



Dominance Assessment in Two-Sided Platforms: Highlights from the ICN's Webinar

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On October 22, the ICN Unilateral Conduct Working Group hosted the first in a series of webinars, “Dominance Assessment in Two-Sided Platforms.” The program, moderated by the Competition Commission South Africa’s Chief Economist James Hodge, featured prominent antitrust experts that shared their experience with (i) market definition; (ii) dominance assessment; (iii) economic elements; and (iv) general lessons learned.

Assessment of competition in two- or multi-sided platforms (“TSPs”) is an important topic that has been at the center of the international debate about the proper role of digital platforms in our society. Are the tools traditionally used to define markets, to assess market power and exclusionary conduct sufficient to protect competition in two-sided markets? Silvia Fagá de Almeida, Economist and Director of LCA, and Brazilian NGA, presented challenges of defining markets in TSPs, such as direct and indirect network effects, low marginal costs of the incumbent, and the presence of non-monetary prices. According to Almeida, Brazil’s CADE is still looking for a clear approach on how to analyze two-sided platforms.

Denis Gavrilov, Counsel at Egorov Puginsky Afanasiev & Partners and Russian NGA, focused on why the classic market share calculation based on volume of sales and revenue cannot be applied to digital platforms given that they are generally free of charge. *Yandex v. Google*, decided by the local antitrust agency, FAS, in 2015 was the first proceeding where Russia’s FAS defined the market for digital platforms and analyzed the potential anticompetitive effects on TSPs.

Andrea Amelio, Policy Officer at EC’s DG Comp, identified seven elements for the economic assessment of dominance in double sided platforms: (i) economies of scale; (ii) economies of scope; (iii) network externalities; (iv) behavioral biases on the consumer side; (v) data advantages of the incumbent; (vi) importance of raising capital; and (vii) brands. He also illustrated the learnings from two landmark decisions of the European Court of Justice, *Groupement des Carte Bancaires* and *Mastercard* that have shed light on the application of Article 101 TFEU to the analysis of multi-sided platforms.

Finally, Donald Baker, founder of Baker & Miller and U.S. NGA, provided interesting considerations on lessons and errors from the U.S. antitrust experience. Historically in the U.S., TSPs can be classified into two categories. The first are networks organized by industry users in order for their members to be able to interconnect, such as credit card systems and stock exchanges, and the second are entrepreneurial ventures where the platform owner creates products that sells on both sides (e.g. Google and Facebook). Different types of TSPs generate difference competition problems for enforcers. According to Baker, user-owned TSPs have generated exclusionary abuses of dominance, as the owners sought to penalize disfavored rivals, and impose rules unreasonably restricting TSP users. On the other hand, single-firm TSPs can generate exploitative abuse problems when they have developed substantial market power. Baker stressed that remedies in this area are generally very complex as there is no one-size-fits all remedy for TSP antitrust violations.

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