



# **Digital Platforms – Opportunities, Risks and the Case for Regulation**

Florence, 20 June

Werner Stengg

European Commission

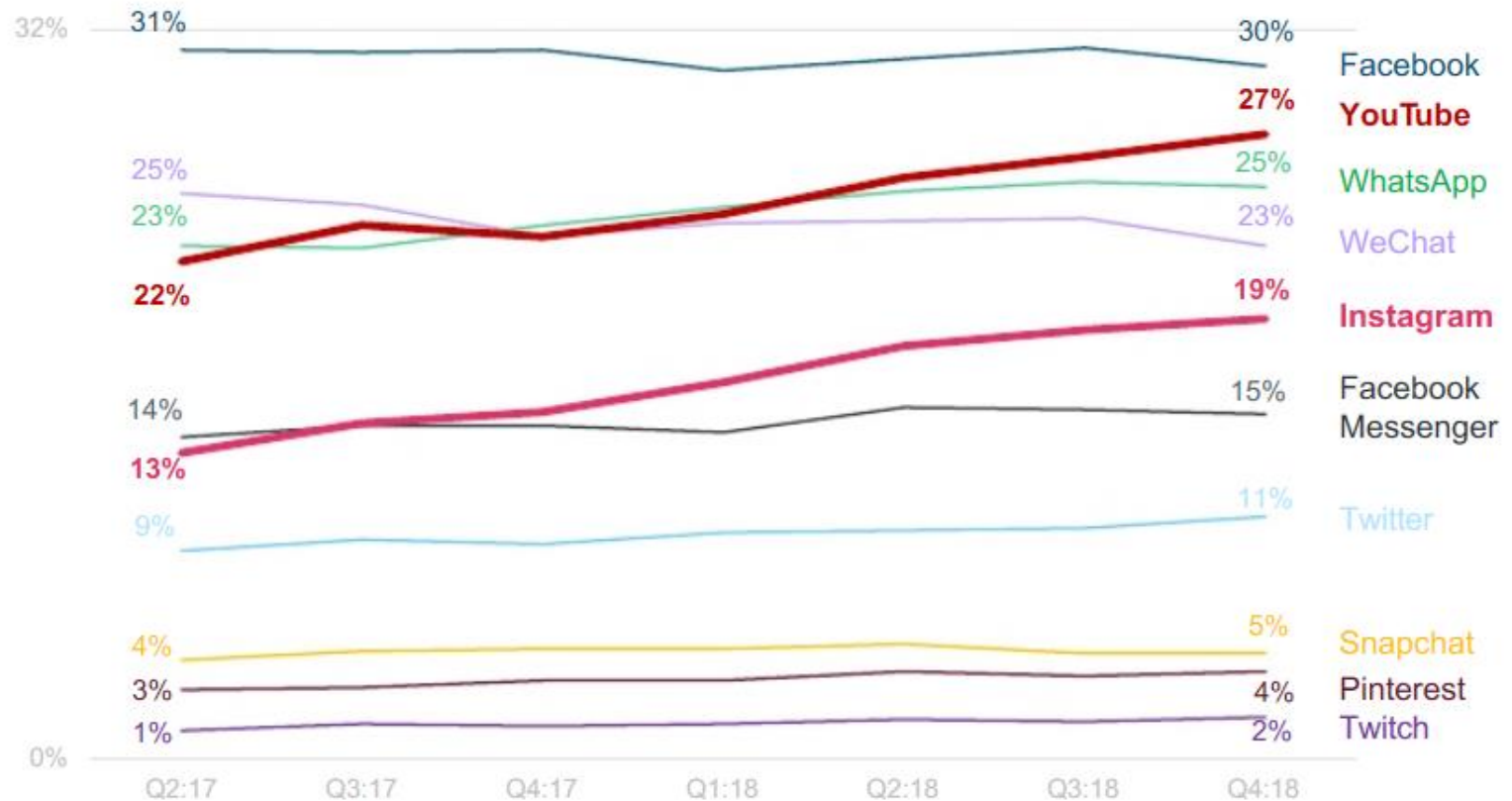
# PLATFORMIZATION

# 2019 *This Is What Happens In An Internet Minute*



# Online Platform Time = YouTube + Instagram Gaining Most

## % Internet Users Using Select Platforms > 1x per Day, Global\*



Source: Mary Meeker's Internet Trends 2019

# Global Market Capitalization Leaders = USA Stable @ 23 of 30...Technology Stable @ 9 of 30

Rank 2019	Company	Sector	Region	Market Cap Value (\$B)		% Change
				6/7/19	6/7/16	
1	Microsoft	Technology	USA	\$1,007B	\$410B	+146%
2	Amazon	Technology	USA	888	343	+159%
3	Apple	Technology	USA	875	540	+62%
4	Alphabet	Technology	USA	741	497	+49%
5	Berkshire Hathaway	Financial Services	USA	505	350	+44%
6	Facebook	Technology	USA	495	340	+46%
7	Alibaba	Technology	China	402	195	+106%
8	Tencent	Technology	China	398	206	+93%
9	Visa	Financial Services	USA	372	192	+94%
10	Johnson & Johnson	Healthcare	USA	368	318	+16%
11	JPMorgan	Financial Services	USA	354	239	+48%
12	Exxon Mobil	Energy	USA	316	371	(15%)
13	Nestlé	Food / Beverages	Switzerland	306	230	+33%
14	Walmart	Retail	USA	303	221	+37%
15	ICBC	Financial Services	China	285	224	+27%
16	Procter & Gamble	Home Goods	USA	273	220	+24%
17	Mastercard	Financial Services	USA	271	106	+156%
18	Bank of America	Financial Services	USA	262	149	+76%
19	Royal Dutch Shell	Energy	Netherlands	259	198	+31%
20	Samsung	Technology	South Korea	249	166	+50%

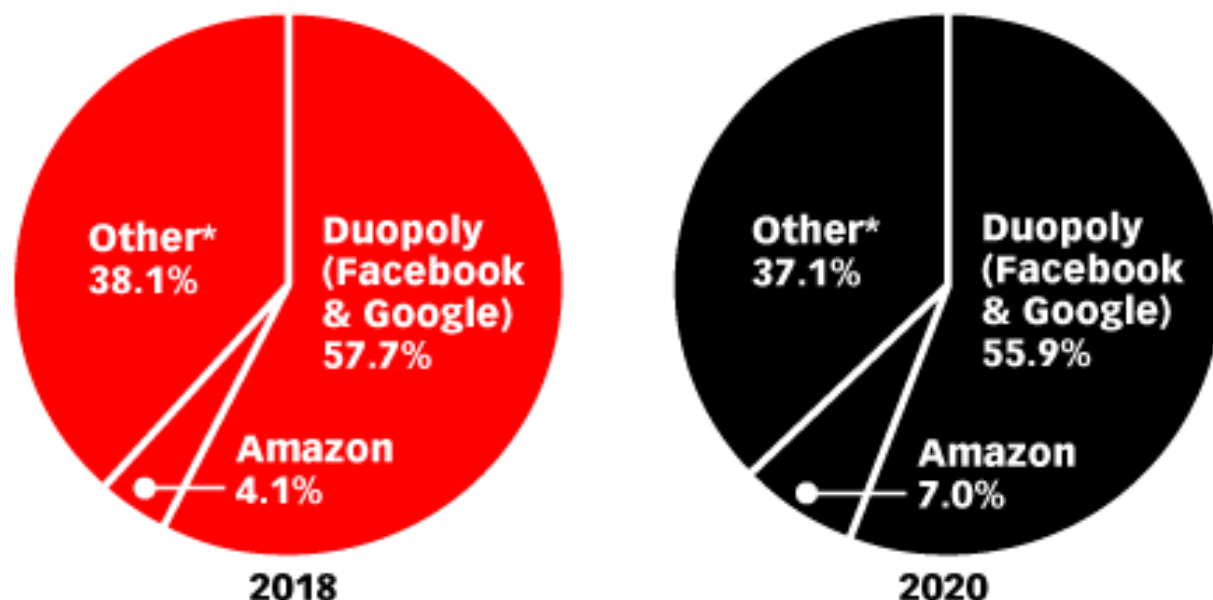
Source: Mary Meeker's Internet Trends 2019

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## Duopoly vs. Amazon Share of Total US Digital Ad Spending, 2018 & 2020

*% of total digital ad spending*

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*Note: includes advertising that appears on desktop and laptop computers as well as mobile phones, tablets and other internet-connected devices, and includes all the various formats of advertising on those platforms; net ad revenues after paying traffic acquisition costs (TAC) to partner sites; numbers may not add up to 100% due to rounding; \*includes US digital ad spending outside Amazon, Facebook and Google*

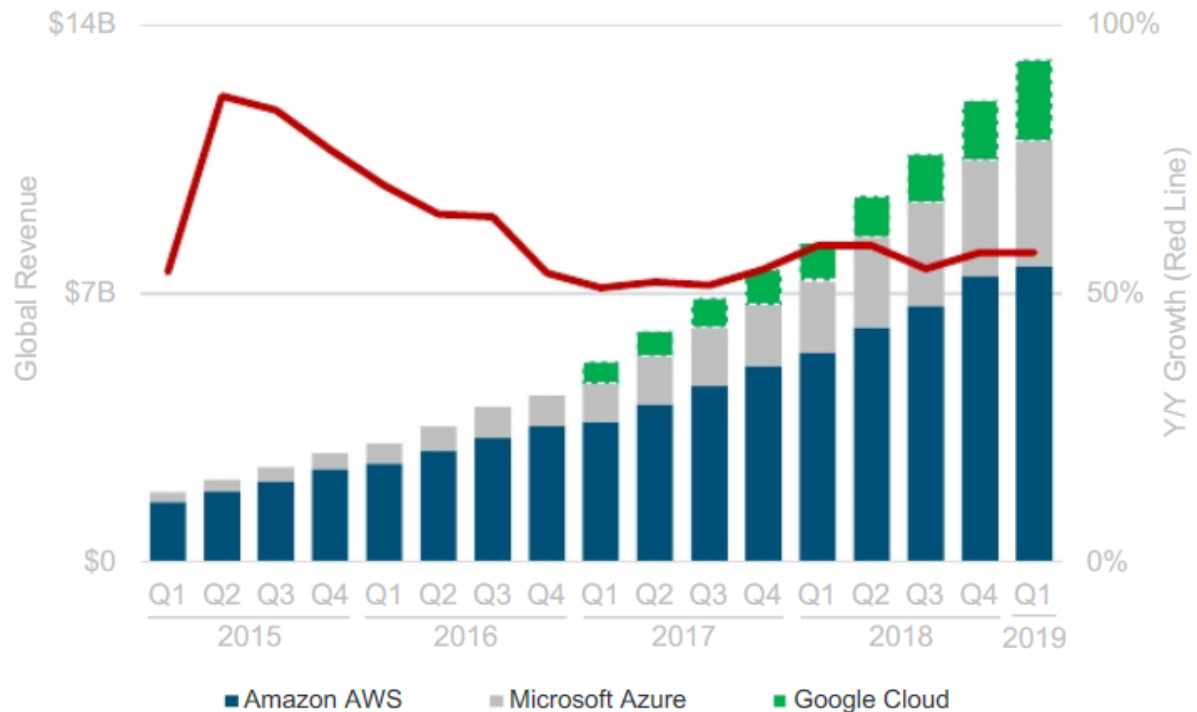
*Source: eMarketer, Sep 2018*

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Cloud Deployment =  
Revenue +58% Y/Y...

## Cloud Service Revenue – Amazon + Microsoft + Google



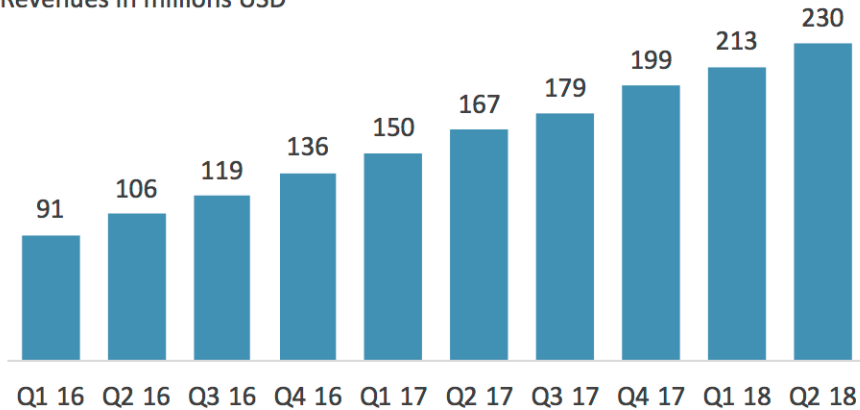
Source: Mary Meeker's Internet Trends 2019

# Global Streaming Music Subscription Market H1 2018

Global Streaming Music Subscription Market, H1 2018 (All Revenues Are Label Trade Values)

## MUSIC SUBSCRIPTION REVENUE BY SERVICE

Revenues in millions USD



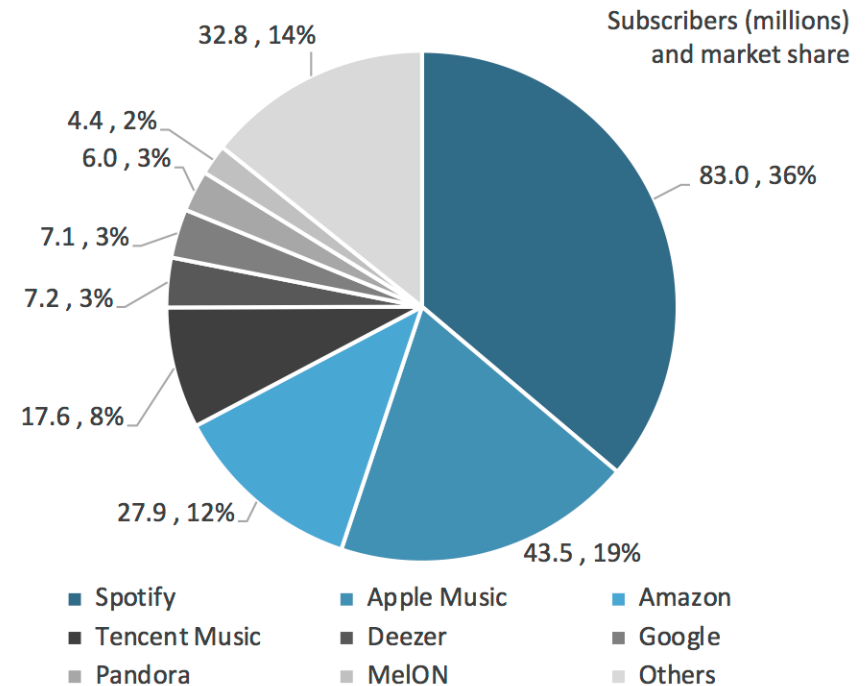
## MUSIC SUBSCRIPTION MARKET METRICS

**229.56m** Music Subscribers H1 2018

**\$3,498m** Music Subscription Revenue H1 2018

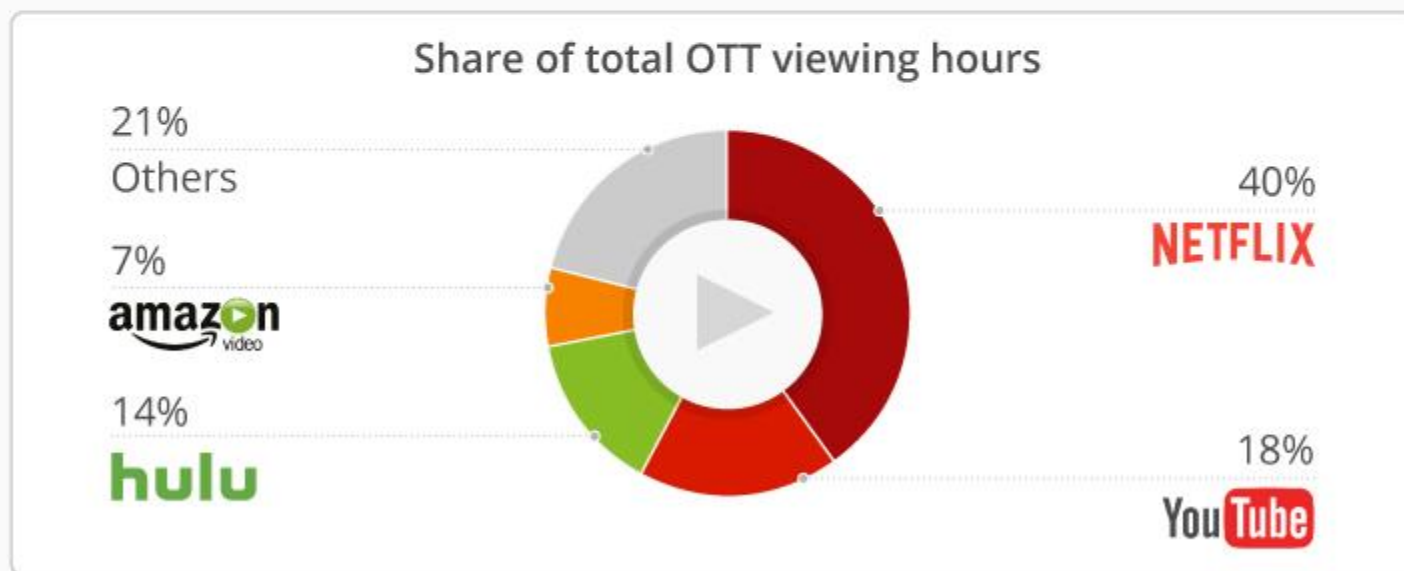
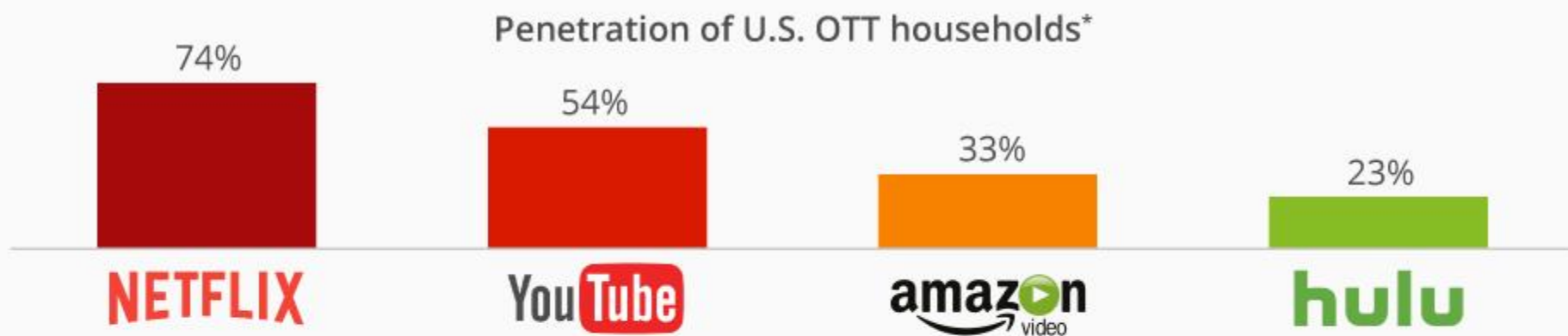
Source: MIDiA Research Music Subscriber Market Share Model 09/18

## MUSIC SUBSCRIBERS BY SERVICE





# Netflix Rules the Connected Living Room

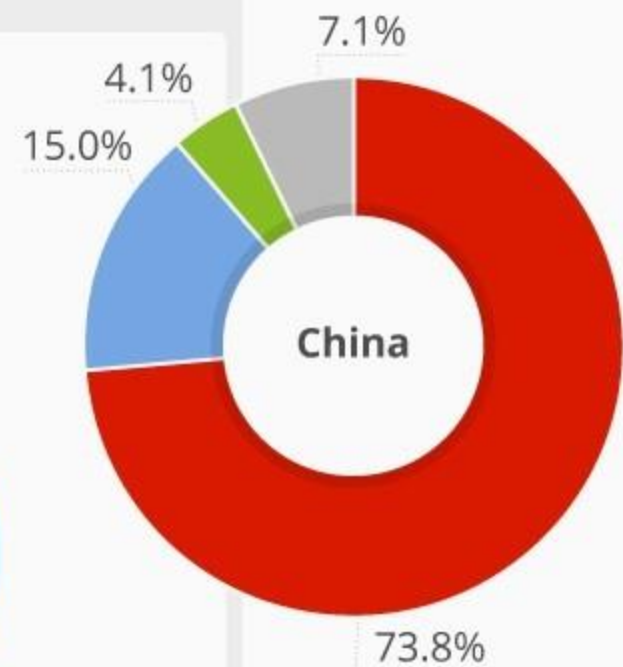
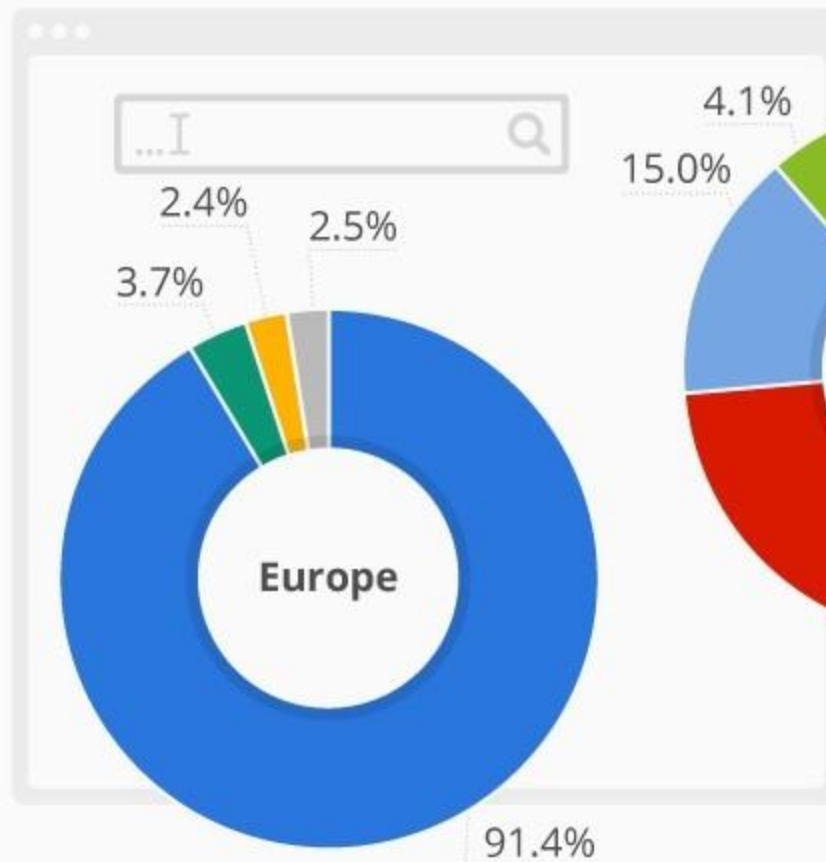
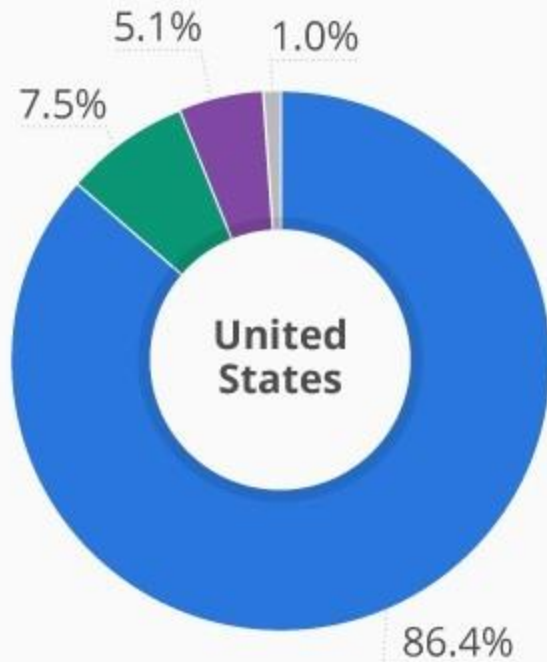


\* OTT (over-the-top) is defined as using apps to stream video content via the internet to a television set; wi-fi households only; April 2017

Source: comScore

# Search engine market share in the United States, Europe and China in July 2018\*

● Google ● Bing ● Yahoo! ● Yandex ● Baidu ● Shenma ● Haosu ● Others

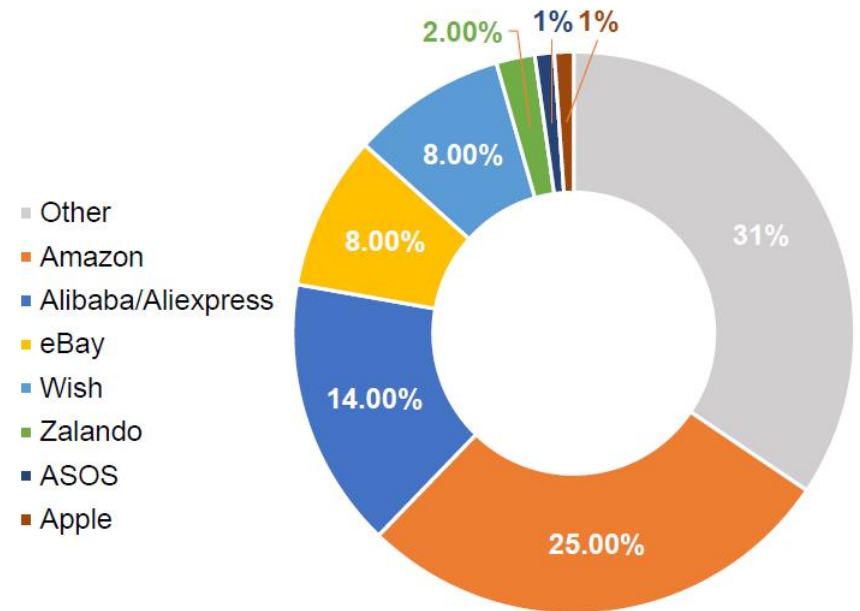


# Globally marketplaces own 56% of cross border ecommerce

- Amazon is the most popular cross border webshop in Luxembourg (72%) and Austria (64%).
- eBay leads in Cyprus (63%).
- AliExpress was most popular in Russia (69%) and the Netherlands (35%).

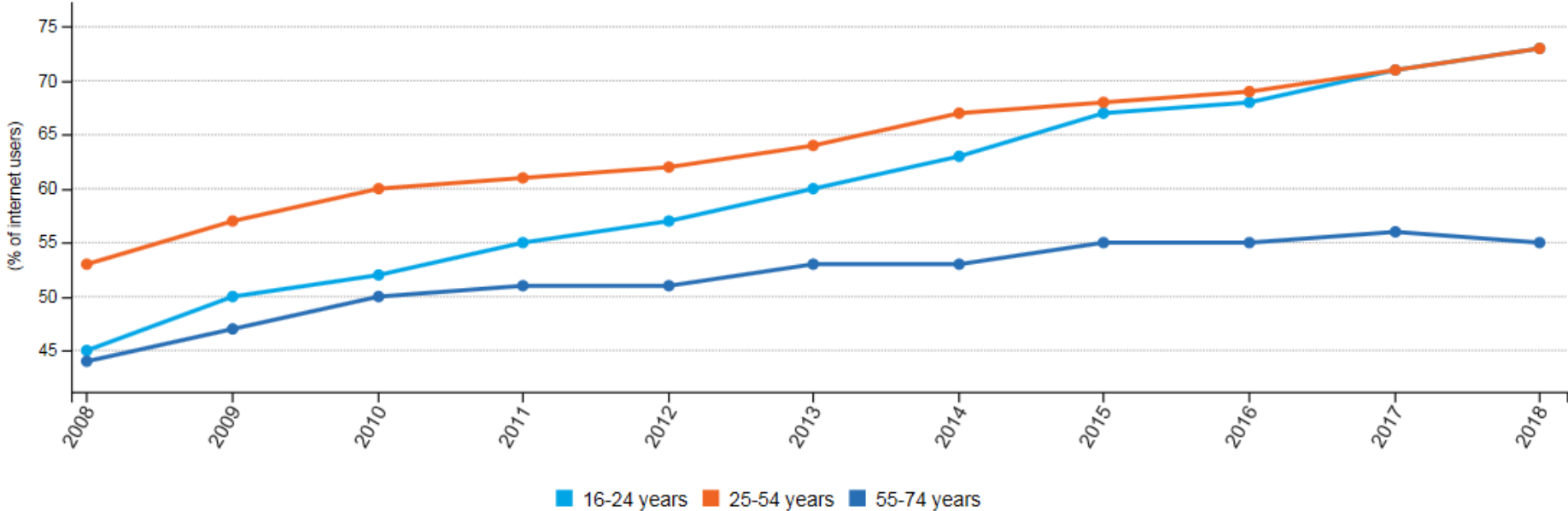


RETAILER CHOICE: LAST CROSS-BORDER ONLINE PURCHASE  
Cross-border ecommerce shopper survey, 2017



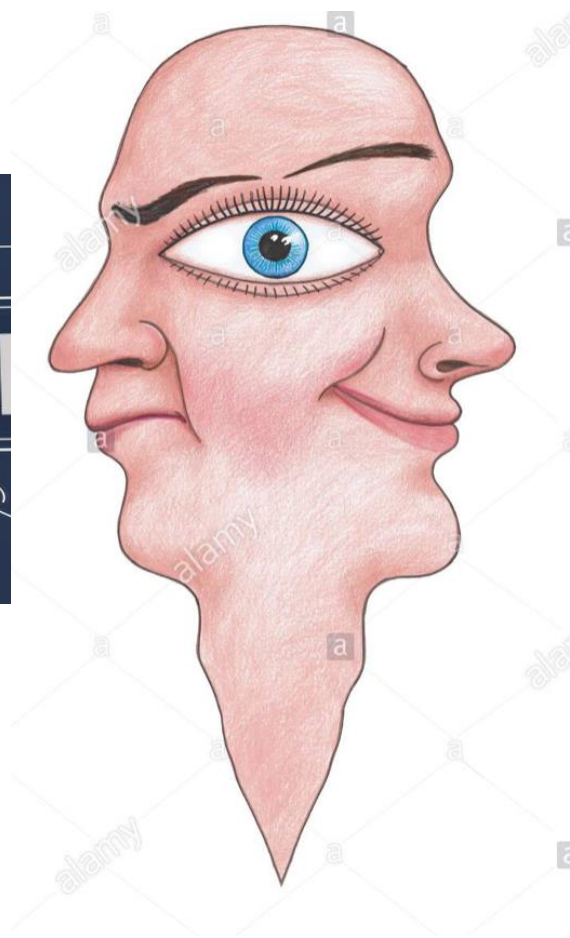
Source Statista; International Post Corporation, 2017. Retailer Choice: Most Recent Cross-border ecommerce item. Source: International Post Cooperation, 2017

# Internet users who bought or ordered goods or services for private use in the previous 12 months by age group, EU-28, 2008-2018



Source: Eurostat (online data code: isoc\_ec\_ibuy)

# GOOD, BAD, OR BOTH?







## Platforms:



business opportunities: access to global/new markets consumer choice ( <u>wide</u> access)
consumer empowerment (algorithms = access to <u>relevant</u> information)
consumers (and business) have <u>easy</u> access to information, goods and services
consumers (and business) have access to <u>new</u> (and cool) types of services and technologies

<b>make markets</b> ( <b>opportunities</b> )
<b>make matches</b> ( <b>efficiency</b> )
<b>make lives easy</b> ( <b>convenience</b> )
<b>make new things</b> ( <b>innovation</b> )

"regulation of markets" (rules of the game; access) is entrusted to private parties (including all data)
control over data and algorithms (ranking) opens door to anti-competitive behaviour (e.g. self preferencing)
increases risk of lock-in into closed eco-systems (e.g. default settings, self preferencing, etc.)
first, fast and strongest uptake of new technologies, further cements competitive edge of digital champions





**REGULATION**

unsafe products

consumer protection

terrorist propaganda

counterfeit products

hate speech

unfair business practices

value gap

illegal and harmful content

taxation

# "Online Platforms"

- create and shape new markets
- operate in multisided markets
- benefit from network effects
- rely on information and communications technologies to reach their users
- play a key role in digital value creation, notably by capturing significant value (including through data accumulation)

*Online Platforms and the Digital Single Market Opportunities and Challenges for Europe (COM(2016)288 – May 2016)*

# "Online Marketplace"

'Online marketplace' means a service provider which allows consumers to conclude online contracts with traders and consumers on the online marketplace's online interface.

Clearly inform consumers about: the main parameters determining ranking of the different offers, and whether the contract is concluded with a trader or an individual.

*Proposal for Directive on better enforcement and modernisation of EU consumer protection rules ("New Deal")*

# "Online interface"

'Online interface' means any software, including a website, part of a website or an application, that is operated by or on behalf of an economic operator, and which serves to give end-users access to the economic operator's products.

"To require the removal of content from an online interface referring to the related products or to order the explicit display of a warning to end-users when they access the online interface".

*Regulation on Market Surveillance and Compliance of Products ("Goods Package")*

# "Internet Platform"

An "Internet Platform" means any information society service provider whose service is used by third parties to initiate online the trading of physical goods.

"The primary responsibility for the protection and enforcement of IPR remains with the respective Rights Owners and that it is the primary responsibility of Internet Platforms to enable a safe online environment for consumers. Hence, it is the parties' goal to collaborate in the fight against the sale of Counterfeit Goods"



# "IT companies"

Facebook, Microsoft\*, Twitter and YouTube (hereinafter "the IT Companies")

The IT Companies share, together with other platforms and social media companies, a collective responsibility and pride in promoting and facilitating freedom of expression throughout the online world; they also share the European Commission's and EU Member States' commitment to tackle illegal hate speech online.

*Code of Conduct on Countering Illegal Hate Speech Online (2016)*

# "Hosting service provider"

"'hosting service provider' means a provider of information society services consisting of the storage of information provided by the recipient of the service at his or her request"

"Hosting service providers, in respect of content provided by content providers which they store at the request of those content providers, are encouraged to take effective, appropriate and proportionate measures to tackle illegal content online"

*Commission Recommendation on measures to effectively tackle illegal content online (2018)*

# "Hosting service provider"

'Hosting service provider' means a provider of information society services consisting in the storage of information provided by and at the request of the content provider and in making the information stored available to third parties.

Hosting service providers shall take appropriate, reasonable and proportionate actions in accordance with this Regulation, against the dissemination of terrorist content and to protect users from terrorist content.

*Proposal for Regulation on preventing the dissemination of terrorist content online (2018)*

# "Online content-sharing service provider"

'Online content-sharing service provider' means a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes for profit-making purposes.

..."shall obtain an authorisation from the rightholders" ... or "ensure the unavailability of specific works and other subject matter"

# "Video sharing platform service"

"Video-sharing platform service" means a service ... where the principal purpose of the service ... is providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility"

"Take appropriate measures to protect minors; [and] the general public from (...) incitement to violence or hatred, ... public provocation to commit a terrorist offence, ... child pornography ... and offences concerning racism and xenophobia."

*Directive on the provision of audiovisual media services (AVMSD)*

# "Digital interface"

'Digital interface' means any software, including a website or a part thereof and applications, including mobile applications, accessible by users.

"A 'significant digital presence' shall be considered to exist ... if the business ... consists wholly or partly of the supply of digital services through a digital interface"

This Directive lays down rules extending the concept of a permanent establishment, as it applies for the purposes of corporate tax in each Member State, so as to include a significant digital presence

*Proposal for Directive laying down rules relating to the corporate taxation of a significant digital presence (2018)*



# "Online intermediation service"

'Online intermediation services' means :

- (a) they constitute information society services;
- (b) they allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded;
- (c) they are provided to business users on the basis of contractual relationships.

Transparency and redress.

*Regulation on promoting fairness and transparency for business users of online intermediation services (2019)*

# The B2P Regulation

on "promoting fairness and transparency for business users of online intermediation services" (2019)



# Online platforms offer **unparalleled opportunities** and their **potential should be maintained**

## **Innovation and growth in the digital economy**

More than 1 million EU businesses already selling goods and services via online platforms

## **Cross-border market opportunities**

More than 50% of SMEs selling through online marketplaces sell cross-border

## **Enhanced consumer welfare**

Increased choice of competitive goods and services online

# Market dynamics and problems

- 1) Online platforms as main vehicle for market access (and as "regulators" of markets)
- 2) Unprecedented, strong network effects
- 3) Data-driven advantages of platforms
- 4) Imbalanced bargaining power and dependency of businesses on online platforms: unfair practices
- 5) Business users' fear of retaliation

# Data network effects

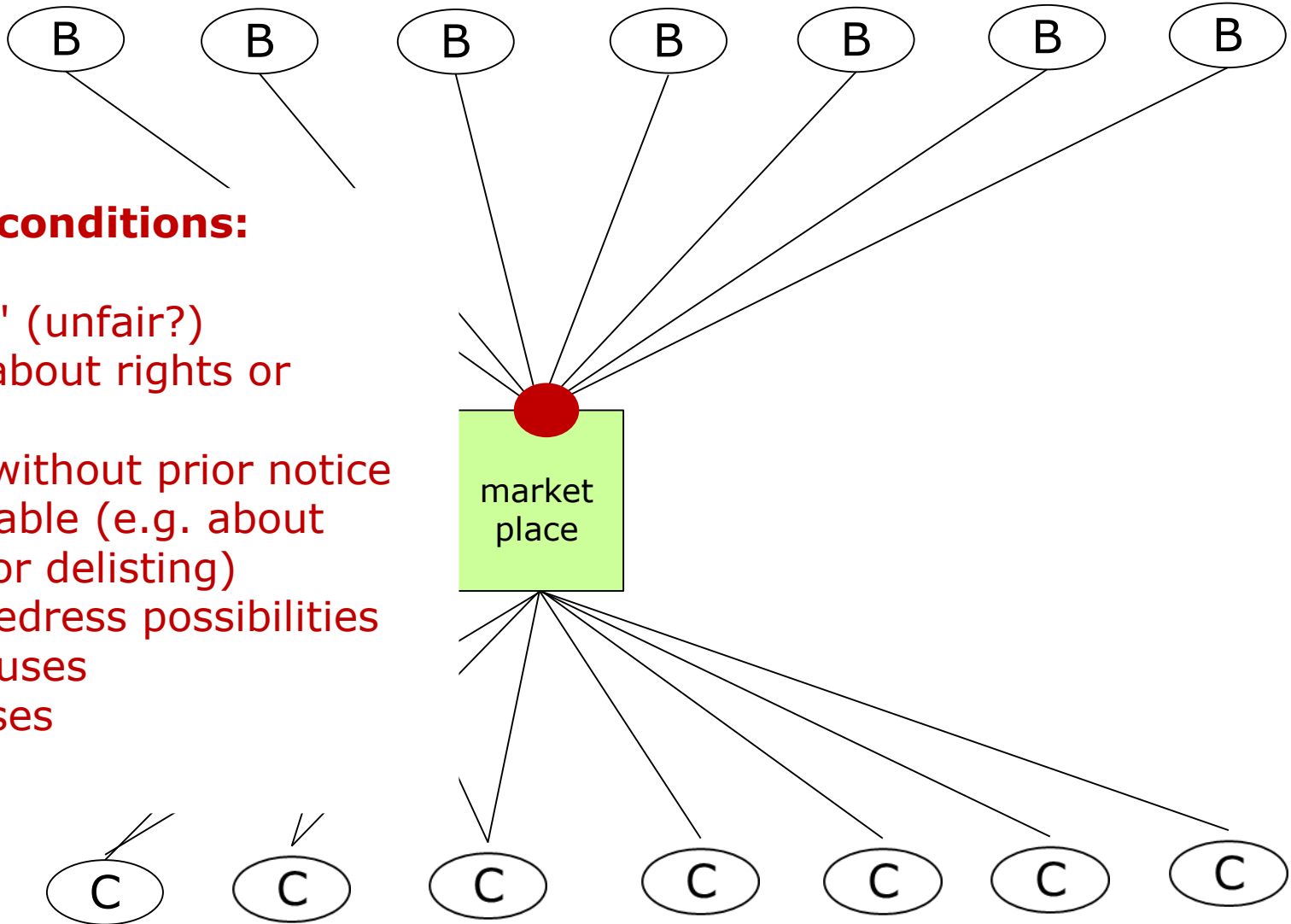
- Raw material to feed algorithms and AI
- Quality of service provided to consumers
- Competitive advantages vis-à-vis other sellers (offline, online, third party on own platform)
- Advantages in targeted advertising
- Facilitated entry into neighbouring markets; possibility to detect promising start-ups

# Harmful trading practices

## Possible motivations:

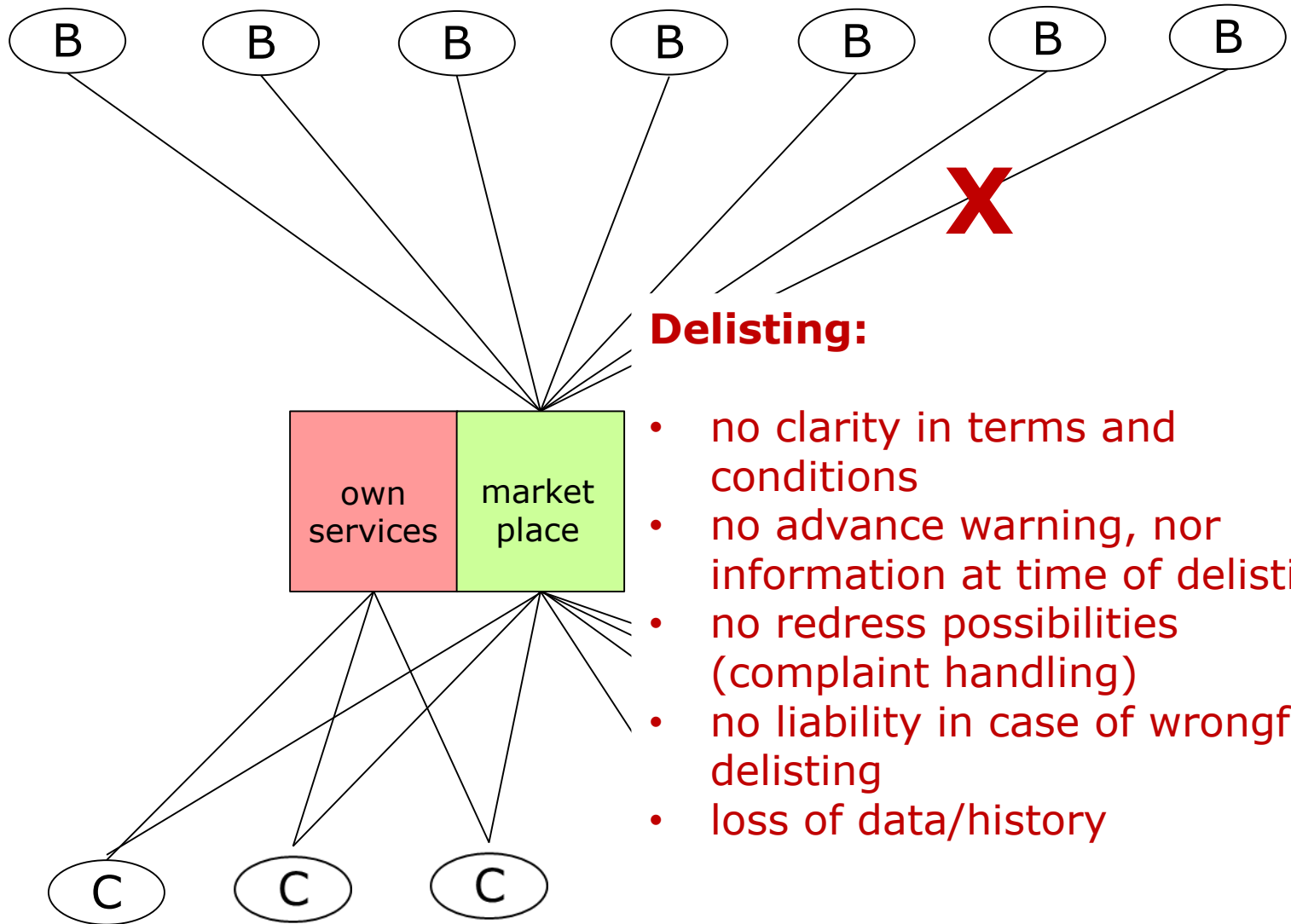
- Interests with business users are aligned (e.g. fee per transaction), but:
  - **Focus on consumer side, who might otherwise multi-home**
  - **(Over-)reliance on automation (e.g. algo takes wrong decision to delist)**
- Interests with (all) business users are not (fully) aligned:
  - **Platform competes with 3rd party sellers (self preferencing)**
  - **Transactions of some sellers are more profitable than those of other sellers (e.g. higher commission rates, in-app purchases)**





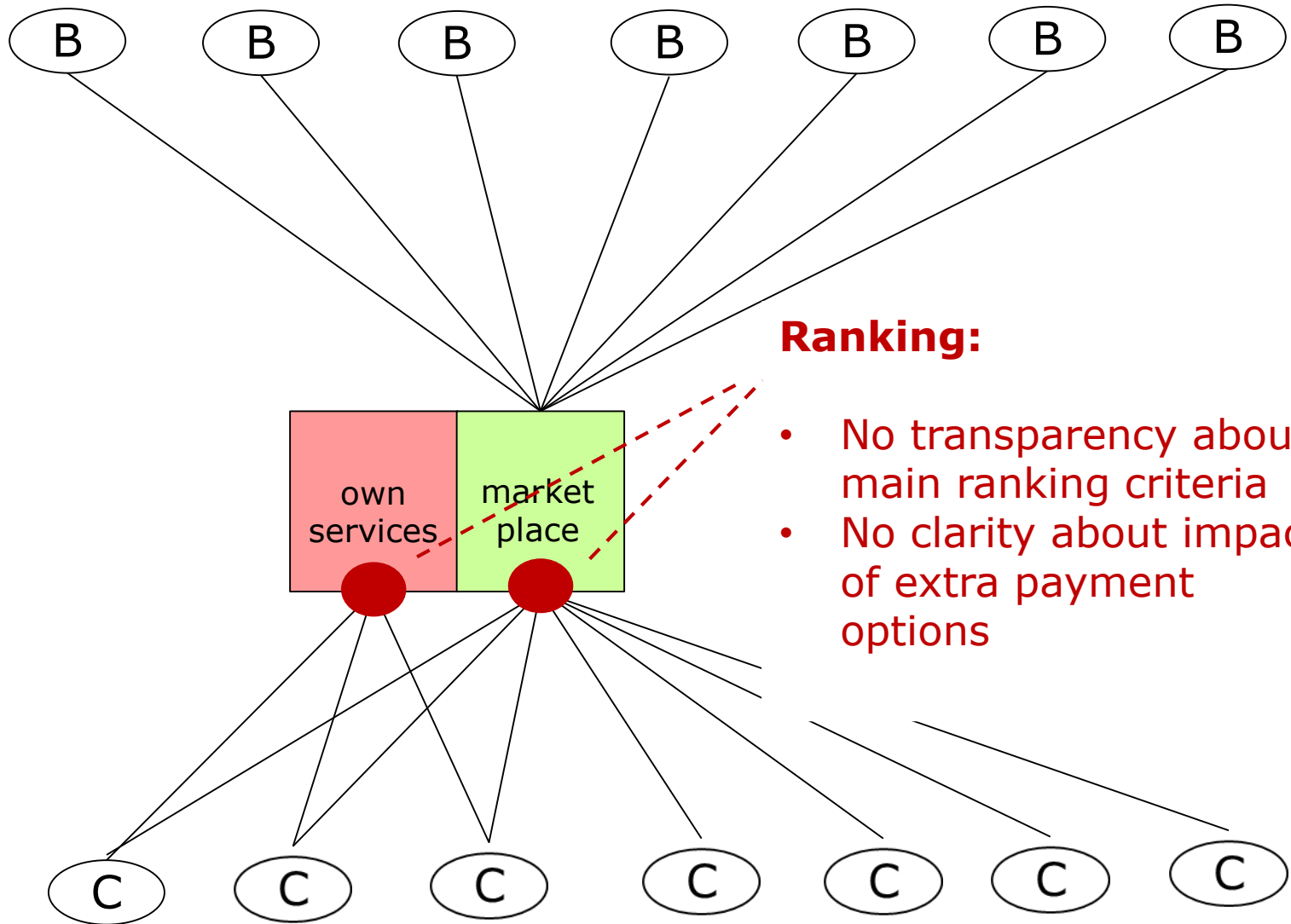
**Terms and conditions:**

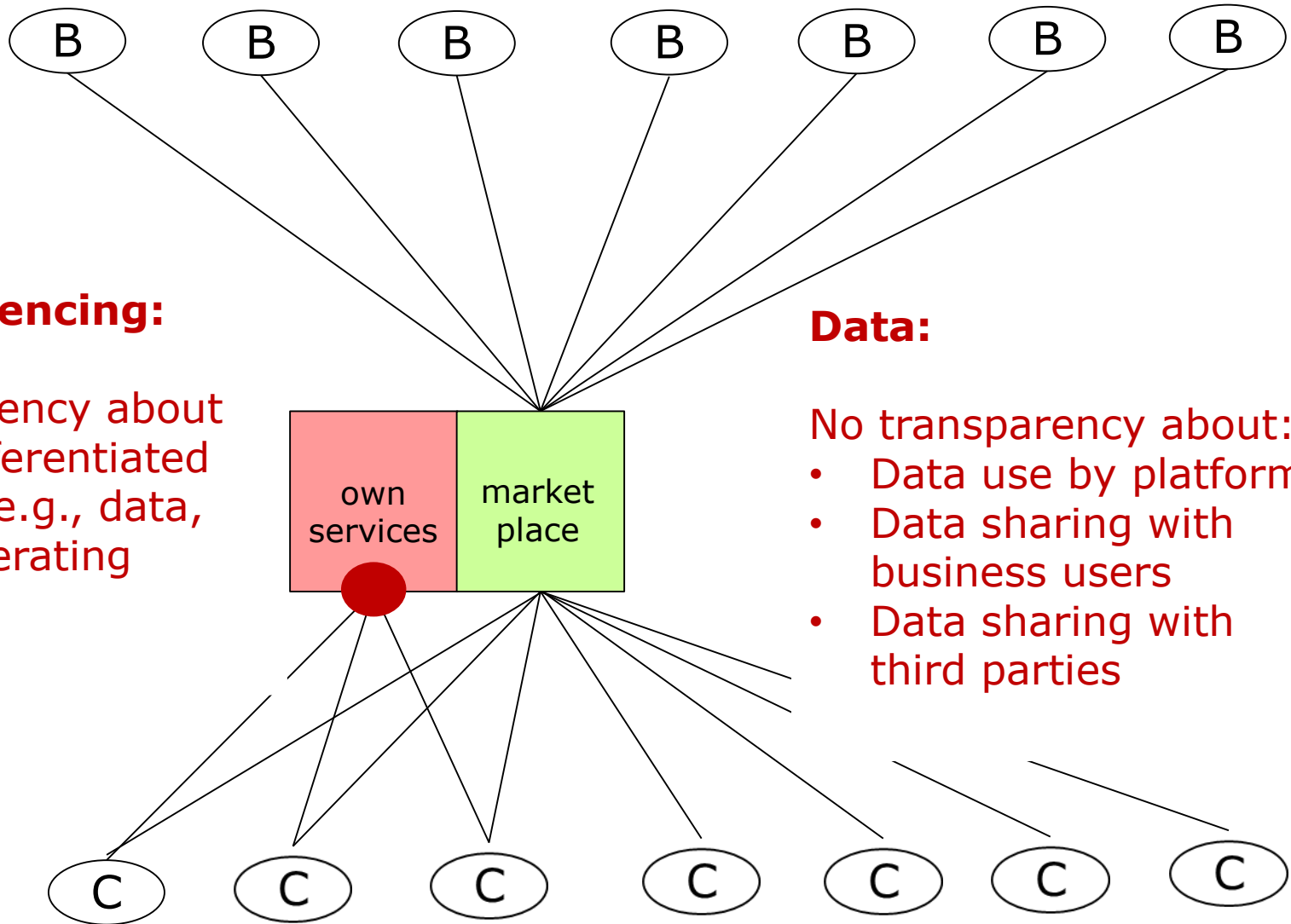
- "imposed" (unfair?)
- unclear (about rights or practices)
- changed without prior notice
- unpredictable (e.g. about reasons for delisting)
- offer no redress possibilities
- forum clauses
- MFN clauses



### Delisting:

- no clarity in terms and conditions
- no advance warning, nor information at time of delisting
- no redress possibilities (complaint handling)
- no liability in case of wrongful delisting
- loss of data/history





**Self preferencing:**

No transparency about possible differentiated treatment (e.g., data, ranking, operating systems)

**Data:**

- No transparency about:
- Data use by platform
  - Data sharing with business users
  - Data sharing with third parties

# P2B initiative – design

## Problem – based approach

- Unfair P2B trading practices
- Lack of effective redress
- Legal fragmentation

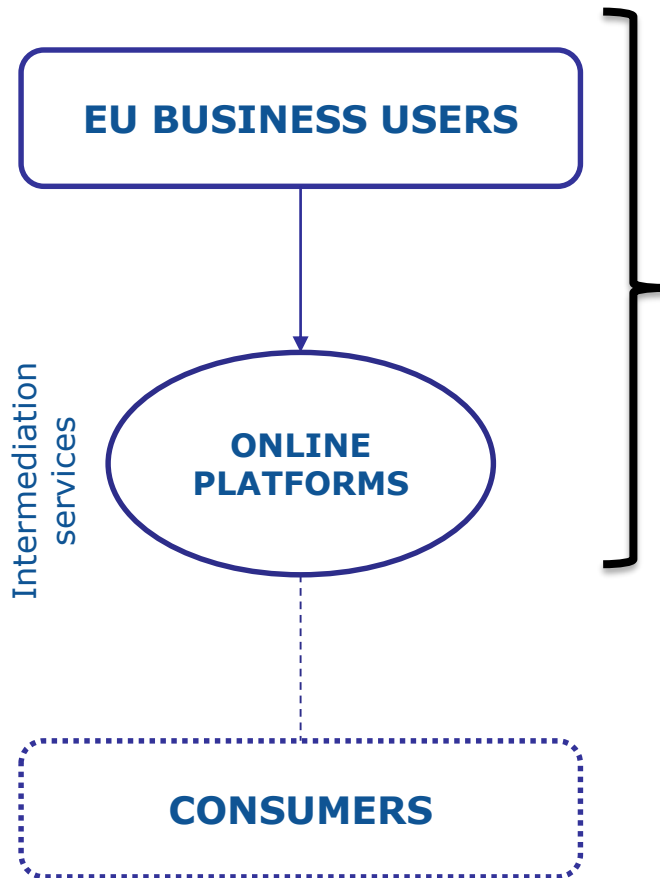
## Two-stage approach

- Focused light-touch measures
- Observatory to inform future policy making

## Three Pillars

- Transparency
- Redress
- Monitoring

# Scope of the Regulation



## Definitional elements:

- a. Information society services
- b. B2P2C relationship
- c. Contractual relationships
- d. Initiating transactions
- e. Geographical scope: intermediation service in the EU irrespective of whether EU platform or not

# *Included in the scope*

**Marketplaces on which a commercial transaction between a customer and a business user takes place**

*Characteristics: The transaction and payment take place on the platform*

*Common business model: The platform charges a commission*

## **E-COMMERCE**



## **APP STORES**



## *Included in the scope*

**Online platforms bringing together users with the aim to facilitate a commercial transaction**

*Characteristics:*

- *The transaction does not take place on the platform itself*
- *The actual payment takes place outside the platform*
- *The business user may be charged by the platform in different ways (e.g. commissions, charges per click, listing fees)*





## T&C

- **Terms and conditions** in plain and intelligible language.
- Business users will be **informed of any changes** to the T&C.
- Platforms will have to respect a **notice period** of 15 days, unless the business user concerned explicitly agrees on a shorter period.
- Providers of online intermediation services to **state which additional channels and affiliate programmes** they might distribute goods and services through, what **ancillary goods and services they may offer** alongside the business users' offer and include the **general effects on the ownership and control of IPR**.
- Requirement for business users' **identity to be visible**.

## NEW RULES

- **T&Cs to include possible reasons for restricting, suspending or terminating.**
- **No notice** requirement for suspension of **individual goods or services** but **30 days' notice for closure** of an account.
- Providers on online intermediation services to provide a **statement of reasons** for its decision.

**Delisting**

- Providers of online intermediation services as well as online search engines will be required **to clearly inform about the general criteria** determining how goods and services are **ranked**.

## Ranking

## Self preferencing

## NEW RULES

- Online intermediation services providers and search engines should be **transparent on how they treat their own goods or services** compared to those offered by business users.

The providers of online intermediation services have to **formulate and publish general policies** on what **data** generated through their services can be accessed, by whom and under what conditions.

## Data

Providers of online intermediation services will be **required to explain the use of contract clauses demanding the most favourable range or price** of goods and services offered by their professional users.

## MFN clauses

## NEW RULES

## Good faith and fair dealing

Providers of online intermediation services shall include specific contractual terms:

- **Not imposing retroactive changes** to T&Cs (exceptions for regulatory obligations or if beneficial).
- **Transparency on use of information** after termination of a relationship and on **how to terminate that relationship**.

## NEW RULES

1. Online platforms will have to set up or have in place **internal complaint handling systems** (exemption for small enterprises)
2. Business users will have access to out-of-court dispute settlement **through easily accessible external mediators** (exemption for small enterprises)
3. Representative organisations or associations will be able to enforce the Regulation in court on behalf of businesses – **injunctive relief**
4. **Member States** to put in place **measures to ensure adequate and effective enforcement** of the Regulation.

## Redress

**Ex-ante Regulation or ex-post  
application of competition rules?**

**Or both?**



# Competition policy for the digital era

A report by  
Jacques Crémer  
Yves-Alexandre de Montjoye  
Heike Schweitzer

# The consumer welfare standard

- "Consumer" should encompass also (business) users
- Because of stickiness of market power...
- ...strategies by dominant platforms to reduce competitive pressure they face should be forbidden...
- ... in the absence of clearly documented consumer welfare gains

# Market definition

- Market (boundaries) may change very quickly
- Interdependence of all sides of multi-sided platforms are essential in analysis
- Less emphasis on market definition, more emphasis on theories of harm and identification of anti-competitive strategies
- Consideration of "lock-in" strategies
- *[Mind importance of clear market definition for SMP-type regulation!]*



## Other considerations

- Assessment of "market power" needs to consider:
  - **the strength of consumers' biases towards default options and short-term gratification (behavioural economics)**
  - **The access to data available to the presumed dominant firm but not to competitors**
- Err on the side of disallowing potentially anti-competitive conducts: impose on the incumbent the burden of proof for showing the pro-competitiveness of its conduct (e.g. when expanding into neighboring markets)

# Platforms

- Essential to protect **competition "for" the market**
  - **MFN clauses** (wide or narrow bans, depending on competition between platforms)
  - **Multihoming, switching and complementary services** (data portability; interoperability)
- Equally important to protect **competition "in" the market** (i.e. competition on a dominant platform)
  - given that platforms play a form of "regulatory role"

# Platforms as regulators

- Dominant platforms setting up a marketplace must ensure a level playing field (= not engage in abusive self preferencing)
  - **Self-preferencing is not abusive per se, but subject to an effects test (Art 102 TFEU)**
  - **However, abusive also where it results in "leveraging" of market power, and not justified by pro-competitive rationale**
- For non-dominant platforms, conduct including self-preferencing may have pro-competitive effects

# Questions

- If we have/had new transparency rules for "all" platforms (B2P Regulation), and modernised competition rules for "dominant" platforms, do we still need additional ex-ante legislation for platforms having "significant market power" or "strategic market power" (see UK Online Harms White Paper)
- If yes, how would we define (a) such power and (b) adequate rules?