

## I. 3 key characteristics of digital business models

### a. Rising market concentration

7 of the 12 highest rated companies in the world come from the digital economy: Apple, Alphabet (Google), Microsoft, Amazon, Facebook and the two Chinese groups Tencent and Alibaba<sup>1</sup> (2008: ExxonMobil, PetroChina, Gazprom, Petrobras and ChinaMobile)

Share prices of the Internet groups: Apple, Amazon and Facebook outperform the market average many times over.<sup>2</sup>

All five companies (Apple, Alphabet (Google), Microsoft, Amazon, Facebook) have a market value of 4.8 trillion euros. This is 1.4 trillion euros more than the entire German gross domestic product. This means that 82 million people in Germany did not earn enough in the whole year to be able to buy these five companies.<sup>3</sup>

### b. Rising profits<sup>4</sup>

Technology, Media and Telecommunications (TMT) companies generate more economic profit than any other sector of the global economy - more than the combined economic profit of aerospace and defense, automotive components and food products companies.

In 2010-14, the top 5 percent of TMT companies, such as Apple, Microsoft and Alphabet, generated 60 percent of the sector's profits.

### c. Decreasing market entries

According to neoclassical standard theory, rising profits would lead to increased market entries, because the above-average profits would be a strong incentive to enter the market

BUT: in the information and communication technology sector, the number of market entries in the industry is decreasing. Especially in the USA, a long-term decline of market entries since the 1980s is evident. Also in Austria the market entry rate has been decreasing since the mid 2000s.

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<sup>1</sup> Chan, Edwin (2017): Tencent Passes Wells Fargo to Become 10th Biggest Company. Bloomberg.

<sup>2</sup> Keine Angst vor der Technologie-Blase, in: Frankfurter Allgemeine (June 5, 2018)

<sup>3</sup> Handelsblatt (February 4, 2020)

<sup>4</sup> McKinsey, online. URL: <https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/how-tech-giants-deliver-outsized-returns-and-what-it-means-for-the-rest-of-us>

The reasons are new business models of data use and extraction of the large Internet groups, which create massive entry barriers for future challengers and the increasing number of takeovers of other companies.

Google alone could buy up all 20 companies listed in the ATX with its enormous reserves, Apple could even buy up companies such as Samsung and Shell

The new Internet platforms are increasingly attempting to expand their business areas to all areas of life (from housing, health to finance), thus driving corporate concentration even further and securing their supremacy in the competitive arena. The entry of new market participants is generally very short.

## **II. E-Commerce Directive (2000)**

### **a. Why is regulation necessary? Problems with the old directive?**

The E-Commerce Directive regulates certain legal aspects of electronic commerce in order to ensure the free movement of information society services<sup>5</sup> between Member States and to protect users and especially consumers. The conclusion of the directive, however, is now 20 years ago. Since then, new challenges and opportunities have arisen for European companies as a result of rapid digitisation.

#### **i. Taxes**

The value of the data economy<sup>6</sup> will increase to 739 billion euros by 2020.<sup>7</sup> Over the last seven years, the average growth rate of revenues of the leading digital companies has been around 14%, compared to around 3% for IT & Telecom and 0.2% for other multinational companies. At the same time, the effective tax rates of traditional companies were 23.2%, compared to only 9.5% for digital companies.<sup>8</sup>

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<sup>5</sup> Information society service: a service normally provided for remuneration, at a distance, by electronic means, at the individual request of a recipient of services, in particular the on-line distribution of goods and services, on-line information provision, on-line advertising, electronic search engines and retrieval facilities, as well as services consisting of the transmission of information by electronic means, the provision of access to an electronic network or the storage of information provided by a user.

<sup>6</sup> Ecosystem of innovative technologies, platforms and market actors, due to the rapid technological progress in digitisation (<https://www.stiftung-nv.de/de/projekt/datenoeconomie>)

<sup>7</sup> European Commission (2019): Building a European Data Economy, online. URL: <https://ec.europa.eu/digital-single-market/en/policies/building-european-data-economy> (accessed on December 16, 2019)

<sup>8</sup> European Commission (2018): Time to establish a modern, fair and efficient taxation standard for the digital economy, p. 2-4.

The US online giant Amazon in Europe only paid 16.5 million euros in taxes in 2016. This would correspond to a tax burden of 0.07 percent.

There are two main reasons, why digital enterprises often have a reduce tax burden:

1. the value creation of digital corporations takes place everywhere and simultaneously, without a company necessarily having to have a registered office in the country in which it is economically active. But many of the American technology groups such as Facebook or Google are also very active in the EU, for example in the collection and processing of data – a central component of the business model of many digital companies. International taxation laws, however, regard such companies as "routine tasks" that are not part of the value chain. For this reason, subsidiaries of digital companies often cannot be taxed in the EU.
2. multinational companies have the possibility to shift profits through subsidiaries in a way that minimises their tax burden. To do this, subsidiaries in low-tax countries demand high prices from the parent company for the use of "intangible assets" such as software. Fictitious transfer prices are used to shift profits into tax areas where they are then only subject to very low corporate tax rates.

#### Losses through the avoidance of corporate income tax (direct tax)

According to lower estimates, the EU Member States lose an estimated EUR 50 to 70 billion annually in taxes on profits (corporate income tax) through active tax avoidance policies by companies. Other estimates (taking into account specific national tax regimes and collection inefficiencies) put the loss of revenue due to corporate income tax avoidance at around EUR 160-190 billion in the EU.<sup>9</sup>

#### Losses due to VAT avoidance (indirect tax)

VAT is an important and growing source of revenue in the EU, generating over EUR 1 trillion in 2015, equivalent to 7% of EU GDP. One of the EU's own resources is also

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<sup>9</sup> European Parliament (2015): Quantification of the scale of tax evasion and avoidance, online. URL: <http://www.europarl.europa.eu/legislative-train/theme-deeper-and-fairer-internal-market-with-a-strengthened-industrial-base-taxation/file-quantification-of-the-scale-of-tax-evasion-and-avoidance> (accessed on December 16, 2019)

based on VAT - this means that a certain percentage of the estimated VAT revenue of the member states is transferred to the Union. As a result of tax fraud and inadequate tax systems, European Union member states will lose an estimated EUR 137.5 billion (also known as the VAT gap<sup>10</sup>) in 2017 - 11.2% less VAT revenue than expected.<sup>11</sup>

## ii. Housing market

Austria:

In the city of Salzburg there are 300 offers on Airbnb every day, while in Vienna the number of offers is 9,000 apartments per month. More than 2,000 apartments in Vienna are currently withdrawn from the housing market. Soberly considered, this number does not appear to be very high, but it must be noted that the majority of the withdrawn apartments are concentrated in classic tourist areas. Especially there, this leads to a crowding out of local businesses and residents due to rising prices. If the growth rates of Airbnb are adjusted to the year 2022, up to 40,000 apartments in Vienna would be withdrawn from the market.

The idea of accommodation platforms was also originally conceived as a means of renting individual rooms in one's own apartment for a short period of time in order to generate a certain amount of additional income. But more and more large providers are dominating the market. If you look at how the income of the landlords and landladies is distributed, you can see that the top 20 percent receive about 2/3 of the total income from Airbnb-related activities, while the bottom 50 percent receive only 6.5 percent. Strong tourist demand in such neighbourhoods changes the local supply structure and may subsequently intensify undesirable gentrification processes.

Amsterdam:

The number of apartments that are rented out via online platforms has risen sharply in recent years. In 2013, according to the city, around 4,500 Amsterdam apartments were still being offered by Airbnb, and by 2017 the number had already risen to 22,000. According to the city, subletting will further aggravate the housing shortage in the Dutch capital.

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<sup>10</sup> The difference between the expected VAT receipts and the actual VAT receipts is an estimate of the loss of revenue due to fraud, tax evasion and avoidance, insolvency, insolvency and miscalculation.

<sup>11</sup> European Commission (2019): VAT gap, online. URL: [https://ec.europa.eu/taxation\\_customs/business/tax-cooperation-control/vat-gap\\_de#heading\\_1](https://ec.europa.eu/taxation_customs/business/tax-cooperation-control/vat-gap_de#heading_1) (accessed on December 16, 2019)

Lisbon:

About 20,000 people live in the Alfama quarter, Lisbon's historic old town. Every day, the city administration estimates that about twice as many tourists rent a flat. This figure refers to the annual average - in the high season, many more tourists than locals live in the old city. In order to attract investors into the country, citizens outside the EU are granted an annual visa if they invest more than half a million euros. Thus, Portugal has become extremely attractive for rich Russians and Chinese, they buy up whole houses in the centre. If this group of buyers is mainly in the luxury and upscale segment, online brokers have thrown the market for mid-range apartments off balance, with Airbnb in first place. The owners thus earn several times the normal monthly rent.

EU:

In 2016, the Commission launched a consultation on the collaborative economy of tourist accommodation. In the end, the aid the Commission received from the platforms was rather limited. Some of the companies agreed to put an announcement and a link on their websites. In the end, only 395 hosts in the EU replied. However, the results were interesting:

- 38.1 percent offered accommodation in more than one property;
- 43.5 percent responded that the apartment/house was neither their main nor secondary residence;
- 75 percent of respondents rent for more than 3 months per year
- 21 percent of the respondents earn between € 10,000 and € 20,000 per year, 19.2 percent earn more than 20,000 per year.

It is clear that the data is not publicly accessible. Therefore, one is dependent on the willingness of the platforms to cooperate.

### **iii. Labour market**

There are few figures on the overall effects of the platform economy on employment. Analogous to the blurring of the boundaries between producers and consumers, the question of the boundaries between independent and dependent work arises with regard to employment. Flexible employment opportunities can lead to a false self-

employment and precarious working conditions. It is about protection against dismissal, minimum wages, occupational health and safety and working time regulations. Without an appropriate regulatory framework, the social security system can be severely impaired.

**iv. Lobbying and platforms**

The lobbying expenditures of other similar companies, such as Expedia, owner of HomeAway, follow the same pattern. Airbnb has hired several consultancy firms to support its lobbying efforts, including the public affairs firm Political Intelligence (which paid between €25,000 and €49,999 in 2016 and helped to introduce Airbnb to key figures in the Commission in early 2015) and Flint Europe SPRL (which paid be-



tween €100,000 and €199,999 in 2018). Homeaway's parent company, Expedia, commissioned the lobbying companies Interel and Communication Matters Kollmann & Partner Public Relations.<sup>12</sup>

**b. What should be taken into account in the new directive? What should it contain? What other approaches to regulation are there?**

**i. Update of the E-Commerce Directive**

To ensure competitive neutrality, a new e-commerce directive can only be part of an overall package. A newly adapted e-commerce directive is also necessary to overcome the aforementioned hurdles for the public sector and must include the following changes:

<sup>12</sup> Corporate Europe Observatory: non-governmental organisation with the declared aim of disclosing privileged access to and influence on European Union policies, online. URL: <https://corporateeurope.org/en/power-lobbies/2018/05/unfairbnb>

### Reasons of general interest must take priority

In principle, public authorities must retain the freedom to organise themselves in such a way that the free electronic movement of goods and services is ensured but does not restrict competition and the functioning of local markets. It is therefore necessary to specify the reasons in the general interest and the associated measures taken by the public sector and to extend them to other areas.

### Cooperation must be established between the country of origin and the country of destination

An imperative for cooperation between a country of origin and the country of destination, i.e. the EU Member State in which an economic activity as a service provider is developed, should be defined. The service provider should cooperate with the target country in the target country in order to safeguard public interests, even if the national location-related regulations of the place in the internal market where the service provider is established apply.

### Extended information and cooperation obligations

The country of origin and/or the digital platforms should provide additional information obligations. A duty of cooperation is to be created so that the concerns of the supervisory authorities of the target country can be administered in the country of origin.

### Cooperation with administrative authorities for efficient enforcement procedures

In order to ensure enforcement for the public administration and not to limit the policy space, the Member State in which the service provider is established must enable cooperation with administrative authorities in other Member States and provide a legal framework to create efficient enforcement procedures to ensure rapid sanctioning.

### Ensuring fair competition

Under no circumstances should a new directive be limited to measures that the authorities in destination countries can take on the basis of notified laws by possibly strengthening the country of origin principle. This would mean that public interest would be relegated to the background in favour of the economic interests of the platforms. In addition, the EU must regulate platforms that develop business capabilities

in the internal market from outside the internal market accordingly, so that the principle of the "level playing field" is also maintained here.

## **ii. Use of already existing legislation**

### Different cities require different approaches.

The status as a federal state gives Vienna more possibilities for design.

Legal matters at state and federal level should be adapted to the present day.

This includes regulations in trade law, tenancy law, residential property law, insurance law, traffic law, consumer protection, safety standards, regional planning, building law, tourism (promotion) laws.

## **iii. Cooperative platforms**

In order to counteract monopolistic tendencies, it would also be conceivable to support cooperative, cooperative-like platforms, which are owned and controlled by users and de facto serve as public utilities. In concrete terms, such projects have not existed for long.

A positive example from Austria that deserves all support is Shöpping, but further development is open: Shöpping.at was launched on 5 April 2018 in full operation. As a subsidiary of Austrian Post, one starting point of the trading platform is to support the parcels business within the context of positioning Austrian Post as a partner for e-commerce trading in Austria. The platform offers Austrian merchants greater reach, and thus more revenue. Mailing is free of charge from EUR 33 (when delivered by Austrian Post), regardless of the number of retailers, including free return shipping. At present, about 600 Austrian retailers are represented with two million products.

Nevertheless, an Austrian e-commerce portal with the explicit aim of supporting domestic trade is an important measure with the aim of

- Added value,
- Jobs and
- taxes in Austria, and to reduce the
- to stem the significant outflow of money abroad in current online trade.
- Helping those small and micro-enterprises that have online sales but cannot achieve the necessary reach and visibility on their own
- To be able to advertise and manage the sale of regionally produced products.

#### **iv. Further proposals**

- Proposals for standardised agreements with platforms
- Creation of a register of existing regulations
- further development of relevant forums for the exchange of experience
- Strengthening the resources in the tax administrations
- Public Relations
- Agenda Setting for transnational solutions