



August 18, 2018

United States Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW, Suite CC-5510  
Washington, DC 20580

*Re: Competition and Consumer Protection in the 21st Century Hearings, Project Number P181201*

**Issue 3: The identification and measurement of market power and entry barriers, and the evaluation of collusive, exclusionary, or predatory conduct or conduct that violates the consumer protection statutes enforced by the FTC, in markets featuring ‘platform’ businesses**

**I. Introduction**

These comments are submitted in response to the U.S. Federal Trade Commission (FTC)’s announcement regarding hearings on competition and consumer protection in the 21st Century.<sup>1</sup> The Computer & Communications Industry Association (CCIA)<sup>2</sup> commends the FTC for seeking a better understanding of the legal and policy challenges that arise with the digitalization of the global economy. CCIA welcomes the opportunity to provide its views on the variety of competition issues raised.

In order for tech-related innovation to drive the U.S. economy, both competition policy and sound antitrust enforcement must play a crucial role in ensuring that competition exists across markets.

The term “platform” is frequently used in reference to certain Internet-related business models, but usually without any definitional rigor. In lieu of these terms, the concept of “two-sided” or “multi-sided” markets is better substituted for “platforms” when considering competition policy

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<sup>1</sup> Press Release, FTC Announces Hearing on Competition and Consumer Protections in the 21st Century (June 20, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st>.

<sup>2</sup> CCIA represents large, medium and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications and Internet products and services. Our members employ more than 750,000 workers and generate annual revenues in excess of \$540 billion. A list of CCIA members is available at <https://www.ccianet.org/members>.



matters.<sup>3</sup> Multi-sided business models are not new and have existed for centuries. However, they have more recently proliferated across the economy, providing for a variety of customers to realize immediate benefits due to the ability of these business models to readily facilitate interactions among multiple parties. As discussed below, multi-sided business models have grown in recent years as a variety of Internet services have utilized the business model of pairing providers of goods, services, or content with consumers of those goods, services, or content, thanks to the power of the Internet to bring people together regardless of geography. Their success has generated vibrant debate on how antitrust enforcement should address these types of enterprises.

CCIA believes that U.S. antitrust agencies can apply the existing antitrust framework to a large and diverse set of businesses, including both single-sided and multi-sided business models. In doing so, U.S. antitrust agencies can take into account real-world business realities and ensure that competition is protected in different markets to the benefit of consumers and innovation. It is important that the FTC continues to do so by applying sound economic analysis to its enforcement actions and having a clear understanding of the underlying business models of these complex services.

## **II. Whether the platform business model has unique implications for antitrust and consumer protection law enforcement and policy**

Multi-sided business models, often called “platforms,” are enterprises based on a business model whereby the demands between different types of customers, connected by the platform, are interdependent.

These business models, including certain online marketplaces, stock exchanges, dating websites, messaging platforms, and payment networks, enable two or more distinct sets of customers to interact with each other, realizing gains from such interactions.<sup>4</sup> What characterizes these business models is that there is interdependency of demand between them. In other words, the demand for the platform’s services by each set of customers depends on the demand for the platform’s services by at least one other another set of customers.<sup>5</sup>

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<sup>3</sup> Daniel O’Connor & Matthew Schruers, *Against Platform Regulation*, Presentation Draft, Oxford Internet Institute Conference on Internet, Policy, and Politics (Oct. 2016) at 3-8, *available at* <http://blogs.oii.ox.ac.uk/ipp-conference/sites/ipp/files/documents/OConnor-Schruers%2520-%2520Against%2520Platform%2520Regulation.pdf>.

<sup>4</sup> *See, e.g.*, David S. Evans & Richard Schmalensee, *The Antitrust Analysis of Multisided Platform Businesses*, Oxford Handbook of International Antitrust Economics 404, 404-405 (Roger D. Blair & D. Daniel Sokol, eds., 2015).

<sup>5</sup> *See, e.g.*, Lapo Filistrucchi et al., *Market Definition in Two-Sided Markets: Theory and Practice*, 10 J. Competition L. & Econ. 293, 296-97 (2014). For example, an assessment of the competitive realities facing a website serving



The current antitrust framework, as supported by the Supreme Court’s recent *American Express* decision, generally requires the definition of markets to assess competitive effects and determine whether an antitrust violation has taken place or not.<sup>6</sup> In defining markets, case law demands that the antitrust analysis takes business realities into account.<sup>7</sup> Given the particularities that characterize multi-sided business models, including the extent of inter-platform and intra-platform competition, it is important that economic analysis informs antitrust authorities’ enforcement decisions. In particular, it is necessary that agencies account for the interrelationship of demand.

When enforcing antitrust laws with respect to multi-sided business models, agencies should also take into account the diverse nature of business models that exist, as is done when analyzing single-sided markets. Predatory pricing is a good example of how failure to account for the interdependent demand that characterizes multi-sided business models can lead agencies to police false positives, by concluding that conduct is anticompetitive when, in fact, it is not. If a multi-sided business is charging a below-cost price on one side, and antitrust enforcement authorities fail to account for the other relevant sides of the business at issue, authorities would reach an inaccurate conclusion regarding the business’s conduct. Pricing below cost is a common profit-maximizing behavior of multi-sided business models because of potential differences in elasticity of demand on different sides of the business, even when operating in competitive industries, and should not be considered actionable, anticompetitive conduct without additional truly probative evidence.<sup>8</sup>

### **III. Whether and how the presence of “network effects” should affect the Commission’s analysis of competition and consumer protection issues in these markets**

U.S. antitrust practice is characterized by fact- and evidence-based enforcement. Therefore, the answer concerning how network effects should affect the FTC’s analysis on competition cannot be broadly answered, and deserves a case-by-case approach.

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advertisements must take into account the interests of both advertisers and site visitors who experience the advertising.

<sup>6</sup> *Ohio v. American Express Co. et al.*, Docket No. No. 16-1454 (June 25, 2018). CCIA filed an amicus brief in this case, showing how antitrust analysis must account for the complexity of multi-sided markets. Enforcers should pursue enforcement actions only with a sound understanding of the business models at issue. See Brief of CCIA as Amicus Curiae, *Ohio v. American Express Co., et al.*, Docket No. 16-1454 (filed Jan. 23, 2018).

<sup>7</sup> *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 467 (1992); see *United States v. Sealy, Inc.*, 388 U.S. 350, 359 (1967) (rule of reason requires a focus on “the context of the particular industry”).

<sup>8</sup> See *id.*; David S. Evans, *The Antitrust Economics of Multi-Sided Platform Markets*, 20 YALE J. ON REG. 325, 343 (2003); David S. Evans & Michael Noel, *Defining Antitrust Markets When Firms Operate Two-Sided Platforms*, 2005 COLUM. BUS. L. REV. 667, 681-82 (2005).



Network effects, or demand side economies of scale, are present when the value of adopting a service to an incremental user is larger when more users have already adopted.<sup>9</sup> The evaluation of network effects in competition analyses should be accompanied by analysis concerning the extent to which “single-homing” and “multi-homing” are present in a given market.<sup>10</sup>

For example, Professors Haucap and Heimeshoff acknowledge that:

In two-sided markets increasing concentration will be driven by indirect network effects, but capacity limits, product differentiation and the potential for multi-homing (i.e., the parallel usage of different platforms) will decrease concentration levels. How easy it is for consumers to multi-home depends, among other things, on (a) switching costs (if they exist) between platforms and (b) whether usage-based tariffs or positive flat rates are charged on the platform.<sup>11</sup>

“Multi-homing” refers to those instances where customers use more than one platform or service, whereas “single-homing” refers to those instances where customers only use one platform or service in a particular industry. Compared to previous physical networks, many of today’s online platforms may be more susceptible to disruption from new entrants thanks to lower barriers to entry, low switching costs, the prevalence of free-to-the-user business models, and multi-homing.

As argued by economist David Evans:

Online platforms are more susceptible to attack by entrants than network industries of a century ago. Network effects and sunk costs made the natural monopolies around the turn of 20th century difficult to challenge. Rivals had to sink massive amounts of capital into duplicating physical networks such as railroad tracks and telephone lines. Using multiple networks, or switching between them, was expensive for customers, even if a second network was available. However, online platforms can leverage the Internet to provide wired and wireless connections globally. People find it generally easy, and often costless, to use multiple online platforms, and many often do. The ease and prevalence of multihoming have enabled new firms, as well as cross-platform

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<sup>9</sup> See, e.g. Hal R. Varian, *Use and Abuse of Network Effects* (Sept. 17, 2017), available at <https://ssrn.com/abstract=3215488>.

<sup>10</sup> See Jean-Charles Rochet & Jean Tirole, *Two Sided Markets: A Progress Report*, 37 RAND J. ECON 646 (2006); Jean-Charles Rochet & Jean Tirole, *Platform Competition in Two-Sided Markets*, 1 J. EUR. ECON. ASS’N 990 (2003).

<sup>11</sup> Justus Haucap & Ulrich Heimeshoff, *Google, Facebook, Amazon, EBay: Is The Internet Driving Competition Or Market Monopolization?*, Düsseldorf Institute for Competition Economics (Jan. 2013).



entrants, to attract significant numbers of users and secure critical mass necessary for growth. Incumbent platforms then face serious competitive pressure from new entrants—startups or other online platforms—because their network effects are reversible.<sup>12</sup>

In sum, the presence of network effects, as well as other competitive constraints such as multi-homing, merit analysis when enforcing antitrust laws on multi-sided business models. Generalizations may be difficult, and a case-by-case analysis that takes into account evidence, economic analysis, and that is specific to the facts remains key to safeguarding consumer welfare.

#### **IV. Conclusion**

The current antitrust framework, when applied correctly, has proven to have the necessary tools to ensure effective competition in the market. The emergence of new business models, such as multi-sided enterprises, presents new challenges for antitrust enforcers. The FTC should continue to apply economic analysis on a case-by-case basis and with a clear understanding of the underlying economics, in order to safeguard market competition to promote consumer welfare and innovation in the market.

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<sup>12</sup> David Evans, *Why The Dynamics Of Competition For Online Platforms Leads To Sleepless Nights, But Not Sleepy Monopolies* (2017), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3009438](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009438).



**Annex:**

Per the FTC's request for empirical research regarding the topics at issue in the hearing announcement, CCIA offers the following additional resources.

- Andrea Amelio, Liliane Karlinger, & Tommaso Valletti, *Exclusionary Practices and Two-Sided Platforms*, OECD Directorate for Financial and Enterprise Affairs Competition Committee (2017), [https://one.oecd.org/document/DAF/COMP/WD\(2017\)34/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2017)34/FINAL/en/pdf).
- Arno Rasek & Sebastian Wismer, *Market Definition in Multi-Sided Markets*, OECD Directorate for Financial and Enterprise Affairs Competition Committee (2017), [https://one.oecd.org/document/DAF/COMP/WD\(2017\)33/FINAL](https://one.oecd.org/document/DAF/COMP/WD(2017)33/FINAL).
- Carl Shapiro, *The 2010 Horizontal Merger Guidelines: From Hedgehog to Fox in Forty Years*, 77 ANTITRUST L.J. 49 (2010).
- David S. Evans, *The Antitrust Economics of Multi-Sided Platform Markets*, 20 YALE J. ON REG. 325 (2003).
- David S. Evans & Michael Noel, *Defining Antitrust Markets When Firms Operate Two-Sided Platforms*, 2005 COLUM. BUS. L. REV 667 (2005).
- David S. Evans & Richard Schmalensee, *Matchmakers: The New Economics of Multisided Platforms* (2016).
- David S. Evans & Richard Schmalensee, *The Antitrust Analysis of Multisided Platform Businesses*, in 1 Oxford Handbook Int'l Antitrust Econ. 404 (Roger D. Blair & D. Daniel Sokol eds., 2014).
- E. Glen Weyl, *A Price Theory of Multi-Sided Platforms*, 100 Am. Econ. Rev. 1642 (2010).
- Gregory J. Werden, *The 1982 Merger Guidelines and the Ascent of the Hypothetical Monopolist Paradigm*, 71 Antitrust L.J. 253 (2003).
- Jean-Charles Rochet & Jean Tirole, *Platform Competition in Two-Sided Markets*, 1 J. EUR. ECON. ASS'N 990 (2003).
- Jean-Charles Rochet & Jean Tirole, *Two Sided Markets: A Progress Report*, 37 RAND J. ECON. 646 (2006).
- Julian Wright, *One-sided Logic in Two Sided Markets*, 3 REV. NETWORK ECON. 44 (2004).
- Lapo Filistrucchi, et al., *Market Definition in Two-Sided Markets: Theory and Practice*, 10 J. COMPETITION L. ECON. 293 (2014).
- Marc Rysman, *The Economics of Two-Sided Markets*, 23 J. ECON. PERSPECTIVES 125 (2009).
- Mark Armstrong, *Competition in Two-Sided Markets*, 37 RAND J. ECON 668 (2006).
- Thomas Eisenmann, Geoffrey Parker, & Marshall W. Van Alstyne, *Strategies for Two-Sided Markets*, 84 HARV. BUS. REV. 92 (2006).