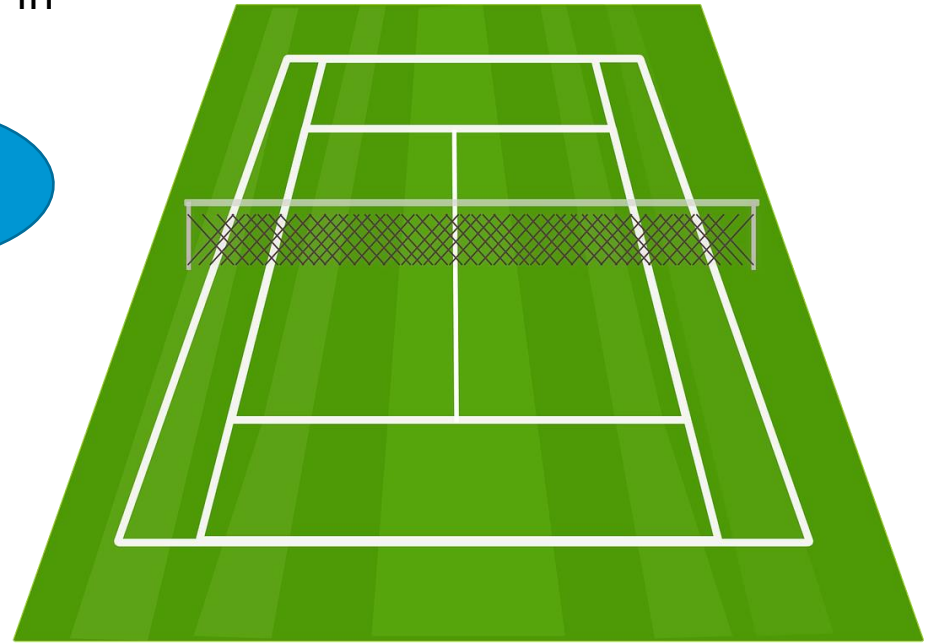
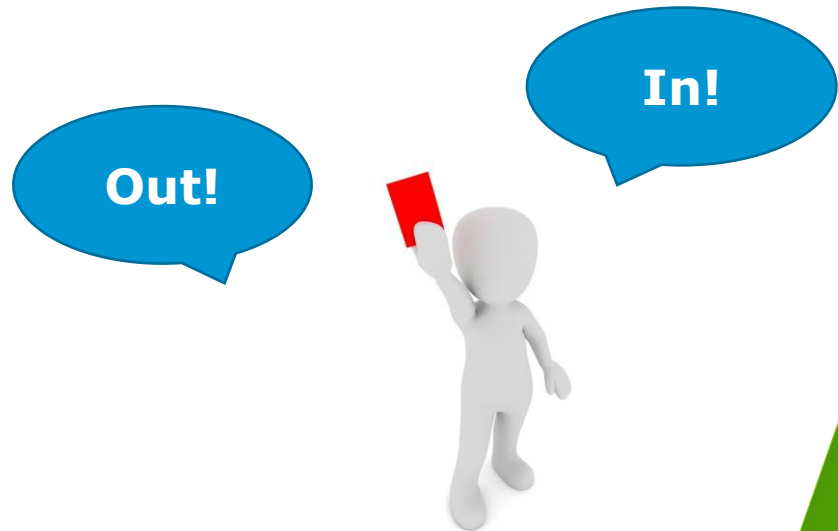


# The Market Definition Notice Goes Digital

Viktoria H.S.E. Robertson



- **Market definition** as a central tool in competition law



Pictures: Pixabay

# Market delineation for digital markets



# Market delineation for digital markets



SPEECH | 9 December 2019

## Defining markets in a new age

Chillin' Competition Conference, Brussels, 9 December 2019

- Review of the Market Definition Notice of 1997
- Consultation until 13 January 2023

Screenshots: [Commission website](#)

Press release | 26 June 2020 | Brussels

## Competition: Commission consults stakeholders on the Market Definition Notice

The European Commission has published today a public consultation on the Market Definition Notice used in EU competition law. The open questionnaire will contribute to the Commission's evaluation of the Notice to assess whether it requires updating. Stakeholders can submit their views and respond to the open public consultation until 9 October 2020.

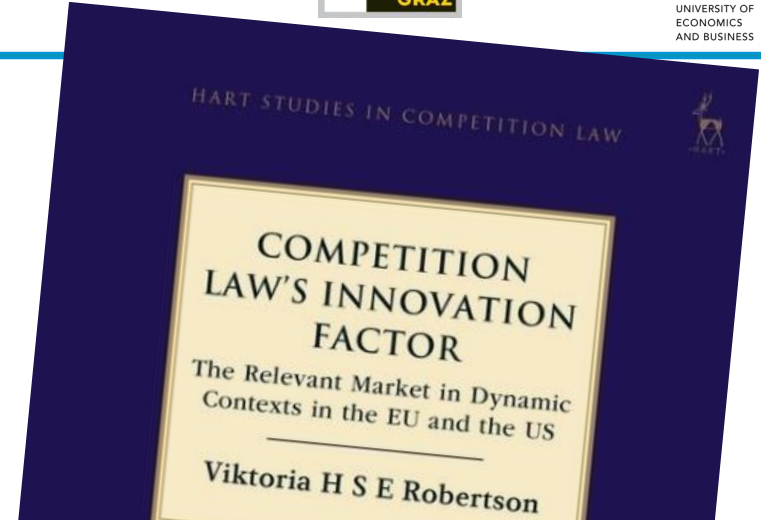
Picture: Alessio Aresu



# Market delineation for digital markets

- **Digital challenges**

- ✓ Zero price markets
- ✓ Digital platform markets
- ✓ Digital ecosystems
- ✓ Dynamic markets
- ✓ Data and data analytics
- ✓ Seamless integration of technologies and markets
- ✓ Online/offline



*Journal of Competition Law & Economics*, 18(2), 417–455  
<https://doi.org/10.1093/joclec/nhab018>  
Advance Access publication 8 September 2021

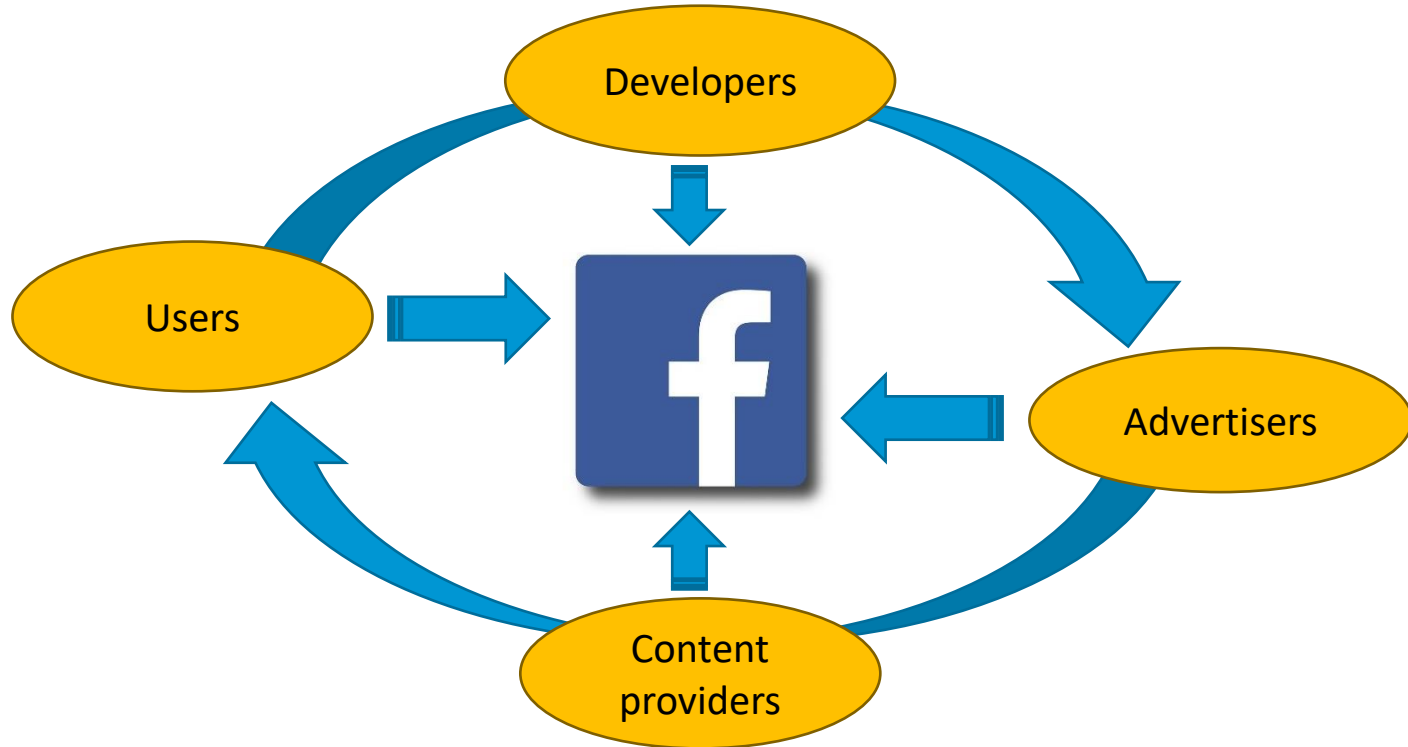
DIGITAL MARKET DEFINITION IN THE  
EUROPEAN UNION, UNITED STATES, AND  
BRAZIL: PAST, PRESENT, AND FUTURE

Magali Eben<sup>id\*</sup> & Viktoria H.S.E. Robertson<sup>id†</sup>

## ABSTRACT

Market definition is a core concept of competition law around the globe.

# Platform markets: The issues



# Platform markets: Enforcement experience

## EU

- Case C-67/13 P *Cartes bancaires* (2014)
- COMP/M.7217 *Facebook/WhatsApp* (2014)
- COMP/M.8124 *Microsoft/LinkedIn* (2016)
- AT.39740 *Google Search (Shopping)* (2017)

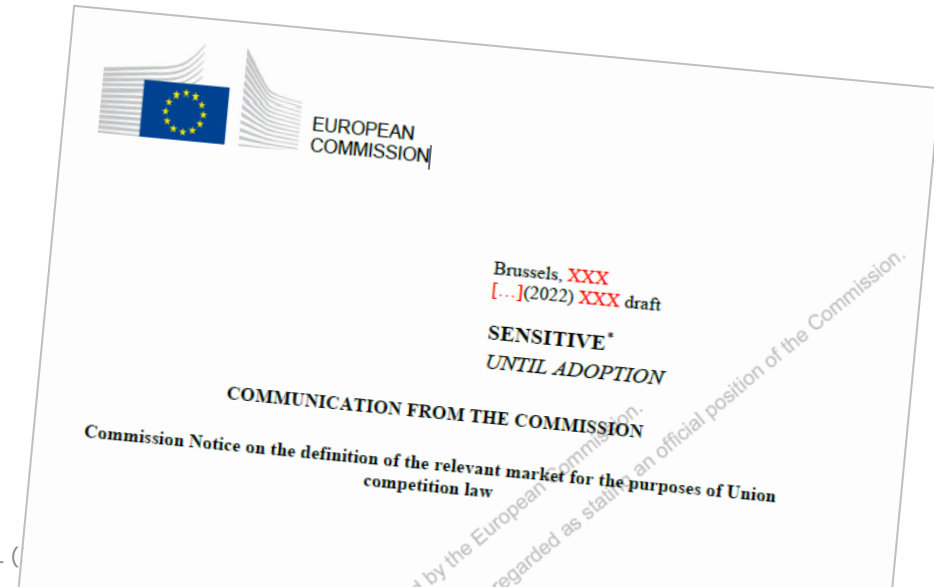
## US

- *Ohio v American Express*, 585 US \_\_\_\_ (2018)
- *US v Sabre*, 452 F. Supp. 3d (D Del 2020)



## ■ **Draft revised Market Definition Notice** (8 November 2022)

- Paras 94 ff
- COM may define comprehensive “platform market” or markets focused on a single market side
- Factors
- Drawbacks of single market sides as a relevant market?
- Indirect network effects?
- Zero price markets?





**How can the relevant  
market remain a  
useful tool in digital  
platforms?**

# Digital ecosystems: The issues



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AND BUSINESS



Picture:  
<https://i.pinimg.com/originals/43/e/a/77/43ea775c459610346c0afe5162c03c54.png>

Picture:  
<https://i.pinimg.com/originals/68/01/97/680197e260478e2a71e355038500e762.jpg>

## Cluster markets

- *US v. Philadelphia National Bank*, 374 US 321 (1963)
- Joined Cases C-125/, C-133/, C-135/ and C-137/07 P, *Lombard Club*

## Multi-sided markets

- Case C-67/13 P, *Cartes bancaires*
- *Ohio v. American Express*, 585 US \_\_\_\_ (2018)

## Aftermarkets

- *Eastman Kodak v. Image Technical Services*, 504 US 451 (1992)
- Case C-56/12 P, *EFIM v. Commission*

## Digital ecosystems

- AT.40099 *Google Android* (2018)
- Case T-604/18, *Google Android*

## Digital ecosystems



- **AT.40099 Google Android (2018)**

- ✓ 4 separate relevant markets: licensing of smart mobile operating systems, Android app stores, general online search, mobile web browsers

- **Case T-604/18, Google Android /1**

- ✓ Interdependencies and overlaps in digital ecosystems (para 116) – may require a 'multi-level or multi-directional examination' (para 117)
- ✓ Digital ecosystem: combination of smart mobile OS and application store (paras 116, 270)
- ✓ 4 relevant markets identified by COM were 'distinct but interconnected relevant markets' (para 129) and could not be 'artificially separated' due to Google's ecosystem (para 126)

## Digital ecosystems

- **Case T-604/18, *Google Android* /2**

- ✓ Apple's iOS as competitive constraint on Android?
- ✓ Competition between the App Store and the Play Store was determined by competition between the OS



— The Impact of the Google Android Judgment —

### ***Google Android and ecosystem market definition***

Viktoria H.S.E. Robertson <sup>1</sup>

#### **Introduction**

On 14 September 2022, the EU's General Court rendered its second judgment in the European Commission's Google trilogy: *Google Android* ([T-604/18](#)). The judgment largely upheld the Commission's 2018 fining decision, which had imposed a record fine of €4.3 billion on the Tech Giant for engaging in a multi-faceted strategy aimed at maintaining its market power in online search through behaviour related to Google's Android operating system. The judgment will rightly give rise to numerous commentary – including in this

# Digital ecosystems: Revised Notice



## ■ Draft revised Market Definition Notice (8 November 2022)

- Para 103
- Defining digital ecosystems
- COM may rely on aftermarket definition, or a bundle approach
- Factors to be taken into consideration in any event: network effects, switching costs, single/multi-homing
- FN 123: example of a digital ecosystem



**How can the relevant  
market remain a  
useful tool in digital  
ecosystems?**



# Digital ecosystems: Discussion



- For digital ecosystems, their “‘field’ of competition is not a single product market, but an ecosystem of complementary products.” (Jacobides & Lianos 2021)
- Special Advisers’ Report (2019)
  - “where the firms’ lock-in strategies are successful, and consumers are drawn into ecosystems which they find difficult to leave, ecosystem-specific aftermarkets may need to be defined. ... Furthermore, a market for ecosystems might have to be defined.”
- “acknowledge [the] different layers of competition [and] multiple competitive dynamics occurring simultaneously.” (Pereira Neto & Lancieri 2020)

## Antitrust market definition for digital ecosystems

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Professor of International Antitrust Law, University of Graz

### I. Introduction

1. Competition law needs to be able to rely on its most fundamental analytical tools in order to properly carry out competitive assessments. This includes market definition as the first step in virtually any competition case. And this also holds true in digital

### II. Digital ecosystems

4. Imagine a successful online ecosystem

## Google Android and ecosystem market definition

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HART STUDIES IN COMPETITION LAW



## COMPETITION LAW'S INNOVATION FACTOR

The Relevant Market in Dynamic  
Contexts in the EU and the US

Viktoria H S E Robertson

## Antitrust market definition for digital ecosystems

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