

E.CA Economics

America has the internet, we have the things!

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The German way forward in regulating digital platforms

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Stylized facts on platform markets, part 1: economic features

- **Multisided platform**
 - zero/ negative pricing on one market side
 - (indirect) network effects
 - Different dimensions of competition, in particular online advertisement market vs. end consumer markets
 - Weak substitutes and complementarities
- **Tipping and winner takes all**
 - Organic growth strategy
 - Fuelled by cheap money in financial markets
- Relevance of **multi-homing/** switching costs
- **No physical capacity constraints**
 - Entry barriers are related to data, technology, network effects
- **Transparency**
 - Horizontally and vertically

Stylized facts on platform markets, part 2: benefits

- **Tremendous benefits** are expected to society (see WP DP):
 - In the EU, a Digital Single Market could contribute **415 billion EUR per year** to the economic performance
 - In Germany alone, digitalizing industry could open up potential additional **cumulative added value of 425 billion EUR**
 - Efficiency increase in the production and provision of products and services of up to 30% in total and around 3% annually
 - Improved cooperation between companies and start-ups could open up growth potential of 100 billion EUR up to 2020
 - Formerly regional markets have been opened up
 - Availability of an unmatched portfolio of products
- **We are part of a digital revolution!**

Stylized facts on platform markets, part 3: leading (antitrust) concerns

- Asymmetric information results in **exploitation of customers**
 - Individualized pricing and advertisement targeting
 - Extensive extraction of data
- **Increasing transparency** may result in
 - Horizontal collusion (through monitoring; through algorithmic pricing)
 - Vertical exclusion (double role of integrated retailer and open market place)
 - preferential treatment of own services
- General concern of **monopolization**
 - Facilitating **tipping** of markets
 - Using contractual restraints; building of walled gardens
 - Artificially strengthening economies of scale and scope
 - by restraining multi-homing
 - or creating data walls
 - **Conglomerate strategies** of controlling weak substitutes
 - To exclude potential competitors
 - To build non-replicable data blocks
- Most concerns relate to **P2C**, only recently P2B has come into focus

Industrial policy vs. competition enforcement

- **Industry policy:** its about competitiveness
 - Much to be said about it. Different variants of that notion exist:
 - selective, picking-the-winner strategies
 - broader (sometimes meaningless) horizontal definitions of providing a framework of conditions for enterprise development and innovation in a specific jurisdiction
- **Competition enforcement:** its about competition
 - Consumer welfare, total welfare and the process of rivalry



Current consensus: there is no trade-off between the two policy objectives. Large scale “single digital market” will allow for more efficient provision of goods and services due to economies of scale and scope **AND** will allow competition of a sufficient number of remaining competitors



This is challenged by the digital revolution: Is there actually sufficient room for several top players given the tremendous economies of scale and scope? Will a pro-active (unilateral?) open market strategy in Europe replace (future) European champions by US and Asian champions?

The German approach, status quo

- **Recent additions in the GWB on platforms** (multisided markets and networks)
 - Part of dominance assessment: direct and indirect network effects, multi-homing & switching costs, tipping, access to data, innovation
 - Merger notification threshold: 400 Mio.€ transaction value
- **Article 20, GWB** – relative or superior market power
- Persisting strong **private litigation** activity, in particular on **Article 102 TFEU cases**
- **Pro-active competition authority**
 - Guidance paper on two-sided markets and big data; internet working group
 - Recently opened sector inquiry in online advertisement by newly formed consumer protection unit
- **Merger cases:** Parship/ ElitePartner; CTS Eventim/ FKP Scorpio; etc.
- **Article 101/ 102 TFEU cases**
 - Best price clauses and selective distribution systems
 - Steel trading platform; cement trading platform
 - CTS Eventim
 - Traditional food retail; information exchange cases

The German approach, the way forward

White Paper Digital Platform

Why is Germany special?

- **Shifting focus:** In the past digital focus on consumer-centred markets
 - online trading; search services; music and video services; social media; travel and mobility services
- Now: Moving into **industrial core industries**
 - Automotive industry, e.g. “where digital groups outside the industry are attempting to establish a new ecosystem of battery-operated, autonomous vehicles and Big Data applications”
 - But more generally, Internet Of The Things; agriculture; health markets
- **Germany’s position:** “America has the internet, we have the things” - high industrial share; SME culture; good in manufacturing and related services
 - 85% of all in-house R&D spending comes from manufacturing (2017)
 - 89.6% of all industrial companies have less than 250 employees (KMU)

Benefit of production competence

(Proportion of total economic output produced by industry)



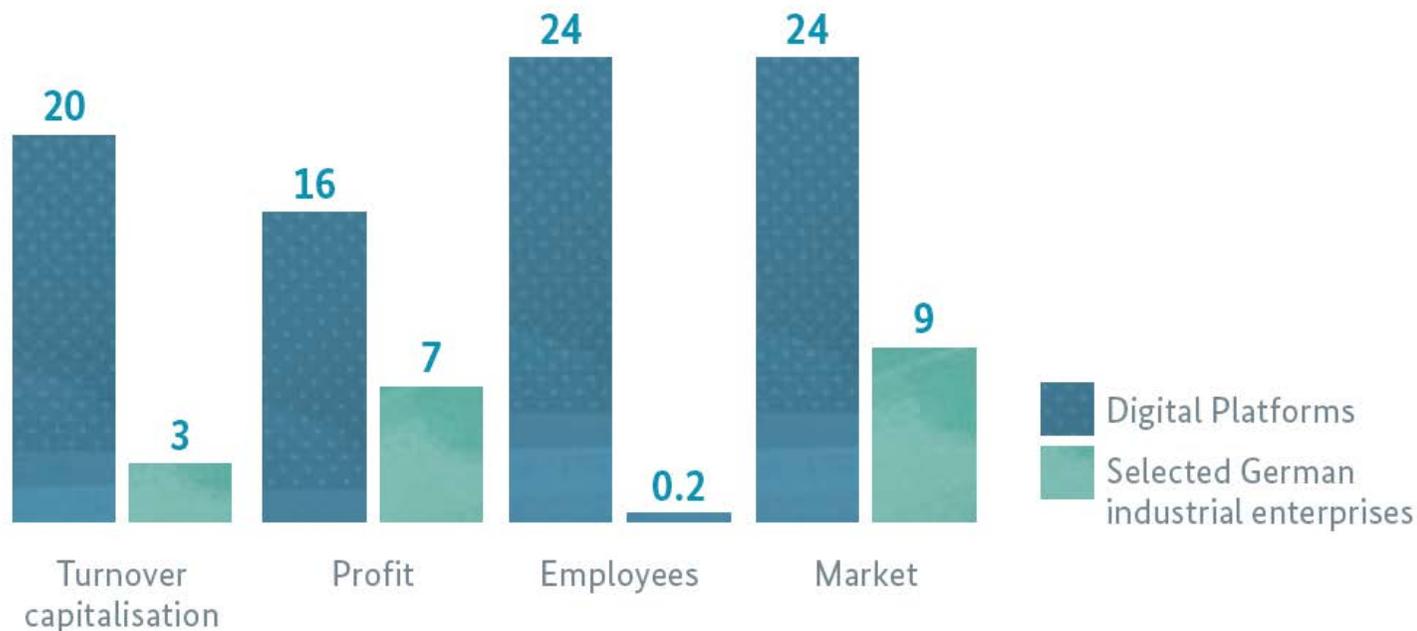
* Value for 2014; source: World Bank, World Bank Open Data: Manufacturing, value added (% of GDP), <http://bit.ly/1GZzpjF> (downloaded on 15 March 2017)

Source: White Paper on Digital Platforms of the BMWi, p. 27

The German approach, the way forward

White Paper Digital Platform

Digital platforms* and German industrial companies**
in a five-year comparison (2012 – 2016 in per cent)***



* Alphabet (Google), Amazon, Apple, Facebook, Tencent

** DAX-listed companies: BASF, Bayer, Daimler, Henkel, Siemens

*** The average annual change in the 2012-2016 period is measured in per cent (CAGR)

Source: Roland Berger, in-house calculation based on Bloomberg, 2017

Source: White Paper on Digital Platforms of the Federal Ministry for Economic Affairs and Energy, p. 22.

The German vision

- **Mingling ex ante regulation with existing (already strong) ex post competition law enforcement**
 - Monitoring
 - Injunctions clauses
 - Abuse without dominance
 - Dominance: simplified market def.; defining „platform market power“ (essential facility?); strengthening relative power
 - Focus on behaviour
 - Specific abuses: multi-homing, non-discrimination, exploitation
- No **new sector specific rules** rather extension of horizontal rules
 - But potentially new institution
- At the same time: **fostering German/ European digital champions** by harmonizing legal provisions and incentivizing infrastructure investment by deregulation
 - Telekom specific rules
 - Implications for competition law unclear
- **Accompanying measures:**
 - Consumer protection unit
 - Portability → General Data Protection Regulation

Some remarks

- **Is there a gap in competition law**, i.e. cases not being caught which should be caught by competition law?
 - Probably!? If you think the Google search decision is right there is underenforcement...
 - Also to be noted: We are not at the beginning of this transformation. WhatsApp took over SMS in 2013 → 5 years ago
- **Can we use “creative monopolies” to break “fat cats”?**
 - No choice: will happen in any case!
 - German industrial policy approach seems, in some dimensions, actually about slowing down digital revolution to gradual transformation
- **Remarks on competition law:** tricky approach; requires extended rules which work across all sectors
 - Tension between **deregulating telecom** infrastructure firms, while **regulating digital firms**
 - **Automotive industry, and manufacturing more broadly**, would benefit from exclusion from competition law (more cooperation/ JV/ information exchange) seem to stay somehow in conflict with stricter ruling in 102 cases
- **Most likely outcome:** Another market monitoring unit, plus some harmonization rules; **broadening of Art 20 GWB to companies of all sizes** seems to be a good and low hanging fruit



No game changer!

Are there more drastic alternatives?

Elements of a race for the market/ vulnerable market regulation

How could it look like?

- **Instead of dominance define a market to be vulnerable**
 - Assess whether a market exhibits „winner takes all characteristic“, is in “a race for monopoly“, as **vulnerable**
 - **Economics of scale and scope; financial reports, stock market value** relevant factors
 - Could come with some sunset clause, „**for the next five years** this market is considered vulnerable“
- **If yes: specific type of behaviour is considered abusive** (without finding of dominance)
 - Restraining multi-homing
 - Leveraging of market power into those markets
 - Excessive exploitation of customers
- **Predefine the price: explain expected future regulation today**
 - Assessment may vary from market to market
- **What it should not do:**
 - Preventing firms to **grow quickly!**
 - Preventing markets **to tip!**
- This is about protecting rivalry in the **race for the market!**

Thank you!

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