

# Digitisation challenges for competition policy

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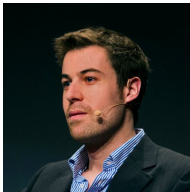
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# Competition policy for the digital era

A report by  
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Competition

The views expressed here  
are entirely my own,  
and do not necessarily reflect  
the views of any institution.

# The tools of competition policy

## An example: private market places

- 👉 For economists, markets are abstractions: they help us organize our thinking about the real world.
- 👉 At the origin of the Internet: clicks and mortars.
- 👉 Now privatized market places:
  - ➡ Not abstractions any more;
  - ➡ The rules are set by private actors;
  - ➡ Should these actors be responsible for enforcing competition law on their platforms?

# Foundations of old style competition policy

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- ➡ If firms and consumers are price takers,
- ➡ equilibrium
  - ▶ exists — the theory is coherent,
  - ▶ and is efficient.

👉 Economically

- ➡ If firms and consumers are “small”,
  - ▶ coordination of economic activity through prices is possible,
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☞ Prices mean something: they represent the social value and the social cost of goods.



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# Competition policy “old style”

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None of this reasoning holds for the digital economy.

☞ But regulation, competition policy & antitrust policy as possible to competitive ideal.

☞ Essential for theory that deviations for competitive ideal be at the margin.

# Competition policy challenges

- ① **In the long run.** We need a new theory: the equivalence between competition and efficiency does not hold.
- ② **In the short run.** How can we adapt the tools we have while waiting for a resolution of the long run issues?

# Competition policy challenges

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The huge social implications of the behavior of some of the new platforms make these issues even more important and politically fraught.

Can we change competition law?

# Competition policy is not alone

- ☞ labor law, consumer protection law, regulation, . . .

- ☞ These regulatory mechanisms have co-evolved over time;

- ☞ In the digital sphere, they collide with each other:

  - data** Privacy and competition law;

  - multihoming** Are drivers of ride hailing apps employees?

- ☞ There is a difficult institutional design and political problem.

# Can we change competition law?

- 👉 Text of the law is vague; entirely case law.
- 👉 Few handles to change the law
  - ➡ US/Europe



Then what do we do?

# Three approaches

- 1 Competition policy is doing OK
  - 👉 we have the appropriate tools;
  - 👉 the industry is innovative and doing well;
- 2 We need very strong structural remedies;
- 3 Let us try how much we can reform competition policy - our approach.

# Disruption / Innovation

I believe that the light touch approach is not appropriate and in any case is not in the cards.

The big platforms are too big and too disruptive.

- 👉 Replacement of old market places: Amazon;
- 👉 New social etiquette: eHarmony, Meetic;
- 👉 Totally new “intermediaries”: Swyft, Uber and their competitors, energy markets, blablacar.

# In conclusion

This is my own personal take on this!

- ⇒ There will be strong regulation.
- ☞ We need to be cognizant of the limits of our understanding.
- ☞ It is worthwhile giving another chance to competition policy
  - ➡ but interfaces with other types of regulation need to be revised
- ☞ The balance between discouraging innovation and promoting competition has shifted.
- ⇒ It is fine to change what we consider illegal.

# The characteristics of the digital economy

# The “characteristics” of digital industries

- 👉 Innovation
- 👉 Increasing returns to scale.
- 👉 The role of intellectual property.
- 👉 Switching costs.
- 👉 Data.
- 👉 Network effects.
- 👉 Two sidedness.

## Some consequences

- ☞ Monopoly is not that bad;
- ☞ Because of externalities decentralized decision making may not lead to efficiency;
- ☞ There is incumbency advantage, but we know very little about it;
- ☞ Prices do not mean too much.

# Competition policy for the digital age



Goals & methodologies  
Platforms  
Data  
Mergers



# Goals & methodologies

- 👉 Consumer welfare standard.
- 👉 Market definition
  - ➡ Less emphasis
- 👉 Measuring market power is difficult.
- 👉 Error cost framework.

# Platforms

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This is a prudential judgment!

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  - ➡ Multihoming, switching & complementary services.
- ☞ Promoting competition **in** the market
  - ➡ Platforms are regulators (precedents in sports leagues)
  - ⇒ They have a responsibility to ensure that their rules are not anti-competitive.
  - ➡ Leveraging; self preferencing.
  - ➡ Selling monopoly power.

# Data: preliminaries

It is difficult!!!!

The most difficult chapter to write of our report

- ☞ Economics less well understood.
- ☞ Interference law as protecting rights and competition law.
- ☞ Heterogeneity of data.
  - ➡ How collected?
    - ▶ volunteered
    - ▶ observed
    - ▶ inferred.
  - ➡ Personal
    - ▶ Difference between individual level and anonymized data sets.
  - ➡ IoT
- ☞ ...

# GDPR and competition

- 👉 Two tests for accessing data.
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- 👉 How will “balancing of interest” be understood?
- 👉 Data portability.

# Data sharing

👉 Pooling and data sharing.

➡ Pro and anti-competitive effects.

👉 Compulsory access to data?

➡ To provide complementary/substitute services;

➡ To provide totally different types of services.

▶ EFD?

# Machine data and aftermarket doctrines

- 👉 Should regulation/competition authorities intervene in sharing of machine generated data?
- 👉 Reviving the aftermarket doctrine?

# Mergers

# Conclusion

We picked topics, but there are others, such as algorithmic collusion, that we have not considered.

- 👉 The digital economy has brought enormous benefits.
- 👉 How do we take into account its specificities, ensure competition and promote innovation?
- 👉 It is a conflictual world, but we need also to make sure that we find a way forward that balances lots of different considerations.

And a few additional remarks . . .



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- 👉 “This is my platform and I own it.”
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- 👉 Contestability and zero price.