

Introductory Remarks

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Enormous as they are, the gains that appeared with the emergence of the Internet have unavoidably been confronted with constantly arising new challenges. Besides others are the issues related to competition on the Internet. The growing digital industries offer platforms which open the gates for new ways of trading, marketing, developing business and last, but not least, for competing. Yet, the Internet may be blurring the trading borders, but it should not be restricting competition. Quite to the contrary, a digital environment should promote competition, not distort it. Platforms that act as intermediaries are, on the one hand, good for that purpose. Yet, on the other hand, competition on the Internet takes place in the industries featured by network effects, rendering the so-called “platform competition” a complex and thus not a one-sided concept.

Competition begins with a market. Yet, markets in network and platform-based industries are no longer one-sided: instead they are two- or even multi-sided. With different business models and strategies involved, competition law analysis becomes complex at the very first step: market definition. The latter is challenged by the ever-emerging new tools (e.g. a market for search engines?), by the swift development of existing products (e.g. a market for operating systems?), and by the unpredictability of completely new technologies. Thus, how should the relevant market be defined in a digital environment? Might the specific features of these industries also impact the assessment of market power? To what extent do the market structure and the level of concentration matter for platform competition? Furthermore, a web-based platform acts as an intermediary between different groups of customers and consumers. This raises the question of barriers to market entry and access to a platform. Should competition authorities step in due to the threat of anti-competitive foreclosure of markets? When does the conduct of a

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dominant market player stop being drastic competition and become anti-competitive behaviour?

Time and again, competition law enforcers have been challenged by the assessment of mergers in traditional business environments. The challenges involved seem to be even greater in light of platform competition: are competition authorities up to the task and do they have the right tools for the assessment of mergers in digital industries which, due to their dynamic effects, are often even more unpredictable? Does this, on the one hand, suggest that more economic thinking should be integrated into a competition law analysis, and does this, on the other hand, raise the question of how competition authorities—which are still not equipped with “a crystal ball”—will cope with that?

Finally, the Internet is meant to be open to all. In which relation does this stand to the on-going debate on network neutrality? Might open Internet and open markets foster competition not only in terms of price, but also in terms of innovation? In dynamic industries innovation is not meant to be developed merely step-by-step, but is rather growing by way of leapfrogging (e.g. the incumbent technology). In light of such industrial developments, it is the traditional competition law concepts that may need to be developed in the first place—importantly, at industry’s pace. In fact, new business models and strategies adopted in network and platform-based industries influence a competition law analysis in terms of both legal and economic thinking. How should competition law deal with the emerging and unpredictable challenges of growing digital industries? Will a constantly and swiftly developing business environment trigger a change in competition law and does this, after all, mean that time of change has come?

These questions were raised and discussed in the Post-Doc conference titled “Competition on the Internet” organized in February, 2013, in Munich. As the title of the conference indicates, the forum focused on competition law issues in a digital environment. A dynamic nature of the latter often triggers the question of whether competition law concerns that arise on the Internet are so specific that they presuppose a reconsideration of competition law concepts and their application. Current competition law tools might on the one hand be considered sufficient to tackle competition law issues arising in the digital economy. Yet, on the other hand, the question is whether these tools can or should be adjusted to the pace of dynamic industries? To what extent could competition law be supplemented by regulation—is the latter a foe or rather an ally? Given the complexity of competitive process in platform-based industries and the unpredictability in terms of innovation, it is hardly sufficient to assess the issues arising online only from the legal perspective. Just as important is an economic way of thinking in order to understand the functioning of digital industries, the markets and thus the competitive process which takes place in them. Bearing this in mind, the speakers of the conference were both lawyers and economists, so that the legal academic discussion was neatly supplemented by economic comments. The same purpose is maintained in this book, which provides an assessment of platform competition issues from a legal as well as an economic point of view. It gives an analysis of recent developments in

the most relevant competition law cases in a digital environment on both sides of the Atlantic (the EU and the US).

Seizing this opportunity, I would like to thank the speakers for their talks and a highly interesting discussion during the conference as well as for their written contributions which have found their place in this book. I am grateful to Professor Dr. Josef Drexler, LL.M. (Berkeley) for his trust in me to organize the conference. I am thankful to Dr. Mor Bakhoun, LL.M. (Lausanne), LL.M. (Chicago-Kent) for his kind assistance in organizational and conceptual arrangements of the conference, to Delia Zirilli for her help in administrative matters and to Allison Felmy for her language editing support. Last, but not least, I thank the Springer Verlag for publishing this book.

Competition on the Internet

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