

The dark side of “authors as customers”: Amazon as a two-sided market and its antitrust implications

Knut Fournier
City University of Hong Kong

In his Nobel Prize lecture, the French economist Jean Tirole issued a warning to competition authorities about the complexity of two-sided markets. Antitrust regulators, he said, would be wrong to look at the anti-competitive effects in one market only. What he did not mention is that two-sided markets are not only hard to regulate, they are hard to spot. Competition authorities attempting to enforce rules in one market are at a higher risk of type-2 errors when the market is connected to a second, sometimes less visible market or segment.

Amazon has attracted a substantial amount of antitrust. As a disruptive, highly successful and fairly recent company, it is even credited with the demise of the brick-and-mortar bookshop. Yet, despite its bare knuckle tactics with publishers and its aggressive pricing and customer service policies, it would be a tenuous task to define Amazon as a monopoly in the print book sale, electronic book sale, or DVD sale markets. By US standards, the internet giant is below (albeit not by much) the 70% threshold that opponents would generally need to establish to prove that a company holds a monopoly. The Weyerhaeuser case raises the bar a little bit more in abuse cases: the US Supreme Court ruled that under some conditions, a company in a dominant position would not violate Section 2 of the Sherman Act by pricing aggressively to gain market shares. The current state of antitrust laws in the US has generally resulted in not much more than background noise for the internet giant.

Amazon is even often praised for its effects on the market for books, whereby it treats authors fairly and ranks search results based on readers' preferences, as opposed to bookstores where books are brought forward under deals with publishers. This fairness for the benefits of customers has obviously been done to the detriment of publishers, which resulted in a protracted battle with the French publisher Hachette. When Amazon started pulling out Hachette books over a pricing dispute, many observers noted that it was doing so to continue to offer lower prices to customers. Attacking an internet giant because it tries to offer lower prices would make the Department of Justice unpopular with the public.

This article proposes to re-think the market for eBooks with a two-sided market approach that focuses on exclusivity clauses for authors. In this conception of the eBooks market, Amazon is no more than a platform (on which eBook buyers are locked-on) where it sells books to customers, and on the other hand acquires intellectual property and resale rights from authors.

In its 2013 letter to shareholders, Jeff Bezos launched the “writers as customers” as a new motto for the ecommerce company. What the letter does not mention is that many authors who chose to publish directly with Amazon would now be, under contractual exclusivity clauses, prevented from publishing

anywhere else. This case under little scrutiny, until Amazon launched its Kindle Unlimited service, whereby buyers would be entitled to an unlimited amount of books for a fixed monthly fee.

In the light of Kindle Unlimited and of the authors' exclusivity clauses, this article argues that it is possible to strengthen claims of abuse of dominant position by Amazon on the market for eBooks, by highlighting the anti-competitive effects of exclusivity clauses in the upstream market, combined with the high market share of Amazon in the downstream market. There are antitrust implications in the reverse dynamic, where excessively low prices on the market for eBooks (\$9.99 for Kindle Unlimited) results in a squeeze for the upstream market, where locked-in authors see their revenue plunge.

The article concludes with a comparison of the situation in European countries where books and pricing are more regulated and where some European governments have voiced concerned or animosity over Amazon's effects on markets for cultural products.