



Universiteit  
Leiden  
The Netherlands

## The application of EU antitrust law to (dominant) online platforms

Mândrescu, D.

### Citation

Mândrescu, D. (2022, October 5). *The application of EU antitrust law to (dominant) online platforms*. Meijers-reeks. Retrieved from <https://hdl.handle.net/1887/3466333>

Version: Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/3466333>

**Note:** To cite this publication please use the final published version (if applicable).

The Application of EU Antitrust Law  
to (Dominant) Online Platforms



# The Application of EU Antitrust Law to (Dominant) Online Platforms

PROEFSCHRIFT

ter verkrijging van  
de graad van doctor aan de Universiteit Leiden,  
op gezag van rector magnificus prof.dr.ir. H. Bijl,  
volgens besluit van het college voor promoties  
te verdedigen op woensdag 5 oktober 2022  
klokke 15.00 uur

*door*

Daniel Mândrescu

geboren te Galati, Romania

in 1987

Promotor: prof. dr. T.R. Ottervanger  
Copromotor: dr. B. Van Rompuy

Promotiecommissie: prof. dr. A.T. Ottow  
prof. dr. S.C.G. Van den Bogaert  
dr. I. Graef (Tilburg University)  
prof. dr. A. de Streel (University of Namur, Belgium)

Lay-out: AlphaZet prepress, Bodegraven  
Printwerk: Ipskamp Printing

© 2022 D. Mândrescu

*Behoudens de in of krachtens de Auteurswet van 1912 gestelde uitzonderingen mag niets uit deze uitgave worden veeelvoudigd, opgeslagen in een geautomatiseerd gegevensbestand of openbaar gemaakt, in enige vorm of op enige wijze, hetzij elektronisch, mechanisch, door fotokopieën, opnamen of enig andere manier, zonder voorafgaande schriftelijke toestemming van de auteur.*

*No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means without written permission of the author.*

# Table of Contents

1	INTRODUCTION	1
1.1	General introduction	1
1.2	Research focus and dissertation structure	11
1.2.1	Research focus	11
1.2.2	Main research question and sub-questions	12
1.2.3	The structure of this article-based dissertation	13
1.3	Relevance of the research	19
1.4	Definition of key terms	22
1.5	Methodology and limitations	24
1.5.1	General research approach	24
1.5.2	Chapter specific approach	26
1.5.3	Sources	32
1.5.4	Limitations	34
2	THE CHALLENGES OF APPLYING EU ANTITRUST LAW TO ONLINE PLATFORMS	39
2.1	Introduction	39
2.2	Online platforms	42
2.3	Article 101 TEFU – Restrictions of competition	46
2.3.1	Establishing collusion	47
2.3.2	Restrictions by object or effect	54
2.3.3	Justification criteria	59
2.4	Article 102 TEFU – Abuse of dominance	64
2.4.1	Establishing dominance	65
2.4.2	Abuse of dominance or legitimate practice	73
2.4.3	Objective justifications	83
2.5	Conclusion and final remarks	89
3	THE DEFINITION OF THE RELEVANT MARKET FOR ONLINE PLATFORMS	91
3.1	Introduction	91
3.2	Defining the relevant market(s) for online platforms: a substantive perspective	93
3.2.1	Article 102 TFEU and market definition	94
3.2.2	Market definition and online platforms	96
3.2.3	Platform substitution – a tale of (at least) two perspectives	109
3.2.4	Preliminary conclusion on the substantive challenges of the market definition for online platforms	122

3.3	Defining the relevant market(s) for online platforms: practical implications	123
3.3.1	Online platforms and zero-pricing – the inevitable task of defining the relevant market of ‘free’	124
3.3.2	Market definition and the SSNIP test	127
3.3.3	Back to (some) basics and plans for the future – a temporary SSNIP free market definition	139
3.3.4	Preliminary conclusion on the practical challenges of the market definition for online platforms	142
3.4	Conclusion and final remarks	144
4	PLATFORM EXPANSIONS AND ANTI-COMPETITIVE MARKET POWER LEVERAGING	147
4.1	Introduction	147
4.2	The life story of online platforms – from launching to tying and bundling	151
4.2.1	Launching phase – managing interactions and achieving critical mass	151
4.2.2	Maturity phase – the path towards expansion and tying	157
4.3	The anti-competitive concerns of tying and bundling	167
4.3.1	Tying and bundling in traditional (single-sided) markets	167
4.3.2	Tying and bundling in two-sided markets	170
4.4	Tying and bundling under Article 102 TEFU	174
4.4.1	Dominant position	175
4.4.2	Separate products	177
4.4.3	Coercion	180
4.4.4	Foreclosure effect	184
4.4.5	Objective justification and efficiency arguments	191
4.5	Conclusion and final remarks	195
5	PLATFORM PRICING AND THE IDENTIFICATION OF POTENTIAL PRICE-RELATED ABUSES	199
5.1	Introduction	199
5.2	Online platform pricing	204
5.2.1	Skewed pricing structures of multisided platforms	204
5.2.2	Skewed pricing variables	206
5.3	Abusive pricing practices under Article 102 TEFU	213
5.3.1	Predatory pricing	214
5.3.2	Excessive pricing	222
5.3.3	Discriminatory pricing	242
5.4	Conclusion and final remarks	254

6	DESIGNING REMEDIES FOR ABUSE OF DOMINANCE BY ONLINE PLATFORMS	259
6.1	Introduction	259
6.2	Aims, means and limitations	261
6.2.1	Aims	261
6.2.2	Means and limitations	264
6.3	Remedy design in context	275
6.3.1	Platform considerations	275
6.3.2	Remedies in tying and bundling cases	282
6.3.3	Remedies for price related abuses	299
6.4	Remedy design and the Digital Markets Act	313
6.5	Conclusion and final remarks	319
7	OVERALL CONCLUSIONS AND RECOMMENDATIONS	323
7.1	Answers to the sub-questions of the research	323
7.1.1	Sub-question 1	323
7.1.2	Sub-question 2	327
7.1.3	Sub-question 3	332
7.1.4	Sub-question 4	339
7.1.5	Sub-question 5	347
7.2	Answer to the main research question and final considerations	354
	ANNEX 1 – LEGISLATION	359
	ANNEX 2 – LIST OF CASES	361
	ANNEX 3 – LIST OF REFERENCES	369
	EXECUTIVE SUMMARY	383
	SAMENVATTING – DUTCH SUMMARY	389
	ACKNOWLEDGEMENTS	395
	CURRICULUM VITAE	397



