

Seminario Concorrenze - Concorrenza Digitale e Big Data

Panel discussion

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Panel discussion:

1. What are the theories of harm?
2. What regulation?

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1.1. What harms might arise in digital markets?

Digital markets are susceptible to a range of potential negative impacts, in areas such as:

Privacy

- Excessive data extraction
- Nuisance from targeted services (especially excessive advertising)
- Abuse of people's data or exposure to risks (e.g. Cambridge Analytica)

Harmful content

- Self-harm (Molly Russell case)
- Terrorism (e.g. Christchurch)
- Antivax
- Disinformation and political influencing

Harms to competition

- Price
- Quality
- Variety
- Innovation

1.2. Harms as a result of market failures digital markets?

Digital markets characteristics might lead to market failures or market imperfections – *Ofcom (2019)*

Market power

- Access to Big Data
- Network effects
- Economies of scale/scope

Information asymmetry

- Consumers do not have information or ability to choose: e.g. use of their data (T&Cs); sponsored v organic search results, etc

Externalities

- Platforms may not fully consider the societal impact of their actions: e.g. attention maximising features that can potentially harm users' wellbeing via harmful content

Barriers to switching

- Lack of data portability
- Learning costs (eg iPhone to Android)
- Technical barriers and tying

Behavioural biases

- Salience (e.g. zero price)
- Default bias (pre-installed apps)
- Prominence/framing (dark pattern techniques used to nudge consumers to making choices in the best interest of the platform (CMA 2019, 4.110))

Characteristics often mean competition is *for* the market rather than *in* the market – but is it?

And can this form of competition address market failures?

1.3. How can these market failures lead to harms in digital markets?

Interactions between market failures could also lead to a range of other harms

Privacy

- A dimension of competition?
- Take it or leave it choices
- Behavioural biases and information asymmetry
- Externalities and weak competition leading to underinvestment in data security
- GDPR as a barrier to competition?

Harmful content or conduct

- Weak competition (and behavioural biases) may dilute incentives to address harmful content (e.g. Disinformation)
- Competition for attention may encourage extreme content (click bait or echo chambers)
- Political influence – e.g. see Liberini et al (2018)

Competition

- Exclusionary or exploitative conduct impacting across different markets
- E.g. Extracting rents from digital advertising resulting in reduced revenues for publishers and risk to their sustainability: negative impact on journalism (and ultimately democracy)

1.4. What *competition* harms might arise in digital markets?

Competition harms can be exclusionary: Foreclosure of competition

Leveraging / self-preferencing

- For example, EU case on Google Shopping



Google Shopping

Refusal to supply, tying or bundling

- For example, EU case on Google tying of Android



android

Foreclosing potential competitors- killer acquisitions

- Horizontal or vertical acquisition of firms with potential to develop into competitors
- Examples include: Facebook/Instagram, Google/Waze and Google/DoubleClick
- Over 400 mergers in a decade- all benign?

1.5. What *competition* harms might arise in digital markets?

...but also exploitative

How to judge if prices are
“too high”?

Too much data extracted?

Current offer is take it or
leave it

A zero price might still be
excessive

Competitive price might be
negative, i.e. paying
consumers for their data

Other forms of exploitation
beyond price – such as
setting exploitative terms

Passing data on to trading
partners or even selling data
to third parties

...excessive prices for digital advertising? These can result in higher prices for consumers.

Competition Policy on its own is unable to address a wide range of harms

Panel discussion:

1. What are the theories of harm?
2. **What regulation?**

2.1. Is ex-post competition policy sufficient, or do we need ex-ante regulation?

Competition cases complex and lengthy, and with no clear solution:

Financial penalties? Any effective remedies? Unsuitable to address market remedies

Do we need to regulate? Who should be regulated?

**Dominance or Strategic
Market Status?**

**“Enduring market power
over a strategic
bottleneck?” - Furman**

Essential facilities?

**“Gatekeepers” – Stigler
Center**

2.2. Is competition policy sufficient, or do we need ex-ante regulation?

What form could ex-ante regulation take?

Tirole's "participative antitrust"

- Regulators work with industry or other parties to develop, refine and monitor regulations, without casting rules in stone
- Code of Conduct (CMA, 2019)

Furman's Digital Markets Unit

- Code of conduct for firms with Strategic Market Status
- Data mobility and open standards – to encourage interoperability
- Data openness to facilitate entry
- Review of merger policy
- More use of interim measures

ACCC digital platforms inquiry

- 23 recommendations covering mergers, online platforms, digital advertising, media policy and privacy

...or could structural break-up be a better option?

2.3. Is competition policy sufficient, or do we need ex-ante regulation?

Several challenges in regulating online services – risk of regulatory failure?

Interactions between market failures and harms

(Privacy protection as a barrier to entry)

Fast-moving, innovative and dynamic markets

Consumer decision biases

Complex business models

(Risk undermining entire business)

Scale and variety of online services

(No one-size fits all)

... and cannot regulate unilaterally global platforms, need international harmonization...

“Regulators and economists must be humble; they will learn by doing and their policies should not be cast in stone.”

Tirole (2019) <https://think.ing.com/opinions/jean-tirole-regulating-the-disrupters/>

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