



## Prof. Dr. Rupprecht Podszun: Innovation, Variety & Fair Choice - New Rules for the Digital Economy

### I. Characteristics of the Platform Economy

- (1) The **digitalisation has unleashed enormous potential**, reduced transaction costs, enhanced consumer welfare and inspired a new entrepreneurial culture. New technologies and business models lead to a far-reaching modernisation of business.
- (2) Notwithstanding the dynamics of digitalisation, the economy is at a turning point: Its fundamental infrastructure is being transformed. Some **platforms turn into gatekeepers of the market places** of the digital economy. Due to network effects, economies of scale and superior access to data, the success of such platforms becomes self-reinforcing. In a platform economy competition is for the market – not on the market. Markets may be “tipped” and are organised and governed by one or two platforms only.
- (3) In such markets, “the winner takes it all”. The platform operator determines the success of suppliers and customers and steers the coordination of supply and demand according to its own parameters. This has **elements of a centrally planned economy** and suppresses the discoveries of a free market economy when customers and/or suppliers are dependent upon the platform. The prerequisites of **innovation** – different paths, diversity, capacities for openness – may no longer be given.
- (4) Real providers of goods and services may become dependent from suppliers of auxiliary services (the match-making platforms). They battle for access to the platform and for the best conditions with the platform operator, but no longer for the customer directly. The direct **customer-supplier-interface gets lost**. Competition is pushed to the periphery. That is a strange distortion of the functioning of markets.
- (5) Consumers may benefit from reduced transaction costs first, but soon may be caught in closed systems where **consumer choice is reduced**. When switching costs are high and multi-homing is not possible, consumers are bound to one platform and may be subject to manipulation of choices and conditions by the platform operator without transparency. Consumers take fewer decisions themselves and take these decisions on a less informed basis.
- (6) The platform economy works with **data, algorithms and machine-learning**. Markets are more and more integrated and connected. The use of data and the delegation of decisions to machines may create barriers to entry and technological **lock-in effects**.



## II. Regulatory Responses

- (7) Regulatory responses to the platform economy need to protect **variety, innovation and fair choice** for consumers. This requires an approach that ensures that markets remain able to perform their function in selecting winners and losers in a dynamic competitive race. Whilst regulation and enforcement need to be cautious with a view to potential “**chilling effects**”, it is also necessary to **act quicker, more hands-on and more technology-sensitive** than so far.
- (8) The EU needs to develop a framework for the **governance of platforms**. Such a framework needs to distinguish between open platforms, proprietary systems and gatekeeping platforms. The framework needs to provide rules for neutrality and interoperability, transparency and liability.
- (9) **Competition law enforcement** needs to take centre stage in the governance of the digital economy. Artificially narrow market definitions should be replaced by an improved look at the integration of markets. The focus should shift to **innovation barriers and technological lock-in effects**. Jurisdiction for merger control needs to be reformed so as to encompass **shootout acquisitions** of innovative rival firms that challenge the market power of platforms. The 2017-amendments of the German Act against Restraints of Competition are a good starting point for reforms.
- (10) **Consumer awareness** in the digital economy needs to be strengthened. In particular, awareness for the non-neutrality of search results and for the use of data, algorithms and machine-learning could be enhanced or fostered through transparency requirements.
- (11) The **free flow of data** is a prerequisite for innovation and variety in the digital economy. **Interoperability** and open standards need to be supported. **An exclusive data right would be counterproductive** at present and would create artificial barriers for innovation. Instead it is necessary to design a **framework for access** to essential data. Such a framework should ensure data **portability** (also for machine-generated rights) and establish a speedy **ombudsman-system** for granting access and determining remuneration. It may be necessary to provide for sector-specific rules, e.g. default rules for data sharing contracts and sector-specific disclosure rules (e.g. for automated driving).

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