Roundtable

Research project:
*The enforcement of EU Competition Law in multi-sided markets*

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The enforcement of EU Competition Law in multi-sided markets

Overview

- Subject of the research
- Research questions
- Methodology
- Research objectives

What are multi-sided markets?
Where to find multi-sided markets?
Why are multi-sided markets relevant for competition?
Why is a legal research important?
1. What are multi-sided markets?

You’re hungry → Order takeaway online → Your food arrives.. Yum!
1. What are multi-sided markets?

Online takeaway marketplace

Virtual platform

Specific services

Transaction costs

Indirect network effects

Subject – Research question – Methodology – Research objectives

<table>
<thead>
<tr>
<th>Actors involved</th>
<th>Platform, two groups of customers</th>
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</thead>
<tbody>
<tr>
<td>Services provided by the platform</td>
<td>Specific services to each side and, above all, connection</td>
</tr>
<tr>
<td>Economic keywords</td>
<td>Indirect network effects, transaction costs, price structure</td>
</tr>
</tbody>
</table>
2. Where to find multi-sided markets?

Almost all our day-to-day activities involve multi-sided markets.

- **Relaxing at home:** Netflix, Spotify, Jyllands-Posten
- **Travelling:** Uber, Airbnb, Expedia
- **Having shopping:** eBay
- **Watching a football match:** Tivoli Aarhus
- **Searching for a job or for your soul mate:** Tinder, Monster, LinkedIn
- **Socializing on the Internet:** Facebook

Subject – Research question – Methodology – Research objectives
3. Why are multi-sided markets relevant for competition?

One-sided vs. multi-sided markets

- E.g. Manufacturing business model

  Buy raw materials
  \[\rightarrow\]
  Make the product
  \[\rightarrow\]
  Sell it to customers

- Multi-sided business model

  Platform
  \[\leftrightarrow\]
  Side A
  \[\leftrightarrow\]
  Side B

- The economic features of multi-sided markets affect almost all aspects of competition analysis
  - The traditional application of competition law rules can lead to mistakes
3. Why are multi-sided markets relevant for competition?

Example

Predatory pricing

One-sided market:
Price decisions are mainly based on costs and competition law applies a cost-price analysis in the assessment of pricing practices. The traditional benchmark is the Average Variable Cost (AVC).

Multi-sided market:
Price decisions are linked to the need to achieve a critical mass on all the sides of the market. How to apply a cost-price analysis when a side is not charged a price at all?
4. What makes multi-sided markets worth of legal research?

- *Economic scholarship*: extremely flourishing. The double-sided market theory represents one of the most remarkable contributions in the field (and brought a Nobel prize to Jean Tirole, one of its main developers). This theory can provide several insights on how to enforce competition law in these markets.

- *Legal scholarship*: extremely limited. The necessity to undertake a specific Competition Law analysis of these markets and the relevance of the double-sided market theory have been to a large extent neglected.
4. What makes multi-sided markets worth of legal research?

- Limited and biased legal understanding of economic phenomena
- Legal uncertainty and inconsistency in the application of traditional EU competition law concepts
4. What makes multi-sided markets worth of legal research?

Limited and biased legal understanding of economic phenomena

- A strict one-sided approach when dealing with a multi-sided reality gives raise to a limited and biased legal understanding of economic phenomena, e.g:

**Network effects**

**Economics**: in a one-sided market they can have anticompetitive effects e.g. enhancing market power; in a multi-sided market, they can have procompetitive effect e.g. enhancing consumer welfare.

**Law**: regardless to the market, they are legal arguments used to corroborate and aggravate anti-competitive practices (e.g. exclusivity arrangements, tying/bundling practices) and are generally rejected as procompetitive legal arguments (e.g. Art.101(3) TFEU).

- By applying a one-sided approach, competition authorities can have a distorted representation of the economic reality and prohibit practices that, in a multi-sided contest, are justified and enhance consumer welfare.
4. What makes multi-sided markets worth of legal research?

Legal uncertainty and inconsistency

Example: Consumer groups and legal definition of “relevant market”

- VISA (COMP/29.373) [2002]
- Travelport/Worldspan (COMP/M.4523) [2007]
- Google/Double Click (COMP/M.4731) [2008]
- GIMD/Socpresse (COMP/M.3420) [2004]
- MasterCard (COMP/34.579) [2007]
- VISA MIF (AT.39398) [2014]
- B SKYB/KIRCH PAY TV (COMP/JV.37) [2000]
- NEWSCORP/PREMIERE (COMP/M.5121) [2005]
4. What makes multi-sided markets worth of legal research?

- Limited and biased legal understanding of economic phenomena
- Legal uncertainty and inconsistency in the application of EU competition law concepts

These, in turn, can have significant economic consequences:
- Far-reaching effects in terms of competition policy goals (e.g. diminishing of consumer welfare)
  - Potential flaws in the smooth functioning of these markets
Major research questions

How to apply EU Competition Law in multi-sided markets?

I. What are multi-sided markets and what are the main economic principles/models applicable to them?

II. What is the current state of the law? How have competition authorities assessed anti-competitive practices, abuse of dominance and concentrations taking place in multi-sided markets so far? How are concepts such as price structure, network effects, or the two-sided nature of the market itself, considered in competition proceedings?

III. When and how do traditional legal concepts need to be reinterpreted so as to take the economic context into account?
Methodology and methods

I. What are multi-sided markets and what are the main economic principles/models applicable to them?

Critical content analysis based on a library research.
The research is cross-sectional and includes insights from several different industries.

Aim: To identify and synthesize the main economic assumptions underlying multi-sided markets
Methodology and methods

II. What is the current state of the law?

Case law analysis through a traditional doctrinal legal method

• Data collection:
  - For Commission’s decisions: Commission official database website. The database allows the setting of fixed conditions with regards to the economic sectors and timeframe under assessment
  - For EU Courts’ judgments: curia (?) or a purposive sampling (e.g. casebook) to which apply the same data-subject matter filters

• Method of assessment: logical analysis and induction, so as to extract general principles from primary materials

Aim: To define the general principles followed by competition authorities and identify the main areas of uncertainty and inconsistency
Methodology and methods

III. When and how do traditional legal concepts need to be reinterpreted so as to take the economic context into account?

Evaluation of the law with a socio-legal approach ("law in the context")

Not a law & economic approach, but use of economic reasoning as a tool to interpret and apply the law.

Aim: To identify what types of economic evidence/arguments competition law should require in order to prove an illegal behaviour and be in line with the economics of multi-sided markets. More generally, to identify how competition rules should be interpreted so as to ensure alignment with the economic principles of multi-sided markets
Research objectives

• Examining multi-sided markets from a EU Competition Law perspective and:

I. Drawing a picture of the current state of law in the field so as:
   • To reveal principles and assumptions implied in the authorities’ judgments
   • To evidence main areas of inconsistencies and ambiguities

II. Considering whether, and to what extent, traditional competition law rules need to be reinterpreted in the light of the features of multi-sided markets

• The ultimate aim of the research is to enhance legal certainty and provide some practical guidance on how to apply EU Competition Law in multi-sided markets
Thank you!