

# Digital platforms and art. 102 TFEU: discrimination, leveraging and undefined abuses

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# Platform features with competition law relevance

- They create value by facilitating the interaction between two or more separate customer groups
- They display direct and/or indirect network effects
- They rely on skewed pricing schemes
- Their customers can single or multi-home
- Expansions are inherent to growth prospect

# Abusive discrimination

A degree of discrimination or differentiation is inherent to platforms and covers both pricing and governance rules:

- not everyone pays the same
- not everyone has the same rights and obligations

Existing price and non-price abuses can be applied to such instances but require diligence:

- differentiation vs. discrimination
- anti-competitive discrimination vs. legitimate discrimination
- discrimination vs. unfair trading conditions

# Abusive leveraging

A degree of market power leveraging is inherent to platforms in the context of their expansion:

- territorial expansions of locally provided services
- expansions of the scope of services offered

Existing price and non-price abuses can be applied to such instances but require diligence:

- market definition: on-platform expansion vs. cross-platform expansions
- effect on competition: effect on homing patterns, impact of network effects
- leveraging potential: extent of customer base overlap

# Undefined and assisted abuses

- New categories of abuses are likely to be identified – post Lithuanian Railways – new individual abuses can be developed as long as these follow the logic of art. 102 TFEU
  - Exclusionary – competition not on the merits (i.e., does not relate to better quality, price, or variety)
  - Exploitative – making use of opportunities available only by virtue of the position of dominance, which would not be available in a competitive market (i.e., going beyond platform logic)
  - Utilizing this option requires caution and should be applied only in situations where the **harm is evident**, but the manner in which it is put into practice does not really fit other types of abuse OR entails an easily defined action
  
- So-called ‘assisted’ are expected to be on the rise in light of the growing regulatory framework covering online platforms such as GDPR , P2B, and DMA
  - This option is subject to the effects-based approach → no automatic double breaches
  - Parallel application requires accounting for the *ne bis in idem* principle

# Thank you for the attention

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