Micro, small, and medium-sized enterprises and e-commerce

Richard Hill[1], December 2017

There is no question that e-commerce and the digital economy pose challenges and offer opportunities for micro, small, and medium-sized enterprises (MSMEs). In the World Trade Organization (WTO), some members are tabling proposals to negotiate binding rules in the WTO which they claim will address those challenges. But the proposals in reality would do little or nothing the help MSMEs: the proposals that have been tabled largely reflect the demands of large transnational corporations and would benefit them, to the detriment of MSMEs.

It is important to note that MSMEs are, in many developing countries, the motor of economic development, and the focus on promoting them has long been prioritized in development circles. But the agenda of the large transnational corporations that dominate e-commerce is entirely different from that of MSMEs: those corporations seek to facilitate their transnational business while at the same time increasing their control over technology and intellectual property, thus limiting the ability of MSMEs to operate on a level playing field.

The challenges posed by e-commerce and the digital economy have been well documented by the Secretariat of the UN Conference on Trade and Development (UNCTAD)[2], which can be summarized:

a) Most e-commerce is domestic[3], so domestic policies are more important than international policies.
b) The digital divides remain wide both across and within countries[4]. Digital divides and uneven access to affordable connectivity can lead to inequitable income distribution and growing income inequality[5]. Thus a key issue that must be addressed is the lack of affordable access in many developing countries[6], and for disadvantaged groups in many countries. For example only one-third of people in Sub-Saharan Africa have access to grid electricity and two-thirds of the population in developing countries are still not online[7]
c) Companies in developing countries may not have adequate access to the e-commerce platforms used in developed countries, and/or the terms of access, including loss of control over data, may be unfavorable.[8] E-payment platforms may not be accessible or available in developing countries.[9] Cross-border delivery may be difficult for both companies and consumers in

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[2] Note by the UNCTAD Secretariat titled "Maximizing the development gains from e-commerce and the digital economy", 26 July 2017, document TD/B/EDE/1/2m available at: http://unctad.org/meetings/en/SessionalDocuments/tdb_ede1d2_en.pdf

[3] Paragraphs 19-22 of the cited Note

[4] Paragraphs 13 and 15 of the cited Note. See also pp. 12 and 16 of the 2017 report of the Broadband Commission, at: https://www.itu.int/dms_pub/itu-s/opb/pol/S-POL-BROADBAND.18-2017-PDF-E.pdf

[5] Paragraphs 38 and 41 of the cited Note.

[6] See pages 46 and 84 of UNCTAD's *Information Economy Report 2017: Digitalization, Trade and Development*, http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=1872

[7] https://www.southcentre.int/wp-content/uploads/2017/01/AN_TDP_2017_2_The-WTO%E2%80%99s-Discussions-on-Electronic-Commerce_EN-1.pdf

[8] Pages 12 and 24 of the cited ITC paper.

[9] Page 14 of the cited ITC paper; see also page 46 of the cited UNCTAD report.

developing countries.[10] It may be difficult to comply with differing data protection laws across jurisdictions.[11]

d) There are increased security risks for entities that connect to the Internet, due to hacking, viruses, cyber-attacks, etc.[12]

e) Issues related to the flow and processing of data, in particular in light of the development of interconnected devices (the Internet of Things – IoT), are increasingly important[13].

MSMEs are the least likely to be able to effectively compete with multinational corporations, who have become global digital leaders, and have decimated smaller companies and who have benefitted from digital industrial policies such as subsidies; research and development subsidies; development of, and access to, and ownership of technologies; economies of scale; government-sponsored infrastructure; tax benefits, etc.[14] For example competitors to Google face high barriers to entry (that basically make Google a natural monopoly) in the following ways:[15]

- In 2008, Google was already estimated to use close to a million computers to index and map the web (and electricity consumption at the level of Salt Lake City).
- Search engine effectiveness is based on data from past searches which are used to train algorithms, but Google owns all the data from past Google searches and does not share it.
- Google's protection of its algorithms as trade secrets which are never disclosed means rivals cannot build on them or learn from them.
- To market an alternative to Google, they would have to advertise it on Google. But past attempts to compete with Google (eg Foundem) found themselves blocked from the first few pages of search results. So Foundem tried to buy advertising on Google and instead of 5pence per bid, it was charged 5 **pounds** per bid which made the cost of advertising prohibitive, so for more than a year, it was effectively eliminated from the view of those using Google to find price comparison websites.
- Microsoft tried to start a competitor to Google (Bing) and it is losing $2.6billion/year. The EU spent $450million trying to develop an alternative to Google (Quaero), but it could not compete with Google's $100billion in annual revenue.

As a learned commentator puts the matter: "Five American firms – China's Baidu being the only significant foreign contender – have already extracted, processed and digested much of the world's data. This has given them advanced AI [Artificial Intelligence] capabilities, helping to secure control over a crucial part of the global digital infrastructure. Immense power has been shifted to just one sector of society as a result."[16] Certain large online retailers have been accused of engaging in anti-competitive behavior, including stifling companies that could potentially compete with them in specific areas.[17]

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[10] Page 19 of the cited ITC paper; see also pages 46 and 86 of the cited UNCTAD report.
[11] Page 24 of the cited ITC paper.
[12] Paragraph 44 of the cited Note.
[13] Paragraphs 27, 42, and 43 of the cited Note.
[14] Paragraph 3.4 of the cited Statement by the African Group. See also: https://www.theguardian.com/world/2017/aug/23/silicon-valley-big-data-extraction-amazon-whole-foods-facebook
[15] 'The Black Box Society', Frank Pasquale, Harvard University Press, 2015.
[16] https://www.theguardian.com/commentisfree/2016/dec/04/data-populists-must-seize-information-for-benefit-of-all-evgeny-morozov
[17] https://www.washingtonpost.com/business/is-amazon-getting-too-big/2017/07/28/ff38b9ca-722e-11e7-9eac-d56bd5568db8_story.html .

MSMEs who have sufficient access to the internet etc (see digital divide problems above) are already participating in ecommerce today. That is, without new WTO rules on ecommerce, US$22 trillion in ecommerce was already taking place in 2015.[18]

In fact the proposed WTO ecommerce rules, in particular to impose the free flow of data, to ban data localization requirements, and to ban disclosure of source code, would worsen the situation for MSMEs because:

1) ITC's survey of MSMEs found that:[19]

> a) MSMEs have expressed concern over concentration in the markets for e-commerce platforms, e-payment solutions and cross-border delivery services. ... Market concentration is especially a concern for MSMEs, as they have limited capacity and resources, and often rely on external suppliers for critical services for their cross-border operations.
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> b) The cost of membership fees in cross-border e-commerce platforms ranked third among all major challenges (15%), and this was a more prominent challenge for companies in African countries (19%). In addition to, or in place of, membership fees, some -commerce platforms charge a relatively high commission on the sales conducted through the platforms. Some e-commerce platforms, for example, may charge up to 40% commission on sales.

2) Yet according to a 79-page study of a major ecommerce platform, Amazon.com:[20]

> a) Half of all online shopping searches start directly on Amazon.com. So if an SME wants to sell online, they must list their products on Amazon.com in order to reach half of all online shoppers.
>
> b) Amazon makes its own competing products and about 75% of the time, it lists its own products in the 'buy box' ie the default seller, even when the same product is made more cheaply by another company selling on the Amazon website.
>
> c) If the SME does not pay Amazon more in fees etc to list its products, Amazon changes its algorithm to direct shoppers to competing sellers and delays shipping for weeks etc.

3) The proposed WTO ecommerce rules would lock in the dominance of these platforms and their ability to abuse SMEs including by:

> a) Requiring cross-border data flows and no requirements to store data locally. 30% of Amazon's sales are generated by its recommendation engine.[21] That is, it's because Amazon knows that when people buy X, they also like to buy Y, so Amazon suggests Y to those who are buying X and so gets them to buy more. So this requirement to allow the purchasing records of consumers worldwide to flow into Amazon's recommendation engine further increases Amazon's profits and dominance, allowing it more power to squeeze SMEs for fees etc. that SMEs are already finding unaffordable.

An academic treatment of the topic is Khan, L. M. (2017) "Amazon's Antitrust Paradox", *The Yale Law Journal*, vol. 126, no. 3, pp. 564-907, available at: http://www.yalelawjournal.org/note/amazons-antitrust-paradox

[18] http://unctad.org/es/paginas/newsdetails.aspx?OriginalVersionID=1281&Sitemap_x0020_Taxonomy=Information%20and%20Communication%20

[19] http://www.intracen.org/publication/New-Pathways-to-E-commerce/

[20] https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf

[21] Big data : concepts, methodologies, tools, and applications, Information Resources Management Association. Publisher: Hershey, PA : Information Science Reference, 2016

b) In cases where Amazon may be abusing its dominance by listing its own product more prominently, even if an SME's equivalent product is cheaper etc., if the competition authority wants to investigate this, it may need to check Amazon's source code (software) and this is not possible under the WTO's ecommerce proposals. Furthermore, the remedy imposed by the competition authority for Amazon/Google's anti-competitive conduct may be to require them to disclose the source code etc, but this is also not possible under the WTO's ecommerce proposals.

So while the concept of ecommerce is good for SMEs, the actual e-commerce rules being proposed at the WTO would enable the platforms whose dominance is already a problem for SMEs to further squeeze SMEs to pay them more.

In addition, the growth of Amazon.com has caused physical shops to close down, including many MSMEs. For example, "a 2016 survey of more than 3'000 independent business owners around the country, 70 percent ranked competition from large internet retailers as their top challenge, by far the largest share of any response."[22] In the USA alone, Amazon.com has been responsible for causing an estimated 135 million square feet of retail space to become vacant (that is, about 700 empty big-box stores plus 22'000 shuttered Main Street businesses).[23] As these shops shut, local governments also lose the property tax from these shops (e.g. 55% of the tax revenue of Portland is from property taxes and 40% of this is from commercial taxes),[24] with flow-on effects to the services provided by local governments from police to rubbish collection.

Other proposals that have been put forward in the name of e-commerce[25], such as a permanent moratorium on customs duties, barring technology transfer requirements, etc. are not likely to be helpful for MSMEs in Africa[26] or elsewhere[27].

In fact, it has been said that[28]:

> … at present, the theme of MSMEs is mostly pushed by the major economic powers advocating new binding disciplines and increased market access. In particular, new WTO E-commerce disciplines are being pushed by the international business community (represented by the International Chamber of Commerce (ICC)/B20) as an MSME issue. However, this E-commerce MSME agenda is in fact the agenda of large corporations. The envisaged binding E-commerce rules would subject MSMEs in developing countries to competition with the digital giants even as these developing countries' MSMEs face very real digital and technological challenges and would need policy space to establish their own domestic and regional E-commerce platforms. If rules would in fact serve developing countries' MSMEs, these should be binding technology

[22] https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf
[23] https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf
[24] https://ilsr.org/wp-content/uploads/2016/11/ILSR_AmazonReport_final.pdf
[25] See for example pages 12-12 of South Centre (2017) "Micros, Small, and Medium-Sized Enterprises (MSMEs)", Analytical Note SC/AN/TDP/2017/4, July 2017, available at: https://www.southcentre.int/wp-content/uploads/2017/08/AN_TDP_2017_4_Micro-Small-and-Medium-sized-Enterprises-MSMEs_EN.pdf
[26] Paragraph 3.5 of the cited Statement by the African Group.
[27] Page 5 of the cited Analytical Note.
[28] Page 1 of the cited South Centre Analytical Note.

transfer arrangements to bridge the digital and technology divides, and binding financial assistance for infrastructure. However, these are not the type of rules being proposed.

Further, fulfilment of the WTO's Doha Development Agenda mandate, such as on substantial reduction of OTDS [Overall Trade Distorting Subsidies] in Agriculture; Cotton; and Special and Differential Treatment, with the view to promoting structural transformation and industrialization, would be of benefit to MSMEs in Africa.[29]

Despite the above, there is a strong push to start negotiating binding provisions for e-commerce in WTO.[30] As the Diplo Foundation has reported: "one of the main topics under consideration in preparation for MC11 [WTO's Ministerial Meeting in December 2017] is e-commerce. While some member states feel that the time has come to start negotiations towards a new agreement on this issue, other members believe that exploratory discussions should continue under the WTO Work Programme on electronic commerce, approved in 1998. Regardless of these differences, at the end of September, member states had already put forward 18 papers that expressed their positions on e-commerce, showing that this will inevitably be one of the key topics under discussion at MC11."[31]

The proposals that have been put forward range from establishing a Working Group to negotiate binding provisions regarding free flow of data, domestic regulatory disciplines, e-signatures, spam, and other topics; to a call to continue discussions within the existing e-commerce program, which does not involve negotiating binding provisions.[32]

It is important to ensure that no mandate be agreed to negotiate binding rules, not even for apparently innocuous issues such as spam or e-signatures, because such a mandate will inevitable expand to include the topics of interest to dominant transnational corporations, in particular the free flow of data. Those topics would surely drown out the topics of interest to MSMEs, such as affordable access.

Consequently, "developing countries should not agree that the MSME issue is taken up as a horizontal issue within the WTO"[33]. And instead, WTO members interested in advancing discussions on MSMEs should focus on the areas which developing countries themselves have proposed as being of greater interest to them, and which which are on the table for the 11th Ministerial meeting of the WTO (MC11), such as[34]:

a) Removing inequities in global farm trade so as to achieve a fair agriculture trading system in line with Article 20 of the Agreement on Agriculture and in accordance with paragraph 13 of the Doha Ministerial Declaration, including the elimination of all historical imbalances, notably the elimination of AMS [Aggregate Measure of Support – trade-distorting subsidies that harm agricultural MSMEs in developing countries] by MC11.
b) A Permanent Solution on the Public Stockholding for food security purposes, which involves developing countries being allowed to subsidize micro-businesses in agriculture, and a Special Safeguard Mechanism as well as an ambitious outcome on cotton by MC11, both of which would provide important tools for supporting agricultural MSMEs in developing countries.

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[29] Paragraph 3.3 of "Statement by the African Group", WTO document JOB/GC/144, 20 October 2017.
[30] JOB/GC/140/Rev.5 from https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S001.aspx proposes a Working Party to negotiate new ecommerce rules.
[31] https://www.diplomacy.edu/blog/e-commerce-will-compromise-be-possible-wto-ministerial-buenos-aires
[32] Ibid.
[33] Page 18 of the cited South Centre Analytical Note.
[34] http://twn.my/title2/wto.info/2017/ti171023.htm

c) A substantial outcome regarding fisheries, while preserving the policy space for developing countries to develop their fisheries sector, particularly MSMEs in the fisheries sector.

d) The urgent need to make flexible the WTO's stringent rules in order to create a conductive environment for industrialization, diversification and structural transformation. The rules in question relate to local content requirements; industrial subsidies, and infant industry protection, among others, and would enable developing country governments to more actively support their local MSMEs in the ways that developed countries have in the past. Developing countries in the Group of 90 have proposals on these issues under the Special and Differential Treatment proposals which should be agreed to, as proposed, in MC11.

As already noted above, progress on those issues would likely serve MSMEs in developing countries better than anything related to e-commerce, because many MSMEs in developing countries are active in farming and fishing, or in industries that are competing with global corporations that benefitted from these types of policies when their countries were developing.