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

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Propositions relating to the dissertation

THE APPLICATION OF EU ANTITRUST LAW
TO (DOMINANT) ONLINE PLATFORMS

by Daniel Mândrescu

1. Over the years academics and practitioners have focused too much on whether certain anti-competitive practices can be caught by EU antitrust law and too little on how such practices and their effects should be remedied, despite the fact that effective remedies may require more elaborate measures than cease and desist orders.
2. The procedural limitations concerning antitrust remedies restrict *de facto* the effectiveness of the material scope of EU antitrust law, which would otherwise offer sufficient flexibility to deal with the unprecedented theories of harm brought by multisided online platforms.
3. The presence of multihoming prevents the concentration of market power. Accordingly, when assessing the foreclosure effects of conduct implemented by dominant multisided online platforms the focus should be on whether the respective conduct prevents, limits or discourages multihoming.
4. The lack of legal and economic tools for measuring market tipping undermines the possibility to take such concern into account in the process of EU antitrust law enforcement.
5. The consensus that anti-competitive effects in cases concerning multisided online platforms should be assessed across multiple markets needs to extend to the design of remedies. Effectively putting to an end anti-competitive conduct that covers multiple markets will often require remedies that cover multiple markets as well.
6. Competition authorities should avoid intervening in the pricing structures of multisided online platforms as much as possible since the non-neutral character of these pricing structures may transform competition authorities not only into price regulators but also into market regulators.

7. Market power leveraging is inherent to the expansion strategies of multi-sided online platforms and should therefore be one of the main priorities of EU antitrust law enforcement. In such contexts, enforcement should be concerned with the leveraging of market power across separate multisided online platforms as well as across the various sides of such platforms.
8. The SSNIP test should be replaced with a the SSNDQ test in order to prevent the market definition from being performed primarily on the basis of qualitative evidence. This adjustment should, however, also include a corresponding procedural framework to preserve the legitimacy of the market definition.
9. One of the main pitfalls of writing a dissertation on the applicability of a legal framework to unforeseen developments is the law of the instrument bias.
10. An article based dissertation in the field of law should be encouraged for topics that concern underexplored or undecided policy questions that can radically change along the writing process.