

# **Platforms and anti-competitive clauses**

## **Trade-offs and Swiss examples**

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# Agenda

## Platform

- Platform markets
- Platform economics
- Traditional platforms versus online platforms
- Analytical framework

## Anticompetitive clauses

- Exclusivity
- Tying and bundling
- Across platform parity agreements
- Coordination of competitors

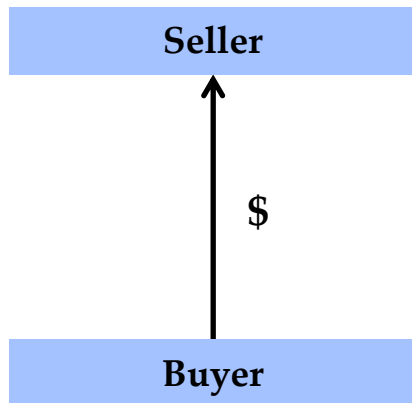
## Conclusion

# Platform markets

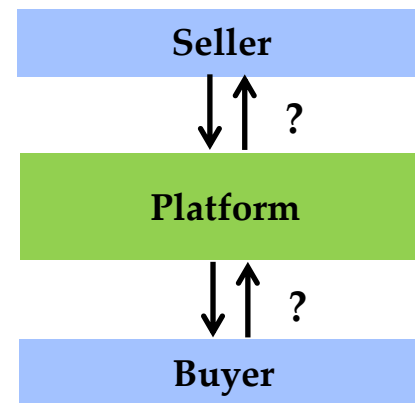
## Platforms

- A platform has to bring both side on board (chicken and egg problem)
- Not the overall price but the price structure determines market allocation

### Conventional market



### Multi-sided market



# Platform economics

## Market frictions hindering efficient competition

- Informational, social, contractual barriers between sellers and buyers
- Existence of group or network externalities
- Impossibility of side payments between market sides

## Economic value of platforms

- Facilitate the interaction of two or more market sides
- Reduce transaction cost
- Internalize externalities
- Enhance competition in the sellers' market

## Alternative provision

- One market side jointly providing a platform  
Often not feasible due to diverting interests, public good problems (and competition law...)

# Traditional and online platforms

## Traditional platforms

Game consoles, advertising based media, credit cards etc.

## Online platforms

Booking and shopping platforms, search platforms, social networks etc.

## What sets online platforms apart?

- Extensive reach (often worldwide)
- Strong network effect
- Extreme cost structure with high fixed cost and quasi zero marginal cost
- Low switching costs due to technological barriers
- High switching costs due to network effects
- Uncertainty of a highly innovative market environment

# Types of online platforms

## **Eyeball platforms**

Advertisement-based business model

E.g. search platforms, social networks etc.

## **Transaction platforms**

Transaction fee or membership fee model

E.g. booking platforms, shopping platforms etc.

## **Hybrids**

Transaction fees plus advertising

E.g. auction pages with advertising, newspapers etc.

# Analytical framework

## Theory of multi-sided markets

- Platforms connect market sides
- Price structure accounts for indirect network effects
- Price on each side determines market outcome (not merely the sum of prices)
- Membership- versus transaction fees
- Multi-homing versus single-homing

## Main Trade-offs

- Competition on one side of the market vs competition on the other side
- Investment incentives vs competition

→ Market structure is complicated and difficult to assess

# Types of anti-competitive clauses

## Exclusivity

- Exclusive contract with one side of the market
- Example: Exclusive content in pay TV

## Tying

- Conditional platform usage
- Example: Honor-all-cards rule

## Across platform parity agreements (APPA)

- Non discrimination between competing platforms
- Examples: Most-favored-nation and no-surcharge clauses

## Horizontal agreements

- Coordination platforms and mergers
- Examples: Credit card interchange fees, merger of competing online platforms



# Exclusivity

## Basic idea

Exclusive contracts with one side of the market in order to gain market share on the other side

## Main trade-off

Enhancing platform competition (with heterogeneous preferences on the other side of the market)

vs.

Foreclosure

## Swiss example (pay TV)

- Exclusive live sport content on Swisscom TV (football and ice hockey)
- Potential foreclosure of TV and broadband markets (due to bundled offers)

→ Case still pending with ComCo

# Tying and bundling

## Basic idea

Platform usage for one product conditional on using another product

## Main trade-off

Foreclosing competitors on one side of the market

vs.

Increasing the value of the platform on the other market side

## Swiss example (credit cards)

- Honor-all-cards rule
- With multiple credit and debit cards, a company may leverage market power into another market
- But: value of all cards increases, which increases number of cardholders, which increases value of cards for dealers etc. (internalization of network effect)

→ Honor-all-cards rule are legal in Switzerland (as in most jurisdictions)

# APPA: Most-favored-nation clauses (MFN)

## Basic idea

Prices conditional on pricing of alternative platforms and sales channels

## Main trade-off

Solving the freeriding problem as externalities may jeopardize the platform's incentives to invest

vs.

Weakening competition between platforms / distribution channels as prices cannot be differentiated and deterring more efficient platforms

## Swiss example (hotel booking platforms)

- Broad MFN clauses were rejected by ComCo as a restriction on competition (Booking.com & Expedia had already adjusted the clauses)
  - No fine because MFN do not constitute a hard-core cartel
- ComCo left legitimacy of narrow MFN open

# APPA: No-surcharge-clauses for payments

## Basic idea

Platform restrains merchants by not allowing them to pass on fees

## Main trade-off

Sending price signal for efficient use of payment systems

vs.

Inefficient market steering possibly triggering a downward spiral for the network

## Swiss Example (credit cards)

- In December 2014 ComCo reduced the interchange fee. At the same time it revoked its prohibition of a no-differentiation rule
- Problematic signal to new (more efficient) payment systems (mobile payment systems etc.) as costumers cannot be incentivized to use a new platforms

# Coordination of competitors

## Basic idea

Joint or coordinated provision of services to enhance network effect

## Main trade-off

Excessive pricing on one market side

vs.

Benefit for the other market side due to stronger network effects

## Swiss Example (merger of online platforms)

- Joint control of the two biggest publishing houses (Tamedia & Ringier) over most of Switzerland's online job portals
  - Not even in-depth assessment. Rationale: low entry cost, alternatives (company website) and consumers' gains due to one stop shopping
  - But: Entry costs due to network externalities, consumers multihome with subscriptions and meta searches
- After the merger prices for advertisers increased by about 50%

# Conclusion

## **Platforms are very common**

- Platforms play an important role especially in the online economy
- They generally reduce transaction cost and enhance competition
- The theory of multi-side markets provides a coherent assessment framework

## **New challenges to competition authorities**

- Platforms often have a strong market position
- Platform operators have incentives for anticompetitive clauses
- Complicated, dynamic markets with complicated effects and hard economic trade-offs

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