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Competition and Competition Policy in a Data Driven Economy

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What is different in a Data-Driven Economy?

- the role of digital platforms in (partially) highly concentrated markets (degree of scale economies and strength of network effects – distance becomes less important).
- data as a critical input for production and distribution processes becomes more and more important (agriculture, industry, trade, services).

Is Data the New Oil?

As we heard several times: No, no, no, data is no oil because

- Data is non-rival in use, data can be used several times by several users,
- Data is used, but not used up,
- Data is not a finite resource.

But: The world's most valuable firms 2008 vs. 2018:

- | | |
|-----------------|-----------------------|
| 1. ExxonMobil, | 1. Apple, |
| 2. PetroChina, | 2. Alphabet (Google), |
| 3. Gazprom, | 3. Amazon, |
| 4. Petrobras, | 4. Microsoft, |
| 5. ChinaMobile. | 5. Facebook. |

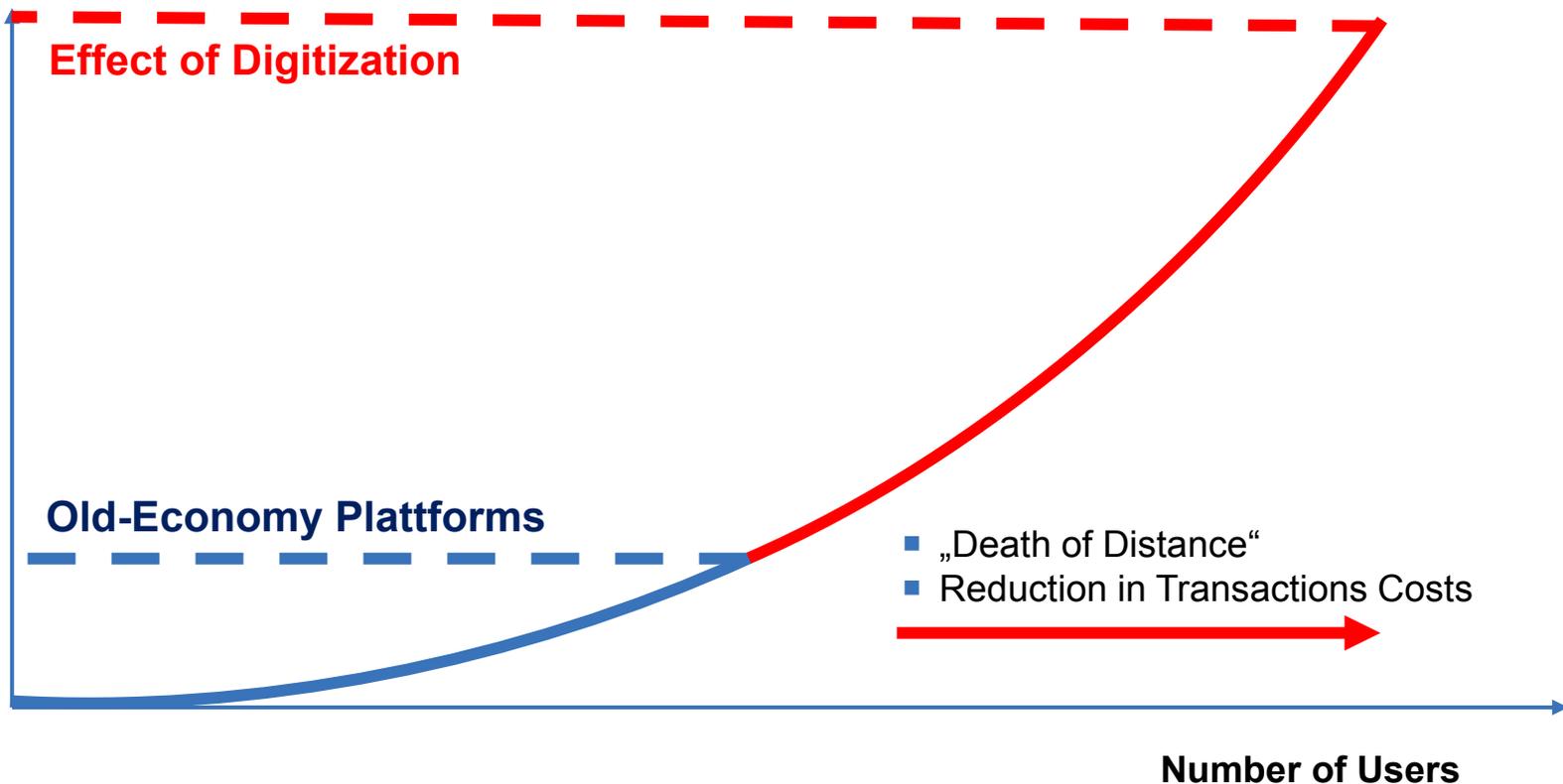
Data is the new oil!



The Platform Economy

Platforms are more important than ever

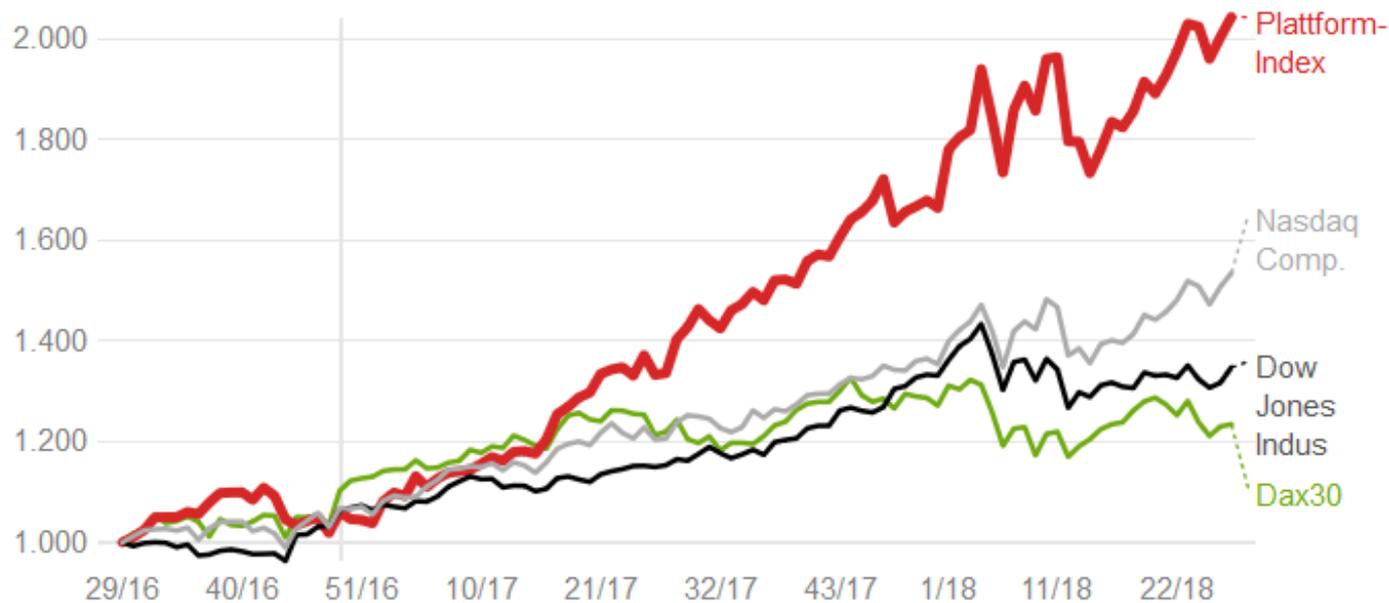
Value for
Users



The Platform Economy

Plattform-Index 15

Im Vergleich mit Dow Jones, Nasdaq Composite und Dax 30 seit Kalenderwoche 29/16



Der Plattform-Index umfasst die Werte: Alphabet, Alibaba, Microsoft, Facebook, Amazon, Tencent, Sina, PayPal, Dropbox, Netflix, Weibo, Booking, Naspers, Baidu und Naver, gewichtet mit ihrer jeweiligen Marktkapitalisierung.

101 Competition Economics of Digital Platforms

Factor	Effect on Concentration
Strength of Network Effects	+
Economies of Scale	+
Capacity Limits	-
Platform Differentiation	-
Multihoming	-

¹¹ Evans, D.S. und R. Schmalensee (2008): Markets with Two-Sided Platforms, *Issues in Competition Law and Policy* 1, S. 667-693.

Competition Law Reforms in Germany 2017

§18 Abs. 3a GWB:

Especially in multi-sided markets and networks the following criteria has to be considered when evaluating a firm's market position:

1. direct and indirect network effects,
2. the parallel usage of multiple services and consumer switching costs,
3. economies of scale in conjunction with network effects,
4. access to competition-related data,
5. Innovation-driven competitive pressure.

Strong Incentives for Market Foreclosure

- Stronger incentives and more possibilities to foreclose the market for online platforms than in „traditional“ sectors
- Logic of Segal & Winston (2000), even strengthened by network effects.
- Direct and indirect network effects plus economies of scale can give rise to “winner takes all markets” – “tippy markets”
- Michael Katz (2017) : „Although the issues are particularly difficult, there are also reasons to believe that two-sided markets may be particularly fertile ground for exclusionary behaviour.”
- Amelio, Karlinger & Valletti (2017): “Traditional exclusionary practices carry over to platform competition and in some circumstances indirect network externalities accentuate the incentive to foreclose by incumbents.”
- Preserving options multi-homing options is key!

„Kill Zone“ Acquisitions

Google and Facebook’s “Kill Zone”: “We’ve Taken the Focus Off of Rewarding Genius and Innovation to Rewarding Capital and Scale”

Posted on May 05, 2019 by Ashraf Habibullah

<https://promarket.org/google-facebooks-kill-zone-weve-taken-focus-off-rewarding-genius-innovation-rewarding-capital-scale/>

Two ideas:

- (1) Define markets more broadly (e.g., markets for attention), or
- (2) allow competition authorities to take business strategies more broadly into consideration, with a view towards potential competition.

Access to Data / Data Sharing

Q1: When is data so essential that a firm's competitive advantage can not be reached any more (or it is highly unlikely)?

Q2: Under which conditions should third-party access be granted?

Q3: Should access be granted even below the „essential facility“ threshold??

Difference:

- Public Data / Open Data / Data of state-owned firms,
- private firms' data.

Access to Data / Data Sharing

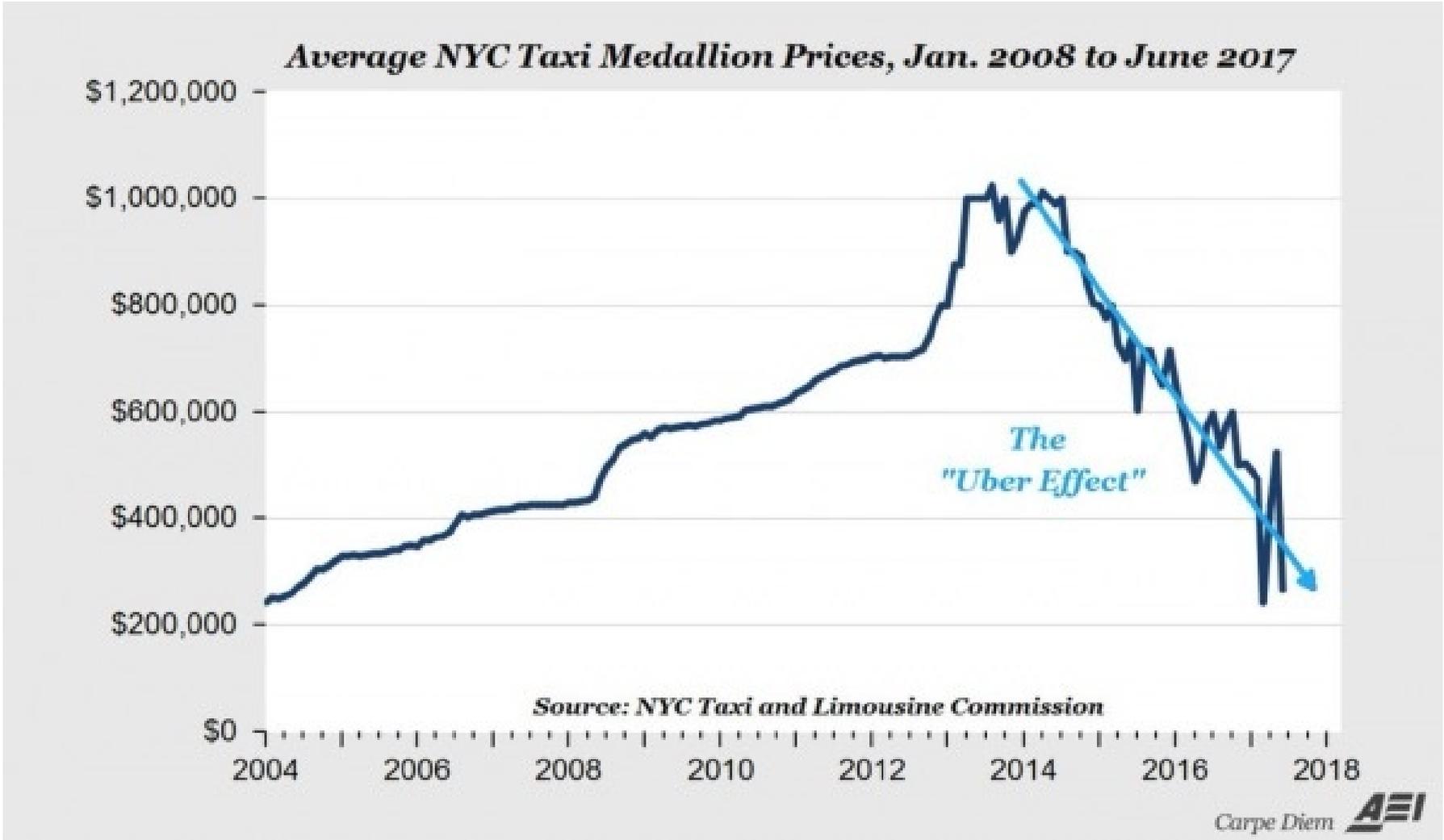
- Traditionally, making third-party access to infrastructure mandatory has been subject to substantial legal tests/barriers.
- The (economic) reasons for not making mandatory third-party access too easy:
 - (1) to preserve investment incentives and (2) because usage has often been rival.
- (1) *can* be different with data and (2) is almost always different (non-rival in use).
- This logic implies, as a rule of thumb, that mandatory access should be subject to lower threshold (in principle).
- In addition: (Voluntary) data sharing policies may be regarded with less suspicion than they traditionally have been.

Access to Data / Data Sharing

Open questions with respect to data access:

- Standards/compatibility?
- Terms and conditions (FRAND?)
- Safe harbours for small and medium enterprises? Thresholds?
- Institutional set-up? Competition authorities? Data protection/privacy authorities?

Other obstacles



Recommendations wrt Competition Law

- Multi-homing options are key to preserve competition in digital markets. If firms try to impede multi-homing, competition agencies should be able to intervene before they become dominant.
- Concept of “relative market power”, i.e., more shades of grey in antitrust rather than dominance/non-dominance.
- Introduction of a concept of “intermediation” power (“buyer power on the supply side”)
- Make it easier to address “kill zone” acquisitions by allowing competition authorities to consider firm strategies more broadly.
- Access to Data:
 - Some data access may sometimes be almost essential to compete in certain markets,
 - In these cases, the threshold for granting access should typically be lower than under the regular essential facilities doctrine
 - Reason: Data is non-rival in use and investments incentives sometimes less important

Thank you for your attention!

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