



FEM-INVISIBLE: THE GENDER BLIND SPOT IN COMPETITION LAW. A WOMEN'S DAY REFLECTION

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Abstract: This article explores the systemic "gender blind spot" within traditional competition law, arguing that while women are central drivers of contemporary economies as consumers and workers, they lack equivalent structural power. This disparity leaves them disproportionately vulnerable to exploitation and the adverse effects of market concentration. The author examines how the "neutral" and "rational" consumer models historically used in antitrust analysis overlook gendered harms, such as price discrimination (the "pink tax"), sexist advertising, and the exclusionary design of essential services.

In the labor market, the paper highlights how monopsony power exacerbates wage gaps and limits mobility for female workers. Furthermore, it analyzes how the digital economy amplifies these risks through opaque algorithmic biases, personalized pricing, and platform-mediated behavioral nudges. The article concludes by advocating for a socially responsive competition policy that integrates a gender lens into market definition and power assessments. By acknowledging structural inequalities and utilizing sex-disaggregated data, regulators can more effectively mitigate the unequal burdens borne by women and promote a truly equitable digital economy.

I. INTRODUCTION

Women play a central role in contemporary markets and economies, as consumers, workers, and entrepreneurs, influencing consumption patterns and driving economic activity. Yet while women wield significant purchasing power and play a crucial role in workplaces, this rarely translates into equivalent economic or structural power. As a result, they remain disproportionately exposed to exploitation and to the consequences of concentrated market power. Across markets and workplaces, women often bear the effects of concentrated economic power more acutely, determining both the opportunities available to them and the risks and vulnerabilities they face.

While women make or influence the majority of purchasing decisions globally, this significant role in consumption does not translate into equal economic participation or treatment in the marketplace.¹ Markets remain unequal spaces across genders in terms of economic opportunities, and access to resources. Women consumers frequently face various forms of discrimination, harm, and exploitation. These range from gender-based price discrimination, where women pay more than men for comparable products, to sexist advertising practices and forms of “fem-washing,” where companies market products as empowering or gender-sensitive without substantive changes.² Products and services may also be inaccessible or poorly designed for women, particularly in areas such as banking, credit, and financial services. Even when access exists, design failures can produce harmful outcomes, including safety risks or increased exposure to toxic substances.³

As consumers, women are disproportionately exposed to monopolistic practices, partly because they are overrepresented in lower-income households that absorb the costs of monopoly rents more acutely and often serve as primary household purchasers. Research shows that market concentration can exacerbate existing economic, social, and gender inequalities,⁴ affecting women who face limited economic opportunities, and shoulder a disproportionate share of unpaid care work.⁵ As a result, female-headed households face a significantly higher risk of poverty. These effects are especially visible in essential sectors such as housing, healthcare, and food, where higher prices and the disappearance of lower-cost alternatives place heavier burdens on low-income households, further deepening gendered economic inequalities.⁶

Moreover, women are not only consumers in markets but also workers. In the labour market, they are systematically underpaid compared to male counterparts, a vulnerability further illuminated by monopsony power, which shows how women are particularly susceptible to employers’ market power, often accepting lower wages or prioritizing nonwage benefits over higher pay.⁷ This situation reflects both a lack of competition in labour markets and the unequal distribution of its effects among participants.

In these contexts, monopoly power, through higher prices and restricted supply, and monopsony power, through suppressed wages and limited employment opportunities, often operate as “silent spreaders of

1 Amy Nelson, Women Drive Majority of Consumer Purchasing and It’s Time to Meet Their Needs, Inc. Magazine, (July 17, 2019), <https://www.inc.com/amy-nelson/women-drive-majority-of-consumer-purchasing-its-time-to-meet-their-needs.html>.

2 Hamblett, H., & Parmee, J. (2024, March 8). Bias, discrimination and stereotyping: While the digital marketplace brings new risks for women consumers, the consumer movement is rising to the challenge. Consumers International.

3 As Caroline Criado Perez demonstrates in *Invisible Women*, the systematic neglect of gender differences in design and data often leads to products and services that fail to meet women’s needs.

4 Oxfam International, *Inequality*, January 2024, https://oxfam.dk/wp-content/uploads/2025/06/2024-davos-report_ulighedsrapport.pdf.

5 Nell Abernathy, ‘The Effects of Market Power on Women and People of Color’ (Presentation to the Congressional Antitrust Caucus, Panel Remarks, 16 February 2018, published 7 March 2018). International Labour Organization. 2025.

6 Council of Economic Advisers, “Chapter 5: Barriers to Economic Equality: The Role of Monopsony, Monopoly, and Discrimination,” in *Economic Report of the President*, 2022 (Washington, DC: Government Publishing Office, 2022), 165–204.

7 Germán Oscar Johannsen, Jennifer Rodriguez, Monopsony Power, Competition Law, and Women’s Informal Labour Markets in Latin America, *Journal of European Competition Law & Practice*, Volume 16, Issue 2, March 2025, pp. 132–143.

poverty,” disproportionately affecting those already economically vulnerable.⁸ At the same time, existing redress mechanisms do not always adequately capture these experiences. Women may be less likely to file complaints, and the lack of gender-disaggregated complaint data means that the scale and nature of women’s experiences as consumers often remain underreported and insufficiently addressed.⁹

All these issues and harms are further amplified in the digital economy. Gendered harms often become less visible than in traditional markets, taking the form of algorithmic bias, opaque platform practices, and other mechanisms that are more difficult to detect, regulate, or address. In many cases, the digital economy has slowed or even reversed progress in gender equality. The persistent “digital gender divide” limits women’s access to technology, digital skills, and financial tools, constraining their participation in increasingly digitized markets.¹⁰

In the digital economy, these gendered harms are also harder to address: algorithmic discrimination, biased targeting, and unfair platform practices frequently operate beyond the reach of traditional regulatory or redress mechanisms, making their combined effects on women both pervasive and less visible.¹¹ While traditional products can be assessed for safety or price differences, digital products often operate under very different logics: the “price” of using a platform is frequently the personal data collected from users. This creates new avenues for discrimination and exploitation that are difficult to detect, including biased algorithmic targeting, differential access to services, or the strengthening of harmful content. The lack of transparency and limited cooperation from digital platforms compounds this problem, making it challenging to identify and address the ways in which women experience disadvantage or harm in these markets.¹²

Together, these developments illustrate how women bear a disproportionate share of the consequences of market concentration and monopolization, both online and offline. Gender equality is therefore not only a matter of equity but also of economic importance. Social structures, including gender, are deeply embedded in economic systems and intersect with other hierarchies such as class, race, and age, shaping access to resources, opportunities, and market participation.¹³ Because modern economies are characterized by gendered divisions of labour, inequalities in income and wealth, and unequal employment conditions, markets are not gender-neutral.¹⁴ Research shows that these structural inequalities can increase the harms of concentrated economic power, which often fall more heavily on women.¹⁵ Competition law therefore plays an important role in addressing market structures and firm conduct that may reinforce or exacerbate such disparities.

Yet the primary legal framework designed to govern these markets, competition law, has largely treated the gendered consequences of market forces as peripheral to its core concerns of openness, fairness, and competition. This is surprising as increasing evidence shows that women disproportionately bear the consequences of concentrated market power through higher prices, limited choice, reduced quality, and

8 Schmitz Jr., James A., and David Fettig (2020). *Monopolies: Silent Spreaders of Poverty and Economic Inequality*. ProMarket, 14 August 2020.

9 Nissen A. Gender-Transformative Remedies for Women Human Rights Defenders. *Business and Human Rights Journal*. 2023;8(3):369-402.

10 Felsberger, S., Ullmann, S., Collett, C., Neff, G., & Lacy, T. (2025). *How AI and digital technologies enable gendered harms: Written evidence to the UN Working Group on discrimination against women and girls for the 2026 thematic report on gender equality, the digital space and the age of artificial intelligence*. Minderoo Centre for Technology and Democracy, University of Cambridge. <https://doi.org/10.17863/CAM.123589>

11 eTrade for All, *Bias, discrimination and stereotyping: While the digital marketplace brings new risks for women*, eTrade for All, <https://etrade-forall.org/news/bias-discrimination-and-stereotyping-while-digital-marketplace-brings-new-risks-women>.

12 Ibid.

13 Diane Elson and Anuradha Seth (Eds.) *Gender Equality and Inclusive Growth: Economic Policies to Achieve Sustainable Development* (2019) New York: UN Women.

14 Rebecca Pearse and Raewyn Connell ‘Gender Norms and the Economy: Insights from Social Research’ (2016) 22 *Feminist Economics*, 1.

15 Progress on the Sustainable Development Goals: The Gender Snapshot 2025. Azcona, G., Bhatt, A., Fortuny Fillo, G., Min, Y., Page, H., & You, S. (2025). *Progress on the Sustainable Development Goals: The gender snapshot 2025*. UN Women.

constrained labor market opportunities.¹⁶ Women's central role in consumer and labour markets makes them particularly exposed to the exercise of market power and exploitative commercial practices.¹⁷ This is particularly evident in consumer goods, care markets, essential services and digital platforms. From “pink taxes” on everyday products to concentrated labour, care, and digital markets, market power affects both their wallets and life choices.

On Women's Day, we must ask how can competition law scholarship and enforcement move beyond a traditional neutral, or even gender blind, stance to actively recognize how market structures and concentrated economic power disproportionately affect women's economic and social roles, while also accounting for the broader democratic and societal implications of economic governance

In this short contribution, I outline a few important avenues for advancing such change within the global competition law community. I focus in particular on market power and the digital economy as two of the most urgent contexts in which these challenges arise today.

II. THE HOMOGENIZING FORCE OF COMPETITION LAW AND HOW TO MOVE FROM CONSUMER WELFARE TO “WOMEN WELFARE”

Modern democratic societies are built on market economies, not only as systems of economic exchange but also as arenas through which individuals exercise choice and participate in economic and social life. Well-functioning markets are therefore central to democracy: they allocate resources, shape opportunities, and influence access to goods, services, and economic participation. Competition law plays a key role in this framework by preventing the concentration and abuse of economic power through restrictive agreements, abuses of dominance, anticompetitive mergers, and, in the EU, distortive state aid. By regulating market structures and firm behaviour, competition law ultimately determines who can access markets, under what conditions goods and services are provided, and how economic opportunities are distributed. For this reason, competition law has direct implications for women's welfare. When competition is effective in markets, citizens benefit from lower prices, better products and services, and innovation. As such, competition law aims to prevent the unlawful acquisition of market power and, where market power already exists, to control its exercise.¹⁸ When markets are concentrated or distorted, women, who often face structural inequalities in income, employment, and access to resources, may experience the harms of reduced competition more acutely.

There is broad consensus that competitive markets are essential to democratic governance, as unchecked economic power can translate into political power. Competition rules and authorities therefore play a crucial role in shaping markets by defining the conditions under which competition takes place and by institutionalising limits on both public and private economic power.¹⁹ By constraining concentrated private power, they help safeguard democratic values and protect fundamental economic rights.²⁰ This has important

¹⁶ Nell Abernathy, 'The Effects of Market Power on Women and People of Color' (Presentation to the Congressional Antitrust Caucus, Panel Remarks, 16 February 2018, published 7 March 2018). International Labour Organization. 2025. *Women and the Economy: 30 Years After the Beijing Declaration*. Geneva: ILO. Jérémy Tanguy & Sylvie Blasco & Johanne Bacheron & Eva Moreno Galbis, 2024. "Labor market concentration and gender gaps," French Stata Users' Group Meetings 2024 31, Stata Users Group. European Parliament, *Gender Aspects of the Rising Cost of Living and the Impact of the Energy Crisis* (Study requested by the FEMM Committee, Policy Department for Citizens' Rights and Constitutional Affairs, January 2024) PE 754.488.

¹⁷ Amy Nelson, Women Drive Majority of Consumer Purchasing and It's Time to Meet Their Needs, Inc. Magazine, (July 17, 2019), <https://www.inc.com/amy-nelson/women-drive-majority-of-consumer-purchasing-its-time-to-meet-their-needs.html>.

¹⁸ N Dunne Competition law and regulation, making and managing markets (CUP, 2015) 7.

¹⁹ E Deutscher 'The competition-democracy nexus resurrected? Four precursors of a competition-democracy nexus 4.0' (2025) J Antitrust Enforcement 1, p 1.

²⁰ KJ Cseres, European competition law: an overlooked element of the EU's rule of law toolbox, *Swedish Institute for European Policy*, November 2024:23epa.

implications for gender equality: structural disparities in income, employment, and access to resources often leave women more exposed to the harms of concentrated market power. By constraining such power, competition law supports not only efficiency and growth, but also broader goals of pluralism, equality, and women's economic welfare.²¹

Over the past two decades, many competition law systems worldwide have adopted consumer-welfare as the main goal and standard for enforcement.²² Understood in terms of economic efficiency, the consumer-welfare standard focuses on market outcomes, typically measured through price effects and their impact on purchasers of goods and services and suppliers.²³ This standard embodies a particular normative vision of markets and their participants. In transnational settings of competition law, it has functioned as a homogenizing force, reinforcing economic liberalization, financialization, and marketization, and steering diverse political economies toward a single, market-centric model to ensure consistent enforcement across jurisdictions.²⁴ Across countries and continents, competition law reflects a broad consensus around its theoretical foundations.²⁵ The dominant "orthodox" or neoliberal framework equates competition with efficiency, innovation, and consumer welfare, relying heavily on neoclassical economic principles that emphasize price theory, consumer sovereignty, and markets' disciplining role over state intervention.²⁶

The appeal of this model lies in its technical language and claim to political neutrality. While competition law could, in principle, support diverse market models, over the past three decades it has almost exclusively followed neoclassical ideals of efficiency and consumer welfare, limiting attention to structural or distributive concerns.²⁷ Through global convergence, this paradigm has spread worldwide, promoting an ideological vision of markets that prioritizes efficiency over state intervention, development, and social cohesion.²⁸

This normative vision, among others, puts the consumer as the sole stakeholder in the center of competition law enforcement, and treats the welfare of all groups equally. By design, it gives priority to the welfare of consumers within the relevant market under investigation; typically those directly affected by the anti-competitive conduct in question. By centering on consumer welfare, this framework marginalizes economically vulnerable members of society and obscures the differentiated effects of market practices on diverse consumer groups, particularly those disadvantaged by social or economic circumstances.²⁹

The consumer is a legally constructed identity, primarily conceived as an economic rather than a social actor. Valued above all as a chooser of goods and services and as a discipliner of the market toward efficiency

21 KJ Cseres 'The Role of Independent Competition Authorities as Quasi-Courts in Defending Rule of Law Values in Europe' in: P Bárd, J Krommendijk (eds.) *Sustaining the Rule of Law*, Cheltenham, (2025) UK: Edward Elgar Publishing, pp 307-327. KJ Cseres, *Feminist Competition Law* (January 3, 2024). Amsterdam Centre for European Law and Governance Research Paper No. 2023-04, Amsterdam Law School Research Paper No. 2023-43. Available at SSRN: <https://ssrn.com/abstract=4682906> or <http://dx.doi.org/10.2139/ssrn.4682906>

22 RA Posner, *Antitrust law* (Chicago: University of Chicago Press, 2nd ed., 2001); AD Mlamad and N Petit 'The Misguided Assault on the Consumer Welfare Standard in the Age of Platform Markets' (2019) 54 *Rev Ind Organ* 741; OECD, p 11.

23 *Ibid*, pp 12-13.

24 Foster, C., & Thelen, K. (2024). Coordination Rights, Competition Law and Varieties of Capitalism. *Comparative Political Studies*, 58(6), 1199-1237.

25 Few other areas of law rest on such widely accepted and largely uncontested assumptions about their regulatory purpose and design. Dowdle MW. The regulatory geography of market competition in Asia (and beyond): a preliminary mapping. In: Dowdle MW, Gillespie J, Maher I, eds. *Asian Capitalism and the Regulation of Competition: Towards a Regulatory Geography of Global Competition Law*. Cambridge University Press; 2013:11-35.

26 Dina I Waked, *Competition Law and Policy in the Global South: Power, Coercion and Distribution*, *Current Legal Problems*, Volume 76, Issue 1, 2023, 375-402. Jessop B. The complexities of competition and competitiveness: challenges for competition law and economic governance in variegated capitalism. In: Dowdle MW, Gillespie J, Maher I, eds. *Asian Capitalism and the Regulation of Competition: Towards a Regulatory Geography of Global Competition Law*. Cambridge University Press; 2013:96-120.

27 Waked (2023) Its narrow focus on efficiency has sidelined pressing questions of power, especially in the digital era, where economic dominance reinforces political power and socio-economic inequalities. Its theoretical neutrality and objectivity, grounded in neoclassical economics, hide structural inequalities, and its apolitical emphasis on consumer welfare marginalizes democratic accountability and overlooks the interests of underrepresented and vulnerable groups.

28 Waked (2023). Johannsen and Rodriguez (2025)

29 O Brook, KJ Cseres (2026) Beyond consumer welfare: responsive priority setting in the public interests in competition law enforcement. *Social & Legal Studies*. forthcoming.

and competition, this figure is treated as uniform in many areas of economic law, without regard to social position, economic status, or personal identity.³⁰

Within the analytical framework of competition law and policy, consumers are generally understood through a narrow and monolithic lens, characterized by rational preferences, product substitution, and willingness to pay.³¹ Portrayed as a coherent, homogeneous, and predictable mass, they serve the narrow goals of consumer welfare; economic efficiency and aggregate wealth.³² Centering consumer welfare thus reproduces particular images of the consumer, reflecting underlying normative, epistemic, and economic assumptions. The consumer is constructed as a “rational economic man” an independent, unembedded agent, without unpaid care responsibilities or other social constraints.³³

As a legally constructed identity, the consumer helps legitimize certain market structures, policy choices, and market structures that may reproduce or exacerbate gendered inequalities in areas such as pricing, labour markets, and access to services. Competition law thus not only legitimizes particular forms of coordination but also influences economic opportunities and mediates how consumers experience the social and political effects of concentrated economic power.

Women’s experiences in markets reveal the limitations of the standard conception of the “consumer” in competition law, as seen in cases where concentrated economic power disproportionately affects them in both consumption and labour markets. By ignoring these differentiated experiences, competition law risks neglecting women’s welfare, leaving gendered harms invisible and unaddressed. Transforming the goal of competition law from a narrow “consumer welfare” standard, typically focused on price and output, towards “women welfare” requires integrating a gender lens into enforcement, policy, and market analysis. This approach recognizes that the market is a “gendered space” where anti-competitive behaviour can disproportionately affect women.³⁴

While these outcomes reflect broader policy choices that must ultimately be made by political actors, competition authorities can still play a role.³⁵ By incorporating gender-based considerations, competition law can recognize the ways gender divisions operate and intersect across societies and markets. Moving beyond mainstream economic assumptions and standard behavioural models allows authorities to capture the complexity of economic behaviour and markets’ embeddedness in social relations.³⁶ Accounting for gender differences in business conduct and consumer behaviour, and analysing data in ways that reflect these differences rather than relying solely on aggregate or male-centered data, can lead to more accurate, inclusive, and socially responsive competition law assessments.³⁷ Research has shown that competition law and enforcement practices have the potential to move beyond a historically gender-blind approach

30 KJ Cseres (2024)

31 C Decker, ‘Concepts of the consumer in competition, regulatory and consumer protection policies’ (2017) *Journal of Competition Law and Economics*, 13(1), 151–184.

32 N Olsen, From choice to welfare: the concept of the consumer in the Chicago School of Economics, *Modern Intellectual History*, 2017 14(2) 511.

33 Condon and Philipps (2015) 125. The consumer is a ‘rational economic man’, a utility-maximizer who, in connection with economic and financial matters, has a narrow, consistent, and predictable range of interests. As a key agent of the market economy, the consumer drives globalization, trade policies of deregulation and liberalization.

34 B Balasingham, I Leone, L Senden, Building a more inclusive and gender-sensitive EU competition law, *Journal of European Competition Law & Practice*, Volume 16, Issue 2, March 2025, 78–87.

35 M Waring, *If Women Counted: a new feminist economics*, (1988)

36 Ferber, Nelson, 1993.

37 Power, M. (2004) Social Provisioning as a Starting Point for Feminist Economics, *Feminist Economics*, 10:3, 3-19. Pearse, R. Connell, R. (2016) Gender Norms and the Economy: Insights from Social Research, *Feminist Economics*, 22:1, 30-53 Oxera, (2021) Gender differences in surveys for market definition and merger analysis, <https://www.oxera.com/wp-content/uploads/2021/10/gender-inclusive-competition-proj-1-gender-differences-in-surveys-for-market-definition-and-merger-analysis.pdf>

and actively address the inequalities embedded in market processes.³⁸ Unpacking and rethinking these assumptions can open space for more socially embedded and responsive competition law enforcement capable of addressing contemporary challenges, including gender inequality.³⁹

These changes do not require overturning existing laws, but rather a redefinition of how markets are defined, how enforcement priorities are set, how “consumer harm” is interpreted and assessed, and which remedies are designed.

In the following, I briefly outline how a feminist approach could inform competition law and enforcement and explore its application in competition enforcement.

III. UNDERSTANDING MARKETS THROUGH FEMINIST APPROACHES: IMPLICATIONS FOR COMPETITION LAW

Competition law can draw on insights from feminist social sciences, such as feminist legal theory,⁴⁰ feminist economics⁴¹ and feminist theories of technology⁴² to enrich the understanding of markets, competition, and economic behaviour. Feminist research is distinctive in centering gender and seeking to overcome the invisibility and distortion of women’s experiences. It raises new questions, gathers new kinds of data, and challenges disciplinary assumptions by investigating the complexity of social, economic, and political organization. By focusing on women’s experiences, feminist scholars adopt a contextualized lens that highlights the embeddedness of markets within broader social, economic, and political structures, emphasizing intersectionality and human diversity.⁴³ Feminist economists and political scientists show how concentrated economic power can reflect structural inequalities and gendered social dynamics. Economics has long held a central role in competition law, providing the analytical tools and conceptual frameworks used to assess market behaviour, define relevant markets, and evaluate the effects of mergers, monopolization, or anti-competitive practices. The discipline’s focus on efficiency, consumer welfare, and quantitative measurement has made it indispensable for enforcement agencies and courts seeking consistent, evidence-based decisions. However, the dominance of neoclassical economics has also introduced important limitations.⁴⁴ By assuming rational, self-interested actors operating in frictionless markets, mainstream theory often abstracts from social structures, power relations, and systemic inequalities. Institutional and epistemic constraints further narrow the perspective, privileging aggregate data and standard behavioural assumptions while overlooking the differentiated experiences of marginalized groups, including women.⁴⁵ Heterodox approaches, such as feminist economics, challenge these assumptions by emphasizing social embeddedness, intersectional

38 L Hornkohl, J Holzwarth, S Marenz, Editorial: Competition Law and Gender Perspectives, *Journal of European Competition Law & Practice*, Volume 16, Issue 2, March 2025, 65–66, and see other article in the Special issue: <https://academic.oup.com/jeclap/issue/16/2?browse=y=volume>

39 O Brook, KJ Cseres (2026) Beyond consumer welfare: responsive priority setting in the public interests in competition law enforcement. *Social & Legal Studies*. forthcoming.

40 Levit, Nancy, Verchick, Robert R.M. and Minow, Martha. *Feminist Legal Theory* (Second Edition): *A Primer*, New York, USA: New York University Press, 2016. K Bartlett.

41 Feminist economics as an organized alternative school emerged out of a conference at the American Economic Association in 1990, resulting in the formation of the International Association for Feminist Economics and the founding of the journal *Feminist Economics*. For an overview, Nelson, J. A. (1995). *Feminism and Economics*. *The Journal of Economic Perspectives*, 9(2), 131–148. Günseli Berik, Ebru Kongar. *The Routledge Handbook of Feminist Economics*. Routledge; 2021.

42 J Wajcman, *Feminist theories of technology*, *Cambridge Journal of Economics* 2010, 34, 143–152.

43 Robeyns, I. (2021). The capability approach. In *The Routledge handbook of feminist economics* (72–80). Routledge.74.77.

44 Marchionatti, R. (2025). Between the Mid-1970s and the Great Recession: The Rise and Fall of New Neoclassical Economics. Final Remarks. In: *Economic Theory in the Twentieth Century, An Intellectual History—Volume IV*. Palgrave Macmillan, Cham.

45 MA. Ferber and J A. Nelson (eds), *Beyond Economic Man: Feminist Theory and Economics* (University of Chicago Press 1993).

inequalities, unpaid labour, and the ways concentrated market power interacts with societal hierarchies, offering tools to make competition law more socially responsive and inclusive.⁴⁶

Meanwhile, feminist analyses of technology reveal how both access to and the design of technology are shaped by gender, demonstrating that gender is embedded not only in users' experiences but in the technologies themselves.⁴⁷ Feminist analyses of technology highlighted not only women's limited access to technology but also the processes by which technology was developed and used, as well as those by which gender was constituted.⁴⁸ They analysed social factors that shape different technologies, especially the way technology reflects gender divisions and inequalities. This showed that not only men had a monopoly of technology, but gender was embedded in technology itself.⁴⁹ This is particularly true for the digital economy, which not only suffers from a 'gender deficit', but also enable possibilities of information and communication technologies to empower women and transform gender relations.⁵⁰ Incorporating these perspectives into competition law allows for a richer, more socially attuned understanding of markets and their differential impacts on women.

While, feminist theories have been less thoroughly developed in relation to market processes and forms of market governance than in relation to other legal areas such as reproductive rights, family relations, and constitutional equality rights, with labour markets as an exception,⁵¹ they have scrutinized the market as a gendered conceptual construction and showed how marketization involved gendered practices that are embedded in and constitutive of unequal power relations of gender, race, ethnicity, class, sexuality, age, and geopolitical locations.⁵² Feminists challenged mainstream economic accounts of markets, market actors, notably the consumer as a rational economic man, and the homo economicus.⁵³

By criticizing formal market models and showing how the conceptualization of markets in economic theory fail to capture the complexity of economic behavior, feminists highlighted the fact that the economy is built on the "other economy" composed of women's labour.⁵⁴

Feminist economists have recognised that the operation of market power, not only leads to oligopolistic tendencies and the exclusion of new firms, but also to the marginalisation or exclusion of some groups, such as women and ethnic minorities, particularly in labour markets.⁵⁵ They have focused less on the strategic behaviour of firms and more on the role of constraining social norms, laws and regulations, as well as asymmetrical historical patterns of the position of men and women in markets. These are expressions of power, not, or not in the first place, by firms but through social differentiation, leading to gendered institutional constraints in markets, such as segmentation and discrimination.⁵⁶ Feminist economics challenges the assumption of the 'rational economic man', an independent, unembedded agent without care responsibilities, and instead views economic agency as embedded in social structures, power relations,

46 Bernasek, A., & Chester, L. (Eds.). (2025). *The Elgar Companion to Women and Heterodox Economics*. Cheltenham, UK: Edward Elgar Publishing.

47 Wajcman (2010)

48 Wajcman (2010)

49 Wajcman (2010)

50 Plant (1998)

51 Feminism confronts homo economicus Gender, Law, and society (Martha Fineman ed., 2005 Condon, Mary, and Lisa Philipps. "Transnational Market Governance and Economic Citizenship: New Frontiers for Feminist Legal Theory." *Thomas Jefferson Law Review* 28.2 (2005): 105-150.

52 M Condon, and L Philipps. "Transnational Market Governance and Economic Citizenship: New Frontiers for Feminist Legal Theory." *Thomas Jefferson Law Review* 28.2 (2005): 107.

53 Marianne A. Ferber and Julie A. Nelson (eds), *Beyond Economic Man: Feminist Theory and Economics* (University of Chicago Press 1993).

54 N Folbre, *Who Pays for the Kids? Gender and the Structures of Constraint*, Routledge, London, Folbre, Nancy. 1994. *Who Pays for the Kids? Gender and the Structures of Constraint*. New York: Routledge. Himmelweit, Susan (ed.). 2000. *Inside the Household: From Labour to Care*. Basingstoke, UK: Macmillan.

55 Irene van Staveren, Post-Keynesianism meets feminist economics, *Cambridge Journal of Economics*, Volume 34, Issue 6, November 2010, 1123-1144.

56 Van Staveren (2010).

institutions, and diverse lived experiences.⁵⁷ In this sense, gender shapes market processes in terms of access to, and control over resources, and it also shapes people's preferences, choices or switching. For example, choices they make in food or in healthcare markets.⁵⁸

IV. GENDERED MARKET POWER IN DIGITAL MARKETS: DEFINING DIGITAL MARKETS AND RECOGNIZING HARM

Gender and competition policy are closely connected: persistent discrimination in concentrated markets may both stem from and reinforce market power. Just as dominant firms can exclude potential competitors, structural biases and gender inequalities limit women's full participation in economic life and the workplace.⁵⁹ Recognizing these parallels highlights that market definition and the assessment of market power cannot be treated as gender-neutral: the same mechanisms that allow firms to entrench dominance may simultaneously reinforce social and economic inequalities along gendered lines. As feminist economist Nancy Folbre observed, "[a] narrow definition of the economy leads to a narrow definition of exploitation."⁶⁰ This insight suggests that if competition law adopts an overly narrow conception of markets and economic activity, it risks overlooking the broader forms of inequality and exclusion that influence how market power is experienced in practice. Accordingly, I argue that incorporating a gender-sensitive perspective can offer a deeper understanding of the role and impact of corporate power, moving beyond the narrow confines of the consumer welfare standard that currently dominates many competition law frameworks.

Market power, the ability of a firm to maintain prices above, or quality below, a competitive level, is a fundamental concept for competition law and policy. It implies that a firm is able to influence outcomes in markets. It forms a decisive element to decide whether a certain conduct is anti- or procompetitive, whether unilateral conduct is abusive, and indicates the difference between beneficial and harmful mergers.⁶¹ A standard approach to measuring market power begins with defining the relevant market, which establishes the boundaries within which market dominance and competitive constraints are assessed. Assessing market power requires a comprehensive evaluation of all relevant constraints on the undertaking(s) in both the product and geographic markets.

4.1 RETHINKING MARKET DEFINITION IN THE DIGITAL ECONOMY

Defining the relevant market is a cornerstone of competition law, as it establishes the boundaries within which market power is assessed. Traditional approaches focus on products, services, geographic scope, and substitutability, often assuming a neutral, homogeneous consumer.⁶²

Market definition is not simply a tool for measuring market power; it serves as a structured framework within which the facts, theories, and evidence of a particular case can be assessed.⁶³ As Eben has argued, defining an

57 -M Sent and I van Staveren (2019) A Feminist Review of Behavioral Economic Research on Gender Differences, *Feminist Economics*, 25:2, 1-35

58 Oxera, 2021

59 Amy T. Brantly and Jennifer M. Oliver, "The Correlation Between Antitrust Enforcement and Gender Equality," *Competition: The Journal of the Antitrust and Consumer Protection Section of the California Lawyers Association* 31(1) (Spring 2021).

60 Nancy Folbre (2020) Manifold exploitations: toward an intersectional political economy, *Review of Social Economy*, 78:4, 451-472, DOI: 10.1080/00346764.2020.1798493

61 OECD, The evolving concept of market power in digital markets, OECD, [https://one.oecd.org/document/DAF/COMP\(2022\)5/en/pdf](https://one.oecd.org/document/DAF/COMP(2022)5/en/pdf)

62 Damstra, L., Salvyuolo, L., & Niels, G. (2021). Gender differences in surveys for market definition and merger analysis. *Competition Law Journal*, 20(4), 178-186

63 M Eben, The Antitrust Market Does Not Exist: Pursuit of Objectivity in a Purposive Process, *Journal of Competition Law & Economics*, Volume 17, Issue 3, September 2021, 586-619.

antitrust market does more than establish the presence of market power: it provides a structured framework for identifying key players, competitive forces, and the factors influencing supply and consumption decisions.⁶⁴ In doing so, it provides decision-makers with a coherent picture of the industry and the context in which business practices take place, allowing for a more informed assessment of potential anti-competitive effects. This broader perspective also creates an opportunity to incorporate gender-sensitive analysis. Just as market definition highlights the structural factors shaping competition, it can similarly illuminate the differentiated ways in which women, as consumers, workers, and participants in economic systems, experience and are affected by concentrated economic power.

A gender-sensitive perspective highlights that market boundaries are not experienced equally: structural inequalities, social norms, and differential access to resources mean that women may face distinct barriers to participation both as consumers and as workers. A gender-sensitive market definition analyses product demand and market power by disaggregating data by gender, recognizing that men and women often have different preferences, shopping behaviours, and constraints. This approach prevents treating markets as gender-neutral, which can hide discriminatory pricing, such as in personal care products or services.⁶⁵

Moreover, traditional market definition approaches, based on homogeneous consumers and stable substitution patterns, are increasingly inadequate in digital markets. Platforms increasingly rely on data, algorithms, and personalization to differentiate products, services, and prices across users, fragmenting the consumer base and creating complex patterns of market interaction. As a result, assessing market boundaries and competitive constraints in digital markets requires a more granular, case-by-case approach that goes beyond the traditional homogeneous-consumer model.⁶⁶ Incorporating gender into market definition thus helps identify and address differentiated harms that would otherwise remain invisible under standard approaches.

4.2. GENDERED DIGITAL HARM

Digital platforms increasingly structure economic interactions, including shopping, job-seeking, networking, and accessing services. With digitalization, market power has become a particular concern. Evidence shows in the form of growing mark-ups that market power is on the rise and potentially becoming more durable, in digital-intensive sectors.⁶⁷ In such a setting, certain market characteristics have been highlighted that contribute to digital firms' market power in new ways. Various demand-side characteristics of digital markets may affect competition, and in particular brand loyalty and consumer inertia.⁶⁸ In digital markets, consumers often exhibit behavioural characteristics that make entry more difficult and market power more durable. Users may be vulnerable to biases such as framing effects, salience bias, focusing on the most prominent options, and default bias, the tendency to accept pre-selected choices. Consumer inertia further reinforces these dynamics, stabilizing the market power of dominant platforms.⁶⁹

64 Eben (2021).

65 Lisa Pinheiro and others, 'Gender considerations in the analysis of market definition and competitive effects: A practical framework and illustrative example' (2021) Gender Inclusive Competition Policy (OECD). Oxera, 'Gender differences in surveys for market definition and merger analysis' (2021), available at <https://www.oxera.com/wp-content/uploads/2021/10/gender-inclusive-competition-proj-1-gender-differences-in-surveys-for-market-definition-and-merger-analysis.pdf>;

66 Digital Regulation Platform, Approach to Market Definition in a Digital Platform Environment (26 August 2020) <https://digitalregulation.org/approach-to-market-definition-in-a-digital-platform-environment/>

67 OECD (2022). It is a fundamental concept for competition law and policy as it delineates conduct that is pro- or anti-competitive, abusive, and draws the difference between beneficial and harmful mergers.

68 Brand loyalty in digital markets can contribute to consumers' hesitancy to switch products and amplify the links between the products within a firm's ecosystems. Loyalty can also limit consumers' response to the exercise of market power. Australian Competition and Consumer Commission has identified with respect to mobile device ecosystems, for example (ACCC, 2021, p. 26)

69 OECD (2022), The Evolving Concept of Market Power in the Digital Economy, OECD Competition Policy Roundtable Background Note, www.oecd.org/daf/competition/the-evolving-concept-of-market-power-in-the-digital-economy-2022.pdf.

Because women interact disproportionately with certain online services, such as e-commerce, social media, and care-, or consumption-related platforms, they may be particularly exposed to these behavioural mechanisms. As a result, the biases and design features that sustain digital market power can have disproportionate effects on women. Algorithmic pricing, discriminatory advertising, or restrictions on access can have gendered effects. For example, women may receive fewer job advertisements for high-paying positions or face higher costs for digital services and subscription platforms.⁷⁰

Viewed through a gender-sensitive lens, digital markets take on additional significance: algorithmic targeting, personalized pricing, and opaque platform practices can disproportionately affect women, particularly those in lower-income households or with constrained access to digital resources, reinforcing pre-existing inequalities in consumption, economic opportunity, and market participation.⁷¹ Gendered digital harm related to market power refers to the ways in which dominant digital platforms and technologies, through their concentrated control, reproduce, exacerbate, and profit from existing gender inequalities. These harms stem from the unchecked power of platforms to set terms, train algorithms, and monetize attention, disproportionately harming women and gender-diverse people.⁷²

Hence, market power in the digital economy, combined with personalized consumer behavior, significantly affects women.⁷³ Digital platforms often exploit gendered shopping patterns, such as reliance on reviews, social validation, and experience-oriented purchasing, to drive impulsive buying and higher expenditures. Algorithms further target women by emphasizing aesthetics, social proof, and influencer endorsements, shaping their purchasing decisions.⁷⁴ Personalized marketing also relies on extensive data collection, exposing women, often the primary household decision-makers, to more intensive tracking, intrusive advertising, and reduced privacy.⁷⁵

These challenges are compounded by economic vulnerability. A persistent gender digital divide limits women's access to technology and online tools, reducing their ability to compare prices, seek alternatives, and fully engage in digital markets. This amplifies the financial burden of higher-priced products and reinforces existing economic inequalities. Addressing these harms requires competition law and policy to recognize the gendered dimensions of digital market power and ensure that markets work fairly for all.⁷⁶

Competition law can play an essential role. By scrutinizing exclusionary practices, self-preferencing, or abuse of dominance, competition authorities can address barriers that reproduce gendered inequality in digital markets. Enforcement can increase contestability, encourage alternative platforms with fairer governance, and limit the power of a few firms to shape market conditions in ways that disproportionately harm women. In this way, competition law becomes a mechanism to address structural social inequalities embedded in digital infrastructures, supporting market regulation with broader goals of equality and inclusion. For example, in the EU the Digital Markets Act and other regulatory frameworks provide tools for addressing such distortions. Yet enforcement rarely considers gendered outcomes explicitly, leaving a blind spot in market analysis. Integrating gender perspectives in digital market oversight could ensure fairer pricing, better access to opportunities, and more equitable labor conditions in platform-mediated work.

70 Eijkman, Q. (2021). *Algorithms increase and decrease the fair chance to get a job*. *Data, Cybersecurity & Privacy (DCSP)*, 08. Magazine DCSP

71 Digital Future Society. 2022. *Algorithmic Gender Discrimination and the Platform Economy*, March 7, 2022. Accessed March 9, 2026. <https://digitalfuturesociety.com/algorithmic-gender-discrimination-and-the-platform-economy/>

72 Ibid.

73 <https://eige.europa.eu/publications-resources/toolkits-guides/gender-equality-index-2020-report/digitalisation-and-equal-rights-role-ai-algorithms>

74 Mehrjoo, A., Cuevas, R. & Cuevas, Á. Online advertisement in a pink-colored market. *EPJ Data Sci.* 13, 36 (2024).

75 Xu, J. (2025). The Aesthetics of Empowerment: How Social Media Markets the "Independent Woman" in the Age of Algorithm. *Communications in Humanities Research*, 75, 40-45.

76 Mboob, Ida S; Osam, Ebo Kobena Atombó; Robinson, Danielle Simone. *For Women, By Women, With Women: Bridging the Gender Digital Divide (English)*. Washington, D.C.: World Bank Group. <http://documents.worldbank.org/curated/en/099610011082285212>

V. CONCLUSIONS

Competition law has long acted as a homogenizing force in global markets, modelling rules, behaviours, and enforcement across jurisdictions. It often assumes a neutral, rational consumer, overlooking how gender influences access, behaviour, and vulnerability. This creates “feminine invisible” blind spots that risk legitimizing (algorithmic) exploitation, gendered pricing, and targeted digital harms, reinforcing structural inequalities.

Recognizing gendered dimensions of market definition and market power is essential for a socially responsive competition policy that not only promotes efficiency but also addresses structural disparities and the differential impacts of digital markets on women. By integrating gender into competition assessment, regulators and enforcers can more effectively tackle harm and exploitative practices in digital markets, such as algorithmic discrimination, gendered pricing, and platform-driven behavioural nudges, as well as the effects on labour markets and care work. Such an approach moves us toward a more equitable digital economy where competition policy acknowledges and mitigates the unequal burdens borne by women.



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