



cerre

Centre on Regulation in Europe

ASSESSING THE MARKET POWER OF DIGITAL PLATFORMS

EXECUTIVE SEMINAR

8 MAY 2019, BRUSSELS

cerre.eu

Improving network and digital industries regulation

PRESENTATION

MARKET DEFINITION AND MARKET POWER IN THE PLATFORM ECONOMY



Jens-Uwe Franck

Professor of Law,
University of Mannheim



Martin Peitz

Research Fellow, CERRE
Professor of Economics, University of Mannheim

CONTENTS

- ▶ **1. INTRODUCTION**
- ▶ **2. PLATFORMS**
- ▶ **3. MARKET DEFINITION**
- ▶ **4. MARKET POWER**
- ▶ **5. CONCLUSIONS**

01

INTRODUCTION

Introduction (1/2)

- Platforms and, in particular, digital platforms subjects of a number of high-profile investigations by the European Commission and national competition authorities
- Are we (authorities, practitioners,...) well-equipped to deal with such cases?
- Do we need an update of the competition framework in light of these developments?
- Do we need to drop tools and methods held dear and develop a competition policy for the age of digital platforms?

Introduction (2/2)

- New CERRE Report “Market definition and market power in the platform economy”
- What we do not address
 - The role of data
 - Theories of harm
 - Update of merger control
- Issues outside competition policy (in particular, consumer protection; worker protection; protection of IP rights)

02

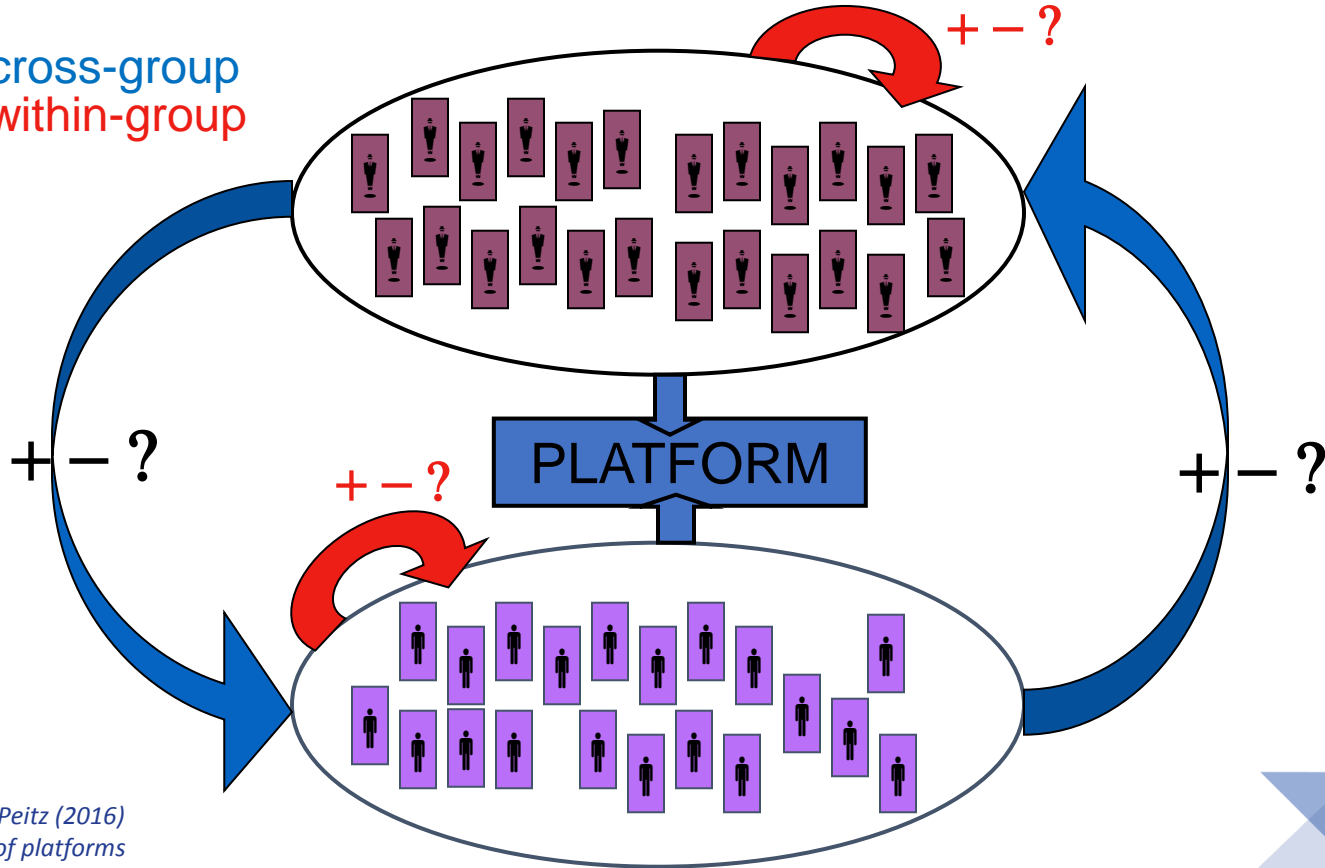
PLATFORMS

Platforms as an analytical and legal concept

- Intermediary operates a platform if it manages network effects
- Intermediary operates a two-sided platforms if it has more than one user group and these groups are linked through cross-group external effects

Platforms and external effects

cross-group
within-group



Source: Belleflamme and Peitz (2016)
presentation, economics of platforms

Platforms and market outcomes

- Positive direct network effect: fosters market concentration
- Positive indirect network effect (positive mutual cross-group external effects): fosters market concentration

03

MARKET DEFINITION

Importance of Market Definition

- “In the case of platforms, the interdependence of the markets becomes a crucial part of the analysis whereas the role of market definition traditionally has been to isolate problems. Therefore, [...] **less emphasis should be put on the market definition** part of the analysis, and more importance attributed to the theories of harm and identification of anti-competitive strategies.” (Crémer, de Montjoye and Schweitzer, 2019, p. 46)
- Agree with the premise
- Disagree with the conclusion

Purpose of Market Definition

- Legally required, in particular, for:
 - merger control
 - abuse cases
- “identify and define the boundaries of competition between firms” (OJ 1997 C 372/5, para. 2)
- “identify those actual competitors of the undertakings involved that are capable of constraining those undertakings' behaviour and of preventing them from behaving independently of effective competitive pressure” (OJ 1997 C 372/5, para. 2)

Multi-Markets Approach

- A two-sided platforms makes service proposals to each side on which it operates
- Multi-markets approach: A market to be defined for each side
- Compared to single-market approach
 - more flexible
 - less error prone
 - captures different substitution possibilities
- Cross-group external effects and homing decisions to be accounted for
- Clarification in EU guidelines desirable

“Zero Price” Markets

- “Markets” for products offered free of charge, i.e. without monetary consideration by those who receive the product
- Free side of the platform may not even pay indirectly (opportunity cost of attention or provision of data)
 - legal concept of “remuneration” not useful
- Sufficient to demonstrate that the platform’s activity is part of a broad or long-term strategy to generate revenue
- Amendment of EU guidelines desirable

Granularity of Markets

- Different categories of services
- Different regional markets
- Different subpopulations of users that are separately targeted or priced
- Depending on user behaviour, the associated markets may be closely interrelated

SSNIP Test

- Useful instrument for competition practice if applied as a thought experiment
- Conceptual clarity regarding demand-side substitutability
- Instead of varying price, other variables may have to be varied (SSNDQ)

04

MARKET POWER

“Market” Shares

- Revenue shares based on the sum of revenues on the two sides
 - not to be interpreted as market shares
 - indicator of some market power if all undertakings follow similar business models
 - otherwise not meaningful
- Market shares in terms of users (or usage volume) as indicator of market power
- In a growing market, total number of active and additional potential users as relevant denominator
- Competition law should abstain from defining “hard” thresholds

Barriers to Entry

- At the core of persistent market power
- May arise due to users' coordination failure in the presence of network effect
- More likely to be present
 - if an industry does not attract new users
 - if it does not undergo major technological change

Direct Evidence

- In light of the difficulties of calculating and interpreting other measures of market power, direct evidence of particular importance
- Lack of entry may be such evidence
- Platform's weakening of (positive) network effects or reduction of service quality as direct evidence

05

CONCLUSION


Conclusions

- ▶ Market definition in the platform economy complex – authorities need to invest substantial resources into the investigation
- ▶ No new paradigm for market delineation: consider economic transaction between the platform and its users
 - Multi-markets approach (interdependent multiple markets)
 - Zero-price markets
 - Granularity
- ▶ Standard indicators market power to be treated with caution in a platform context
 - Barriers to entry should be at the core of an investigation

The logo consists of the word "cerre" in a lowercase, sans-serif font, centered within a white square. The background of the slide is a dark blue with abstract, overlapping geometric shapes in lighter shades of blue and white, creating a dynamic, layered effect.

cerre

Centre on Regulation in Europe

 Avenue Louise, 475 (box 10)
1050 Brussels, Belgium

 +32 2 230 83 60

 info@cerre.eu

 cerre.eu

 @CERRE_ThinkTank

cerre.eu

Improving network and digital industries regulation