



European
Commission

European **Political Strategy** Centre

Transcript

1. **Hearing: ‘What Kind of Regulatory Environment for Online Platforms?’***

2. Monday, December 14, 2015

3. Held at: Salle 11, 11th Floor Berlaymont, 14h00 to 16h00

4. European Commission, Rue de la Loi 200

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7. *Participants:*

8. **MODERATORS:**

9. **ANN METTLER**, Head, European Political Strategy Centre

10. And

11. **MARIO MARINIELLO**, Advisor responsible for Digital Affairs, European Political Strategy Centre

12.

13. **PANELISTS:**

14. **JACQUES CRÉMER**, Professor of Economics, Toulouse School of Economics

15. **BENJAMIN EDELMAN**, Associate Professor of Business Administration, Harvard Business School

16. **JOSEPH FARRELL**, Professor of Economics, University of California, Berkeley (videoconference)

17. **ROMAN INDERST**, Professor of Economics and Finance, Goethe University Frankfurt

18. **PIERRE LAROUCHE**, Professor of Competition Law, Tilburg University

19. **FIONA SCOTT MORTON**, Theodore Nierenberg Professor of Economics, Yale School of Management

20. (videoconference)

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22.

23. **PROCEEDINGS**

24.

25. **ANN METTLER:**

26.

27. So good afternoon and welcome to this hearing convened by the European Political Strategy Centre on ‘What
28. Kind of Regulatory Environment for Online Platforms?’ My name, particularly for the colleagues joining us
29. from abroad, is Ann Mettler, and I’m the head of the European Political Strategy Centre. And I am joined on
30. my left by Mario Mariniello, Advisor at the EPSC for Digital and Competition Issues. This hearing is organised
31. to contribute to the European Commission’s online consultation on online platforms and everything that is
32. being said here today will be transcribed and submitted to the consultation. So let me say how delighted
33. I am to welcome such a high level group of experts who will help us today shed light on online platforms.
34. They are Jacques Crémer from Toulouse University, Benjamin Edelman from Harvard Business School,

35. Joe Farrell from University of California, Berkeley, Roman Inderst from Goethe University Frankfurt and
36. Imperial College London, Pierre Larouche from Tilburg University and Fiona Scott Morton from Yale School of
37. Management.

38.

39. Four of our experts are in the room and two others are joining us from the US so Fiona Scott Morton
40. from New Haven Connecticut and Professor Farrell from Berkeley California. Good morning to you. Now
41. before we ask the invited experts to briefly introduce themselves and their work, allow me to make a few
42. announcements. The hearing will last about two hours until ten past four. Each speaker will have a certain
43. amount of time to address each question. The time limit will be announced when the question is posed and
44. one minute prior to your time being up I will show an, an orange sign and when your time is up I will show
45. a red sign. So it's pretty self-explanatory. Some experts have said "well I may need a little more time for
46. one question" – that's fine – but then I would ask you to perhaps take a little bit less time when you answer
47. another question just so that we can stay more or less with, on track with the timetable.

48.

49. As I said before, the hearing will be on the record and a full transcript of the hearing will be submitted
50. as a contribution to the public consultation on online platforms. The experts have received the questions
51. in advance in order to allow them to prepare well their answers. We have invited a few colleagues from
52. the European Commission to join us as observers. They are sitting behind me as well as to the side here.
53. However given the format I would appreciate if our Commission guests can be in full listening mode for
54. the duration of the hearing. There will be an opportunity to interact with the guests later at a networking
55. coffee so, I, I ask for your understanding. And with that, let's go to the first question. "Please state your
56. name and affiliation; please flag any potential conflict of interest (if you are providing consulting services to
57. a client potentially affected by the European Commission initiative on the regulatory environment for online
58. platforms, please state so). Please describe your background and your experience in dealing with regulatory
59. issues in the digital environment. And you are welcome to briefly express your general views about the
60. Commission's initiative."

61.

62. And I ask you to do this in two minutes or less, and we will start with you, Professor Crémer.

63.

64. You need to press the red button.

65.

66. JACQUES CRÉMER:

67.

68. Ok, thank you very much. My name is Jacques Crémer, I'm a Professor of Economics at the Toulouse School
69. of Economics. At the present time I do not provide any relevant consulting services. But TSE and Institute,
70. the Institut d'économie industrielle to which I am affiliated in Toulouse have received research support from
71. a number of players in that field, Orange, Microsoft, Qualcomm, Google, Samsung and so on. I manage
72. some of those relationships. I have some experience writing and consulting on issues relative to regulatory
73. issues but my main source of expertise is my research on the topic and I'm delighted to participate on the
74. discussion of an EC initiative. I think it is great that the EC is thinking more deeply about these issues. But
75. my precise comment will come along as I answer the other questions.

76.

77. ANN METTLER:

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79. Excellent, thank you so much. Professor Edelman, please.

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81. BEN EDELMAN:

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83. Yes my name is Benjamin Edelman, I'm a faculty member at the Harvard Business School. And in that
84. capacity I try to create a breed of MBAs that are a part of the solution rather than part of the problem.

85. I suppose I've been interested in making online services as good as they could be, and better than they

86. are, for about as long as I can remember, maybe my whole adult life. As to potential conflicts, I've done a

87. fair amount of work for a bunch of companies that are concerned about these things but none of these

88. relationships are current. The question is stated in the present tense so I have no current conflicts to disclose.

89.

90. Ann METTLER:

91.

92. Excellent, thank you so much. Professor Farrell, please.

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94. JOSEPH FARRELL:

95.

96. Good afternoon everybody, I'm Joe Farrell, Professor of Economics at University of California, Berkeley. I've

97. worked on the economics of competition, innovation and related topics. All which I think are platform-y to

98. some extent or another, for probably about 35 years now. Specifically I've worked in telecommunications,

99. worked on the economics of network effects, worked on payment cards, interchange fees. Outside

100. my academic career, or as part of my academic career I really prefer to say, I was Chief Economist

101. of the US Federal Communications Commission, and later of the US Department of Justice, Antitrust,

102. and most recently at the Federal Trade Commission which does, as you probably know, antitrust and

103. consumer protection work. I also served on the National Academies of Sciences, Computer Science and

104. Telecommunications ward. And a variety of other experiences that I won't get into for time limit. In terms

105. of conflicts of interest I do some consulting, certainly some of my consulting in the past, has touched on

106. these issues. For example I've worked for the Reserve Bank of Australia and its interchange fee analysis, and

107. cases that resulted from that. But as far as I know none of my clients are before the European Commission

108. or specifically expecting to be on this or another topic, which is probably helpful for answering that question,

109. because as we'll see it is not entirely clear what this topic really is.

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111. ANN METTLER:

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113. Thank you so much. Professor Larouche.

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115. ROMAN INDERST:

116.

117. This one, sorry.

118.

119. PIERRE LAROUCHE:

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121. I am Professor of Competition Law at the Tilburg Law and Economics Centre (TILEC) at the Tilburg University

122. in the Netherlands. Also professor at the College of Europe and joint academic director at the Centre on

123. Regulation in Europe (CERRE) which is a think tank which regroups a series of regulated firms and

124. regulators. I often act as a member of the sounding board in research projects for, recently the European

125. Parliament, the European Commission, or national authorities. The research I do, and the research we do at

126. TILEC, at my research institute, is sponsored regularly by public and private entities alike. It is always

127. aligned with the principle of academic independence and I have no advisory business. I've been working

128. in the broad economic regulation area with focus on the ICT sector so telecom, media regulation, Internet
129. regulation since the mid-1990s. And you asked for some general views, so I think the Commission is right to
130. be concerned about online platforms, what we need at the moment is a better understanding of the market
131. mechanisms at work, not just for competition law but also for privacy and for consumer protection purposes.
132. But at this point in time I doubt that we need to do something specifically on online platforms as we will see
133. later. Thank you.

134.

135. ANN METTLER:

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137. Excellent, thank you so much. And finally, Professor Scott Morton please.

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139. FIONA SCOTT MORTON:

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141. Hello. My name is Fiona Scott Morton, I am a Professor of Economics at the Yale University School of
142. Management. In terms of conflicts I have worked in, and continue to be retained by TripAdvisor and Travel
143. Tech, this is an industry group of travel websites and I will discuss this in more detail later but the topic
144. is the ownership of data such as schedule and fare information. Um, actually for those of you who are
145. interested in that conflict I authored a report for TripAdvisor and Travel Tech which is public and so whoever
146. is wants to look into the details of that can read the report. I believe this problem is starting to occur in
147. Europe but the report is mostly focused on the United States. My research area is industrial organisation,
148. which is the study of firms, competition and markets. I've been working in that area for more than twenty
149. years and in that time the Internet has become increasingly important as a competitive force. In particular
150. I would say I've been focused the role of the Internet in lowering search costs and improving consumer
151. information. And these two aspects of the Internet put more competitive pressure on firms. And that I think
152. is the theme of my work but also many of other people's work.

153.

154. In 2011 and 2012 I was the Deputy Assistant Attorney General for Economic Analysis at the Department
155. of Justice in the United States. That job involves overseeing about fifty PhD economists who are the staff
156. members who enforce the antitrust laws in the United States. Many issues of online platform competition
157. arose in the context of enforcement during my time at DOJ.

158.

159. I apologise that I can't be personally in Brussels today, I am giving two final exams and have other
160. university

161. business. I just want to apologise in advance I will disappear from the screen for about five minutes about
162. partway through the call. I just need to visit the students who are taking the examination and make sure
163. they don't have any questions. So I won't be gone for very long. Sorry about that.

164.

165. ANN METTLER:

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167. Very good. Thank you so much. Also for making the effort. And finally, Professor Inderst, please.

168.

169. ROMAN INDERST:

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171. My name is Roman Inderst, I'm a Professor of Finance and Economics at Goethe University in Frankfurt.
172. Amongst other things I've written numerous articles in the area of competition analysis and my current
173. research in the field of industrial organisation covers also another related issue which is the issue of privacy.
174. Over the last years I've provided consulting services in notably antitrust cases, both to online platforms and

175. to other parties that could be affected by the Commission's initiative. This includes notably hotel booking
176. platforms.

177.

178. Given the breadth of the subsequent discussion I should also disclose that presently I consult providers of
179. telecommunications, banking and insurance services. I truly welcome the Commission's initiative and in
180. particular the Commission's willingness to learn the views of various parties including us academics on the
181. regulatory framework on which online platforms operate and shall operate in Europe in the future. And I
182. hope that I can contribute to your effort.

183.

184. ANN METTLER:

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186. Thank you so much. We are already making very good time. I thank our experts for, for abiding by the, the
187. time limitation and with that I handover to my colleague Mario Mariniello.

188.

189. MARIO MARINIELLO:

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191. Thank you, thanks a lot. So for this question you will have five minutes each. The question is: "Please submit
192. the definition of online platforms that you consider most accurate. Please discuss the benefits and the risks
193. that may accrue to consumers and business due to the increasing role played by online platforms in the
194. economy." And we start with Professor Edelman.

195.

196. BENJAMIN EDELMAN:

197.

198. Thank you. So. It's tricky. You press it the light turns on then it turns off. Ok, it's a pleasure to go first on
199. this important question of what it is that we are talking about. And Joe already flagged the possibility that
200. it could be a difficult thing to nail down. Let me first try to engage with the definition and then suggest a
201. different approach. So the definition gets most technical as proposed by the Commission in its suggestion
202. "between two or more distinct but interdependent groups of users". And that's the wording that seems to
203. be the most narrowing for what we've got in the draft definition. I just wonder what that rules out. It seems
204. to rule out a platform or some other type of service that has only one type of user. How about Facebook at
205. its launch? Facebook had men and women and the men mostly wanted to connect to the women and the
206. women to the men. That was what it was for at that moment. But in any event everyone was young people,
207. it was Harvard college students. There was one type of user. I think it was still a platform, definitely it was
208. an online service. Whatever it is that we figure out as part of this discussion today, and more generally,
209. I think that it would have applied to the first version of Facebook even though there was fundamentally
210. only one type of user there. So this 'two or more' narrowing language in the definition might be unduly
211. narrowing. I don't quite think about these things with that level of formality, I think about it more in terms
212. of online services. What are the fundamental issues that tend to arise in looking at online services, what's
213. the role of government, of regulation in making online services better. And to that the draft notes that we
214. were provided, listing all kinds of potential benefits of online platforms and some potential problems. The
215. problem that jumps out for me, and the role for regulation, at least the role I'd suggest, is that sometimes
216. competition for the market can lead firms to get awfully aggressive. Aggressive in elbowing out competitors
217. in ways that you look at it at the end of the day and you say gee I'm not sure we want to be encouraging
218. firms to do exactly that. So if we're in a market for online video sharing platforms, something like YouTube,
219. the platforms are sitting there looking at the way they're going to get big, and the obvious way to get
220. big is to allow copyright infringing, infringing videos onto the platforms. I'm going to look the other way
221. on copyright infringing videos. Well I'm really going to look the other way, in fact I'll tell my cousin and

222. my brother-in-law to upload copyright infringing videos. And, and I'll then have an even better site for the
223. users who want to watch videos. So, so that's the kind of thing that can happen when competition for the
224. market causes firms to cut corners there. And, and we would want to see a regulatory environment that sets
225. an equal playing field, a level playing field but a playing field we can all be proud of. Where if one of your
226. students, say, wanted to start a video sharing platform you could tell him with some confidence "look here's
227. how you should do it". You want to succeed but you don't have to worry that the other guys is going to be
228. such a bandit, he'll never get away with it. The regulators won't let him, the legal system won't let him get
229. away with it. I think there are shades of that in quite a few online platforms actually. That have felt it was in
230. their interest to be awfully aggressive at launch and even continuing beyond that.

231.

232. Ehm, more generally as to proposed concerns there was a, a suggestion of bottlenecks where consumers
233. could get stuck in certain platforms perhaps because they don't have either the ability or the incentive to
234. get out, to embrace competitors. It is interesting. So many of these platforms offering services at zero price.
235. When these services offered to one set of users at zero price, there's not an obvious way for a competitor to
236. come in with a service that probably is a little bit inferior at the start. If you thought Bing Search was a little
237. bit worse than Google the obvious thing to do would be to price it a bit lower. But how can you price it a
238. little bit less than zero? You could offer a negative price I guess? But that has all kinds of problems in that
239. once you start offering a negative price it's going to be difficult to avoid fraud.

240.

241. So those are the kinds of things that I tend to think about. Opportunistically without a grand framework of
242. how we should approach online platforms. But looking at specific problems, ideally the ones that recur and
243. the ones with some structural basis, in how we might intervene to make these markets work better.

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245. MARIO MARINIELLO:

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247. Thank you very much. Professor Farrell.

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249. JOSEPH FARRELL:

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251. Thank you. Can you hear me?

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253. MARIO MARINIELLO:

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255. Yes.

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257. JOSEPH FARRELL:

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259. I'm going to start by talking about some of the benefits and risks because I think we need to have a
260. discussion of that before we can comment on definition. So I think a reasonable way to say what we are
261. talking about is that a platform is an "enterprise that contributes value by bringing together those who have
262. an economic benefit from interacting with one another". And perhaps not just to bring them together but
263. helping them to govern or manage that interaction. In general that's obviously a good thing to do and most
264. of the benefits that you list in the next question are benefits of doing that better and that's a great thing
265. to do. It's also the locus where we often expect network effects to arise and that can come with very strong
266. degrees of market power and that creates a bunch of problems. So that is kind of cannibalising my answer
267. to the next question. So what does this imply for the question?

268.

269. First of all, I think Ben Edelman kind of said, “forget most of this definition except for online”. That worries
270. me a little bit because I’d like to suggest that we forget the “online” portion of the definition. I really don’t
271. think it is fundamental whether something is online or otherwise. Online, you know, does indeed cause
272. order of magnitude differences in certain kinds of costs and delays and so on but if there are fundamental
273. problems they are going to be there with platforms whether they are online or not online. So when I look at
274. the definitions that have been proposed, and this applies both the one that the Commission staff put
275. forward here and to other definitions that I’ve seen in the literature. I do not feel that the definitions really
276. effectively capture what we are talking about and what we are not talking about. Let me just go off to
277. the definition that was proposed here, not to single it out as being, as being inadequate in comparison
278. with others but rather to help make the point that all the definitions I think that have been proposed are
279. inadequate. So Ben commented on the two or more groups – I sort of agree with him. I think a lot is buried
280. in the word “interdependent” in the definition. But if you don’t, if you’re not willing to read a full analysis into
281. that word then I think it’s hard to say what is ruled out by the definition. So think about a firm that, if you’d
282. like, takes online reservations for sandwiches. It buys bread, it buys cheese, it sells sandwiches. Isn’t that
283. firm providing something to the sellers of bread? And the sellers of cheese? And the buyers of sandwiches?
284. They’re interdependent. They all get value out of this. I don’t think we would want to call that an online
285. platform or at least if we want to discuss questions that are specific to online platforms we almost certainly
286. not want to include that sandwich shop. So rather than trying to tweak the definition and fix it, I want to
287. suggest very strongly that it is not a good time to settle on definition. There are variety of definitions out
288. there in the literature, people are aware that they’re all imperfect. We do have some shared intuitive sense
289. of what we’re talking about. And that’s valuable, that’s obviously important to be able to have a discussion.
290. But when you try to write down a series of words, and since it is the European Commission that is doing it in
291. twenty-seven languages, and there’s some legalistic framework under which the words have a lot of power
292. and it’s difficult to change the words and they’ll have legal interpretations that’ll be difficult to change, I
293. think that’ll be hugely important
294.

295. MARIO MARINIELLO:

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297. Professor Farrell? Sorry to interrupt, but I’m not sure whether you can see it but you still have just thirty
298. seconds, ok?
299.

300. JOSEPH FARRELL:

301.
302. Ah. Ok. I predict that when we come to a better understanding of this, the key will be buried in the word
303. interdependent. That we’ll find that certain kinds of interdependence do create platform issues as we
304. understand them and certain kinds don’t. But I don’t think we understand properly that distinction yet.
305. And so as I say my main message to this question is: “way too early, or too early anyway, to settle on a
306. definition.”
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308. MARIO MARINIELLO:

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310. Great, thanks a lot. Professor Inderst.
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312. ROMAN INDERST:

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314. Let me start by my full appreciation for your efforts to come with a workable definition of online platforms.
315. That said however I also would like to advise you to adjust a definition to the particular regulation that

316. shall be applied. A general all-encompassing definition may then not be necessary at all. The proposed
317. definition in fact may be too narrow to capture all institutional undertakings that one would like to describe
318. as platforms or “online platforms”. The requirement for instance that there are two or more distinct groups
319. may for instance not be appropriate for a platform there which collectors pay a registration fee and then
320. exchange collectables. Also the requirement that platforms enable interactions rather than engaging in
321. certain trade may create a somewhat artificial wedge between the different roles that a particular online
322. market place can play, such as acting as a retailer, trading on commissions, or facilitating other parties’
323. trades. That said however the academic literature has certainly proposed clear-cut definitions of platforms.
324. For instance, the instance that there is the presence of important cross group or indirect network effects.
325. Such a narrow perspective would I think be indeed be warranted in case the focus of many envisaged
326. regulation lies precisely on these particular externalities. These related to network effects. But already your
327. list of potential benefits and risks shows that your scope is much wider.

328.
329. That brings me to the second part of your question. The benefits and risks associated / derived from online
330. platforms lie close together. Network effects and often global availability give rise to winner takes all effects.
331. But lower search and transaction costs also generate scope for increasing variety – so called “long tail of
332. offers” on the Internet. The same forces pose increased competition, notably in formal rather segmented
333. markets and may lead to new concentration and to scope for anti-extraction, anti-competitive behaviour. I
334. will later argue how dynamic and flexible response of European competition authorities next to the creation
335. of a level playing field with incumbents may already go a long long way in diffusing some of the related
336. concerns.

337.
338. I would like to end with singling one particular risk. That this choice is based largely on my own prior work
339. rather than because it may be overall the most pressing concern to you or the European citizens. As I will
340. discuss later when turning to the consideration of different regulatory tools, the identification of a market
341. failure is of course a key prerequisite to justify any regulation in first place. Market failures may arise
342. when consumers may fail to understand basic principles of how the respective markets work for instance. I
343. provided consulting services for the former DG SANCO for intervention on the provisions of retail investment
344. services, based on controlled experiments and insights from behavioural economics. And a good part
345. my recent academic work deals with consumer naivety when faced with potentially biased advice. Policy
346. response to biased advice range from disclosure of inducements to the outright prohibition. And the latter
347. irrespective of whether the advisory firm has market power or not and irrespective of whether there is
348. a clear tight relationship with the product provider. One justification for this, which I share only partly, is
349. observed consumer behaviour in some markets that it seems to exhibit considerable naivety with regards
350. to often present incentive conflicts. There are clearly immediate and important parallels to some of the risks
351. that you identify. Consumers may be naïve about restricted nature of any suggestions, ratings, or tertiary,
352. tertiary results that platforms provide. That they provide driven partly by commissions or other sources of
353. revenues such as direct ownership of the suggested businesses. Our experience for market advice tells us
354. that more disclosure and health warnings about the possible restrictedness of the respective suggestions
355. may not be sufficient. At the least they need to be complemented with a strict enforcement of rules that
356. govern the provision of misleading information. Here for instance about the accuracy and source of reviews.
357. And that govern potentially misleading claims about the selection of provider information and suggestions
358. that the platform makes. Naivety or at least lack of knowledge about the potential use the firms can make
359. about personalised data may also create a wedge between what citizens, here as consumers, do on the
360. Internet and what may be in their own self-interest. For instance firms’ ability to combine their proprietary
361. data with publicly available data may differ widely between various countries in Europe. And citizens may
362. not at all be aware of these possibilities. Creating greater awareness about the value of one’s data and

363. possibly also one's privacy is certainly an important policy priority. In this short and medium term however,
364. protection and strict enforcement may be required in addition.

365.

366. MARIO MARINIELLO:

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368. Great, thanks a lot. Professor Larouche.

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370. PIERRE LAROUCHE:

371.

372. Thank you. So I am, I thought I was the lone lawyer in the group but I found out that Professor Edelman is

373. also a trained lawyer.

374.

375. So, am, from that perspective the precise contours of the definition I think I would leave to my colleague

376. economists to argue. I will look at it as a lawyer. So you propose to intervene on online platforms. So there

377. are two issues as a lawyer that I see.

378.

379. You want to have a definition that is sufficiently solid. That there are meaningful common issues amongst
380. the phenomena that come under the definition. And secondly we want to have a definition that is sufficiently

381. distinctive, that it singles out phenomena that present specific issues not otherwise occurring in other

382. phenomena. Why do I worry about this? It's not the obsessive-compulsiveness of lawyers, it's because

383. you have boundary effects. You know that firms will argue I'm on this side or that side of the boundary

384. and of course that creates transaction costs. And I would argue at this point in time we have a problem on

385. both accounts. So my first point is: the definition as such lacks cohesiveness. We all know that platforms'

386. strategies are more prevalent today but they have been around forever. It's just that the Internet makes

387. platforms more effective, enables them to ride more quickly, more strongly on network effects. So our

388. definition the way it is framed now cover a wide range of models - so you have credit cards, Google, Uber,

389. they're all platforms following the meaning of that definition and it's not all that obvious what they share

390. in common from a legal perspective. So my first point is the definition may be too broad. And at the same

391. time, my second point, there might be a lack of specificity about online platforms. So the issues that are

392. raised and listed in this questionnaire are not really specific to platforms. We are talking about market

393. power issues, privacy, data protection, consumer protection issues, pluralism, public order, criminal law...

394. these are all known issues where we have some framework in place. So I would be very cautious about the

395. epistemology here, we shouldn't get ourselves into a trap where we have a new, brand new technology, a

396. brand new phenomenon and we look for problems in that phenomenon. Rather we should know what we are

397. trying to enforce, what are we trying to achieve and then look at the phenomenon.

398.

399. But my third point, more fundamentally. I said earlier, I think the Commission is onto something. What

400. is the Commission getting at? I think the concern, the underlying concern is the rise of the platform as a

401. leading business strategy. As I mentioned it's more pervasive than it used to be and I think that's where

402. the challenge lies in this exercise. To develop a better understanding of the market processes at work,

403. so the competitive landscape is being reshaped. What we see with platforms is a rise of more disruptive

404. innovation type of models: where parties compete not just in the market, they don't also compete for the

405. market I think they compete to define the market. They compete to draw the market boundaries according

406. to their preferences so that they are in a bottleneck situation. And I think that - it's not yet quite clear how

407. this works, and what are legal and policy implications would be, aren't even these clear. So in a sense this

408. is a model that is not just giving rise to disruptive innovation on the market but it is also disruptive of the

409. legal and regulatory framework. So the main challenge is not so much to do something on online platforms

410. but to understand them better so as to adapt areas of the law where it is needed. I think the one area that
411. will need work perhaps more quickly is competition law – the area I'm more at home with coincidentally and
412. probably also privacy. And the challenge here is that we want to have a law that is sustainable, able to deal
413. with a change in technology, and changing business strategy, and so on. And so it calls for the rediscovery of
414. the vertical dimension in law making. So it's not bad to stick to general principles and leave the enforcement
415. and put emphasis on the enforcement to deal with the vagaries of what happens on markets and new
416. technologies.

417.

418. MARIO MARINIELLO:

419.

420. Thank you. Professor Scott Morton.

421.

422. FIONA SCOTT MORTON:

423.

424. Thank you. I think a definition is a difficult assignment as others have flagged because of the continual
425. creativity of firms and consumers in figuring out new ways to interact online. You know, when you just think
426. about a very basic definition: an online platform makes it easy and efficient to use the Internet to search
427. and communicate and transact among many parties. And I think it's been correctly pointed out that you can
428. have one type of user on an online platform: sharing, teenagers you know, sharing pictures of what they did
429. yesterday – that's one type of user, they're enjoying that. Why do we focus on a definition with two or more
430. types? I think this is often key because we do have a commercial aspect to online platforms – one type of
431. user placing ads and another type of user is doing something else. Or one type of user is selling and another
432. type of user is buying. And the result of that is that the pricing structure of whatever they are doing on a
433. platform is different. The consumer finds it free to use the platform or the consumer's purchasing something
434. and the seller is selling something. So this is how we end up thinking about types, but the types, you
435. know, a successful online platform need not have both types. I do think that the network effects are worth
436. mentioning again though they have been mentioned a couple of times. These are often very important in
437. platforms because the users of the platform value the number of other users of the platform. That's pretty
438. much always going to be true. And, when I value the number of other users then I have a network effect
439. and we all want to be in the same place. And there is a winner and a loser. And therefore competition for the
440. market can be intense as Professor Edelman says but consumers require that intensity, because after there
441. is a winner in a network effects industry, then that firm necessarily has some market power. They've got
442. lots and lots of users. And not so much competition after they have successfully gathered all that demand.
443. So it's important for dynamic welfare that competition for the market is indeed vigorous and not stifled by
444. a regulation for example. I want to highlight one benefit of online platforms that hasn't come up quite so
445. much in discussion so far and has been extensively studied in the economics literature which is the
446. reduction in search costs. We know from a lot of work that the ease of gathering product information
447. availability and price data from different sellers falls drastically when entrepreneurs and governments even
448. create specialised search engines on the Internet that allow consumers to compare bank accounts, or to
449. compare airline flights or whatever it might be. The reduction in search costs lowers prices for consumers
450. because firms respond. And that's actually an important point. When the consumer becomes more price
451. sensitive because she's more elastic because it's so easy to gather these prices then firms respond by
452. lowering their prices and their margins to get those elastic consumers. So that's feedback that we want to
453. continue to have and to enhance in order to improve consumer welfare. And low search costs also improve
454. matches: consumers are able to find a product they want, whether it is a long tail product, a niche product,
455. something that matches their taste much more easily than was possible with only physical search and
456. that's a welfare gain also.

457.

458. And thirdly the Internet has really lowered entry costs for many sellers. I think we're probably all familiar
459. with these sites, in the US we have a site called Etsy that is designed for small artists at home who
460. are knitting or painting or making jewellery or whatever and they produce a small amount of a unique
461. handmade product. Normally it would be very difficult for such a firm to get a wide distribution and on an
462. Internet site they can get that audience very cheaply. Similarly with a small hotel. This encourages I think
463. the formation and entry of small businesses and transactions in these types of sectors because of the ease
464. of entry. So one of the things that I did notice in the materials that no one has referred to so far, and I'll just
465. take twenty seconds to talk about it, is that there is a lot of problems in the EU on transacting. And concerns
466. that rules differ and that transaction costs are high. I think a very low hanging fruit, much easier than you
467. are asking the economists to talk about today are harmonisation and lowering of transaction costs. Physical
468. transaction costs. This is not a point specific to platforms, but it becomes really valuable when platforms
469. are available. When I can buy something that is a niche product from another country, it really matters that
470. those transaction costs are low. Thanks.

471.

472. MARIO MARINIELLO:

473.

474. Super. Professor Crémer.

475.

476. JACQUES CRÉMER:

477.

478. So I'm going to repeat a lot of things which my colleagues have already said but I'm more courageous
479. than any of them because I'm going to propose a definition at the end, so hang on. I need to provide you
480. incentives to listen. I think we do need a definition: I understand perfectly Joe's argument that it might be
481. too early but, you know, in some sense economists are comfortable with a definition in their models but
482. not definition that we apply in the real world. But I'm afraid that in any case there is one which is going
483. to be made, people are going to speak about platforms and if we do something which is wrong we are
484. going to have a problem. And I think we've got two ways of thinking about it. One we make a very specific
485. definition and then we know what to do when we meet something called a platform or we make a very
486. broad definition and then we say look, this is a platform and you have all types of phenomenon which can
487. be associated with the existence of a platform. And we go and analyse in more detail in this case. And I
488. think we should do the second thing and in this way I think the definition which is proposed is too narrow.
489. And I think it's too narrow in two aspects. First on the insistence on multisidedness and secondly on the
490. insistence on the fact that the value is generated from interaction of consumers. And my colleagues have
491. already spoken about this. I just want to kind of stress a few other things. First it's very dangerous for me
492. to say that we shouldn't stress multisidedness given the role of Toulouse in the development of multisided
493. platforms but please don't report this to people down south.

494.

495. Now it's true in reality that all platforms are in some way or the other multisided but the multisidedness
496. is not yet necessarily what determines market power. Take Facebook for example. It's true that Facebook
497. is multisided in the sense that it's got advertisers that come and try to connect the consumers but if there
498. is a market, a stable market power in the type of Facebook it is due to the one-sided network effects of
499. people connecting with each other, as Ben pointed out. If we stress the multi-sidedness issue we will catch
500. Facebook but we will have a tendency of stressing, if you know what I say, something which I don't think is
501. primordial when we are analysing its functioning.

502.

503. Same thing with value, and again I'm sorry I'm taking the big platforms, it's true for small platforms too.
504. Google's main power is from search algorithm. That's not multisided, what is multi-sided is the fact
505. that they are getting money out of advertisers. The search algorithm itself is just providing a service to
506. consumers. And actually it's a bit more sophisticated than this. At the beginning it was just providing a
507. service. As time went by, websites adjusted to the search algorithm and hence it became multisided. But
508. on the first level of analysis I think that Google provides a service and its market power comes from the
509. fact that it provides a service well and probably with very increasing returns to scale in the provision of that
510. service. And I think that stressing multisidedness will throw out the analysis in the wrong direction.

511.

512. So I mean there are other aspects. You know I've spoken to increasing returns to scale, multisidedness. For
513. some platforms switching costs are very important, role of data is very often the source of market power,
514. and I think we need a definition which is broad enough not to channel us into one of those aspects. And
515. that's why I would propose the definition "Online platforms refers to an undertaking which uses the Internet
516. to provide services to one or several groups of users, often by facilitating interactions between them". And
517. I would keep the Internet, sorry Joe, because I do think that it does, it is true that it is not necessary for
518. the existence of a platform, but we are speaking about online platforms and there are some specificities to
519. them. Thank you.

520.

521. MARIO MARINIELLO:

522.

523. Great, thanks a lot. So we now move to the third question. Ann.

524.

525. ANN METTLER:

526.

527. Thank you so much Mario. So the third question you'll have five minutes as well and the question is as
528. follows: "Please consider the potential benefits and risks identified in response to the previous question.
529. In your view, can the regulatory tools already available today efficiently address potential issues (such as
minimize risks while not limiting potential benefits)? You are welcome to refer to experiences outside the
European Union if you wish to do so." And we will start with Professor Farrell, please, five minutes maximum.

530.

531. JOSEPH FARRELL:

532.

533. Thank you. So I'm going to be a little loose again in addressing the question because I think identification
534. of what tools are available is perhaps more of a legal and political question than an economic question.
535. But I think echoing something that one of the, one of the other speakers said earlier, I think Pierre actually:
536. I would urge you to focus primarily on the problems to be addressed and how best to address them rather
537. than starting with the tools and rather than starting the category where the problems arise.

538.

539. So I think, not just for example, but primary instance of this, as, as I said earlier, and others have also
540. said earlier: platforms are, I think, largely about facilitating interactions among users. And when there is
541. certain features of that, as shorthand I would say, have to do with quality of match and not just "here's
542. another sandwich", you tend to get as Fiona noted, an appeal of size and network effects. Network effects
543. can, although they don't have to always, lead to durable strong and hard to challenge market power. And
544. that is going to be a pervasive feature of online platforms if you like. That means that as online platforms
545. become more important in the economy and more pervasive, it is going to be more valuable and more
546. important, more crucial to have good policies for dealing with strong market power. Strong market power
547. caused by network effects and switching costs but I don't think that it's necessary to have those policies to

548. be specific to online platforms. I would rather say that, as Jacques was suggesting, at this point, you really
549. need to plunge into the specifics of the online platform that you are looking at, rather than saying “we can
550. find a more detailed pattern”. You know some of the problems as well as some of the benefits I think that
551. you identified in your list – tax avoidance and promotion of homophobic speech. You know, it may be that
552. those are going to come up, do come up, with online platforms. They also come up in airports and yet we
553. do not think of that as an air travel industry issue. And so I think it’s, it’s important to try to have the policy
554. discussion in the right place. If we’re talking about market power and market power due to network effects,
555. how much to do about it, and what to do about it, we should have the discussion in those terms and not
556. primarily talking about online platforms as such even though that may be one of the main places where it
557. arises, if that’s not the fundamental. So let’s see. How am I doing on time?

558.

559. ANN METTLER:

560.

561. Doing fine, you’re at three minutes, twenty.

562.

563. JOSEPH FARRELL:

564.

565. Ah ok. Let’s see. Well let me go back to something that I rushed through earlier: I think different groups or
566. as several speakers have pointed out, different members of the same group, when you have a matching
567. technology or matching enterprise benefit from getting better matches, and having their interactions better
568. mediated and better governed as well as better identified. And if you think about the difference between
569. that and the sandwich shop, I think there is a real difference between a case where things are
570. fundamentally about quantities of certain finite number of well-defined product and the case where you
571. have idiosyncratic matching. I think idiosyncratic matching is much more likely to lead to strong network
572. effects and strong network effects are up to lead to many of the other issues that you identified and I
573. think you are right to point out that there can be benefits as well as problems. So I think that part of the
574. discussion that we should be, and are having about online platforms and platforms in general, so whether or
575. not we end up with a definition, I think that’s important to keep in mind.

576.

577. ANN METTLER:

578.

579. Excellent. Thank you so much, Professor Inderst is next please.

580.

581. ROMAN INDERST:

582.

583. Thank you. In my view existing regulatory and policy tools can be used more effectively to address many of
584. the aforementioned problems and risks. So the emphasis is on existing regulatory tools.

585.

586. A key prerequisite for this is to fully embrace economic analysis to understand both the working of online
587. markets and the possible effects that regulation intervention can have. For instance based in economic
588. analysis, markets should not be artificially delineated by mere technical considerations. Instead markets
589. should be understood based on actual consumer behaviour such as the actual search behaviour of different
590. consumer groups. In terms of regulation I would advise to make more use of empirical analysis to learn
591. both from past Europe wide enforcement of regulation and to learn from cross country differences. In
592. ex-ante regulation and ex-post intervention. There are sometimes quite pronounced differences between
593. the enforcement practices of national competition authorities notably with respect to online platforms may
594. generate valuable learnings. Turning now more specifically to an assessment of the available regulatory

595. tools, I would like to focus on two issues.

596.

597. The first issue relates to the residual scope for any ex-ante regulation when authorities and courts

598. effectively enforce ex-post the rules that govern misconduct. That is unfair trading practices or

599. anticompetitive practices. Adjusting ex-post intervention to the realities of online markets as well as better

600. alignment of ex-post enforcement across national authorities where this is needed may already fill some of

601. the perceived gaps in regulation.

602.

603. The second issue that I want to address relates to the adequate application of existing regulation to online

604. platforms. This may fill further gaps. And I now take up both of these issues.

605.

606. With regards with ex-post intervention I take the case of competition policy. Traditionally competition

607. authorities are concerned in particular with long term monopolisation tendencies in markets. Arising

608. for instance from unconstrained merger activities or anticompetitive vertical restraints. These concerns

609. may prove to be less relevant to some of the considered online markets where form and technology can

610. quickly and fundamentally change the whole playing field. On the other hand, the nature of some of these

611. markets, notably the presence of network effects and possible tipping points may require authorities to act

612. particularly fast. National competition authorities as well as the European Commission can possibly act

613. more flexibly using economic tools and insights to address early on anticompetitive behaviour while still

614. taking into the account the particular dynamics of these markets.

615.

616. For the application of both competition analysis and any specific regulation, market should be adequately

617. delineated wherever this is necessary. Market should not be considered too narrowly, for instance by

618. focusing only on one group of users for multisided platform. This error may severely underestimate the

619. true competitive constraints faced by any given platform. But platforms are providers of online services

620. should also not escape regulation simply because certain technical requirements are not met. So thereby

621. they fall outside the respective scope. This is my second issue. Various online platforms may presently

622. escape regulatory requirements. The incumbent providers of functionally equivalent or comparable services

623. face. Both in the interest of creating a level playing field and possibility to close perceived regulatory gaps,

624. existing regulatory requirements should be more broadly applied also to online platforms and services.

625. But this should be done with caution. In fact this may be the right moment to revisit some fundamentally

626. or more fundamentally the rationale for some of the respective existing regulations. That is before these

627. are extended to cover new players. Also when the respective players are still small and the market is in its

628. infancy, authorities may wish to generate space for experimentation, carefully monitoring the respective

629. developments instead of imposing too onerous regulatory burdens too early. To sum up, in my view at least

630. some of the perceived regulatory gaps can be closed by most flexible ex-post intervention and by extending

631. existing regulation also to powerful online platforms albeit both with the right measure of caution. Thank

632. you.

633.

634. ANN METTLER:

635.

636. Thank you so much. Next up is Professor Larouche.

637.

638. PIERRE LAROUCHE:

639.

640. Thank you. So I will go back to some remarks I made in the earlier first question. So the first point here on

641. the existing framework is again the proper route to, for analysis. It's important to start by having a clear

642. view of the policy priorities and the framework that is already available to address them and in that
643. respect the question referred to the concept of market failure. You have to be careful about the normative
644. dimension of that concept. Then you use the tools of that framework to analyse whether there's any need
645. for intervention in the new situation and you act accordingly. So if I take this and apply this to the current
646. policies, some of them need some revamping to deal with the new market realities.
647.
648. I think a nice example is what happens with Uber in the Member States and kneejerk reaction that you see
649. in many places is to prohibit Uber cause it does not fit the framework. It's not a taxi service. I think if you
650. take my approach, you would think well first, why do we regulate the taxi business? And it's not, there is
651. some capture involved but there are also some genuine reasons to regulate the business. People don't have
652. time to negotiate, they have to take the taxi as they find it, they don't know anything about the driver and so
653. on. And then if you know why the regulation is there, then the next step would be to ask a service like Uber,
654. well what do you do about this? How does your business meet these regulatory concerns?
655.
656. And that's when it starts to be interesting because Uber offers different routes to achieve these concerns.
657. Next to the traditional command and control that we use in the taxi business, it has internal means, which
658. may or may not be good enough for that purpose, but at least that's where the discussion should go. So,
659. using this as an example of how things should work out, I would argue as I mentioned earlier that some
660. of the current policies need to be a bit rethought. I think, and again the one that may need the most work
661. is competition law because we need to have new understandings of competition on markets that are,
662. where platforms are active. Of course even if you frame it in terms of competition for the market, I think
663. competition authorities don't like to hear that there's going to be a monopoly and then another monopoly
664. and then another monopoly and so on. That's not what is going on. I think all of these platforms try to have
665. a bottleneck somewhere, try to have a position where they can extract value and then they are in looser
666. relationship with one another, trying to put themselves at the centre of the universe of the user. So it needs,
667. competition law needs some work to deal with this. We have to move away from a strict market definition,
668. market power, behavioural assessment framework. If you look for instance Facebook, WhatsApp, the EC
669. came to the conclusion the firms were mostly busy on separate networks and that didn't totally catch their
670. rationale for the transaction. And the potential risks attached with the transaction. And I can't resist the
671. opportunity to say that this will require I think DG Comp is ready for this but the legal service might have
672. a harder time with this but they need to make the effort too. And in the end also there is a lot of old style
673. practices going on where competition law can very well be applied. Some of them in the Google case.
674.
675. But the main point I want to make is: you might need to work on the substance. But as a lawyer, I look at
676. more than this and I think the bulk of the work will be on existing policies is going to be on jurisdiction and
677. enforcement. On the institutions.
678.
679. So on jurisdictions, both to be able to have some counterweight to the platforms and to be able to foster
680. the growth of European platform you need to put the emphasis on a one stop system and that requires
681. some harmonisation to prevent race to the bottom, we know the system. Or maybe reallocation rules as in
682. competition law to bring platforms to another authority if they pick the wrong authority. And on
683. enforcement, that's I think, any attitude or any analysis that says we have the tools that we need in the
684. current law needs to take into account that then the emphasis will be on the proper enforcement. And
685. here I think that we need to give more resources to the authorities to police these sectors. There's simply
686. not enough available to keep an eye on everything that is going on. And I would argue also like we did in
687. competition law, also for privacy matters, give more room to private enforcement. Give a break to the public
688. authorities. Thank you.

689.

690. ANN METTLER:

691.

692. Thank you so much. Next up is Professor Scott Morton please.

693.

694. FIONA SCOTT MORTON:

695.

696. I will focus on competition issues also, rather than other types of regulations. I think the group here and
697. many other economists would say that additional regulations in the competition area will be tricky to
698. get right because the specific problem that might arise in the future is difficult to predict and therefore a
699. specific regulation might slow progress without helping consumers. So general kinds of laws like the existing
700. competition law in European Union I think are the right approach. I think that law is doing a good job. And I
701. agree with panellists who've said that thoughtful enforcement really should be able to do a good work with
702. online platforms.

703.

704. I do have, I do see one potential difficulty however. Difficulty of having, of handling anticompetitive
705. behaviour in online platforms under competition law is that it requires a lot of work and time to achieve
706. change. Why is this? A competition case requires first an understanding of all the parties' behaviour, an
707. analysis of competitive effects, then you have to bring a case, there's various process that has to be gone
708. through and parties who benefit from status quo will work hard to slow this process down. If the default
709. favours the anticompetitive firm then the anticompetitive firm wants the default and it will have incentives
710. to lobby, to delay enforcement, to capture the regulator, to influence other agencies that might have
711. oversight in that space and so forth.

712.

713. In that case the purpose of the regulation is potentially not achieved in a time frame that is useful for
714. consumers. Markets move fast in this high tech area and I think one issue that, that really is a live issue,
715. is that enforcement needs to move at an equivalent speed. So I'm, I might propose that if you wanted this
716. and want to balance these two concerns, one a general law and particular laws that already work, but also
717. perhaps greater speed, would be some kind of light touch regulation that outlines general principles that
718. could establish perhaps some defaults or presumptions. I'm thinking about burdens of proof, I'm thinking
719. about timeline, kinds of regulations that would allow anticompetitive behaviour to be addressed in the
720. way it is today but perhaps in a quicker and more efficient manner. And that would help to keep markets
721. functioning well sort of all the time.

722.

723. Let me flag one part of, of the competition law in Europe that I think may pose a problem going forward and
724. that is RPM. And prohibitions of RPM. Here if you're trying to integrate the physical and the online the firm
725. has to try to make those two parts of its business work together and be consistent. The online platform that
726. doesn't provide services can't undercut the local physical presence and in a transition or in a world where
727. you might have more than one distribution channel this is tricky. So I think again we need to return to the
728. focus on inter-brand competition. If there is inter-brand competition in selling shoes, then we should not be
729. so concerned about intra-brand restraints, vertical restraints that may really just be helping the shoe seller,
730. the shoe brand, be efficient. So I think that I would just flag that as one area that I predict that will be a
731. problem going forward. But in general I think I am most worried about speed. Speed and efficiency.

732.

733. ANN METTLER:

734.

735. Excellent. Thank you so much. Now we go to Professor Crémer.

736.

737. JACQUES CRÉMER:

738.

739. Yes, I basically would like to discuss a little bit, to step back a little bit and try to discuss why we might
740. have problems with the current competitive law and competitive, regulatory tools. You know, in some sense
741. competitive law was built in order to try to make the market as efficient as possible. So we have, there are
742. two types of things could happen. One you had a market which could be competitive but the, some of the
743. actors monopolise it: they do a cartel, they do bad things in order to prevent competition. Competition law
744. comes and beats up on them very severely because this is really bad and really forbidden. Ok. Then you've
745. got other markets where we really don't think that competition can work perfectly, for instance because
746. there are increasing returns to scales or something of that type, and we either decide to regulate or we
747. decide to use competition law and then we try to reach some kind of compromise where we try to make
748. the market as efficient, as efficient as possible for the consumers without losing too much efficiency on
749. the production side. But typically, in that view of the world, we are taking efficiency and competition to be
750. equivalent. That shows in the language of competition economics which speaks of pro-competitive to really
751. mean efficient solution.

752.

753. Now the problem which we have with platforms is that monopoly – and I agree with Pierre's more subtle
754. assessment but you will excuse an economist for not being subtle – with platforms monopolies are often
755. efficient and really don't know very well how to deal with this. So we accept that they have monopoly on
756. some segment and we are just worried about whether or not they are trying to use this monopoly power
757. to extend it to other segments but we are not entirely sure whether protecting their monopoly would
758. be efficient or not? We are not sure whether you know if they are efficient in one case should they also
759. be allowed to be a monopolist in another dimension? We really don't have very good theories of this.
760. And actually there was a debate in Brussels in September in the Coeure project – also a project of the
761. European Commission, where we had a debate about whether or not the tools which we have in order to do
762. competition law are appropriate or not. There were basically two theses: one which said well we've got lots
763. of tools, we've got good theories of bundling and things of that type, and we should keep on using them.
764. And another view which was well it's a different economy, different economics, we need new tools. In that
765. debate I pushed rather strongly for that second alternative. I think I've mellowed down a little bit and my
766. current thinking would be more that we should use the old tools because those are those we know and we,
767. but we shouldn't be satisfied with them and we should make sure that we understand when they are not
768. satisfactory. And push on. Ok.

769.

770. If I've got one more minute, I would just state that on the other hand: I'm a little bit weary of the negative
771. tone of the question, ok, which immediately goes onto the risks. Speaks of potential benefits and risks
772. but immediately is 'how do we control the risks?'. I mean, platforms are and potentially can be, even more
773. useful, we should really try to encourage their development and not only coming from Palo Alto but also
774. from Berlin, Toulouse and Milan. And so for this I think, you know, we really need to work on the flexibility
775. of our social systems, as Pierre was mentioning and you know, as I said during the lunch, we should also
776. really do some thinking about the use of platforms in the public services. We are lucky enough in Europe
777. that even though people complain about the public services we don't have a strong ideological resistance to
778. the development of public services. And we should try to make them as efficient as possible. Thank you.

779.

780. ANN METTLER:

781.

782. Very good, thank you. So the last speaker in this round is Professor Edelman, please.

783.

784. BENJAMIN EDELMAN:

785.

786. I wouldn't be so bold as to argue that the tools are insufficient or inadequate or that particular new tools
787. are required but after hearing the theoretical remarks from some of the other panellists I thought I might
788. try to turn back to some specifics. It might be easier to think about specific tools for specific problems. So
789. what are some problems that we've seen recurring in multiple online platforms? And what tools might one
790. use in response?

791.

792. There have been all manner of platforms where disputes arise as to the order in which things appear.
793. What's at the top? What's in the middle? What's nowhere at all? You could imagine responses grounded in
794. transparency, you could imagine responses grounded in specific prohibitions of use of improper factors or
795. affirmative requirements to sort based on appropriate factors (like objective best fit of some sort). It seems
796. like those are all tools that are broadly available, those are equitable remedies in an ex-post proceeding.
797. Those can all be, can be brought in just fine.

798.

799. Another that arises over and over and has a particular international overtone I suppose: when a platform
800. charges especially high fees. If you look at the fees charged by a dominant platform and say "well, these
801. fees are just unjust, I don't like the apportionment". If I was splitting ice cream with my little sister and
802. I got you know a whole pint of ice cream and she got one little scoop it would be unfair. And you look at
803. sometimes the split between platforms and the folks using them and you say just this, this just isn't fair.

804.

805. I have a case subject who comes to class each year, he sells wallets and he tries to sell wallets on Google.
806. He can try to sell them for twenty dollars which sounds pretty good because his cost of goods sold plus
807. fulfilment plus inventory and postage is all about five dollars. So if he could sell one for twenty dollars he
808. would have fifteen dollars of profit. But actually when he uses Google to try to sell a wallet he spends about
809. fourteen dollars for advertising to sell one wallet on a good day and sometimes he spends sixteen dollars,
810. that's a bad day because then he loses a dollar on selling that wallet. So to him it feels unjust that Google
811. makes fourteen dollars when he sells a wallet and he makes one dollar. And actually that concern kind of
812. resonates with me. That the efficiencies of online platforms should be shared in a way that doesn't result in
813. 14/15ths of the surplus going to Mountain View. So if you thought that was a problem, would we have any
814. tools and any solutions? You could limit the fee I guess, and such things have been done in payment cards
815. for example as Joe could tell us at great length. Obviously that's going to be tough in the online advertising
816. context – to just declare that this will be the maximum fee that could be charged. If only there were
817. multiple platforms, I guess a person selling things could choose between this one and that one and move to
818. the cheaper one if there was a cheaper one. But we have this tendency towards a single dominant platform
819. in so many contexts.

820.

821. So what might you do? I guess facilitating direct purchases. Fiona points out the importance of MFNs in
822. keeping parity between offline and online sales which is all well and good but an MFN could also be used
823. to prevent the use of a more effective, and more efficient, and lower cost online platform. If there was
824. going to be a search engine whose benefit was "I'll get you to the wallet seller and I'll only charge him ten
825. dollars to do it rather than fourteen and he'll pass that four dollars savings onto you", how exactly would
826. that search engine offer that benefit to consumers? And it sounds a little bit crazy in the context of general
827. purpose search where it would be hard. But in the context of, say, hotel search it's perfectly plausible that
828. some platform may be willing to do the work for a lower price and use that as their basic marketing pitch to
829. consumers.

830.

831. One more on my list of problems and solutions: sometimes you see complicated relationships between
832. consumers, platforms and large number of service providers. If something needs to be done by Airbnb
833. hosts, they all need to install better smoke detectors, commercial grade smoke detectors. Is that a problem
834. you go to Airbnb to get them to solve it? “Dear Airbnb please email every host and tell them to install the
835. better smoke detectors, in fact please send your local city rep to inspect the smoke detectors”. Or do you
836. need to find each of the hosts and the city needs to check on the smoke detectors? Sometimes the complex
837. relationships can be a real source of unaccountability: what would a solution be? I guess the e-commerce
838. directive offers one answer: that a platform broadly isn’t responsible for what happens. Maybe another
839. answer is that certain circumstances might arise where the platform should be responsible.

840.

841. ANN METTLER:

842.

843. Excellent. Thank you so much. This concludes the answers to question three. I pass over to Mario.

844.

845. MARIO MARINIELLO:

846.

847. Thank you Ann. So fourth question is this: “If potential gaps in the current regulatory framework are
848. identified, do you believe that new ad-hoc regulatory tools should be designed? If so, please provide
849. concrete examples of new public intervention of any form (from ex-ante regulation to non-binding guidance)
850. where the cost/benefit trade-off of intervention would likely be outweighed by the latter.” Ok. You have 5
851. minutes each, again, and we start with Professor Inderst.

852.

853. ROMAN INDERST:

854.

855. Thank you very much. This question concerns the identification and application of new regulatory tools. The
856. presumption is that already that notably the ex-post enforcement of rules, not just those relating to privacy,
857. to unfair trading practices, or anticompetitive practices remains insufficient. In the first part of my answer
858. I want to advise to proceed with caution. Imposing additional regulation notably also in the European level
859. precisely because there may be often considerable scope to deal with problems through ex post
860. enforcement of existing rules. Regulation is called for in particular when market failures persist. This should
861. require to precisely identify the source of the perceived market failure and to provide both rationale and a
862. cost benefit analysis for the introduction or extension of a specific regulation. The Commission’s own impact
863. assessment guidelines provide a framework for this. I would now like to provide an example where in my
864. view the Commission should not resort too quickly to a regulatory solution. Non-discriminatory access.

865.

866. Various regulations are in place to require former state monopolies to grant non-discriminatory access
867. to their infrastructure, or to parts of their services. These regulations are however in place often with the
868. view that over time such ex-ante regulation should be transformed into ex-post intervention. Breaking up
869. incumbent monopolies is most likely not the right framework into which to cast any considered regulation
870. of online markets. Hence the starting point to ensure non-discriminatory access, provided this requirement
871. is justified, given the specific circumstances, should be the ex-post intervention of competition authorities
872. rather than a regulatory solution for which a sound case must be provided first. Regulation is warranted
873. in the presence of widespread market failure. For instance the market may fail to achieve the degree
874. of standardisation of technologies and into a probability that maximises welfare, either because of
875. coordination problems or due to entrenched interests. Policy can certainly play a role here but I would like to
876. spell out at least one warning also in this perspective. This relates to the notion subsidiarity. It clearly needs

877. to be asked first whether there is indeed scope for such policy and second whether the European level is the
878. right level of action. Certain services are still largely national, in notably the large European countries. In as
879. much as national players adopt their own solutions, notably also in the provision of online services and the
880. exchange of data, and if there is sufficient competition, the cost of imposing a harmonised European
881. solution may weigh in particular heavy compared to the benefits.

882.

883. More European harmonisation and joint action may instead be called for when it comes to markets where
884. ultimately network effects are of a larger and potentially global scale. Even presently the market may
885. still be fragmented, at least in the eyes of national competition authorities, who may wish to define a very
886. narrow market. Which actions to take? We can effectively distil at the discretion of any national authority
887. who wants to bring a case or not. In the past these examples where attempts were made to coordinate a
888. coherent response of European authorities. So this was unfortunately not always the case and it was not
889. always comprehensive. While this may not be envisaged as a new regulatory tool according to your
890. question, for some markets an early joint European enforcement of rules may generate a level playing
891. field in a highly dynamic environment. And I'd like to focus on this one message that I would like to stress in
892. particular.

893.

894. MARIO MARINIELLO:

895.

896. Great thanks. Professor Larouche.

897.

898. PIERRE LAROUCHE:

899.

900. The gist of a number of statements is that we have enough tools as it is. And I think it has been also the
901. thrust of my remarks. Nonetheless there is a problem, and here I speak from experience with the whole
902. network neutrality discussion: is that there are political pressures to intervene on online platforms, and they
903. will remain. So you need to deal with that as well. So I think there's a risk in simply saying that we're just
904. going to wait and see because you might find yourself caught in a situation like we had in the last years
905. where the initiative is coming from the political side and it is not that well informed. So I think you need
906. a framework to channel these political pressures and I would suggest maybe deriving some inspiration
907. from Directives 98/48 – that's a long time ago – and now Directive 2015 15/35. That's the directive on
908. the communication of technical regulation for information society service. So you might want to have just
909. a framework instrument to lay the boundaries. And it would concern digital services, so I would frame it
910. broader than just platforms, and that would, so, be all services provided over electronic communications
911. networks including information society services, audiovisual media services, all these services. And I would
912. say just a few principles.

913.

914. A) one-stop shopping as much as possible; B) any specific legislation must be submitted to a strict
915. assessment of its added value over the general framework, and not just for the EU but also for the Member
916. States. So Member States cannot act on platforms without having first asked themselves “do we already
917. have the tools to deal with this?” and a third point would be a strengthening of enforcement. So make sure
918. that the authorities that apply the current frameworks are not without any means to enforce them because
919. this is what gives rise to the call for legislative action, if the current frameworks are not properly enforced.
920. So that would be my proposal.

921.

922. So second point, content wise, not much new in there I think. The E-Commerce and the Audiovisual Media
923. Services Directive, could be seen as specific chapters of this general instrument. And you could use the

924. opportunity to also make the exercise with these two directives; I think they can be made leaner. And maybe,
925. a, some rules as mentioned often on portability, inter-operability and standardisation might be needed but
926. this is a very thorny aspect: it's coming up in the general data privacy regulation but there it is limited to
927. when the data subject requests the personal data to be ported, we're looking at a larger issue. Of course
928. some measure of portability will come spontaneously from market forces but there might be still room for
929. intervention if you see for instance that customers do not multi-home, there are no market solutions coming
930. spontaneously. But it's a tricky thing. You don't want to have too strong standardisation, either because that
931. has an adverse effect on innovation. But in all of this, the enforcement as I mentioned before is absolutely
932. key. So you need to sort out the jurisdictional issue as much as possible, a one-stop shop system for online
933. platforms and non-EU firms must elect. They must pick a jurisdiction and I would seek inspiration from
934. competition law to have a kind of referral mechanism. So authorities can say "well look, we don't respect the
935. choice of that firm but we'll bring it under another authority." Make sure that the authorities have sufficient
936. means and have European coordination mechanisms like we see them for all network industries. And as I
937. mentioned earlier maybe rely more on private enforcement, so if you have in the privacy side for instance,
938. there is only so much that public authorities can do to enforce privacy rules. Why not try to have liability
939. claims more widespread, like we do in competition law. Add private enforcement to the mix. So that
940. would be in a nutshell my suggestions. So yes there is not that much need for a specific instrument but
941. nonetheless you want to have some structure in place to catch the discussions that are sure to continue at
942. the political level about online platforms. Thank you.

943.

944. MARIO MARINIELLO:

945.

946. Ok, thanks a lot. Professor Scott Morton.

947.

948. FIONA SCOTT MORTON:

949.

950. Thank you. I was somewhat disturbed by the ad hoc in the description, which I think certainly shouldn't
951. be the right direction. If there are principles concerning competition and the digital economy that the
952. commission thinks would advance social welfare, then laws or regulations making those principles binding
953. seems like a good idea. But not an ad hoc approach. And again specific regulations that attempt to control
954. behaviour in specific places and times seem much less likely to stay useful and correct as technology and
955. business strategies change over time. I wanted to bring to everybody's attention one example of data, data
956. ownership as an illustration of a place where it might be possible to improve regulation, certainly this is the
957. case in the United States and that may also be the case in Europe. So I've concerns about data ownership
958. in the digital economy. As I mentioned before one of the great benefits of the internet is the ability to collect
959. data in one place and lower search costs for consumers, thereby enabling them to make better choices of
960. products and services to purchase. Of course as I mentioned before this also increases competition among
961. those firms selling the products and services. And they may not want that competition to increase. If a large
962. firm, let me give you the examples of for example, insurer, an airline, a bank – the dominant firm in that
963. category could refuse to allow its data to appear in a search site, this would hobble such a search site from
964. providing the consumer benefit I just described. So let me be clear I am not referring to any confidential
965. information but rather the information that the firm itself is publicly displaying on its own site in order to
966. induce consumers to buy its product. So for example the fee of a certain account at a bank or the time
967. and the day of a flight. Consumers immediately see this information if they are searching the firms directly.
968. And when a market is fragmented, these providers are delighted to appear on a search site – for example
969. Skyscanner for flights, or a, a banking search site, because that would increase demand: more consumers
970. see the product. However a search site will lose credibility and usefulness with consumers if it does not

971. have the dominant firms' offerings. So a dominant firm that withholds data can set back a search-based
972. business. And that will increase consumer search costs because the consumer has to go to the multiple
973. websites and this reduces the efficiency of the economy and reduces the usefulness of the Internet. So
974. a default regulation holding that this kind of behaviour is anticompetitive unless there is an efficiency
975. justification might be the sort of rule that would improve welfare in the sense that it would allow for
976. search functions on the Internet to work as they sort of how they are working now. It's not completely you
977. know, obvious how to design such a regulation to catch all the cases we want and avoid harm because
978. for example, we should notice that such a regulation is useful when provide, when applied to the provider
979. itself. For example, the bank, the airline. A site that is itself a search site, that is itself a platform that
980. has successfully collected many buyers and sellers in the same place such as eBay, for example, would
981. be harmed if other search sites could freely take all the information on eBay and attract consumers with
982. that information. That's essentially just appropriating the eBay competitive advantage. So clearly we would
983. need to do some thinking about how to construct such a rule to capture the cases that we want. But I am
984. concerned that dominant firms that decide they own the information that they put on their own website will,
985. will restrict or even eliminate the search function of the Internet which I feel has just been an enormous
986. consumer gain.

987.

988. MARIO MARINIELLO:

989.

990. Super. Professor Crémer.

991.

992. JACQUES CRÉMER:

993.

994. Yes, so, I mean, there are so many issues that I decided just to try to tackle one of them. And I do think that
995. one thing which we could improve would be the transparency of what platforms do, both for consumers and
996. for policymakers.

997.

998. So, I mean, it's true that for most goods we more or less know what we are going to buy, if you... So, I nearly
999. took the example of a car but that's probably a bad example right now. But if I go and buy a car, I know
1000. what I'm going to get because we know that some things can be hidden, but fewer things can be hidden in a
1001. car than when I go onto a travel site and I go and ask the travel site for some recommendation. I don't know
1002. very much about the way in which those recommendations are built. Even if I trust the, you know, the whole
1003. information which I am given, which is the number of stars which people have given, the little statement
1004. they've made has not tampered with, I still don't know how the site is choosing to give more prominence
1005. to one place or the other, to one restaurant or to the other, or to one hotel or the another. It's not on the
1006. Internet but a long time ago I realised there was a free guide, which was, about Toulouse restaurants which
1007. was distributed widely in Toulouse. And I realised that it was a pretty good guide, you could trust it, except
1008. that every restaurant which had a picture, and you had to pay to get a picture, was substantially
1009. over-rated. I mean clearly there was some type of you know. But this was not written anywhere,
1010. you know, if you buy a picture you will get a better, a better critique. And I do think that we, this is a problem
1011. for consumers, it's also a problem by the way for all users, I mean you know it is also true for b2b and so on.
1012. I think we probably can do a much better job about doing consumer protection on this. One of the benefits
1013. of this is that consumer protection typically is less heavy from a legal viewpoint than competition law
1014. regulations. So we can act faster.

1015.

1016. There is also a problem of knowing how those platforms function. So some of them are very, you know, closed
1017. and basically don't let any information come out. Other platforms actually even go and hire economists or

1018. other type of academics and ask them to come and, you know, write research papers using their data. But of
1019. course what comes out has been also vetted by multiple layers of public relations people and lawyers, and
1020. what you are getting out is the good the results. So, you know, the study is not begin if you do not think that
1021. the result is going to go into the right direction. And I think it's a problem for academics – but you know you
1022. might say, you know that's too bad – but certainly for regulators who don't have much information generally
1023. about the way those platforms work internally. I'm not sure that we can make a re regulation telling, saying
1024. 'you should let some academics go and do this and that' – but I think there might be some soft pressure
1025. which could be put, you know. We, if we've got enough information from people who look independent
1026. enough, this might, that we won't use it too much against you when we are looking for targets for antitrust
1027. information and we will take this into account when you, no, when we are deciding how nasty to be with you.
1028. Thank you.

1029.

1030. MARIO MARINIELLO:

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1032. Perfect, thanks. Professor Edelman.

1033.

1034. BENJAMIN EDELMAN:

1035.

1036. A few things as we get to the clean-up after hearing everyone's thoughts on this question. Number one, Fiona
1037. points out I think quite reasonably the alarm bells that go off I think in all our heads when we see the label
1038. ad hoc. Ad hoc, ad hoc, ad hoc, appears too many times on that page of the briefing for it to sound like a good
1039. idea. Except then you turn to the next page with the list of things we are trying to fix and it does kind of sound
1040. like a laundry list of strange problems that no existing legal regime nor toolkit for that matter would really
1041. that naturally deal with. And so I was pulled in different directions. My own instinct on this I suppose is to try
1042. to fit this square peg into a round hole. Not to make some new ad hoc regulation but to find a way to fit within
1043. existing competition doctrines for example. What Fiona describes as to the restriction of say an airline as to
1044. its flight schedules and fares, you could tell a story of that as a restriction on competition. This is a dominant
1045. firm trying to impede price comparison, that's improper purpose and improper method of getting there, so
1046. maybe it's not quite so ad hoc after all. Her story incidentally is absolutely fascinating because as consumers
1047. we're all furious, I'm sure, when you can't find say, Ryanair, in the comparison search results... it drives you
1048. nuts! How are you supposed to figure out if Ryanair flies the route that you need, because if they do, they'll
1049. at least have a low posted price and there might be some other fees you'll have to but you want to know
1050. about that, right? And the poor comparison search engine that can't give you Ryanair because Ryanair says
1051. they want to be kept out. On the other hand, from the perspective of a service provider, say an airline, they
1052. are gonna be over a barrel once they're in this comparison search engine. Once they are in the comparison
1053. search engine they are going to have to pay top dollar to be at the top of the list, otherwise they'll get buried.
1054. And the one thing they can do, is to try to hold over the comparison search engine, "hey, we're pretty powerful
1055. too" "you think you have a powerful search engine but if you don't have my big airline, you're going to have
1056. a bad comparison search engine". So for the last seven years I've had the folks from American Airlines
1057. distribution strategy come to my MBA class to tell the MBAs about their negotiations with Kayak at the dawn
1058. of Kayak. Kayak of course, one of these original meta-search services that would have "quote unquote every
1059. airline" – Kayak was over the barrel negotiating with American because American, then the biggest airline, in,
1060. in the world I guess at that moment, depending on how you count it, number of take-offs per day, they really
1061. needed to have American. And so American was able to negotiate not just to be included in Kayak for free,
1062. but actually to get some free advertising out of Kayak. So Kayak had to put their listings in, link straight to
1063. AA.com – not link to some other service and furthermore give free advertising. If we think the pendulum of,
1064. of negotiating power can swing back and forth between the search platforms and the sellers who are actually

1065. making stuff, in a lot of markets we see the pendulum swinging all the way towards the search platform. My
1066. friend selling wallets is an example of that, where he's hardly getting anything and the search platform is
1067. getting a lot. At least in an airline that uses this strategy – or as Fiona points out – a bank or an insurer what
1068. have you – they can pull the pendulum back a little bit in their direction. Maybe with consumers damaged
1069. along the way and we shouldn't celebrate it too quickly, but this is the sort of fight that seems to be playing
1070. out. It's the very essence of ad hoc, isn't it? The complexity of the strange negotiations and tactics in this
1071. environment.
1072.

1073. The one other concern I wanted to flag following up on the discussion we've just had, is the question of
1074. whether enforcement actually occurs, and if it does, whether it occurs sufficiently quickly and with sufficiently
1075. high probability to protect prospective competitors. So if you were, I don't know, a Halo or a European
1076. company competing with Uber, what strategy do you want to use? If you think Uber's strategy of drivers who
1077. mostly don't have commercial insurance and mostly don't have commercial vehicle inspections, and on down
1078. the road, if you thought that was wrong, you might not want to do it, just for intrinsic reasons you didn't get
1079. into this business to do things that are against the law. On the other hand you see that they are doing it and
1080. you think the regulators probably won't catch up that quickly and in fact the regulation might change because
1081. maybe some of those rules are out-dated and the political process will rescind them, and maybe rightly so.
1082. So it puts these entrepreneurs in a tough spot. I feel bad for the guys who don't come at it with the, you know,
1083. steel-toed boots on. Because you are going to need your steel-toed boots and your rubber gloves and every
1084. other tool in your toolkit for, for putting up with some pretty dirty behaviour. It's not great from the regulatory
1085. perspective if we've created an environment where that's what firms have to be prepared to do.
1086.

1087. MARIO MARINIELLO:

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1089. Thank you. So our last speaker for this round, Professor Farrell.
1090.

1091. JOSEPH FARRELL:

1092.
1093. Well, it's been a wide ranging discussion already and I probably won't help with that. So let's see, starting with
1094. a couple of thoughts on implementation of existing tools, in particular competition law.
1095.
1096. You know, obviously there are a thousand things that could be said about a thousand different instances
1097. or cases. One thing that I do see coming up fairly often is how to deal with market definition in multisided
1098. markets and I'm not going to try to give the answer this morning. But, but you know one question that arises
1099. is "do you think of the market as a market for intermediation, of interactions within this group or across these
1100. groups?" "Do you think it as services provided and if so, to this side, to that side, both?" "How do you deal with
1101. that?" It seems to me that the traditional tools of market definition are very finely tuned, at least in theory, for
1102. dealing with the nuances of different degrees of substitution, and they're not all that finely tuned for dealing
1103. with issues of complementarity and follow on, and multi-sided markets. Obviously one approach we can take
1104. to that is to just try to do each case as intelligently as possible and see what principles emerge. Another
1105. approach might be to try to think that through a little more in the abstract.
1106.
1107. Closely related to the market definition question, although separate, is what is often called the "pass through
1108. defence" in multisided markets. If a merger for example enables a firm to extract more from side A and it
1109. therefore has an incentive to lower the prices to side B which is complementary, is that a defence? Is it a
1110. partial defence? Is it a full defence? In what circumstances? I think that's a set of questions that comes up
1111. repeatedly and deserve, deserve some thought.

1112.

1113. Moving away from the most traditional towards stuff that's been around but is less squarely and conventional
1114. competition law area: terminating access, interconnection, interchange fees, net neutrality, these issues come
1115. up, terminating access has been an issue in telecommunications for a long time of course. To some extent
1116. these issues are issues that come up as policy substitutes for dealing with a succession of network-effect
1117. monopolies. If you had no regulation of interconnection, you might find yourself with monopolies entrenched
1118. except for occasional gargantuan wars of succession. So obviously we have had policies on terminating
1119. access interconnection, we have policies, particularly you do, on interchange fees, and merchant different
1120. criteria and the tourist test. To those things need to be thought about more abstractly, more generally, more
1121. systematically. There are some deep questions in there.

1122.

1123. Finally on sort of a variety of things, including perhaps the search facilitation and protection of search against
1124. subversion and also perhaps privacy and data protection. One key insight that I think comes out from thinking
1125. about the competition aspect and that may also be relevant to these other aspects is that where you have
1126. these strong network effects, the incumbent platform, let's call it platform P, is not just in command of the
1127. market power that corresponds to the extent to which it is better than the alternatives. It may also command
1128. market power that is commensurate with the network effect. And therefore it's not necessarily an accurate or
1129. fair point to say "if you don't like what platform P is doing, use the alternative" because the alternative may
1130. be significantly worse for an individual user than it would be for society as a whole. And we've seen that, you
1131. know I've said, in multiple contexts, we've seen that standard essential patents but it's a more general point
1132. having to do with platforms in general. And so when you think about privacy policy as well as when you think
1133. about competition and innovation policy that's a general point that may have pretty broad implications. Thank
1134. you.

1135.

1136. MARIO MARINIELLO:

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1138. Great thanks a lot. So I'll hand over to Ann for the fifth question.

1139.

1140. ANN METTLER:

1141.

1142. The fifth question was conceived as a buffer question which we would maybe forgo if you had not stuck to
1143. your time, which you did. So I, I thank you for that. So we will go ahead with the fifth question which is: "Please
1144. feel free to use this time to continue the discussion around core-questions (2), (3) and (4)." So and I add to
1145. that perhaps there's something you heard one of your colleagues say that you would like to comment on or
1146. there is something that you couldn't say in a previous answer due to time constraints. It is optional to answer
1147. question five. We come first to you Professor Larouche.

1148.

1149. PIERRE LAROUCHE:

1150.

1151. Thank you. So on question five I think I will go for complementarity rather than. So talk about a point that was
1152. not mentioned so far. We focused a lot on competition policy and so on, I wanted to talk about what this all
1153. implies for the Single Market. I think the Single Market dimension plays both in the sense of enforcement and
1154. warning against the risk posed by online platforms, but it's certain also that the EU wants to be part of that
1155. trend and would like to have more home-grown players on this market. I think in that respect the key measure
1156. will be to develop scalability for EU players. What we see there's a risk always within the Single Market with
1157. these new issues that we would get fragmentation, so Member States would go in their respective directions.
1158. That must be avoided for me, at all costs. And sometimes it's the lesser of two evils to have action at the EU

1159. level if it's going to prevent fragmentation at Member State level. In the realm of platforms I think the local
1160. effects or the local preferences don't play out as much as with networks. So here there will be some work to
1161. do. It will imply also a shift in the conception of the internal market, so often the internal market, the Single
1162. Market, is conceived as a matter of equality and level of playing field between firms. If we are serious about
1163. online platforms in Europe, it means we will have to accept that is more about scalability and growth. We will
1164. not have players emerging from all twenty eight Member States, it will, like in the US, be concentrated in a
1165. few areas but that's the price to pay I think if we want to have European players on the scene. Thank you.
1166.

1167. ANN METTLER:

1168.

1169. Excellent. Mario reminds me I forgot to mention the time limit which is two minutes. A maximum of two
1170. minutes please. And next up is Professor Scott Morton please.

1171.

1172. FIONA SCOTT MORTON:

1173.

1174. I wanted to build on what Pierre said, I think if you want home-grown entrance here that the way to do that
1175. is not the expensive way of subsidising or protecting. Because we know from economic theory that that will
1176. be costly to the taxpayer. I think the place to focus, in addition to scalability as he said, is to try to lower entry
1177. costs. I think the entry barriers that might be worth considering are, are those logistical ones mentioned in
1178. the documents, also net neutrality (or really the barrier being a lack of net neutrality), and also exclusivity
1179. contracts. You can imagine in an exclusive contract on a, for a ride sharing app, on the largest handset
1180. platform and what would that do to competition in ride-sharing across Europe if that, if such an exclusive
1181. contract were in place. These are, are again, you know, I'm focusing on the competition side of things and
1182. trying to think about what would generate the most competition and most consumer welfare, and I think this
1183. idea of lowering entry barriers so that you have both an easy way to enter and access to a wide group of
1184. consumers at low transactions costs, low logistics costs and large economies of scale, this is going to be the
1185. way to generate new businesses and to generate consumer welfare.

1186.

1187. ANN METTLER:

1188.

1189. Excellent. Thank you so much. Actually next up is Professor Crémer but I wonder if we should go to Professor
1190. Farrell first because you may be cut off in a moment. So let me, so let me go to you Professor Farrell cause I
1191. would not, I would hate to not get your answer.

1192.

1193. JOE FARRELL:

1194.

1195. OK, I hope I don't get cut-off but I would echo some of what Fiona just said. That it's, it's a good idea to
1196. think about what facilitates entry or perhaps a better way to put it is: avoid the erection of needless entry
1197. barriers. I would also link that to my previous comment about the platforms' actual contribution; you know, in
1198. many cases, or some cases, the platform does contribute something important but the users also contribute
1199. something that arguably should not be viewed as inherently exclusive to that platform. You want to be careful
1200. and thoughtful about this, obviously if the platform contributes a means of using and pulling together all
1201. this information that can be a real contribution. But, but there may be ways to try to minimise the extent to
1202. which the platform can command more than it really contributes and that I think might be a good principle for
1203. thinking about pro-competition policy.

1204.

1205. Overall, I think we've had a really wide-ranging and rich discussion, one that cannot easily be condensed into
1206. a paragraph and I think that provides support for the view with which I opened that it would be premature to
1207. try to write down a simple verbal definition. I'll stay on if telecommunications allow me to do so.
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1209. ANN METTLER:

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1211. Excellent. I see that it's been extended so but I didn't want to take any risks. So next up Professor Crémer.

1212. JACQUES CRÉMER:

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1214. There is just one more point I'd like to do. And there is a distinction which I don't think we've done enough
1215. maybe in the discussion and which we, you know, should remember, is that: there are really two types of
1216. categories of things which platforms do. And, I mean, they are not split exactly, I mean, it's not a clean cut but
1217. there is in some sense the possibility of offering new services and then there is the possibility of reorganising
1218. existing services. Ok so if we take Uber clearly comes in competition with existing services and creates lots
1219. of tension. YouTube in some sense come in competition with, you know, movie theatres and so on, but it's
1220. much more new and is outside of a realm of, you know, competing with people who are already present on
1221. the same market. And I'm just, I think that in some sense it's much much easier from the regulatory viewpoint
1222. the second type of innovation is much easier because we start with a clean state, we don't, we've got less
1223. pressure and so on. And just thinking that maybe it's something which we should keep in mind more clearly
1224. when we are doing, when we are doing policy.
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1226. ANN METTLER:

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1228. Thank you so much. Professor Edelman is next.

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1230. BENJAMIN EDELMAN:

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1232. It's fascinating for me as an American to be here thinking about what might help Europe get more home
1233. grown tech companies. Obviously incredibly important to the future of Europe to economic success and jobs
1234. and what have you. Actually similar questions arise in the United States, in Boston we look back at a decade
1235. ago when there were more tech companies in Boston, Route 128 corridor used to be better than it is now and
1236. obviously other parts of the United States really struggle with this too. I tried to think of some really great
1237. European tech companies and thought of several, some that are in software, some that are in hardware, some
1238. that make apps, some have network effects, some really have free standing value and don't depend on who
1239. else uses them. I didn't see any amazing pattern that says to me this is what's working and this is what's not
1240. working. So I don't have a great solution there but boy, homework assignment for everyone, for a decade.
1241. Fiona points out requiring exclusivity as a potential concern, maybe if we see a firm requiring exclusivity we
1242. should be concerned about that. It's interesting to think about other additions to our dull weather list of things
1243. that should raise alarm bells. Limits on getting data in and out, strategic incompatibility. I remember my first
1244. exam question about the Apple power connector on iPhones and these days iPads. Quite a sore subject that
1245. you can't use that with any other devices. Why did they do it that way? And what are the impacts on the
1246. environment? What are the impacts on competitors? On switching from a household full of Apple devices to a
1247. household full of something else. Interesting set of problems there although definitely in the ad hoc category.
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1249. ANN METTLER:

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1251. Thanks so much. Next up is, and the last speaker in this round is Professor Inderst, please.

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1253. ROMAN INDERST:

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1255. Thank you. With respect to regulation and ex post intervention we surely want to ensure that there is a level

1256. playing field between all present and all future competitors. This requires revisiting existing regulation and

1257. possibly disabandon it or to extend it. Otherwise distortions may arise.

1258.

1259. But if we are concerned with distortions posed to the advantage and disadvantage of certain online

1260. platforms, we may also want to revisit, and this is my point here now, more generally treatment of online

1261. and e-commerce in European competition policy. I truly understand the effort to expand e-commerce, also

1262. as means to foster single European market. But we should rethink carefully the need to restrict the freedom

1263. of non-dominant firms to practice say dual pricing, or to impose other restraints that force or that shape

1264. precisely the presence of a firm's online appearance. We've seen various cases over the last years and in

1265. particular we've seen very restrictive stances of some authorities. Again I would like to stress the need to also

1266. reconsider such possible symmetries and possible distortions now not with respect regulation but with the

1267. possible application of competition policy.

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1269. ANN METTLER:

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1271. Excellent. Thank you so much. I'm glad we were able to do this round it was very interesting. So for the last

1272. question, back to Mario;

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1274. MARIO MARINIELLO:

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1276. Yeah. Now your bottom line. So you have one minute to answer this question and is as simple as that: "In

1277. a nutshell: your message to the European Commission – what should (or should not) be done about online

1278. platforms". We start with Professor Scott Morton.

1279.

1280. FIONA SCOTT MORTON:

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1282. My bottom line message is that I think competition law can primarily handle this setting and that perhaps

1283. some more thought needs to be put into presumptions and defaults so that decisions can be reached more

1284. quickly and more accurately. I think that technology moves very fast and to effectively protect consumers, the

1285. regulator is going to need to move fast. And that may involve some establishing some presumptions about for

1286. example data compatibility, or data sharing or other kinds of things like that, that allow the authority to get to

1287. an answer more quickly. But I think competition law can largely handle it.

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1289. MARIO MARINIELLO:

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1291. Great. Thanks. Professor Crémer.

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1293. JACQUES CRÉMER:

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1295. First recommendation, don't ask me to give you a new policy in one minute. Second thing I would just second

1296. what Fiona is, is saying that I think that competition law can do enough, I think we should be careful to, in

1297. some sense, reform it rather gradually, you know, kind of try to improve something regularly. The third point is

1298. maybe try to, you know, which is saying that we should come to a fast resolution, maybe: be less insistent on

1299. declaring that a company is guilty, get out a little of a judicial aspect and more to the change of behaviours
1300. that we can make sure that there is, that new behaviours, new rules are announced fast.

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1302. MARIO MARINIELLO:

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1304. Ok thanks. Professor Edelman.

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1306. BENJAMIN EDELMAN:

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1308. On some of the broader questions clearly many people will tell the EC and almost any regulator anywhere in
1309. the world to get out. Certainly it's important to know what you know and know what you don't, know what you
1310. can do and know what you can't do. But even so I wonder what's the alternative? Would you just sit here and
1311. accept the world as it is and not try to make your mark on it and make it a better place as best you can. So I
1312. am incredibly appreciative of the effort going on on this side of the ocean and I'm glad to have been a part of
1313. it in this small way.

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1315. MARIO MARINIELLO:

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1317. Thank you. Professor Farrell

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1319. JOSEPH FARRELL:

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1321. Ah well let's see. A number of really interesting and important problems do tend to arise from online
1322. platforms. We've identified some of them. Nevertheless I think it's important to address the problems as
1323. problems, not based on the category of how they arose. So in particular, you know, dominance based on
1324. network effects probably should be thought of as how to address dominance based on network effects and
1325. not how to address dominance based on network effects arising from online platforms. So that's one point.
1326. And the second point, which I've already said twice, is we should continue to have an intelligent and flexible
1327. discussion. I thank you for setting up this piece of thing. It would be premature I think to write down a
1328. definition.

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1330. MARIO MARINIELLO:

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1332. Ok thanks. Professor Inderst.

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1334. ROMAN INDERST:

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1336. Let me start that I would not claim that there are no regulatory gaps that need to be filled. For instance with
1337. regards to the protection of privacy. Still the particular advice I would like to provide again is to ensure that
1338. effective enforcement of existing rules and regulations should get priority. This has at least needs to fall
1339. into practical implications: first effective intervention needs to be fast but flexible, and it needs to rely on
1340. sound economics rather than technicalities that fail to capture important aspects of some of the concerned
1341. markets such as the inherent dynamic nature and the two-sidedness. Second intervention and duplication of
1342. existing regulation must treat, to put it shortly, likes alike. Online platforms and other services should at least
1343. not systematically escape not regulation that affects competitors. But they should also not be placed into a
1344. separate market for instance for the purpose of market delineation where they themselves experience strong
1345. competition from other players.

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1347. MARIO MARINIELLO:

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1349. Great. Thanks. Our last speaker.

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1351. PIERRE LAROCHE:

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1353. Thank you. Well I will join in the chorus of carefulness. So I would say keep in mind the legislation because

1354. if you are talking about legislative intervention the legislation must be sustainable, the link with the general

1355. legislation and the need for proper enforcement. I think at this point what we have is a gap rather in

1356. enforcement, there's not enough enforcement pressure. We know that there are problems of competition

1357. law, problems of privacy, problems of consumer protection. My colleagues have documented them. There's

1358. no enforcement going on. You want to avoid the situation where enforcement weakness leads to misguided

1359. legislative intervention because we're just adding a problem to another one. So I would say at this point no

1360. specific action for online platforms. But as I suggested maybe you want to have a light framework instrument.

1361. Just to lay a few principles down for the future. Thank you.

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1363. MARIO MARINIELLO:

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1365. Thank you very much. This concludes our round of questions. I'll hand over to Ann for concluding remarks.

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1367. ANN METTLER:

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1369. Thank you so much. I will refrain from concluding remarks because so much has been said. But I do want

1370. to take a moment just to thank our external speakers. I think this was extremely interesting and instructive.

1371. This will be a very valuable contribution to the public consultation on online platforms. I would now like to

1372. invite all, including the Commission colleagues who have been very patient and silent, to an informal coffee.

1373. Sadly Professor Scott Morton and Professor Farrell won't be able to be with us but you'll be with us in spirit

1374. undoubtedly and, but mostly I really want to warmly thank our external experts. You made a big effort to

1375. be here. You were so generous with sharing your knowledge, extremely well prepared and let me say as the

1376. chair I always appreciate when questions are answered in a timely manner. So also here you were extremely

1377. disciplined. So all that remains for me to do is to ask my colleagues to give you a round of applause to thank

1378. you once again. And bye bye to the United States. Bye bye, thank you.

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1380. MARIO MARINIELLO: Bye bye.

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1382. ANN METTLER: And join us for coffee, thank you.

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1390. *The text reported herein has been obtained through manual transcription of an audio recording taken during the hearing. Although the EPSC believes the text to be most accurate, mistakes and omissions ought not to be ruled out.