



Multi-sided markets in EU competition law and regulation

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DG COMP
5 March 2021

SECTION 1

RULES APPLYING TO UNDERTAKINGS

Article 101

(ex Article 81 TEC)

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,

— any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 102

(ex Article 82 TEC)

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.



EUROPEAN
COMMISSION

Brussels, 15.12.2020
COM(2020) 842 final

2020/0374 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on contestable and fair markets in the digital sector (Digital Markets Act)

Platforms

Old platforms	New platforms
Ad-supported media (advertisers, consumers)	Operating systems (Android, iOS)
Stockmarkets (sellers and buyers)	App stores (Apple app store, Google Play)
Trade fairs, shopping malls (tenants and consumers), supermarkets	E-commerce platforms (Amazon)
Classified ads (sellers and buyers)	Social networks/professional social networks (FB, LinkedIn)
Real estate agents	Messaging
Credit cards	Dating websites
Videogame consoles (game developers and consumers)	Real estate websites
Publishing companies (authors, readers, bookstores)	Ride-hailing (Uber), mobility platforms (bahn.de)
Clubs	Video platforms (Netflix)
Pay-TV	Restaurant delivery platforms
GDS	Mapping websites
Travel agents	Review/price comparison websites
Phone directories/yellow pages	Hotel/accommodation booking websites

Definitions of platforms

- Old definition: Two sides
- New definitions: several types of platforms
 - Transaction v non-transaction platforms
 - Matching v non-matching platforms
- Proposed definitions:
 - One type of platform = standard
 - Another type of platform = ad-supported content distribution
 - **Another type of platform = the platform as a market**

The platform as a market

"The study of markets, in general, is the study of platforms. It is not necessary to draw a distinction between markets and platforms."

Daniel Spulber, [The economics of markets and platforms](#),
Journal of Economics and Management Strategy, 2018

The platform as a market

1. Turning the firm into a platform seller
2. Turning the firm into a platform

The platform as a market

1. Turning the firm into a platform seller

2. Turning the firm into a platform

Ways to get to the market

	Vertical integration model	Distribution model	Agency model	Platform model
Making	Vertically integrated firm	Producer	Producer	Suppliers pay to be present on the platform
Distributing		Distributor/ franchisor	Agent	The platform distributes

- Shift from making to distributing
- Shift from "within firm" relationships to market relationships

The platform as a market

1. Turning the firm into a platform seller

2. Turning the firm into a platform

The Nature of the Firm

By R. H. COASE

ECONOMIC theory has suffered in the past from a failure to state clearly its assumptions. Economists in building up a theory have often omitted to examine the foundations on which it was erected. This examination is, however, essential not only to prevent the misunderstanding and needless controversy which arise from a lack of knowledge of the assumptions on which a theory is based, but also because of the extreme importance for economics of good judgment in choosing between rival sets of assumptions. For instance, it is suggested that the use of the word “firm” in economics may be different from the use of the term by the “plain man.”¹ Since there is apparently a trend in economic theory towards starting analysis with the individual firm and not with the industry,² it is all the more necessary not only that a clear definition of the word “firm” should be given but that its difference from a firm in the “real world,” if it exists, should be made clear. Mrs. Robinson has said that “the two questions to be asked of a set of assumptions in economics are: Are they tractable? and: Do they correspond with the real world?”³ Though, as Mrs. Robinson points out, “more often one set will be manageable and the other realistic,” yet there may well be branches of theory where assumptions may be both manageable and realistic. It is hoped to show in the following paper that a definition of a firm may be obtained which is not only realistic in that it corresponds to what is meant by a firm in the real world, but is tractable by two of the most powerful instruments of economic analysis developed by Marshall, the idea of the margin and that of substitution, together giving the idea of substitution at

¹ Joan Robinson, *Economics is a Serious Subject*, p. 12.

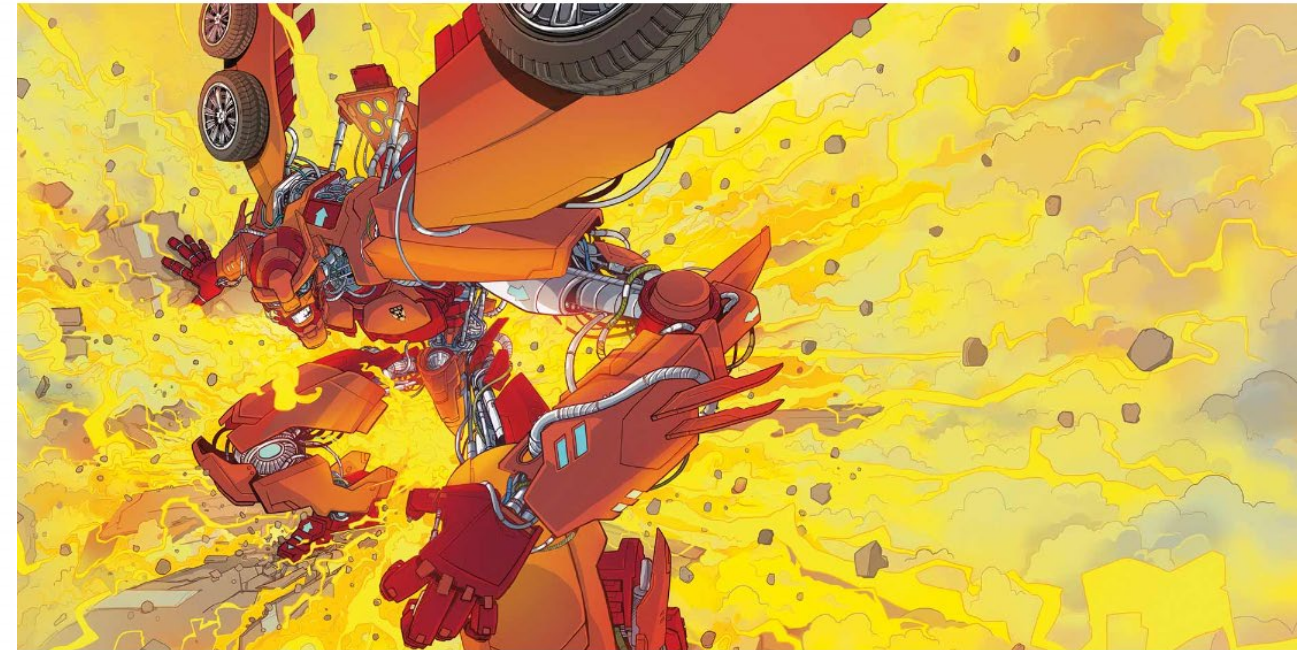
² See N. Kaldor, “The Equilibrium of the Firm,” *Economic Journal*, March, 1934.

³ Op. cit., p. 6.

Finding the Platform in Your Product

Four strategies that can reveal hidden value by Andrei Hagiu and Elizabeth J. Altman

From the Magazine (July–August 2017)



Summary. Five of the 10 most valuable companies in the world today—Apple, Alphabet, Amazon, Facebook, and Microsoft—derive much of their worth from their multisided platforms, which facilitate interactions or transactions between parties. Many MSPs are more... [more](#)

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Why are new platforms different?

Characteristics

- Digital
 - Scalable
 - Can make and enforce rules
- Strong network effects
- Sometimes fuelled by VC, financialisation, tax avoidance, regulatory arbitrage, size, political power

Benefits

- Network effect = efficiency
- Digital technology improves transactions

Concerns

- Loss of competition through high fees, loss of innovation, loss of choice
- Eliminating rival sales channels or products, reducing switching, collusion among platforms

8 current issues

Issue #1: General framework of assessment

- Market definition: single market or separate markets?
 - U.S. Supreme Court [American Express](#) judgment, 2018
 - Cyril Ritter, [Antitrust in Two-Sided Markets: Looking at the U.S. Supreme Court's Amex Case from an EU Perspective](#), JECLAP, 2019
- Restriction on one side, legitimate objective on the other side?
 - ECJ judgment in C-67/13 P [Cartes Bancaires](#), 2014, paras. 76-77
- Restriction on one side = legal because ancillary restraint?
 - ECJ judgment in C-382/12 P [Mastercard](#), 2014, paras. 89-95
- Cross-market efficiencies?
 - ECJ judgment in C-382/12 P [Mastercard](#), 2014, para. 242

Issue #2: Vertical restraints

- Vertical Block Exemption Regulation
- Vertical Guidelines
- Is the platform an agent?
- Is the platform a seller [producer] or a buyer [distributor]?

Article 4

Restrictions that remove the benefit of the block exemption — hardcore restrictions

The exemption provided for in Article 2 shall not apply to vertical agreements which, directly or indirectly, in isolation or in combination with other factors under the control of the parties, have as their object:

- (a) the restriction of the buyer's ability to determine its sale price, without prejudice to the possibility of the supplier to impose a maximum sale price or recommend a sale price, provided that they do not amount to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties;
- (b) the restriction of the territory into which, or of the customers to whom, a buyer party to the agreement, without prejudice to a restriction on its place of establishment, may sell the contract goods or services, except:

of prohibiting a member of the system from operating out of an unauthorised place of establishment;

- (d) the restriction of cross-supplies between distributors within a selective distribution system, including between distributors operating at different level of trade;
- (e) the restriction, agreed between a supplier of components and a buyer who incorporates those components, of the supplier's ability to sell the components as spare parts to end-users or to repairers or other service providers not entrusted by the buyer with the repair or servicing of its goods.

Article 5

Excluded restrictions

1. The exemption provided for in Article 2 shall not apply to the following obligations contained in vertical agreements:

Issue #3: Parity/MFN clauses

- Parity
 - across platforms
 - vis-à-vis the seller
- Under Article 101: Booking.com cases [national authorities]
- Under Article 102: [Amazon e-books case](#) [Commission]
- [DMA](#) Article 5(b) prohibits parity across platforms

Issue #4: "Self-preferencing"

- Google Shopping case
- Amazon "Buy Box" case
- DMA Article 6(1)(d)

Issue #5: Info exchange through dual role

- Amazon dual role case
- Bundeskartellamt *Klöckner* case
- DMA Article 6(1)(a)

Issue #6: Off-platform contracting

- Can mean
 - Paying for content off-platform, consuming it in-platform
 - Advertising off-platform payment
 - Getting content off-platform, consuming it in-platform
- [Spotify case](#)
- [Epic Games cases](#)
- [DMA](#) Article 5(c)

FORTNITE

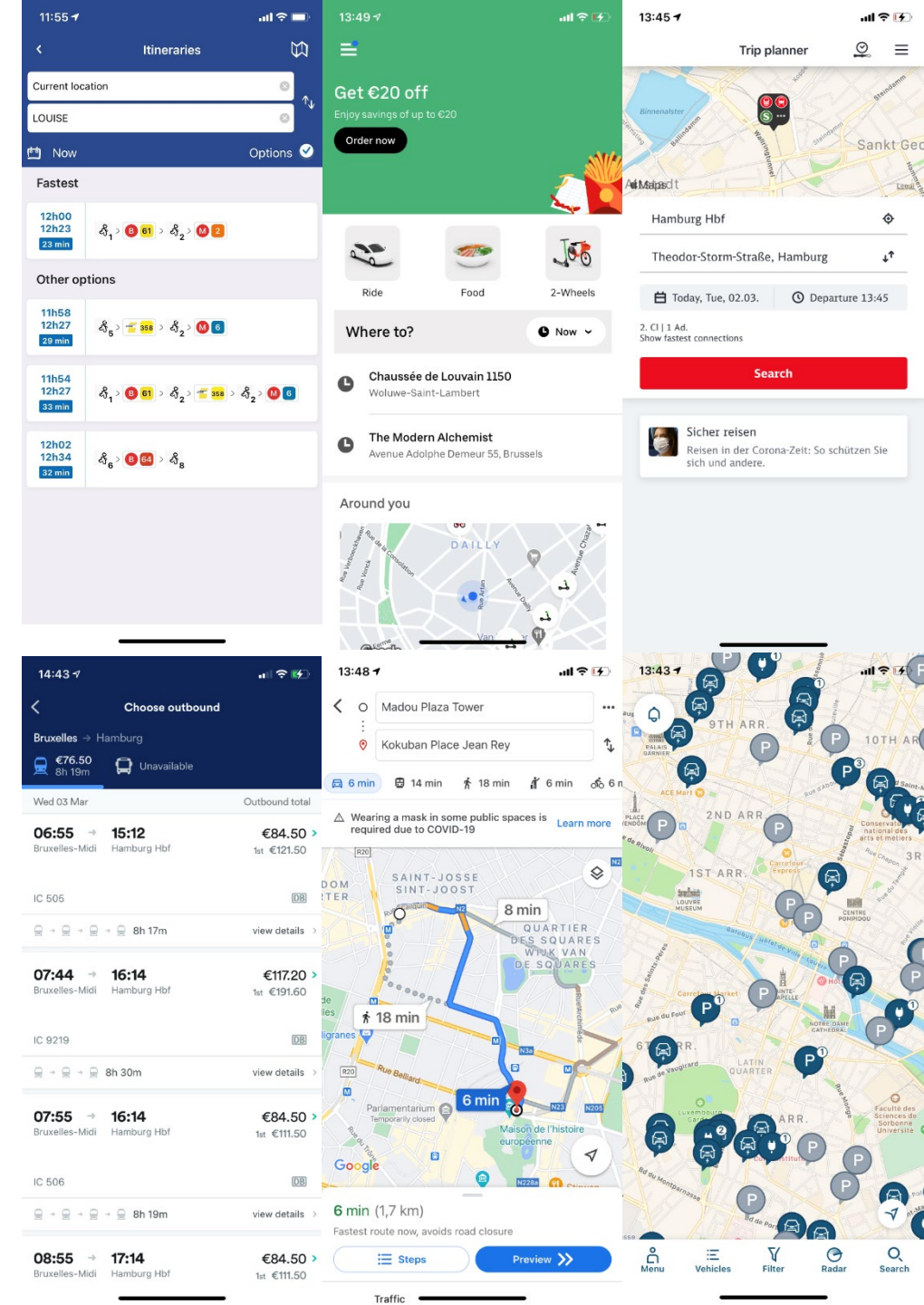


Issue #7: Platform workers

- ECJ judgment in C-67/96 [Albany](#), 1999, para. 60
- ECJ judgment in C-413/13 [FNV Kunsten](#), 2014, para. 31
- 6 January 2021: [DG COMP roadmap](#)
- 24 February 2021: [DG EMPL consultation document](#)
- 5 March 2021: [DG COMP consultation](#)

Issue #8: Mobility platforms

- *Scenario 1*: transport service provider wants to be hosted on mobility platform
 - *Scenario 2*: mobility platform wants a transport service provider to be present on its platform
- ➔ Competition law solution?
- ➔ Regulatory solution?



Conclusion

- Multi-sided platforms = not that different
- Who has market power?
- Where does competition come from?
- Fair market access, fair rules
- Competition law and regulation