheiro, A.C. Faye, M. Ginn, J.Y. Lehmann and J. Posch.
3. Cartel behaviour and boys' club dynamics: French cartel practice through a gender lens by C. Abate and A. Brunelle.
4. Gender bias in cartel engagement by J.R. Borrell, C. Garcia, J.L. Jimenez and J.M. Ordonez-de-Haro.
5. Gender and collusion by J. Haucap, C. Heldman and H. A. Rau.

6. Prioritising gendered public interest considerations by B. Mkatshwa, M. Tshabalala and S. Phala.
7. Incorporating Gender as a Prioritization Principle and Project Selection Criterion in Competition Agencies by W. Kovacic.

2 The importance of a gender lens in competition policy

This chapter describes why competition policy, historically a gender-neutral policy, can be analysed in terms of women's roles within firms, and their experiences as consumers. It explores the differing impact of regulations on women. Hidden disincentives and restrictions can hinder women's access to specific professions, markets or services.
It explains that gender may lead to price discrimination based on willingness to pay. Gender-specific behavioral biases between women and men in some markets may mean that demand-side remedies targeted at women would be more effective.

Competition policy has been seen historically as gender neutral. It is usually considered in terms of consumers and firms. Traditionally, consumers are homogenous groups characterised by their willingness to pay, their (rational) preferences, and their ability to substitute between products offered by firms. Meanwhile, firms are defined by the profit-maximising objectives of their owners, and only rarely seen as collections of people. Considering gender in competition policy has changed these perceptions. Gender in competition policy can be analysed in terms of women's roles within firms, and in terms of their experience as consumers.

Women within firms

Within the firm, women assume roles as entrepreneurs, board members, senior managers, or self-employed professionals. However, as entrepreneurs, depending upon the country, women can face regulations that bar them from competing, e.g. preventing them from registering a business, or from owning land or wealth, or from accessing the necessary credit to finance entry or expansion of their enterprise within the market (Smith et al., 2009[3]).

Regulations constraining women's access to specific professions or markets are primarily detrimental for the women involved and a waste of their potential economic contribution to the wealth and productivity of their community. Such regulations are also actively damaging to competition and the efficiency of markets and may provide opportunities for incumbent firms to charge higher prices for all consumers. Markets may still appear to be competitive if less efficient male entrepreneurs can fill the gaps left by these competitive distortions. However, these entrepreneurs will themselves offer less value and will also provide a weaker competitive constraint on more efficient firms, giving those firms greater market power that may allow them to devalue their offer or raise prices. These rules are amongst the types of anti-competitive regulations that can be identified by the OECD's Competition Assessment Toolkit.

Other disincentives and restrictions may not be written down in regulations and may therefore be more difficult to dismantle. Women may face barriers to joining professional networks or clubs. Banks may consider them riskier borrowers. Women could face negative pressure or disincentives to pursue professional careers in STEM disciplines,[5] law, or other traditionally male-dominated fields. They may also be disadvantaged by the lack of infrastructure required when starting a business, for example, access to professional childcare or other solutions.

Women as consumers

Firms may consider gender as an indicator of willingness to pay, and therefore seek to price discriminate based on gender. Alternatively, this might happen due to the differences in the behavioural biases that men and women tend to exhibit. These biases might then mean that some markets work better or worse for women.

In many countries, it is illegal to set a different price based on gender. However, most price discrimination by gender that is observed involves setting different prices for slightly different versions of a product. Where small price differences are sustained, this may indicate that differences in prices do not reflect discrimination but that there are two entirely distinct markets. The market definition that is adopted for this product or service needs to reflect this distinction. Any market shares should be calculated separately, which may have a significant effect on an analysis of a merger or in understanding whether a firm is in a dominant position in a given market. This impact on market definition might then mean that authorities become concerned about the effects of a merger or behaviour on female consumers alone, since they constitute the relevant market.

Behavioural biases of women may differ from that of men. For example, there can be significant gender differences in discount values, attitude to risk, or financial literacy and confidence, and these may result in different outcomes. These biases may vary depending upon the market and the different types of consumers engaged. It is not evident if these differences would lead to women receiving better or worse outcomes. However, the potential for such differences can mean that in some markets, more effective remedies can be constructed by targeting demand-side remedies at specific consumer groups, such as women.[6]

3 Key insights

This chapter provides key considerations and steps for a competition authority to apply a gender lens in its day-to-day work. It explains the importance of gathering disaggregated data to understand when and how diverse groups of people are harmed, and how the use of surveys can give better insights into consumer behaviour. It shows how a gender lens can be applied to market definition and competitive effects analysis, cartel investigations, compliance and advocacy, prioritisation of decisions and ex-post evaluation. Finally, this chapter discusses the need for remedies to be tailored to correct or offset harm to a specific disadvantaged group. It emphasises that targeting stakeholder engagement is key to ensuring inclusivity. Diversity and inclusion should be considered at the institutional level to enhance decision-making. It concludes with a checklist for a gender inclusive competition law and policy (Annex A).

The research stemming from OECD work on gender inclusive competition can be distilled down to the following key insights that will be subsequently expanded upon.

- Gender is an additional relevant feature worth considering in competition analysis.
- Gendered analysis[7] provides competition authorities with information to make better and more tailored decisions.
- Gendered analysis is more relevant in markets where products are offered to end consumers.
- Disaggregated data is critical for gendered analysis. Without data disaggregated specifically for gender, there is no way of knowing whether there are, or are not, gendered effects. Data should be disaggregated to the extent that it reveals gender while protecting other identifiers.
- Building on the concept of the double dividend,[8] remedies that factor in gender considerations may not only improve competition outcomes, but they can also help address gender inequality in markets.
- Different gendered effects may not be immediately obvious. Further analysis of markets including market definition, conduct and firms may be necessary.
- A gendered analysis of mergers could reveal poorer outcomes for female consumers or women-run businesses.
- Gender diversity can be an important variable of collusion, in that cartels are more likely to form in homogenous groups with repeated formal or informal interactions.
- Regarding cartels, compliance and outreach efforts should include discussions on why repeated interactions among homogenous groups present an increased risk of cartel behaviour for companies
- Diversity can strengthen competition authorities.
- Where public interest considerations are available to competition authorities, gender should be among them.

Data

Reliable analysis depends on the quality and extensiveness of the data collected. Disaggregated data by gender allows authorities to determine if indeed gender is a factor to be taken into consideration or if, on the contrary, it can be put aside.

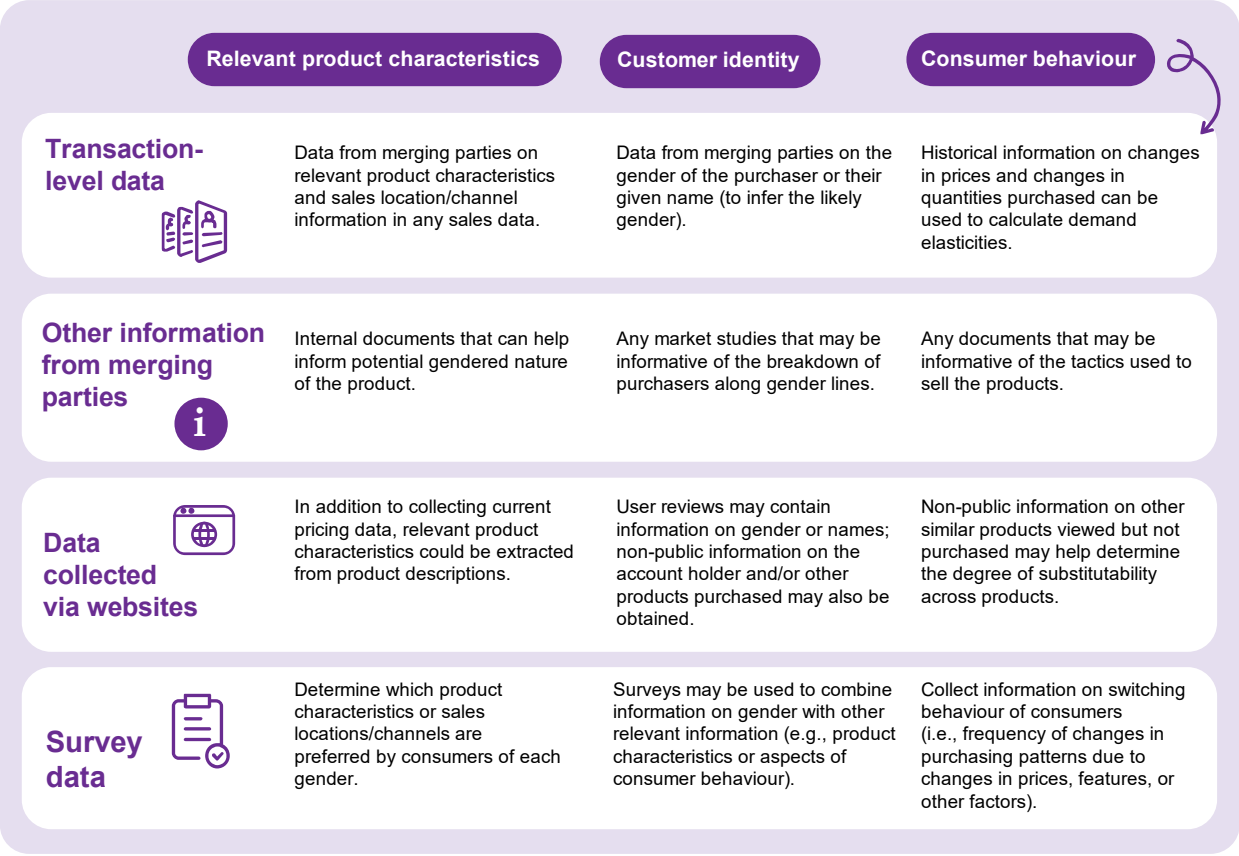
Types of data and data sources

Competition authorities need disaggregated data by gender to understand, if, when and how diverse groups of people could be harmed disproportionately, including women. Gendered data is a good starting point. However, having a broader set of data is even better, as additional demographic data can be used to control for other characteristics.

When considering the question of data, for example, in merger review or monopolistic practices, there are four main sources of information: transaction level data, other information from the parties, publicly available data collected via websites and survey data. These would be relevant for competition analysis for any consumer facing markets. These sources, summarised in Figure 1, can be used to understand relevant product characteristics, consumer identity and consumer behaviour.

Useful gendered data may also be available from other law enforcement agencies. Competition authorities may also wish to consult other agencies to see if they are using gender-based data or are implementing gender- based considerations in their work.

Figure 1. Sources to consider for the application of a gender lens in merger reviews



Source: Adapted from Pinheiro et al. (2021, p. 10[4]), Gender considerations in the analysis of market definition and competitive effects: A practical framework and illustrative example, https://www.oecd.org/daf/competition/gender-inclusive-competition-proj-2-analysis-market-definition-and-competitive-effects.pdf.

In some cases, where gendered data is not available, authorities can infer the gender of consumers. This is not as precise as gathering specific gendered data but may be a good proxy for initial analysis. Competition authorities can request information on product characteristics, product marketing and product sales channels using their compulsory information gathering tools. This information may also be publicly available. Authorities can also examine additional information online, such as the profile of online reviewers to see if they are primarily of one gender. Finally, authorities, who are equipped, can use predictive tools[9] to assist with inferring gender from names, where it is not otherwise obvious.

Competition authorities can also help generate data for future research on the intersection between gender and competition. Whenever possible, authorities could include gender in published decisions, as well as explaining the interpersonal relationships (formal and informal) between individuals who participated in cartels.

Surveys

Surveys can be used to better understand consumer behaviour, including factors such as:

- what product attributes are most valued
- if there are differences in frequency of buying and differences in volume bought

- price sensitivity and awareness
- overall switching levels.

Surveys can also gather data effectively for gendered analysis by including questions, specifically on gender. Collecting a broader range of data enables an authority to focus on certain characteristics, control for identity factors and thus confirm if an effect in a market is due to gender or some other identity factor. Furthermore, tailoring surveys to the needs of the review or investigation ensures authorities collect the right data. If gender is collected at the beginning of the survey, the results can then be analysed by gender and compared to see if there are differences.

There may be differences between revealed versus stated preferences. This can influence responses, so it is important to include questions that reveal both, such as questions about past practice and hypothetical situations.

Market definition and anticompetitive conduct

Market definition and competitive effects analysis

Thinking about market definition and competitive effects analysis along gendered lines helps competition authorities understand who is affected by anticompetitive conduct and to what extent. It is then possible to evaluate whether one group of consumers is better off than another, and if that needs to be corrected or prevented. Gender can influence:

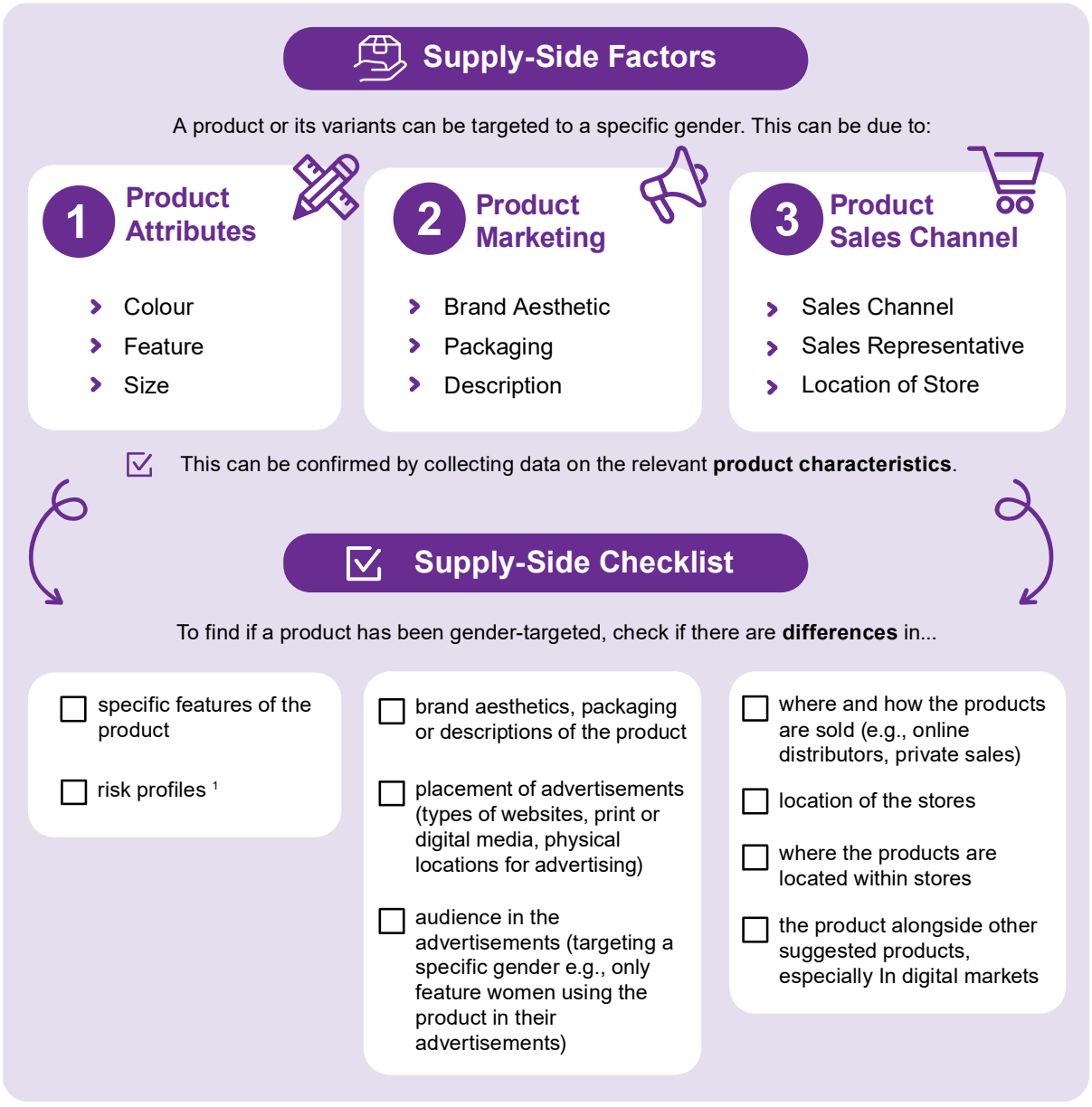
- consumer preferences, for example whether a consumer sees a product as complementary or substitutable
- price-sensitivity
- switching behaviour.

Supply- and demand-side factors

Supply- and demand-side factors can be applicable for gendered analysis of competitive effects. These factors are relevant for market definition and competitive effects analysis. Competition authorities can look at both supply-side factors and demand-side factors when applying a gender lens.

Supply-side factors include product attributes, product marketing and product sales channels to see if firms are targeting a specific gender.

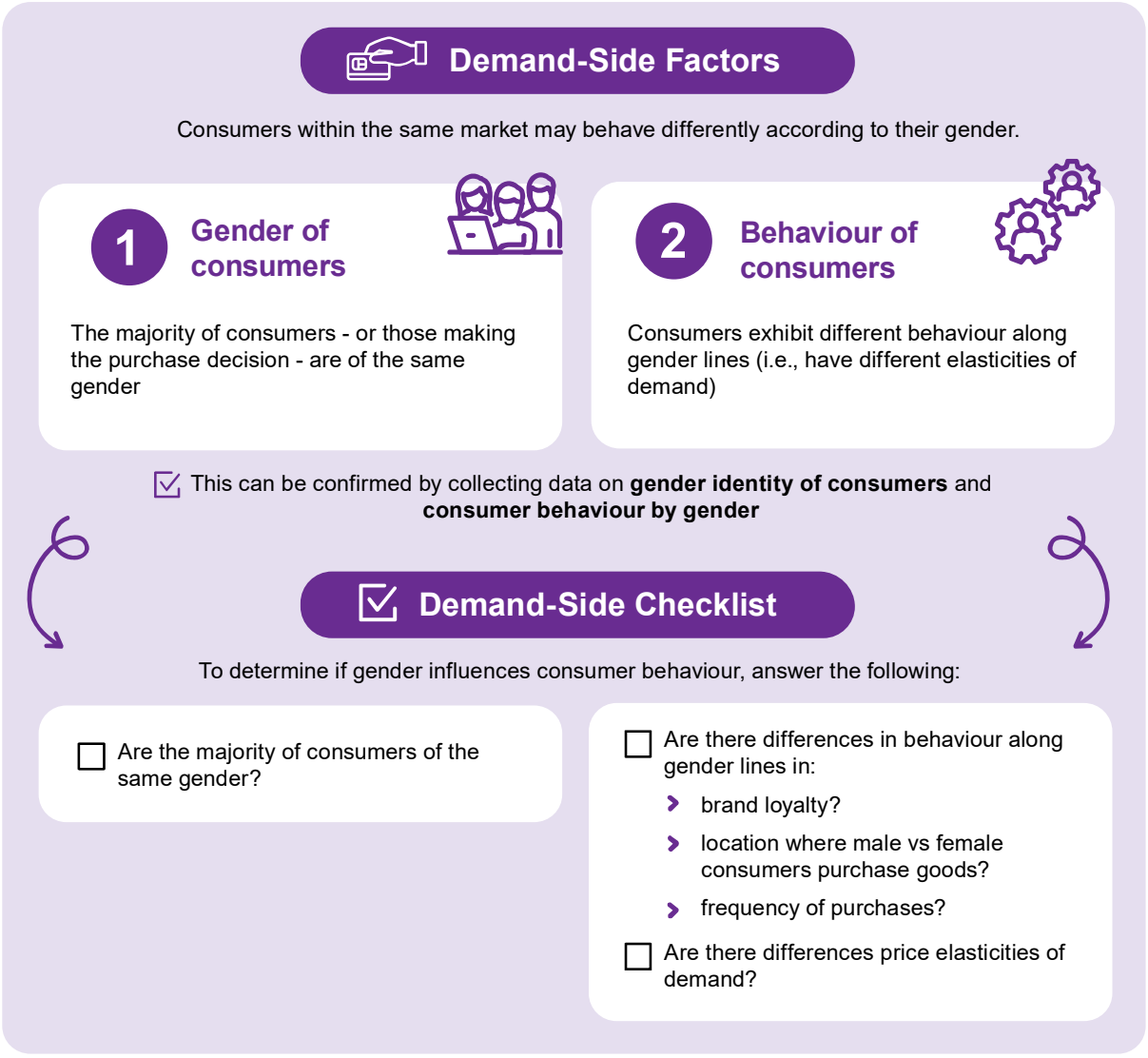
Figure 2. Supply-side factors and checklist



1. Economic research shows that there are gender differences in risk preferences, competitive preferences, and altruism. See Croson, Rachel and Uri Gneezy (2009, pp. 448-474[5]), "Gender Differences in Preferences." Journal of Economic Literature, Vol. 47, No. 2, pp. 448-474.
Source: Adapted from Pinheiro et al. (2021, pp. 8-9[4]), Gender considerations in the analysis of market definition and competitive effects: A practical framework and illustrative example, https://www.oecd.org/daf/competition/gender-inclusive-competition-proj-2-analysis-market-definition-and-competitive-effects.pdf.

There are also important demand-side factors to consider, such as the identities of consumers, and if consumers exhibit different behaviour.

Figure 3. Demand-side factors and checklist

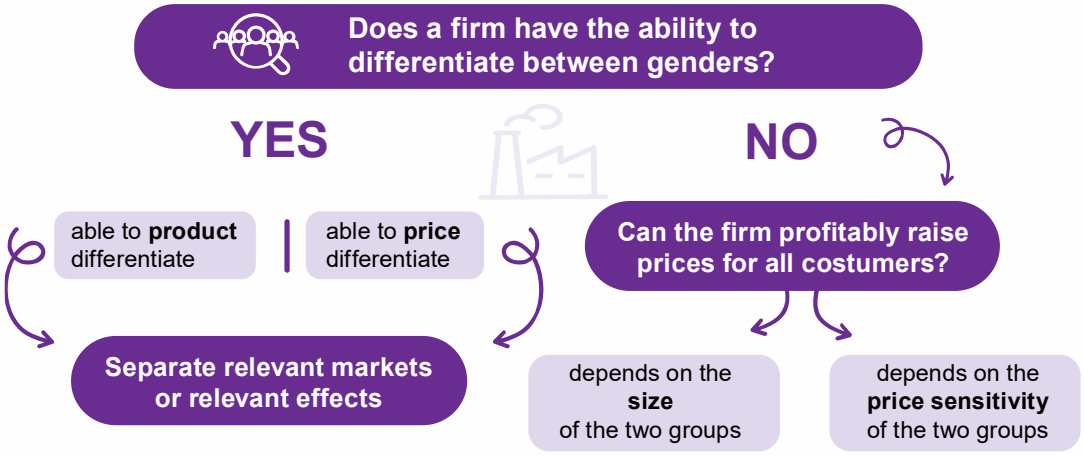


Source: Pinheiro et al. (2021, pp. 8-9[4]), Gender considerations in the analysis of market definition and competitive effects: A practical framework and illustrative example, https://www.oecd.org/daf/competition/gender-inclusive-competition-proj-2-analysis-market-definition-and-competitive-effects.pdf.

Framework for assessing firms' ability to differentiate by gender

Competition authorities can also assess the ability of firms to differentiate between consumer groups, the relative size of these groups, and the extent of switching after a price increase. The following framework indicates if firms could differentiate between genders.

Figure 4. Framework for assessing firms' ability to differentiate by gender



Source: Based on Oxera (2021, p. 8[6]), Gender in competition analysis, 7 October 2021, https://www.slideshare.net/OECD-DAF/oecd-gender-inclusive-competition-policy-project-key-findings-from-oxera-on-gender-differences-in-surveys-for-market-definition-and-merger-analysis-october-2021.

The diagram above explains the potential effects if a firm is able to differentiate by gender. If yes, competition authorities need consider if the firm is able to differentiate by product or price. If this is the case, there may be separate relevant markets or separate relevant effects. In this case, gender can be included as one of the variables to consider when assessing competitive effects.

If a firm is not able to differentiate by gender, then competition authorities should consider if the firm is able to profitability raise prices for all consumers. That will depend on the size of the groups (i.e. number of male vs female consumers), and their respective price sensitivities. If the more price sensitive group is large enough, it can protect the others from adverse competitive effects. In practice, authorities must assess factors like substitutability by subgroups of consumers, and then compare that to consumers in aggregate.

For example, conducting the SSNIP test[10] and critical loss analysis for each specific group can be used to define the market and determine the effects of a merger on the different groups of consumers. As noted above, gendered analysis can be done whenever data is available. In practice, this means that men and women should be considered separately and then in aggregate to see if firms can increase the price profitability post-merger. These can then be weighted to reflect the size of groups; but the analysis should follow the diversity of the sample, rather than the diversity of the population. The results should determine if a firm is able to increase prices for some or all consumers.

Diversion ratios are another tool to assess willingness to switch by gender. If differing diversion ratios are present, competition authorities could investigate if the firm is able to differentiate their offerings based on gender. If firms can apply different prices for different groups, then merger effects should be considered by gender. If firms cannot apply different prices to different groups, then size of the groups and their respective price sensitivities will determine if one group is able to protect the other. If one group is protecting another, then authorities do not need look into separate competitive effects or remedies.

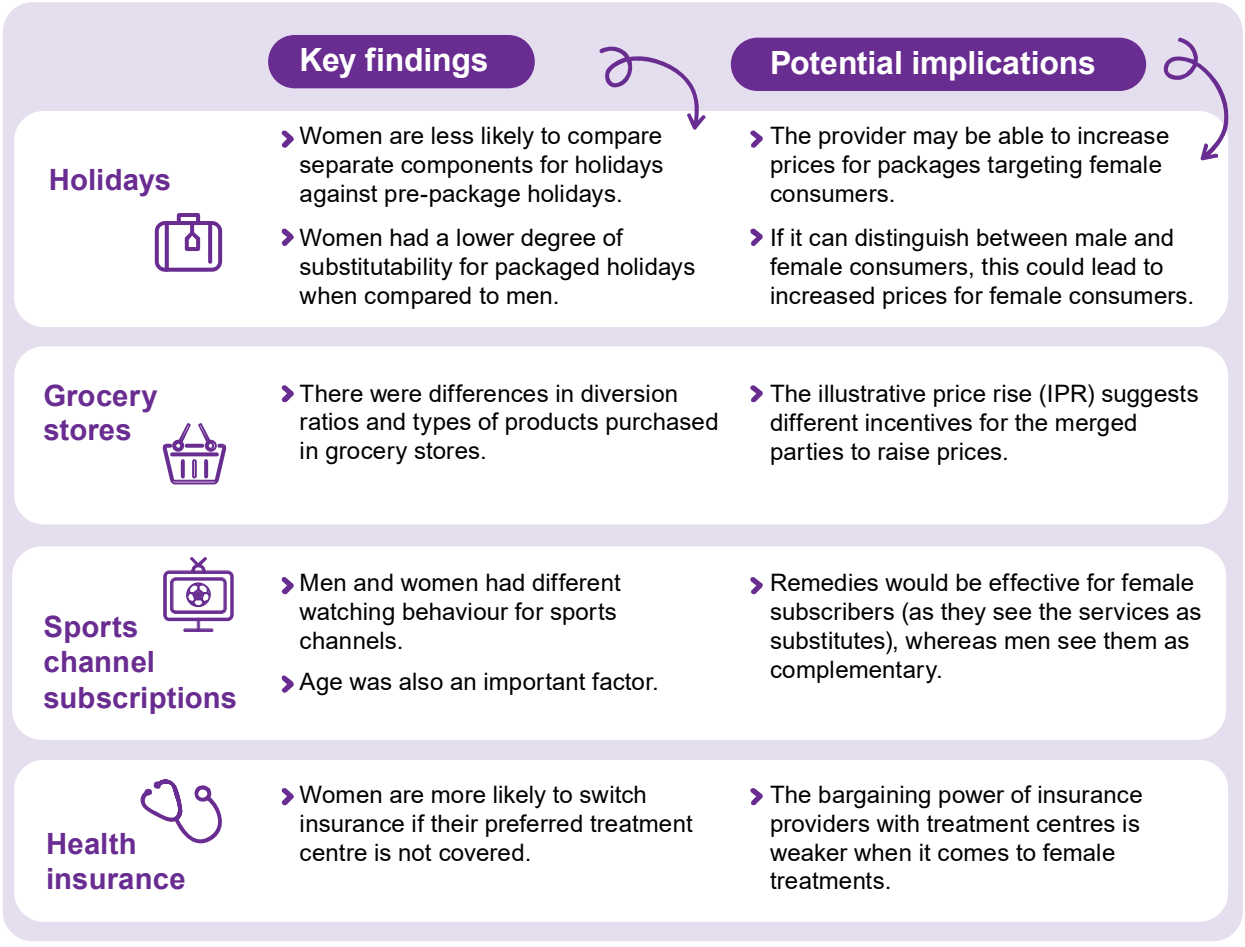
Competition authorities can analyse disaggregated data to see if gender is the driving factor for different preferences and price elasticities of demand that lead to different switching behaviour. This can vary depending on the product or service being investigated or reviewed, but in some cases will lead to gender-segmented markets. Where gendered data is available, competition authorities can run their usual analysis, but do so for men and women separately, and then all consumers in aggregate.

Gendered markets and case studies

Gendered effects are present in many sectors such as toys, clothing, personal care products, health care products, dry cleaning, hair cutting services, insurance, financial products. These are more likely to have gender-segmented markets and different associated competitive effects. If competition authorities do not have the capacity or resources to systematically consider gender when determining market definition and analysing competitive effects, the markets outlined above are good markets to prioritise for gendered analysis as they have known gendered effects.

If competition authorities have the necessary capacity and resources, it is best to do gendered analysis whenever relevant and data is available. Analysis of past surveys related to mergers and market studies demonstrate that there can be significant gender differences in terms of substitution, consumer preferences and switching behaviour. The markets concerned in this analysis did not exhibit any obvious gendered differences until consumer behaviour was examined. These past survey case studies looked at three areas of consumer behaviour that are relevant for market analysis. These areas are price sensitivity, preferences for substitutes and willingness to switch.

Figure 5. Key findings from survey review



Source: Adapted from Oxera (2021[7]), Gender differences in surveys for market definition and merger analysis, https://www.oecd.org/daf/competition/gender-inclusive-competition-proj-1-gender-differences-in-surveys-for-market-definition-and-merger-analysis.pdf

Remedies

In markets where the tools outlined above reveal differences in behaviour, competition authorities can then take that into account to determine the level of harm for specific groups and tailor remedies to correct or offset that harm. Competition authorities can also consider outcomes that target and improve the consumer welfare of the most negatively affected groups. Remedies that factor in gender considerations will not only improve competition outcomes, but they can also help address gender inequality in markets. Stakeholder views, particularly those of affected groups, should be considered in the development of remedies. Authorities could also consider if it would be appropriate to "market test" proposed remedies with interested stakeholder groups.

Cartels and collusion

Cartel formation and investigations

Understanding the social context of cartel formation, and the dynamics of the group can support a more precise assessment of the incentives to enter and remain in a cartel. Homogeneity of characteristics amongst cartel members may facilitate cartel formation. The common identity bias instils a sense of trust and predictability in the group that helps enable cartel formation.[11] In such a group, it is easier to believe that someone will act in a consistent way and be loyal to the group. Men and women are similar in terms of factors that predict involvement in white-collar crime, but differ in terms of motivation and opportunity, due to women's exclusion from male-dominant informal networks. To date, however, there is no compelling evidence to believe that women would not do the same if the prevailing networks in professional environments were women's networks rather than those of men.

When investigating and interviewing alleged cartelists, competition authorities can seek to understand the broader range of interactions and history between suspected individuals. "Boys' clubs" can sustain cartel behaviour over time, as they reinforce and facilitate relationships between members. These kinds of relationships form at work, and in informal settings.[12] Competition authorities should look beyond the formal work context during investigations.

Competition authorities could look at more informal networks such as alumni associations, local business groups, sports and cultural associations, or charities, where "boys' clubs" can emerge. Social media profiles and other public sources (e.g. alumni associations or charity events) may be able to provide some of this information. Competition authorities should consider gender diversity when investigating groups of individuals suspected of engaging in cartel conduct and can discuss gender diversity of teams within companies as part of compliance efforts (see following section).

Compliance and advocacy

Factors such as social norms, personal relationships and peer pressure help create and maintain cartels. These factors are linked to corporate culture, but also broader industry culture. Industries most at risk for cartel behaviour usually present the same characteristics: significant social events in the margins of business meetings; participants are more homogenous with repeated and regular participation over time.

Competition authorities could direct advocacy efforts to relevant business associations of these at-risk industries explaining the compliance risks associated with informal networks and lack of gender diversity. Firms that opt to change representatives, inject diversity by paying attention to gender balances may be able to reduce the risk of cartel behaviour.

There is research that indicates that men and women may approach leniency and whistleblowing differently (Tilton, 2018[8]). Women may be more likely to whistle blow externally, e.g. to law enforcement agencies compared to men who may be more likely to do so internally. Regular interactions with networks of businesswomen may give insights into sectors with gender-based competition barriers and provide opportunities to promote leniency and immunity programmes.

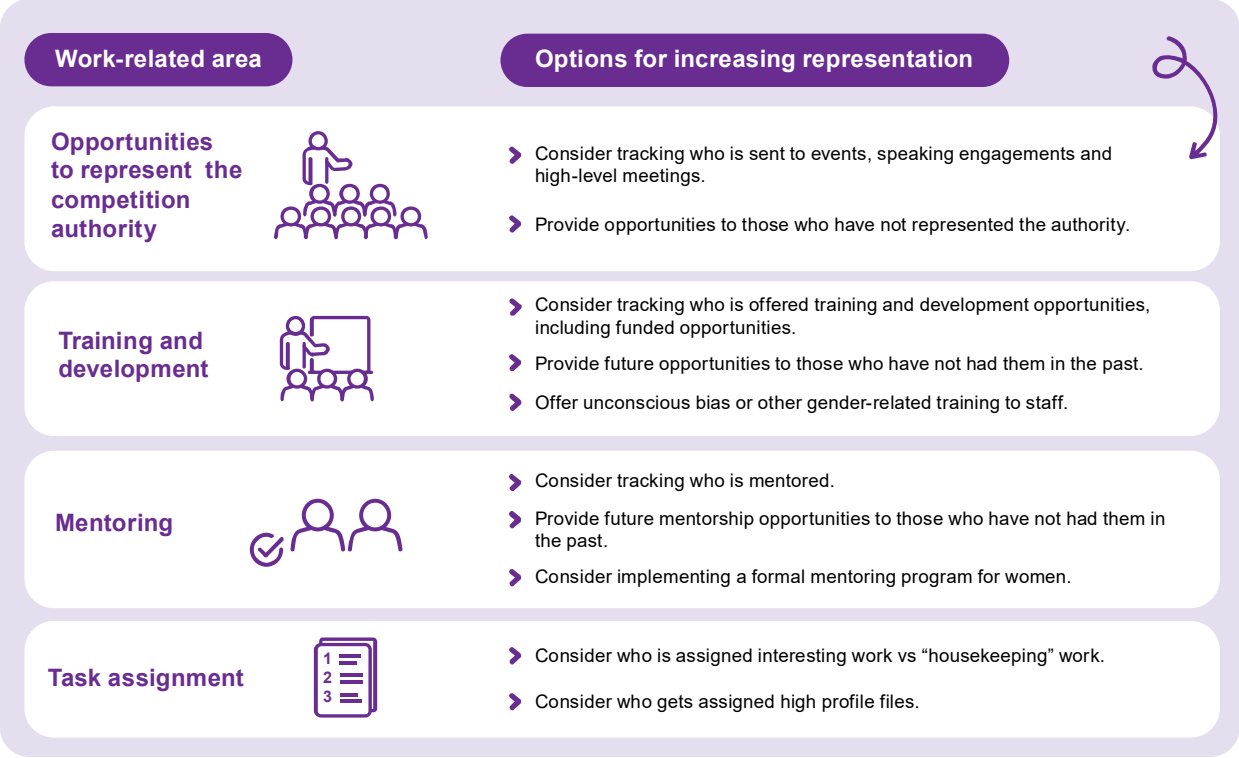
Institutional considerations

Representation

Diversity can strengthen competition authorities for many of the same reasons it can strengthen boards. Decision making processes benefit from a diversity of perspectives that in turn can lead to better governance. Gender representation at different levels can benefit an authority, for example, authority heads; heads of principle operating units; committees or teams that set priorities and select projects; and case handling teams.

Competition authorities can also consider their outward facing representation, and who is given opportunities for career development. Considering who gets opportunities helps ensure a diverse pipeline of talent. Figure 6 provides some options to help track and increase representation over time.

Figure 6. Options for tracking representation



Stakeholder engagement and communication

Even with gender-balanced teams, it will remain difficult to fully understand how men and women experience the various outcomes of the work of competition authorities. Women face additional barriers in

markets and may benefit more from competitive interventions. Targeting stakeholder engagement efforts to ensure inclusion of women, e.g. women's business groups, will also help create a two-way flow of information that could lead to complaints or tips for enforcement or compliance activities to address conduct affecting those communities. Authorities can use a range of engagement options from targeting specific groups to broad and inclusive public consultations. For example, competition authorities can:

- Target women in relevant markets through surveys or focus groups.
- Seek out women's business groups in the relevant market.
- Provide multiple timing options for public events, with in person and virtual attendance options.
- Provide online engagement options, such as a dedicated feedback website or hotline.
- Provide resources in multiple languages available to women who may be in a minority group.

While not all authorities will have similar formal powers, they can follow similar processes at the information-gathering stage of a review or investigation. International co-operation can further support this approach.

Prioritisation

Competition authorities can consider the gender of those impacted by anticompetitive activity as an additional factor in the prioritisation process. For example, women-led businesses face difficulties in getting access to financing. Competition authorities can prioritise markets studies in finance-related markets to review barriers and provide recommendations that would increase competition, but at the same time reduce barriers to entry for women-led businesses.

Enforcement priorities can also consider the gender structure of firms and target industries with lower levels of diversity in management positions. For example, the construction industry[13] is known to have several compliance and cartel-related issues (e.g. bid-rigging) and is also known to be male dominated.[14] When applying gender considerations, similar industries should be prioritised for enforcement and compliance work.

Competition authorities can also consider gender when prioritising market studies. Authorities can use market studies to determine whether key markets for women are working well.[15] Targeting services traditionally supplied by unpaid female labour and other key markets for women could lead to increased competition while also reducing barriers that prevent women from participating in markets. OECD research identified key sectors for women's participation in markets, including childcare, elder care, infrastructure, and financial markets.

Ex-post evaluation

Ex-post evaluation is an important tool for understanding the effects of earlier decisions and whether they aligned with expected outcomes. Ex-post evaluation allows authorities to understand how factors like prices, quality, variety, innovation, and entry have changed over time. Ex-post evaluation can help improve decision making, assess the effectiveness of tools, verify assumptions, and improve design and implementation of remedies.

Lessons learned from the evaluation process can also be used to provide insights on how gender was incorporated in the past. Ex-post evaluation may reveal approaches and methods of analysis that are useful for gendered analysis and could be used in future matters. This kind of evaluation is not just for cases. It can also be used to analyse complaints.

If there is insufficient information available on past cases, complaints, and resource requests, it would be worthwhile to find ways to integrate information gathering and tracking into existing processes. This could increase the information available for future ex-post evaluation. One option is to include a section on gender considerations in templates (e.g. documents and staff papers) and to add gender and other identity factors into forms so the data is automatically tracked. Another option is to encourage management to ask about gender considerations as part of the decision-making processes (e.g. when deciding to investigate a matter or to pursue a market study).

Co-operation

Further research, policy discussions and application of this Toolkit are needed to strengthen the understanding of gender-inclusive competition policy. Continued co-operation among competition authorities and with international organisations can enhance knowledge and the development of best practices, much as it has been done in other areas of competition, such as merger control.

Competition authorities and their governments can seek opportunities to push for the inclusion of gender-related commitments in relevant recommendations, memoranda of understanding and agreements related to competition, as well as trade agreements. This can provide a framework for ongoing information exchanges on best practices for gender considerations.

Annex A. Checklist for a gender inclusive competition law and policy

1. Gather data

Competition authorities require disaggregated data to understand when and how diverse groups of people are harmed disproportionately. Gendered data is a good starting point. However, having a broader set of data is even better, as additional demographic data can be used to control for other characteristics.

- Ask for disaggregated data related to consumer facing markets whenever possible, including transaction level data. If you are not sure where to start, ask the company for a list of data they collect on consumers or competitors.
  - Considering privacy concerns, it is good to get de-identified data where only characteristics are listed, rather than names.
  - For public records where names are available (e.g. online reviews), authorities can use predictive naming tools to infer gender when it is otherwise unavailable.
- Request information about consumer profiling or if and how the company distinguishes between types of consumers.
- To gather data, include gender in published decisions whenever possible, including characteristics and relationship of cartel participants.
- Consult with other law enforcement agencies to see if they gather and use gender-based data. The data itself or methodologies to gather data may be useful.

2. Use surveys to better understand consumer behaviour

Surveys can be used to better understand consumer behaviour, including factors such as: what product attributes are most valued; if there are differences in frequency of buying and differences in volume bought; price sensitivity and awareness; and overall switching levels. Collecting a range of data indeed enables an authority to focus on certain characteristics and control for others. It is important to collect information on additional identity factors, as this can be used to control for various characteristics and confirm if an effect in a market is due to gender, or some other identity factor. Use and design surveys to gather disaggregated data for a range of identity factors, including gender.

- Use and design surveys to gather disaggregated data for a range of identity factors, including gender.
- Tailor surveys to the needs of the review or investigation to get the right data.
- There may be differences between revealed versus stated preferences. This can influence responses. It is important to include questions that reveal both by including questions about past practice and hypothetical situations.

3. Apply a gender lens to market definition and competitive effects analysis

Thinking about market definition and competitive effects analysis along gendered lines helps competition authorities understand who is affected by anticompetitive conduct and to what extent. It is then possible to evaluate whether one group of consumers is better off than another, and if that needs to be corrected or prevented. Gender can influence consumer preferences, for example whether a consumer sees a product as complementary or substitutable; price-sensitivity; and switching behaviour.

- Look at both supply-side factors and demand-side factors when applying a gender lens.
- Supply-side factors include product attributes, product marketing and product sales channels to see if firms are targeting a specific gender.
- Demand-side factors to consider, such as the identities of consumers, and if consumers exhibit different behaviour.
- Determine if a firm can differentiate by gender.
    - If yes, consider if the firm can differentiate by product or price. If yes, there are likely separate relevant markets or separate relevant effects and therefore, authorities should include gender as one of the variables to consider when assessing competitive effects.
    - If no, consider if the firm can profitability raise prices for all consumers. This will depend on the size of the groups (i.e. number of male vs female consumers), and their respective price sensitivities. If the more price sensitive group is large enough, it can protect the others from adverse competitive effects. Assess factors like substitutability by subgroups of consumers, and then compare that to consumers in aggregate.
- Analyse disaggregated data to see if gender is the driving factor for different preferences and price elasticities of demand that lead to different switching behaviour.
    - For consumer facing markets and where data is available, consider gender in the first instance when looking at consumer preferences, price sensitivity, switching behaviour. This will determine if a deeper gender-based analysis is warranted. Where that is not possible, prioritise gendered analysis in markets known to have gendered effects such as toys, clothing, personal care products, health care products, dry cleaning, hair cutting services, insurance, financial products.
- When looking at different metrics and analysis of competitive effects, separate out different genders and then compare with consumers in aggregate to see if there are gendered effects.

4. Tailor remedies

More effective consumer remedies are a result of a better understanding of who is harmed. Competition authorities could consider differences in behaviour, to determine the level of harm for specific groups and tailor remedies to correct or offset that harm. Competition authorities can also consider outcomes that target and improve the consumer welfare of the most negatively affected groups.

- Review the results of gendered-analysis and consider the need for tailored remedies if there is evidence of different levels of harm to subgroups of consumers.
- Consult broadly with diverse stakeholders to market-test remedies, including women's groups.

5. Consider gender diversity in cartel investigations

Cartels are often formed through the social interactions of people, who gather and exchange information seeking to replace competition with co-operation. When investigating and interviewing potential cartelists, competition authorities should seek to understand the broader range of interactions and history between suspected individuals and the gender dimension of those interactions.

- Review the homogeneity of groups suspected of cartel behaviour and factor gender into forensic cartel analysis to aid in detecting cartelists.
- Look at formal and informal networks, and prior relationships to understand opportunities to collude.
- Increase the use of behavioural economics in cartel detection and investigations to better understand the balance between incentives to collude and deterrence.

6. Include gender considerations in compliance and advocacy

Industries that incorporate significant socialisation in the margins of business meetings, where participants are more homogenous and have repeated participation over time, will be at increased risk of cartel behaviour. Firms that opt to change representatives and pay attention to gender balances may be able to reduce the risk of cartel behaviour.

- Discuss within cartel teams both informal and formal examples of social interactions and networks, the risks of homogenous groups and how they can facilitate cartel formation and present a risk to compliance.
- Target compliance outreach to industries that have less diversity and are at greater risk of cartel conduct explaining the compliance risks when management is homogenous with regular social interactions.
- Promote corporate diversity efforts across all industries as part of compliance outreach.
- Target networks of businesswomen to explain leniency and immunity programmes.

7. Consider diversity and inclusion at the institutional level of competition authorities

Competition authorities could benefit from a diverse workforce for many of the same reasons boards do. Those making important decisions benefit from a diversity of perspectives, and this leads to better governance.

- Conduct a self-assessment to understand organisational gaps in representation. Generally, representation should be compared against the general population.
- Use recruitment, training, mentoring and development opportunities to fill gaps in representation.
- Track diversity data over time (either internally or by reporting to international organisations through annual reports) and assess against other institutional changes (e.g. shifts in priorities).
- Make data on representation and commitment to diversity and inclusion available to the public.

8. Target stakeholder engagement to ensure inclusivity

Creating a two-way flow of information with relevant groups of stakeholders **helps authorities to understand the impact of their work and decisions. This dialogue could lead to better or more complaints or tips for enforcement or compliance activities to address conduct affecting women.**

- Review who has been consulted. If a gender gap exists, do targeted consultations to address any gaps (e.g. women's business groups).
- Target and build relationships with women's business groups to help address barriers in markets that matter to them.
- Target and build relationships with women from diverse groups and markets.
- Target women in relevant markets through surveys or focus groups.
- Provide multiple timing options for public events, with in person and virtual attendance options.
- Provide online engagement options, such as a dedicated feedback website or hotline.
- Provide resources in multiple languages available to women who may be in a minority group.

9. Consider gender in prioritisation decisions

Competition authorities have limited resources and need to prioritise some matters over others. Competition authorities can incorporate in their priorities **enforcement and compliance work that address barriers that prevent women from gaining market access.**

- Discuss gender internally with for authority staff, ensuring management engagement, to understand the issues around gender inclusive competition.
- Enforcement priorities should also consider the gender structure of firms and target industries with lower levels of diversity in management positions.
- Consider gender as part of the prioritisation process for enforcement, compliance, and advocacy efforts.
    - Consider gender when prioritising market studies by targeting sectors that are traditionally important sectors for women's participation in markets, including childcare, elder care, infrastructure; or that historically have presented anticompetitive barriers to women, for example, financial markets.
    - Prioritise addressing barriers that prevent women from gaining market access or participating in markets.
    - Monitor and increase vigilance for industries that lack female representation.

10. Apply a gender lens to ex-post evaluation

Ex-post evaluation is an important tool for understanding the impact of earlier work, including if an intervention achieved the intended objective, and if not, why it failed. Ex-post evaluation may reveal approaches and methods of analysis that are useful for gendered analysis and could be used in future matters.

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Notes

[1] See https://oecdonthelevel.com/2018/03/02/whats-gender-got-to-do-with-competition-policy/.

[2] See for example, https://www.oecd.org/daf/competition/roundtables.htm.

[3] See https://www.oecd.org/competition/globalforum/gender-and-competition.htm.

[4] See https://www.oecd.org/competition/gender-inclusive-competition-policy.htm.

[5] Science, technology, engineering, and mathematics.

[6] See https://www.oecd.org/daf/competition/consumer-facing-remedies.htm.

[7] For a definition of "gendered analysis" see: https://eige.europa.eu/gender-mainstreaming/methods-tools/gender-analysis.

[8] OECD (2018, p. 33[15]) explain that "by promoting competition in certain markets, competition authorities may reduce market distortions in a particular market (first dividend) and contribute to reduce gender inequality (second dividend)."

[9] See, for example, Malmasi, Shervin and Mark Dras (2014, pp. 145-149[23]).

[10] SSNIP tests are used to determine the smallest market in which a hypothetical monopolist could impose a small but significant non-transitory increase in price (SSNIP).

[11] Abate and Brunelle (2021, p. 9[20]) explain that "[c]ommon identity bias refers to the fact that people belonging the one specific group usually prefer to work and interact with other people belonging to the same group".

[12] Abate and Brunelle (2021, p. 11[20]) explain that "[a]t its core, a "boys' club" is an organisation recruiting and selecting men who then create a circle of solidarity both horizontally, among peers, and vertically, through mentoring relationships between junior and more senior members. An essential element of this definition is the fact that "boys' clubs" are based on relationships that are in no way confined to the boundaries of the employing company. Men belonging to one of such networks meet each other in a variety of contexts: university, company workplace, business relationships, sport clubs, charities etc. Consequently, they create links and build personal loyalties they may prove stronger than the obligations due to one's employer."

[13] See https://www.oecd.org/daf/competition/sectors/41765075.pdf.

[14] See for example https://link.springer.com/article/10.1007/s12147-020-09257-0.

[15] The OECD Competition Assessment Toolkit provides guidance on how to remove barriers to competition in markets. It provides methodology for identifying unnecessary restraints on market activities and on how to develop alternative, less restrictive measures that still achieve government policy objectives. See https://oe.cd/cat.

Gender Inclusive Competition Toolkit

What has competition got to do with gender? Competition authorities play a crucial role in shaping fair and thriving markets. However, the connection between competition and gender is often overlooked. This Toolkit equips competition authorities with the knowledge and tools necessary to incorporate gender considerations into their work. The Toolkit offers an evidence-based approach, going beyond theory to provide concrete recommendations that can enhance the accuracy of analysis, facilitate cartel investigations and optimise advocacy efforts. Drawing from gender research in related policy areas such as corporate governance, anti-corruption, and behavioural economics, this Toolkit provides a comprehensive framework for integrating gender considerations. By incorporating this Toolkit into their day-to-day operations, competition authorities can contribute even more to the advancement of fair and efficient markets that benefit individuals of all genders.



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