

## ***Co-opetition among digital platforms and consumer welfare***

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As was long recognised upon opening the Google investigation back in 2010, even the most basic tools of competition law analysis, such as market definition have been challenged by the special characteristics of digital platforms.<sup>2</sup> Market definition, and the assessment of market power are important steps in antitrust analysis since they trigger the threshold for intervention in abuse of dominance cases. Defining the relevant market does not enable any conclusion regarding infringement of competition law; but it does help define the contours and the nature of competition. This is of critical importance in such markets where intense competition for innovation coexists with substantial market power held by a few actors.

This note provides some comments on the nature of competition among digital platforms (mainly the GAFA), which will be qualified as ‘co-opetition’, to reflect the complementarity of services offered and fierce rivalry among the platforms in their strategies of vertical integration. The main question is the extent to which co-opetition among digital platforms, and the associated race for innovation serves consumer welfare both in a static and dynamic perspective. This note will give examples based on the Google shopping decision; and draws from remarks given at the UCL conference ‘Digital Platforms and the Widening EU/US Competition Law and Regulation Gap’ in February 2018.<sup>3</sup>

### **Market definition in digital markets: A need to move away from the ‘functionalities’ offered to consumers**

Market definition typically entails an analysis of demand- and supply-substitutability to gauge the existence of competitive constraints. In the Google shopping decision, the Commission discusses the extent to which online retailers and merchant platforms (such as Amazon) set competitive constraints on Google on the shopping comparison functionality. Based on a careful consideration of market data; the conclusion is that merchant platforms only act as limited substitutes for users and sellers. One of the arguments advanced is that Google Shopping does not sell products directly to users; but acts as an intermediary between sellers and shoppers. Instead, although they may offer similar multi-brand comparison experience to users; merchant platforms also do enable the sales to be concluded and orders to be processed.<sup>4</sup>

I believe that a more dynamic approach is required to complement the ‘static’ approach that is associated with an analysis of substitutes. This dynamic enquiry entails prospection of what Google shopping is likely to become in the near future. This differs slightly from an analysis of potential competition which asks whether competitors are likely to enter and exert some competitive constraints. The dynamic approach to substitutability, instead, enquires whether the service or product at stake may evolve in a way that it will be submitted to additional competitive constraints. To illustrate this: the possibility to purchase directly on Google is currently being tested, for Android users in the US. Users would then be able to purchase directly products of participating online

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<sup>2</sup> J Almunia, *Competition in Digital Media and the Internet*, Speech delivered at UCL, 7 Jul. 2010

<sup>3</sup> <https://www.ucl.ac.uk/laws/events/2018/feb/digital-platforms-and-widening-euus-competition-law-and-regulation-gap>

<sup>4</sup> Commission decision, Paras 207-250

retailers directly on Google; rather than having to be redirected onto the retailers' website to conclude the sale. This may hint at how Google shopping may evolve from a pure comparison service to a merchant platform in the near future.<sup>5</sup> I will give a further illustration of how defining competitive constraints based on functionalities may become quickly obsolete in such sectors, thereby making a static and functionality-based approach to substitutability inadequate. Some years ago; (or before I had a smartphone) were I asked what 'functionalities' or 'products' I would use to find a restaurant in a city as a tourist; I would possibly search first in a touristic guide book; then check reviews online on my computer; and use a satnav device in a car to get to that place. Today; all three functionalities are offered as integrated services (eg. Google Places etc); enabling users to search for places based on location, read reviews and get directions with just one device. It means that such integrated services may impose competitive constraints on a range of functionalities that were deemed to be unconnected some years before. Thus, a dynamic analysis of competitive constraints should complement the static substitutability –based approach that remains very important since based on actual rather than prospective type of evidence. In short; the Google Shopping inquiry ought to have asked: to what extent are Amazon (or other merchant platforms) and Google likely to compete in the near future; if so, would this set sufficient constraints on Google's behaviour? (to establish the degree of market power, together with an analysis of other factors such as barriers to entry etc.).

Furthermore, acknowledging the two-sided nature of digital platforms requires us to move away from a static and functionality-based approach to market definition. Building on a pioneering article by Rochet and Tirole, a number of authors have written on the critical implications of multi-sided platforms for market definition and the assessment of market power. Among the issues considered are whether current tools such as the SSNIP test are suitable, particularly when pricing models are founded on gratuity for consumers. Early proponents of a multi-sided approach raised the risk of defining markets too narrowly in a way that raises the scope of antitrust inquiry for abuse of dominance cases.<sup>6</sup> To address this issue one of the question is whether one or several markets need to be defined to account for the multi-sided character of the platform.<sup>7</sup> Thus, some authors suggest defining a market that reflects the platform's role as intermediary for internalising indirect network effects between different user groups. In particular, it would be incomplete to only define a platform based on the functionality offered to users (eg. Facebook as a social-networking service: Google as a search-engine etc) since this eludes the critical interactions with the advertiser's side that is at the heart of the business model. Wider market definition such as establishing the relevant market of digital platforms as 'monetising users' information' or the 'attention market' are examples of what digital platforms actually do as business and compete in.<sup>8</sup> Analysis of substitution based on

<sup>5</sup> <https://www.wordstream.com/blog/ws/2017/06/08/purchases-on-google>

<sup>6</sup> J.C. Rochet & J. Tirole, *Platform Competition in Two-sided Markets*, 1 J. European Econ. Assn. 1015 (2003). See also by D Evans. Eg. D.S. Evans, *Two-Sided Market Definition*, in *Market Definition in Antitrust: Theory and Case Studies*, Ch. XII, 7 (ABA Section of Antitrust Law 2009).; See David. S. Evans, *The Economics of the Online Advertising Industry*, 7(3) Rev. Network Econ. (2008); David S. Evans & Richard Schmalensee, *The Antitrust Analysis of Multi-Sided Platform Businesses*, in *Oxford Handbook on International Antitrust Economics* (Roger Blair & Daniel Sokol eds, Oxford University Press 2014)

<sup>7</sup> Daniel Mandrescu, 'Applying (EU) Competition Law to Online Platforms: Reflections on the Definition of the Relevant Market(s)' (2018) 41 World Competition, Issue 3, pp. 453–483; See e.g. Lapo Filistrucchi, Damien Geradin, Eric van Damme & Pauline Affeldt, *Market Definition in Two-Sided Markets: Theory and Practice*, 10(2) J. Competition L. & Econ. 293–339 (2014); Florence Thépot, *Market Power in Online Search and Social Networking: A Matter of Two-Sided Markets*, 36(2) World Competition 195–221 (2013);

<sup>8</sup> S.Weber Waller, *Antitrust and Social Networking*, 90 N.C.L. Rev. 1771, 1777 (2012); Florence Thépot, *Market*

functionalities is not irrelevant though; it helps understand why large platforms may have market power in their own segments within a wider market definition. (eg. The same way product differentiation does confer market power).<sup>9</sup> As such a dynamic approach to the relevant market needs not reduce antitrust scrutiny towards large platforms.

### **The nature of competition: Co-opetition and vertical integration strategies**

Taking some distance from a strict functionality-based approach, it seems reasonable to hold that Amazon and Google do or are likely to compete in innovation around online shopping services (among other things). At the same time; Google and Amazon offer complementary or vertically-related services. As the CEO of Amazon puts it; Amazon and Google are simultaneously business partners and competitors: ‘While much is made, including by us, about co-opetition with Amazon (the ability to leverage and compete against Amazon), we see Amazon’s co-opetition efforts with Google as becoming increasingly important, and in many ways, problematic for Amazon’.<sup>10</sup> The nature of competition is thus particular; both platforms leverage each other’s services (Google brings traffic to Amazon) while competing at the same time. Similar considerations enable to conclude that the large digital platforms are all engaged in fierce rivalry, using similar business models; irrespective of the different functionalities they offer; which may also complement each other. Looking at a chronologic evolution of the functionalities they offer; digital platforms have converged in competing in very many different segments of the tech industry; even if they each built their original success on very distinctive services. (eg. Facebook: social-networking: Google: search-engine etc); as the table below shows. Taking into account the advertisers side of their business model which plays a critical part; and in which digital platforms all compete we may say that the largest digital platforms all seem to compete on innovating in the tech-market, by way of vertical integration strategies.<sup>11</sup>

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Power in Online Search and Social Networking: A Matter of Two-Sided Markets, 36(2) World Competition 195–221 (2013); D Evans “*Attention Rivalry among Online Platforms and Its Implications for Antitrust Analysis*,” Journal of Competition Law and Economics, 2013, 9(2), 313-357; D Evans and R Schmalensee, *Matchmakers: The New Economics of Multisided Platforms* (Cambridge, MA: Harvard Business School Press, 2016)

<sup>9</sup> D Evans ‘Multisided Platforms, Dynamic Competition and the Assessment of Market Power for Internet-based Firms’ *Competition Policy International* (May 2016).

<sup>10</sup> <https://www.barrons.com/articles/clash-of-the-titans-who-will-win-as-amazon-google-go-head-to-head-1508421457>

<sup>11</sup> S Galloway; *The Four: How Amazon, Apple, Facebook and Google Divided and Conquered the World* (Penguin Random House, 2017)

	Google	amazon	f	Apple
IT & Infrastructure	Google fiber	amazon fulfillment	Aquila	Apple SIM
Artificial Intelligence	Google Assistant	amazon alexa	Jarvis	Siri
Hardware Devices	Pixel Chromecast Home nest	amazon fireTV amazonkindle amazon echo	oculus	iPhone iPad WATCH etc.
Communication & Messaging	Google+ Allo		Whatsapp Messenger facebook Workplace	iMessage
Digital Media & Entertainment	Google Play YouTube	amazon Prime instant video	facebook.com/gaming	iTunes Apple TV MUSIC
Connected Car & e-Mobility	android auto	Alexa integration	-Integration (Transportation)	CarPlay
E-Commerce & Retail	Google Shopping 'Purchase on Google'	amazon.com etc. amazon Prime NOW	Facebook 'Buy-Button'	iBeacon store
FinTech & Payment	Google pay	amazon payments	-Integration (Friend-to-Friend Payment)	Apple Pay
Navigation & Location services	Google Maps	Amazon Maps API, MAPS.ME integration		Apple Maps
Advertising	Google AdSense doubleclick AdExchange	amazon associates amazonadvertising	Facebook Business, Instagram Business	Apple Search Ads

*Technology Comparison: Google v. Amazon v. Facebook v. Apple, CitiusMind (June 2017)<sup>12</sup>*

### Consumer welfare and innovation

What are the implications for consumer welfare of such vertical integration strategies by digital platforms? Does fierce rivalry in innovation in the tech sectors keeps the consumer 'safe' both in the short and long-run? Consumer welfare, if understood as quality, low prices and choice in the short run; may be easily satisfied by the breadth of tech services offered at low price today. Gratuities; typical of multi-sided platforms business strategies; may also reinforce the idea that consumers are better off today than yesterday. Vertical integration strategies also may however favour the segmentation of users in eco-systems (eg. Google Android; or Apple); and as such may reduce the ease with which consumers switch to other services. As long as there is enough competition and innovation between these eco-systems; consumer welfare is theoretically preserved. Consistent with the idea of protecting competition, not competitors; one should be less concerned with competition for an outdated technology or type of service than with the possibility that innovators have to reach the market.

The key question is thus whether potential entrants and 'co-opetition' among platforms are a credible safeguard to innovation; and thus, to consumer welfare in the longer-run. Based on the assumption that rapid innovation paces are the main tools against 'lazy' monopolists; there are two main threats to consumer welfare in the longer-run: the significance of network effects and consumers' inertia or the power of 'convenience'<sup>13</sup> that prevails in today's society. Network effects operate among users; but also indirectly among advertisers and users; and considerably limit the ability of new entrants to penetrate a market dominated by large actors. In particular, one may wonder what innovation it would take to have Google's search engine supremacy displaced by a competing one; and whether this could be achieved by a new entrant.<sup>14</sup> Advertisers greatly benefit from the large breadth of targeted advertising enabled by the pool of user data generated by the engine (not to mention the other Google services used that enable greater targeting). Users seem to be 'faithful' to a service they have known for years; a process reinforced by the vertical integration

<sup>12</sup> <https://www.citiusminds.com/blog/technology-comparison-google-v-amazon-v-facebook-v-apple/>

<sup>13</sup> T Wu, 'The Tyranny of Convenience', New York Times, 16 Feb 2018

<https://www.nytimes.com/2018/02/16/opinion/sunday/tyranny-convenience.html>

<sup>14</sup> In Europe and in the US; knowing that Baidu is the dominant one in other parts of the world.

strategies of the GAFA; which provides ‘convenient’ solution to users increasing consumer ‘lock-in’. Other conclusions may however be reached in relation to other services offered by the GAFA. Innovation may have no limits; as new solutions come in every day to challenge incumbents; in a way that may preserve dynamic competition. This optimistic view is however nuanced by the ability of large platforms to leverage the power of network effects from one segment or service to the other; as the Google Shopping decision critically illustrates. Vertical integration strategies, together with significant network effects may demand a revised and reasoned approach to the ‘common carrier antitrust’, that is the extent to which a company will remain allowed to give preferential treatment to its vertically-integrated services with which its main competitors compete.<sup>15</sup> Today more than ever; the critical question is whether innovation by large platforms and potential entrants will keep pace; especially if successful entrants are targeted by acquisition strategies by large platforms. (eg. WhatsApp; Instagram etc). Consumers’ growing concern for privacy and data protection may provide opportunities for disruptive innovations; the expression of which should be encouraged.

### **Conclusive remarks and recommendations**

- Market definition should complement its static and functionality-based approach to substitutability with a dynamic inquiry into product or services’ likely evolutions. Such rapid changes may have implications regarding the scope of competitive constraints.
- Understanding the particular nature of competition, as one of ‘co-opetition’ and driven by vertical integration strategies is of critical importance for the assessment of market power.
- Network effects and consumers inertia may be a threat to innovation by new entrants; requiring a revised approach to leveraging strategies by dominant companies
- Competition authorities may engage in advocacy campaigns to encourage consumers demand for alternative and innovative business models.

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<sup>15</sup> A Lamadrid, ‘On the Amazon probe: neutrality everywhere (or the rise of common carrier antitrust)’ Sept 2018 <https://chillingcompetition.com/2018/09/25/on-the-amazon-probe-neutrality-everywhere-or-the-rise-of-common-carrier-antitrust/>