Düsseldorf Institute
for Competition Economics

Heinrich Heine University of Düsseldorf

Antitrust in Digital Markets

Justus Haucap

Brussels, 29 November 2017

What is the challenge?

- **First things first: The Internet (digital markets) tend to foster competition, as consumers have more choice, can compare more prices and products, markets expand in terms of geography, competition intensifies.**
- But: Are there long-term trends towards concentration or even monopolisation?
- Google (Alphabet), Amazon, Apple, Facebook etc. are (among) the most valuable companies in the world. That means: stock markets expect these firms to be extremely profitable. Why?
- Do we need to adjust competition policy instruments to address new problems?
- Answer: Possibly yes, some things change so that competition law enforcement may have to adopt.
- Example: Merger control thresholds.

Further challenges ahead

- Can data resources turn out to be an essential facility? If so, how must they be shared? What about consumer privacy? The consent to grant firm A access to my personal data may not imply consent for firm B to access it.
- Should privacy play a role in merger control? Imagine a hypothetical merger between a bank, an electricity retailer (with smart meters) and some grocery retailer….
- How can we define markets if users do not use money to pay? What does it mean, for example, to collect 5-10 % more data (in analogy to the SSNIP test)?

Example: Market definition for search engines

- Of course, Google is a multi-sided market / platform.
- Users (who search) and webpages are not charged any money (for generic search), which makes the SSNIP test practically impossible.
- Is there a distinct product market for general search? How would consumers substitute away from Google? (interchangeability).
- Where do consumers really search for products?
- Are Amazon, Wikipedia, IMDb, eBay, Facebook, LinkedIn, booking.com, inomics etc., search engines?
- Do people search for webpages ("general search") or do they search for information (or entertainment) ("content search")?
- The Commission focuses on technical aspects (e.g., in general versus specialised search) when delineating the market rather than (potential) consumer behaviour.

Abuse in the market for comparison shopping services

- Is displaying (effective) advertisements for Google shopping abusive?
- Crucial: What is the consumers' view? Do they realise this is advertisement? – Consumer protection versus competition policy.
- Is Google shopping an essential facility / bottleneck?

Does Google bias (generic) search results?

- Of course, this is utterly difficult to determine.
- But: At least at the margin Google should have an incentive to favour its own content / web pages.
- Has a used car dealer incentives to tell you the truth, the whole truth and nothing but the truth?
- But: Google's incentives to bias search results may actually be lower than those of its rivals due to media attention.
- In principle, larger search engines probably have lower incentives to bias their results as it will be discovered and spread more easily (through media coverage etc.) (who is interested in a tiny little webpage biasing results? – unlikely to be widely reported).

Conclusions on Google

- Unclear whether a distinct market for generic search exists.
- (Potential) substitution between generic and vertical search not clear.
- Also unclear why market places are not substitutes for comparison shopping sites.
- Dominance of Google shopping is not unambiguous.
- But: Incentive to bias search should exist, at least at the margin, but not necessarily a competition law problem (rather consumer protection).
- Is Google (Shopping) a bottleneck/essential facility? At best unclear.
- Remedies are difficult to impose, and can be highly political.

Vertical restraints for ecommerce

- Quantitative restrictions for online retailing,
- Price discrimination between online- und offline sales (“dual pricing systems”),
- Complete ban of online sales,
- Across platform parity agreements (APPA) – a special form of most-favoured customer clause (e.g., booking).

Economic explanations for vertical restraints in general

Core questions in competition economics:

- Why do special (“non-standard”) agreements exist?
- What effects do these agreements have?

Economic explanation (quite general):

- Power (here: securing or extending market power)
- Efficiency (overcoming coordination problems)

Theories of harm / anti-competitive effects

1. Foreclosure (VR as a barrier to entry or to expansion)
   Esp: Exclusivity clauses and APPA

2. Collusion enhancing effects
   e.g.: Increased market transparency with resale price maintenance (RPM), potential “star cartels”

3. Further competition reducing effects
   E.g., lower incentives to price aggressively with exclusivity clauses

Economic considerations

Why do manufacturers want to soften retail competition?

Or: Why do I want to expose „my“ retailers to softer competition?

- (Broad) stationary presence may have a value for manufacturers (e.g., window shopping),
- The (luxury) image may depend on the distribution channel,
- Rebates /price differentiation between retailers is becoming indirectly more transparent – opportunities for price differentiation may be reduced.

Selective distribution systems and platform bans I

Many cases concerns luxury or high value products.

- Yves Saint Laurent perfumes (YSLP): Online sales only by dealers with stationary presence is ok, (EU Commission)
- Pierre Fabre: Ban of online sales is core restriction. Efficiencies could not be demonstrated.
- Bijourama/Festina: Pure online retailers without a stationary presence can be excluded from a distribution system.
- PMC Distribution/Pacific Creátion: Online sales of non-authorised dealers can be subjected to damage claims.
- Makro/Beauté Prestige: Ban of Internet sales for high-valued perfumes is ok (Belgium 2002).

Selective distribution systems and platform bans II

- Bose, Focal JM Lab, Triangle Industries, Bang & Olufsen: Online distribution by authorised dealers may not be banned altogether.
- Germany: Adidas, backpacks, running shoes (Acsis), Lego toys.
- Dual pricing systems: According to the Bundeskartellamt they are only justified if the costs of online and offline sales differ for the manufacturer (e.g., due to complaint management), other "value added" (e.g., contribution to brand image) not accepted so far.
- From an economic point of view this attitude is not without problems.
- Consideration: A high price or exclusivity can, for luxury goods, be part of a brand image.

Final remarks on vertical restaints for online sales

- Main arguments in favour of efficiencies regarding vertical restraints of online sales are specific investments and free-riding, sometimes possibly brand image (luxury products).
- In this context, it may make sense to demand a stationary presence and to limit the extent of online sales.
- It is not clear that banning online sales should be viewed as a core restriction (as it primarily limits intra-brand competition).
- Also dual pricing (wholesale price discrimination) should not be prohibited per se.
- Question: Which alternative mode of organizations may emerge (agency models, flagship stores)?

Literature advertising

- Haucap, J. & T. Stühmeier (2016), “Competition and Antitrust in Internet Markets”, in: J. Bauer & M. Latzer (eds.), *Handbook on the Economics of the Internet*, Edward Elgar: Cheltenham.
- Haucap, J. & U. Heimeshoff (2014), „Google, Facebook, Amazon, eBay: Is the Internet Driving Competition or Market Monopolization?“, in: *International Economics and Economic Policy* 11, 49-61.
- Dertwinkel-Kalt, M., J. Haucap & C. Wey (2015), „Procompetitive Dual Pricing“, in: *European Journal of Law and Economics*.

Thank you for your attention!

Prof. Dr. Justus Haucap
Düsseldorf Institute for Competition Economics (DICE)
Universitätsstraße 1
40225 Düsseldorf, Germany
www.dice.hhu.de – www.dice-consult.de
haucap@dice.hhu.de

Twitter: @haucap und @DICEHHU