

# EU-China Competition Week

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Two-sided markets – with  
particular reference to  
internet/digital  
platforms



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# Two –sided markets

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- I. Introduction
- II. Working Paper 2016
- III. Case-to-case approach
- IV. Changes in the law

# Two-sided markets

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## I. Introduction

- several cases involving assessment of two-sided markets even before internet/digital platforms
- growing number of internet/digital platform cases from 2012 onwards (merges, abuse of dominance, parallel cases in several member states)
- establishment of a “think-tank” unit: focus on platforms & networks, assessment of market dominance

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## II. Working Paper 2016/market concept:

- market definition needs to be done on a case-by-case basis
  - in matching platform cases: defined as only one market
  - audience providing platforms: consideration of the two sides
- all activities related to a platform qualify as “market activities”, even if one side does not pay cash

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## II. Working Paper 2016/assessment of market power:

- key test unchanged: is there a not sufficiently controlled scope of action
- but: potential scope for price increase not dominant focus
- matching platforms: risk of market tipping especially high

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## additional criteria of specific relevance:

- direct/indirect network effects
- effects of economies of scale
- single homing/multi-homing
- access to data
- innovation potential
- user-based market share of more relevance than turnover based market shares
- overall assessment required

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- Case Practice:
  - merger cases (dating platforms, real estate platforms)
  - abuse of dominance cases (hotel platforms, branded sports shoes, amazon)

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Amazon case: price parity obligation for retailers

- Amazon:
  - operates an e-commerce platform (extensive range of goods sold)
  - clients: end-consumers
  - seller: Amazon and third party sellers
  - both segments are presented as a single integrated platform
  - largest e-commerce platform in Germany for fixed price (non-auction) sales



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- condition for participation of third party retailers: “price parity clause” (product may not be offered anywhere cheaper)
- price parity clause was monitored by Amazon and enforced
- price parity clause has effects on both sides of the market

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## Competition assessment:

- Markets:
  - several different retail products markets for the goods traded on the platform (books, clothes, cameras, toys)
  - national B2C online platform service for the sale of a general product range, excluding auction platforms, price comparison engines, online advertising

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## Competition assessment:

- effect:
  - horizontal price fixing agreement for the various retail markets
  - barriers to entry for new competitors/hinders expansion of existing competitors on B2C online platform market –
    - better price conditions for retailers on other platforms cannot be translated into cheaper product prices
    - less incentive for consumers to search on other platforms
- Amazon abandoned its price parity clause

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- Google case:
  - background information:
  - disputes between search engine providers and press publishers about the display of excerpts in search result lists
  - legislator introduced a copyright, protecting the investment of the publisher (right of prohibition); exemption for: individual words or very small text excerpts

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- Google case:
  - subsequently Google asked publishers to confirm that they agree to have short text excerpts displayed in google service
  - if publisher does not consent, Google would display only the headline in its search result lists
  - most publishers agreed to that

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- Google case:
  - Google's search engine has the character of a platform:  
provides user with a search service, offers advertising customers advertising space + website operators
  - positive and negative indirect network effects between users and advertisers
  - Google uses the content of the websites as input for its search service

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- Google case:

market definition:

- google is an audience providing platform
- second market side (advertisers) are not an essential component of the product offered, rather an add-on for financing reasons
  - activity towards advertising customers was considered separately
- “market” despite the absence of a monetary market price

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- Google case:

dominant position:

- strong market position on a search engine market and on a search related online advertising market (usage volume, user affiliation, access to user data)

discrimination/abusive practice:

- what obligation does the law impose on a dominant search engine ?
- no general obligation to compile/list/present search results non-discriminatory



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- Google case:

discrimination/abusive practice:

- no general obligation to compile/list/present search results non-discriminatory
  - many possible ways to compile/list/ present search results
  - this constitutes the core business of a search engine
  - only if criteria have no relevance or clearly other motives
  - here: aim of Google is to respect the law, the means used were suitable and had no significant negative impact on third parties

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Thank you very much for your  
attention!

