



# What is a platform and should they be regulated?

## Summary report

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In its Digital Single Market strategy, the European Commission reflected on the concerns of some member states and some players about the growing market power of online platforms. A public consultation is now underway to better understand the social and economic role of platforms, market trends, the dynamics of platform development and the various business models underpinning platforms.

The objective of the seminar was to support the quest for a better understanding of online platforms and the regulatory environment by exploring two key questions:

- What is a platform?
- Is specific regulation necessary?

This CEPS Digital Forum seminar organised on the 17<sup>th</sup> of November 2015, supported by the Computer and Communications Association (CCIA), comprised in two sessions on these themes, with each session having two speakers followed by two discussants. The seminar deliberately had the intention to focus on providing evidence to help answer the questions posed, rather than directly calling out stakeholder's views.

*Session 1 - What is a platform, what is their role, how are they changing, how do they compete with each other?*

The first session, chaired by Colin Blackman (Director, CEPS Digital Forum) included presentations by Thibault Larger (Oxera) and Nicolai van Gorp (e-Economics), with Brian Williamson (Plum Consulting) and Charly Berthet (Rapporteur, Le Conseil national du numérique) as discussants.

Thibault Larger (Oxera), drew upon a recent study conducted for Google on the *Benefits of Online Platforms*,<sup>1</sup> to consider the definition of platforms, their role in the economy and how they compete with each other. He pointed out the great diversity in online platforms in terms of activity, sector, business model, and size. As a result, discerning commonality between them is difficult and this is why there is no commonly accepted definition.

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<sup>1</sup> See Oxera (2015), *Benefits of Online Platforms*, October, <http://www.oxera.com/Latest-Thinking/Publications/Reports/2015/What-are-the-benefits-of-online-platforms.aspx>



The definition used by the European Commission in its consultation document (*“an undertaking operating in two (or multi)-sided markets, which uses the Internet to enable interactions between two or more distinct but interdependent groups of users so as to generate value for at least one of the groups. Certain platforms also qualify as intermediary service providers.”*) is too broad and vague to be of great value. The economic literature on multi-sided markets suggests that definition should take into account at least three criteria:

1. The balance of contributions, i.e. does the online platform balance the contribution made to total profits by setting different access to and usage fees between the groups of users?
2. Interdependence, i.e. are there dependence effects between the distinct groups of users?
3. Control, i.e. does the platform have control over the terms of the exchange between the distinct groups of users?

Thus, some digital intermediaries may be considered online platforms in some cases, and in some others not. For instance, Gumtree, the UK classified ads website, does not require any kind of affiliation, and therefore would not be considered an online platform according to the third criteria, but it satisfies the requirements of the other two. Similarly, certain platforms captured by the European Commission in its definition may not be defined as a platform according to these criteria. For instance, there is no interaction between content providers and users on Netflix, and no affiliation is needed from the consumers' side on Vimeo, Dailymotion or YouTube.

Larger also referred to the OECD's definition, which equates digital platforms with “pure intermediaries”, in other words, that they do not retain control over the interactions they facilitate. But, in practice, the degree of control over interactions varies. It may be quite limited, for instance, in creating an account on Facebook or Twitter, or it may include control over aspects of transactions, such as quality standards and commission payments on Airbnb and BlaBlaCar. Going further, companies such as Amazon and Netflix retain control over prices and even distribute their own products. Thus, if online platforms were required to be “pure intermediaries”, Airbnb, BlaBlaCar, Amazon, Netflix and Facebook would be excluded.

On the role of online platforms, the Oxera study shows that they provide significant benefits to consumers in terms of improved convenience, greater choice, improved transparency, higher engagement, as well as monetary benefits and enhanced relationships. While consumers express some concerns, for instance, trustworthiness, security and privacy, online harassment, and complexity, these are far outweighed by the perceived benefits. Platforms also bring benefits to businesses, reducing geographic barriers, expand the pool of potential employees, customers and investors, allow them to support new and different types of businesses or products, and change the cost structures of



businesses, including lowering the costs of staff search, acquiring and engaging with customers, and allowing more targeted, effective marketing.

The Oxera survey also indicates that multi-homing is possible for most consumers and desirable to many, but not all - between 60% and 70% of consumers use multiple websites or apps for specific tasks - suggested limited potential for lock-in on the consumer side.

Larger concluded that the concept of an “online platform” is a concept that is ill posed in the context of policy (antitrust and regulation). Online platforms are bringing together users (customers and producers), allowing trades that would otherwise not happen. They compete because consumers like to multi-home, but concentration is likely to be due to the interdependence between user groups and differentiation.

In the second presentation, Nicolai van Gorp drew on the findings of a study for the Dutch Ministry of Economic Affairs, by TNO, Ecorys, IViR, e-Conomics and Radicand Economics, on *Digital Platforms: An analytical framework for identifying and evaluating policy options*. Van Gorp highlighted the wide variety of platforms because of underlying business models and gave a basic definition as follows: a digital platforms is a (technological) basis for delivering or aggregating services/content that is or can be operated as a two- or multi-sided platform that is or can facilitate information exchange between end-users on one side of the platform, or allow them to socially interact.

Applying a modular approach to capture the essential characteristics of the different business models, he defined four basic approaches to operating a platform:

1. Single sided with no network effect e.g. Netflix, Zalando
2. Single sided with direct network effects, e.g. Whatsapp
3. Two (or multi)-sided with indirect network effects, e.g. Amazon, YouTube, New York Times
4. Two (or multi)-sided with direct and indirect network effects e.g. Facebook, LinkedIn

But to fully understand the nature of online platforms, it is necessary to consider many additional factors, such as the revenue model, the role of scale and scope economies, how data and user-generated content is used, horizontal and vertical integration, geographical dependencies, whether the platform is used by other apps or platforms (platform of platforms), and whether the platform is creating new markets or disrupting/redefining existing markets. He described how these additional “modular building blocks” enable a taxonomy of online platforms to be constructed.

Responding to the presentations, Brian Williamson thought the main challenge may lie in the regulation of the offline world rather than online, pointing out the



example of Uber facing strong state regulation. He also raised questions on public interests at stake and more specifically on how competition policy should adapt to the new digital landscape. How can we ensure that freedom of choice and fundamental rights are protected? Mr van Gorp replied that we can relatively easily identify the public interests at stake and link these to the platforms' characteristics. When, for instance, data is used internally and externally, and that content is curated raising concerns on integrity and transparency, generated by bottleneck conditions.

On the other hand, the appropriate regulatory response is problematic, for instance by imposing data portability, it lessens the added value of network effects, since users could switch more easily. As a result it would reduce incentives to innovate as users may be free riding more easily, which cuts off the scope economy, and might dissuade companies to merge. Therefore, he stated that fewer barriers to entry and less "winner-takes-all" effects would be detrimental to innovation as a whole. Then, portability required standards and interoperability, however those two factors are not recognised as incentives to innovate. Putting the users back in control by implementing greater data portability requirements shifts in fact the problem to data transfer security and companies' accountability. In tackling one concern, regulators may create other issues, hence, making hard choices and weighing different public interests is necessary.

Charly Berthet remarked that a broad definition should be privileged in order to capture essential characteristics of platforms, stating that a narrow or too strict definition would not age gracefully in the extremely fast developing ecosystem. He also acknowledged the tremendous added-value that online platforms are bringing into the economy while recalling the fact that some concerns and ethical issues are sometimes founded, and often legitimate, touching upon competition or public interests aspects. He saw the intermediary function as a crucial common denominator, as well as other factors such as information asymmetry and being active on two or multi-sided markets, and the fact they are operating online which triggers network effects, economies of scale among other specificities. In his view, especially because the overall economy is about to platformise, the question of regulation is rightfully posed. Obviously, regulation faces two main constraints: coping with very different sets of activities from banking to social media, as well as the very fast-changing character of digital technologies.

He notably explained that most efforts at the CNNum<sup>2</sup> were made to understand that defining roles and responsibilities was beneficial for the overall ecosystem,

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<sup>2</sup> The CNNum's opinion and reports on *Platform Neutrality: building an open and sustainable digital environment*, are available at:  
<http://www.cnumerique.fr/en/platform-neutrality-building-an-open-and-sustainable-digital-environment/>



users and companies altogether. This is why using a bundle of criteria is absolutely crucial. While the intermediary position must be at the very core of this definition, having a definition exclusively based on this pattern is irrelevant since platforms filter, organise and prioritise content, products and services, most often for the benefits of the users. Berthet saw potential issues linked to interconnectedness and mixed business models, meaning that some platforms can be integrated in hybrid ecosystems characterised by strong interaction of converged services. He finally stated that the notion of ecosystem was particularly meaningful in how we should consider the potential effects for both users and competitors, as well as society as a whole. As an innovative solution, and rather than imposing prescriptive regulation, CNNum notably proposed to evaluate platforms through rating agencies based on an open network of contributors.

A question arose from the audience on the reasons why Netflix should be categorised as a platform instead of simply seen as a service provider that licences content to consumers. Mr van Gorp replied that Netflix could operate as a multi-sided platform while facilitating communication among end-users even if they currently don't. In his view, the main difference between Netflix and a traditional video shop is mainly scale, and the possibility to become something else, hence highlighting how those business models were in constant flux, which is the very difficult character to capture in defining platforms.

*Session 2 - Do we need to regulate? Is competition law still sufficient or do we need a new framework? Do competition enforcement and politics need to adapt?*

The second session, moderated by James Waterworth (CCIA), comprised presentations by Mark Hiley (The Analyst) and Alfonso Lamadrid de Pablo (EU and Competition Law Department, Garrigues), with responses from Kaja Kallas (MEP) and Katarzyna Ananicz (Permanent Representation of Poland to the EU). The purpose of the session was to consider whether existing law and its enforcement are effective in the context of platforms, or whether new tools are needed.

Mark Hiley provided a financial markets analysis of internet markets and the state of investment in e-commerce in Europe. Analysis showed a consistent trend since 2012 of increased capital raising in the internet sector in Europe by European domiciled businesses. At least €12bn has been raised by public companies and €5bn by private companies in the period since 2012. Some notable examples of success include Just Eat (€3.6bn market capitalization), Yoox (€1.7bn), Rightmove (€5bn), and Zalando (€7.2bn).

Hiley said that this was different to the dot.com bubble of 15 years ago as companies are willing and able to spend the capital they raise. With more than €10bn operating spend (SG&A) accumulated since 2012, more businesses are raising more money and spending more to build scale. Online return on investment (ROI) is still substantially below offline ROI, perhaps understandably



because of the immaturity of the business models, rather than competitive barriers. In his view, when scaled, online retail will have a faster capital turn than offline models, because of the lower physical asset requirement for an online model. Early evidence suggest online models will generate higher margins than offline, because of the lower costs required to service the customer.

Hiley concluded that companies in Europe can raise money and spend money, whilst the barriers to entry are typical of those faced by most businesses in Europe.

Alfonso Lamadrid de Pablo (EU Competition Law Department, Garrigues) began his presentation by considering the origins of the debate on regulation of online platforms, which he saw as political dissatisfaction with the competition rules. Politicians in some member states, notably Germany and France, have called for a review of competition law claiming that it is no longer adequate. French Technology Minister Fleur Pellerin went so far as to say, "*We don't want to regulate the net...We want to regulate a small number of Internet platforms that today are blocking innovation from all of the other actors.*" These sentiments were reflected in the Digital Single Market (DSM) strategy: "*the way they (some platforms) use their market power raises a number of issues that warrant further analysis beyond the application of competition law in specific cases.*"

Lamadrid pointed out some of the inconsistencies in the debate, for instance, the DSM strategy is aimed at "tearing down regulatory walls" but, at the same time the consultation on platforms appears to be aimed at erecting new regulatory walls. On the question of whether competition law is sufficient to handle challenges raised by online platforms, he thought that this was the wrong question. Rather than looking for supposed flaws in competition law, instead we should look to competition law to inform the debate.

First, on whether and how to intervene, Lamadrid said that experience has taught competition law to be humble, that with great power comes great responsibility, that authorities should also intervene when a clear problem is identified, and that when they do so they should only act with proportional remedies.

When it comes to the identification of "platforms", LaMadrid thought that the key question was whether two-sidedness is enough to matter. This question is not one that can be answered ex ante in the abstract, but on a case-by-case basis and in the light of empirical evidence. He argued that experience from competition law showed that picking multi-sidedness, as the decisive element for specific regulation to apply, may be tremendously problematic. He reminded the audience that competition law should be agnostic towards business models and public distortions. In many markets "online platforms" compete with offline platforms or with non-platforms. Regulating only some of the players active in a market may skew and distort competitive conditions in an undesirable way (one



only needs to look at the “regulatory asymmetry” concerns raised in regard to the sharing economy”).

He urged caution regarding online platforms and market power because the appearance of market power in online settings often cannot be trusted, because, among other things, the markets are extremely dynamic and there are strong actual or potential competitors, services may be provided for free, there may be differentiation, multi-homing, easy switching, interoperability or low barriers to entry. Size also does not necessarily matter, or that it may not necessarily be a bad thing. Multi-sidedness is about network effects and network effects are a positive externality; the main defining characteristic of these settings is that scale generates benefits.

Lamadrid concluded that the bottom line was consumer choice. Competition law and public policy should be about enabling informed choices. He thought that the best way of protecting consumers from the perceived problems in these markets was to ensure they were informed and educated, and then making sure that they are not artificially locked-in to a given platform.

In response to these presentations, Kaja Kallas (MEP) thought that harmonising regulation was *per se* beneficial for all, and foremost needed in order to shape an EU-wide digital market. This is precisely the overall objective of the DSM strategy. On the other hand, since regulation was traditionally designed according to incumbents’ business models, the challenge for the EU institutions was to re-think the regulatory landscape through an innovation lens. Therefore, the Commission envisioned starting from analysing new players and identifying problems in order to define online markets. Besides, she thought that competition law was not an answer to every problem, and may lack useful tools to perform competition assessment, especially given the very fast changing context where today’s successful digital players can disappear overnight. She also cautioned against the temptation to resonate anti-American sentiment or implement protectionist strategies through regulatory measures.

She also found it interesting to hear that there were few or low barriers to market entry, which made her wonder in which direction we are going now: towards protecting existing models or looking forward to enable innovation to flourish? Many called for creation of a level playing field, including between OTTs and Telecom operators. As a result she saw a critical moment not to “regulate up” platforms but rather to balance rules for both sets of players.

Katarzyna Ananicz (Permanent Representation of Poland to the EU) stressed the importance of seeing the digital economy as a chance to move forward in the European economy, at this precise timing of E-commerce uptake. As a stress case to test our approach, she notably pointed out the NIS directive on which the Council is currently discussing in the trilogue process. Public consultations are crucial in order to define things apart. She then added that no one size-fits-all approach to platforms would be relevant, even though some undertakings may



be taken and existing rules be adapted, for instance as regards consumer protection, or SMEs. As fundamental rights, she mentioned the right to information as a critical criterion to assess the interplay between platform's functions of gatekeepers or maybe censorship should be investigated.

Questions from the audience focused mainly around competition rules enforcement, and how adequate tools could be brought in to investigate in this particular online landscape. Ms Kallas notably called for a new toolbox in order to better comprehend algorithms, and the implications of data collection, storage and treatment. On this Mark Hiley opposed this view stating that the Commission has the means to request and analyse data from companies, in order to better understand online markets' functioning and interactions. Nonetheless, he agreed on the overall idea of adapting some tools, especially to more convincingly measure innovation. On the question of whether data analytics is conceived as a tremendous competitive advantage, Lamadrid retorted that "big data" was a barrier to entry like any other, meaning that it should be proved and treated as such. The last remarks touched upon the conundrum of having platforms operating as pure intermediaries, irresponsible as regards the content they transmit, while expecting them to take more responsibilities as information gatekeepers.