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“ ” 11

Feldman

12 “ ” 13

14

15

8 Streinz/Eilmansberger/Kruis, 3. Aufl. 2018, AEUV Art. 102 Rn. 121.
9 Herbert Hovenkamp, *Robert Bork and Vertical Integration: Leverage, Foreclosure, and Efficiency*, 79 Antitrust Law Journal 983, 992 (2014).
10 Carbice Corp. v. Patents Dev. Corp., 283 U.S. 27, 31 – 32, 34 (1931).
11 Michael D. Whinston, *Tying, Foreclosure, and Exclusion*, 80 American Economic Review 837, 837 (1990); Robin Feldman, *Defensive Leveraging in Antitrust*, 87 Georgetown Law Journal 2079, 2079 (1999).
12 Robin Feldman, *Defensive Leveraging in Antitrust*, 87 Georgetown Law Journal 2079, 2079 – 2080 (1999).
13 Ward S. Bowman, *Tying Arrangements and the Leverage Problem*, 67 The Yale Law Journal 19, 20 (1957).
14 Louis Kaplow, *Extension of Monopoly Power Through Leverage*, 85 Columbia Law Reivew 515, 516 – 517 (1985).
15 Richard A. Posner, *The Chicago School of Antitrust Analysis*, 127 University of Pennsylvania Law Review 925, 929 (1979).

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” Single Monopoly Profit Theory

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16 Robin Feldman, *Defensive Leveraging in Antitrust*, 87 *Georgetown Law Journal* 2079, 2080 (1999).
 17 *United States v. Griffith*, 334 U.S. 100, 107 (1948).
 18 *Standard Oil Co. v. United States*, 337 U.S. 293, 305–306 (1949).
 19 *Brown Shoe Co., Inc. v. United States*, 370 U.S. 294, 323–324 (1962).
 20 *Kerasotes Michigan Theatres, Inc. v. National Amusements, Inc.*, 854 F.2d 135, 137 (6th Cir. 1988).
 21 Richard A. Posner, *The Chicago School of Antitrust Analysis*, 127 *University of Pennsylvania Law Review* 925, 927 (1979).
 22 Louis Kaplow, *Extension of Monopoly Power Through Leverage*, 85 *Columbia Law Review* 515, 517–518 (1985).
 23 Michael D. Whinston, *Tying, Foreclosure, and Exclusion*, 80 *American Economic Review* 837, 837 (1990).
 24 Robin Feldman, *Defensive Leveraging in Antitrust*, 87 *Georgetown Law Journal* 2079, 2080 (1999).
 25 Patrick F. Todd, *Digital Platforms and the Leverage Problem*, 98 *Nebraska Law Review* 486, 506–507 (2019).
 26 Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself*, 1st ed., 1978, p. 376; Richard A. Posner, *The Chicago School of Antitrust Analysis*, 127 *University of Pennsylvania Law Review* 925, 927 (1979).
 27 Robert O’ Donoghue & Jorge Padilla, *The Law and Economics of Article 102 TFEU*, 3rd ed., Hart Publishing, 2020, p. 698.

28

29

30

31

32

New Brandeis School

“ ” 33

“ ”

2018

“ ” P2B “

” 34 2020 7

12

P2B 35

P2B

2022 11 36

28 Roger Van den Bergh & Peter D. Camesasca, *European Competition Law and Economics: A Comparative Perspective*, 1st ed., 2001, p. 279.

29 Louis Kaplow, *Extension of Monopoly Power Through Leverage*, 85 *Columbia Law Review* 515, 536 (1985).

30 Jurian Langer, *Tying and Bundling as a Leveraging Concern Under EC Competition Law*, 1st ed., 2007, p. 21.

31 Louis Kaplow, *Extension of Monopoly Power Through Leverage*, 85 *Columbia Law Review* 515, 528 (1985).

32 Dennis W. Carlton & Michael Waldman, *Robert Bork’s Contributions to Antitrust Perspectives on Tying Behavior*, 57 *Journal of Law and Economics* 121, 133 – 134 (2014).

33 Lina M. Khan, *The Separation of Platform and Commerce*, 119 *Columbia Law Review* 973, 973 (2019).

34 European Commission, Proposal for a Regulation of the European Parliament and of the Council on Promoting Fairness and Transparency for Business Users of Online Intermediation Services, COM (2018) 238.

35 Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on Promoting Fairness and Transparency for Business Users of Online Intermediation Services, OJ L186/57.

36 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act).

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2021 7

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37

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38

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39

2020 2 120–132

40 Kenneth A. Bamberger & Orly Lobel, *Platform Market Power*, 32 Berkeley Technology Law Journal 1051, 1087–1088 (2017).

41 Michael G. Jacobides, Carmelo Cennamo & Annabelle Gawer, *Towards a Theory of Ecosystems*, 39 Strategic Management Journal 2255, 2256–2257 (2018).

Alphabet Google YouTube Android
 Google Capital Calico Chronicle Google Ventures

42

43

44

45

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46

A

B

42 “ ” 0 1

43 Nicolas Petit & David J. Teece, *Innovating Big Tech Firms and Competition Policy: Favoring Dynamic over Static Competition*, 30 *Industrial and Corporate Change* 1168, 1180 (2021).

44 2018 6 76

45 Michael G. Jacobides, Carmelo Cennamo & Annabelle Gawer, *Towards a Theory of Ecosystems*, 39 *Strategic Management Journal* 2255, 2257 (2018).

46 Patrick Barwise & Leo Watkins, *The Evolution of Digital Dominance: How and Why We Got to GAFAs*, in Martin Moore & Damian Tambini eds., *Digital Dominance: The Power of Google, Amazon, Facebook, and Apple*, Oxford University Press, 2018, p. 26 – 27.

iPhone

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App Store

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Apple Music

App Store

54

⁵⁵ 2021 11

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56

57

58

2021

19 a

“ ”

“ ”

54 European Commission, *Antitrust: Commission Sends Statement of Objections to Apple on App Store Rules for Music Streaming Providers*, European Commission (30 April 2021), https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2061.

55 Stacy Mitchell, Ron Konx & Zach Freed, *Report: Amazon's Monopoly Tollbooth*, ILSR (28 July 2020), https://ilsr.org/amazons_tollbooth/.

56 The Verge, *Amazon Has Been Fined \$1.3 Billion (€1.1 Billion) by Antitrust Regulators in Italy*, The Verge (9 December 2021), <https://www.theverge.com/2021/12/9/22825759/amazon-antitrust-fine-italy-1-3-billion>.

57 MüKoEuWettbR/Eilmansberger/Bien, 3. Aufl. 2020, AEUV Art. 102 Rn. 633.

58 Shili Shao, *Antitrust in the Consumer Platform Economy: How Apple Has Abused Its Mobile Platform Dominance*, 36 Berkeley Technology Law Journal 353, 369 (2021).

1.

“ ”

“ ” “ ”

“ ”

“ ” GT-Link ⁶¹

2017

24.2

⁶² 2021

59 Daniel L. Rubinfeld, *Antitrust Enforcement in Dynamic Network Industries*, 43 *Antitrust Bulletin* 859, 879 (1998).

60 Jacques Crémer, Yves-Alexandre de Montjoye & Heike Schweitzer, *Competition Policy for the Digital Era*, 2019, p. 37.

61 EuGH, Urt. v. 17.7.1997, C-242/95, ECLI:EU:C:1997:376 – GT-Link.

62 European Commission: Decision Case AT.39740.

63

“ ” “ ”

“ ”

2.

technological tying

“ ”

64

2004 “ ” Windows Windows Media Player, WMP
Windows WMP

65

66

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67

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63 EU General Court: ECLI:EU:T:2021:763, paras. 169 – 175, 237, 240.

64 European Commission: Guidance on the Commission’s Enforcement Priorities in Applying Article 82 EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings, para. 48.

65 2019 2 191

66 European Commission: Guidance on the Commission’s Enforcement Priorities in Applying Article 82 EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings, para. 48.

67 European Commission: Case COMP/C-3/37.792 Microsoft. EU General Court, ECLI:EU:T:2007: 289, paras. 859, 869.



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68

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69

“ ” Theory of Harm

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77

73 Steven C. Salop & David T. Scheffman, *Raising Rivals' Costs*, 73 American Economic Review 267, 267 (1983).

74 ——— 2007 1 76

75 2005 144 ———

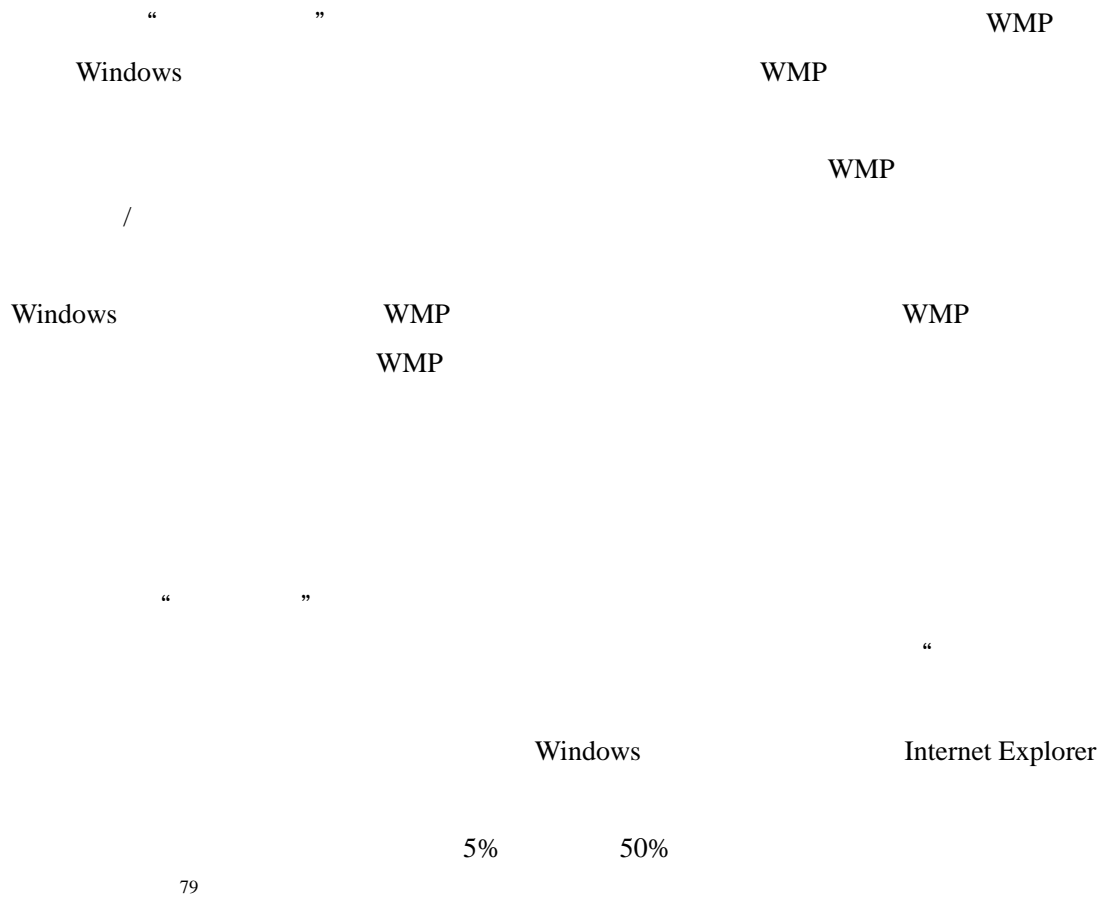
2007 1 76

76 MüKoEuWettbR/Eilmansberger/Bien, 3. Aufl. 2020, AEUV Art. 102 Rn. 633.

77 David S. Evans & Richard Schmalensee, *Matchmakers: The New Economics of Multisided Platforms*, Harvard Business Review Press, 2016, p. 36.

” 78

“



78 UNCTAD, *Restoring Competition in “Winner-Took-All” Digital Platform Markets*, UNCTAD (4 February 2020), [https:// unctad.org/news/restoring-competition-winner-took-all-digital-platform-markets](https://unctad.org/news/restoring-competition-winner-took-all-digital-platform-markets), p. 1.

79 *United States v. Microsoft Corp.*, 84 F. Supp. 2d 9 , 101 – 102 (D.D.C. 1999).

80

⁸¹ 1999 Feldman

Windows IE Windows
Netscape Navigator
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⁸² Netscape Navigator

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IE IE

83

80 Robin Feldman, *Defensive Leveraging in Antitrust*, 87 *Georgetown Law Journal* 2079, 2087 (1999).

81 Robin Feldman, *Defensive Leveraging in Antitrust*, 87 *Georgetown Law Journal* 2079, 2087 (1999).

82 European Commission: Case COMP/C-3/39.530 – Microsoft (tying), para. 57.

83 Stancke, in: Bunte/Stanke, *Kartellrecht*, 4. Aufl. 2022, Rn. 16 – 31.

84

85

competition on the merits

OECD “ ”

86

“

” 87

“ ”

88

84 EuGH, C-85/76, ECLI:EU:C:1979:36, Rn. 91 – Hoffmann-La Roche.

85 2019 284

86 OECD, *What Is Competition on the Merits?*, OECD (June 2006), <https://www.oecd.org/competition/mergers/37082099.pdf>, p. 1.

87 Judgment of 27 March 2012, *Post Danmark*, C-209/10, EU:C:2012:172, para. 24.

88 EU General Court: ECLI:EU:T:2021:763, para. 178.

“ ”

“ ” “ ” “ ” 89

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90

91

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“ ”

89 EU General Court: ECLI:EU:T:2021:763, para. 179.

90 United States v. Microsoft Corp., 253 F. 3d 34, 58–67, 84–97 (D.C. Cir. 2001).

91 2008 154–155

360

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92

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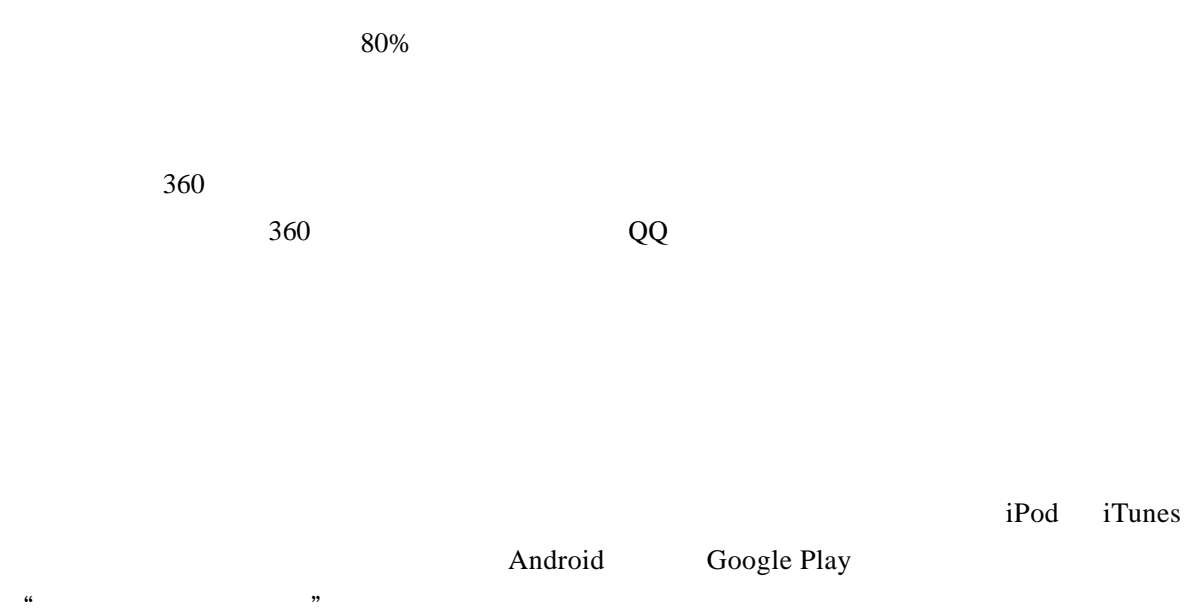
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Transmissive Exclusionary Strategies in Platform Cross-Border Competition: Focus on Theory of Competitive Harm Due to Leveraging

XU Zhiren

Abstract: In the digital platform market shaped by the network effect, the positive network effect not only allows the value of digital products or services to form positive feedback with the number of users, but also increases the return of platforms from economies of scale and scope. On the one hand, this drives platforms to enter multiple neighboring markets through external expansion and cross-border competition, develop and integrate multi-product and service ecosystems, and compete in multiple dimensions such as data, innovation, and technology. On the other hand, cross-border competition leads to conflicts of interest between the platform's own business and the incumbent. Digital platforms have an incentive to adopt exclusionary strategies to extend their market power across market boundaries, to exclude competitors (offensive leverage) and/or to maintain dominant positions in their core markets (defensive leverage), in order to make network effects in favor of themselves and against competitors. Digital platform markets are markets driven by innovation and dynamic competition. The anti-competitive effects and positive welfare effects of leverage behavior are often blurred compared to traditional markets. Coupled with the fact that leverage behavior affects multiple markets at the same time, the lack of clarity in the analytical criteria of the theory of competitive harm due to leverage can easily lead to systematic under-enforcement of antitrust, or over-enforcement. To this end, the paper suggests analyzing competitive harm in terms of increasing the cost of achieving network effects for competitors, further consolidating existing market dominance, and whether the competitive advantage conveyed by leverage is consistent with the competition on the merits.

Keywords: Digital Platforms; Leveraging; Cross-Border Competition; Exclusionary Abuse; Theory of Competitive Harm