



Online platforms and competition

Lessons from the telecom sector

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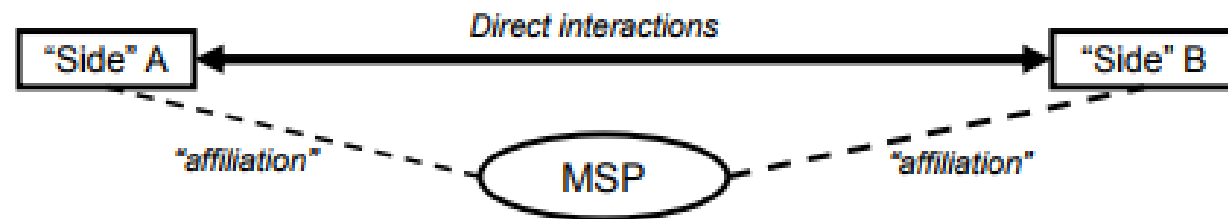


Introduction

Platforms & regulation

Online platforms – multisided markets

- Platforms facilitate interactions between different user groups (or ‘sides’, i.e. suppliers & customers)
 - Google Search: advertisers/websites and *potential* customers → **advertising** platform
 - Amazon Marketplace: sellers and customers
 - App stores: app developers and customers } **transaction** platforms



- Platforms offer two services
 - Search > **advertisements** (‘pay per click’)
 - Matching > **transaction** fee (5-35% commission from supplier)

Online platforms – the new utilities?

Amazon could become a new kind of utility: one that provides the infrastructure of commerce, from computing power to payments to logistics.

Amazon controls key critical infrastructure for the Internet economy – in ways that are difficult for new entrants to replicate or compete against.

Amazon Is Trying to Control the Underlying Infrastructure of Our Economy

Google ‘now accounts for an estimated 87% of online searches worldwide. It is essentially a global utility in private hands.’

As stated on our home page, Facebook is a social utility that connects you with the people around you, not a “social networking site”.

Don't Delete Facebook, Regulate It
It should be treated like any other vital utility.

Online platforms – *regulate* as utilities?

NO

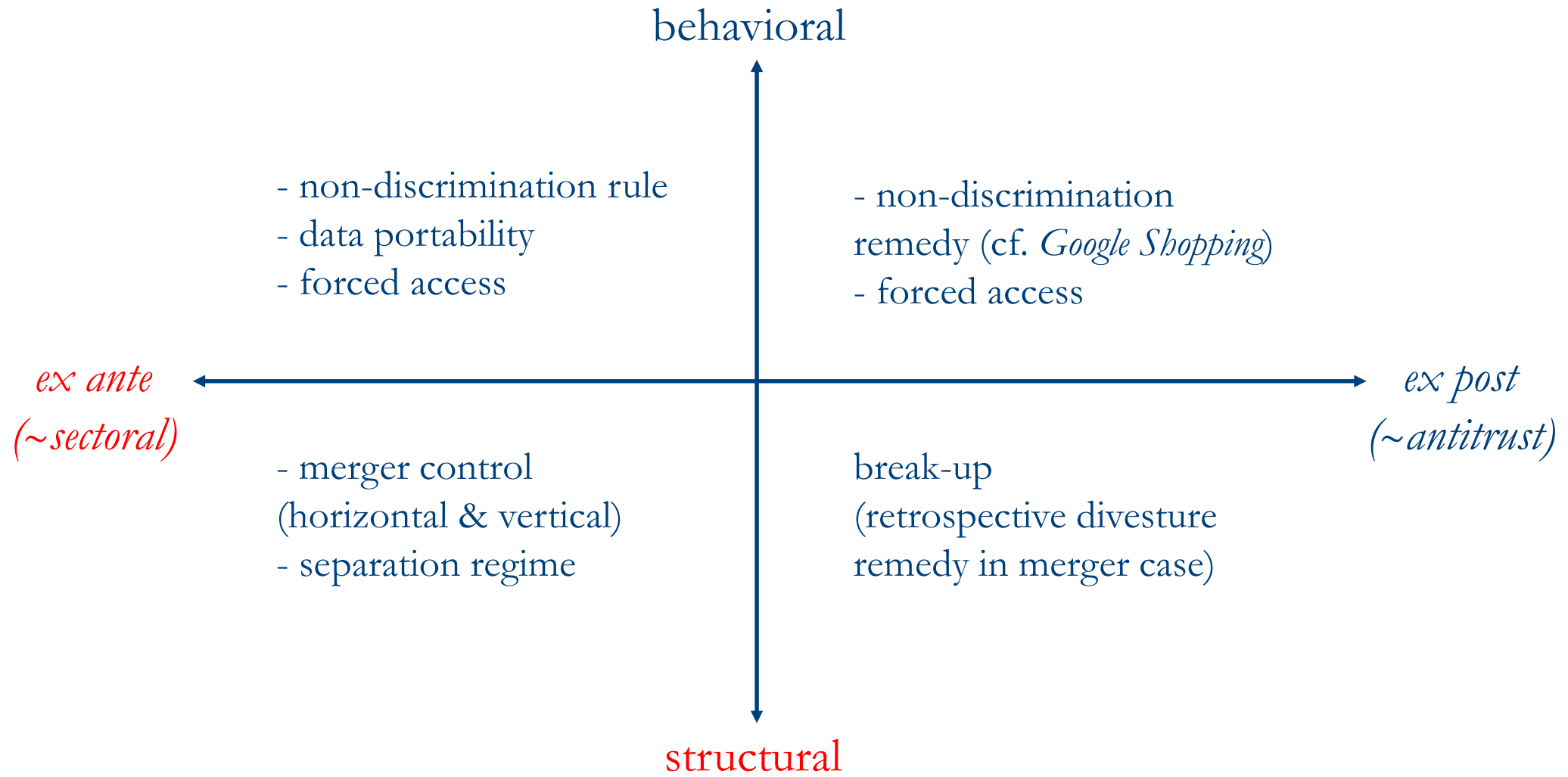
- Not vital: *‘People can #deletefacebook and still live respectably. It’s much harder to do that without basic transport, power, communications, water, and sewer services.’* (Crawford)
- ‘Technology neutral’ regulation for platforms and ISPs = lowest common denominator unfit for both?
- Utility regulation is heavy-handed & not always successful/exemplary... (e.g. Kingsbury Commitment)

YES

- Digital *infrastructure*
 - o Network effects
 - o Economies of scale
 - + Learning effects
- *‘This fosters market concentration and the formation of [natural] monopolies.’* (German Fed. Ec. Ministry)
- **Conduct similar** (discrimination, serial acquisition, etc.) esp. to that of telecom providers

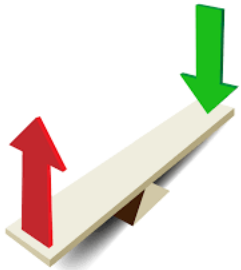
Telecom reg: idea generator to devise taxonomy & illustrate trade-offs

Regulatory matrix



Which type of regulation to adopt?

- Add *ex ante* regulation to antitrust? (EC's 'three-criteria test')
 1. high barriers to entry (structural or regulatory)
 2. market structure does not tend towards effective competition
 3. competition law alone is insufficient



calls for *ex ante* regulation are *inversely* correlated with the perceived effectiveness of antitrust (substantively + enforcement-wise)

- Choose *structural* over behavioral regulation?
 - ✗ heavy-handed/intrusive for the subject → incentives to invest, efficiencies?
 - ✓ eliminates *incentive* for anticompetitive conduct → effective, no monitoring



Regulatory interventions

Competition law & beyond

1. Merger control – horizontal

- Concern: ‘shoot-out acquisitions’ resulting in ‘kill zone’
 - Not blind (e.g. Facebook’s Onavo)
 - With pressure (e.g. Amazon vs Diapers.com)
 - Alternative: copying (Facebook/Instagram vs Snapchat)
 - Effect: decline in VC investment by -20% in ‘15-‘17 (Wyman, Hathaway) + ‘*We don’t touch anything that comes too close to Facebook, Google or Amazon*’ (WaPo 10.08.17) → **dampening innovation?**
- Telecom precedent: Bell’s Kingsbury Commitment
- Platform equivalent? Adapt merger control regime
 - Thresholds: turnover-based + value-based (cf. Facebook/WhatsApp)
 - Substantive: take into account ‘*the existence of an overall strategy of a dominant company to systematically acquire [potential competitors]*’ (Competition Law 4.0, Crémer Report)
 - Effect? removing exit strategies reduces incentives to invest for entrepreneurs → **dampening innovation?**

1 Merger control – vertical

- Concern: customer foreclosure
 - Using platform (upstream) to exclude competitors/suppliers (downstream)
 - E.g. Amazon acquires Ring & stops selling Google's Nest products
 - Subtler ways: increase transaction fees, demote in search results (*Google Shopping*), restrict interoperability (*Spotify vs Apple?*)
- Telecom precedent: *Comcast/NBCU* – non-discrimination remedy
- Platform equivalent?
 - Stricter vertical merger enforcement with non-discrimination remedies?
 - A 'dominant platform presumption'? (Baker et al 2019)
 - However...
 - platform expansion usually organic rather than through acquisition
 - vertical mergers can generate considerable efficiencies
 - removing exit strategies may dampen innovation?

Got a Hot Seller on Amazon? Prepare for E-Tailer to Make One Too

'You're Stupid If You Don't Get Scared': When Amazon Goes From Partner to Rival

How Amazon Steers Shoppers to Its Own Products

Amazon Sellers Say The Tech Giant Is Crushing Them With Competitive Pricing

① **Antitrust: Commission opens investigation into possible anti-competitive conduct of Amazon**

② A528 - Amazon: investigation launched on possible abuse of a dominant position in online marketplaces and logistic services

③ **Enquête sur les services de plateforme en ligne**

④ Bundeskartellamt obtains far-reaching improvements in the terms of business for sellers on Amazon's online marketplaces

⑤ **BWB informs: Amazon modifies its terms and conditions**

closed



2. Non-discrimination – behavioral rule

- Concern:
 - Using platform (upstream) to exclude competitors/suppliers (downstream)
 - E.g. Apple (App Store) restricting Spotify in favour of Apple Music
 - Effects? Wen & Zhu (Google Play), Zhu & Liu (Amazon), Luca & Wu (Google Search)
- Telecom precedent: 1992 Cable Act prohibiting discrimination by tv distributors against ‘unaffiliated’ content; net neutrality regulation
- Platform equivalent?
 - **Currently:**
 - *Ex ante* EC Regulation on platform-to-business practices – transparency
 - *Ex post* antitrust enforcement (*Google Shopping*) – ‘equal treatment’ remedy
 - **Future:** *ex ante* non-discrimination rule, e.g. for platforms ‘of paramount significance for competition across markets’? adjudicated by a separate tribunal?

2. Non-discrimination – structural separation

- Concern: platform exclusion through discrimination
- Telecom precedent: *Bell Company* consent decree incl. line-of-business restrictions on local Baby Bells (e.g. no long-distance)
- Platform equivalent?
 - Keep platform & downstream products/services separate (Wu, Khan, Warren)
e.g. Amazon Marketplace/Amazon Basics, App Store/Apple Music
 - Potential effects:
 - ✓ no discrimination & *without monitoring* (incentives!)
 - ✗ no vertical integration – loss of efficiencies (e.g. *Amazon/Whole Foods*)
 - ✗ removing exit strategies may dampen innovation? (cf. *TechCrunch* 8.3.2019)

3. Data portability

- Concern: user lock-in > platform market power > misconduct
(from discrimination to privacy)
- Telecom precedent: (mobile) phone number portability
- Platform equivalent? Data portability
 - Art. 20 GDPR: *‘the data subject shall have the right to have the personal data transmitted directly from one controller to another, where technically feasible’*
 - An effective (i.e. seamless) process requires *standards*
 - Data Transfer Project (Facebook, Google et al): *‘an open-source, service-to-service data portability platform’*
 - Risks:
 - reduces *incumbent’s* incentives to invest, dampening innovation (but increase *entrants’* incentives more?)
 - ends up benefitting incumbents rather than entrants (due to compliance costs, regulatory capture)?
cf. Goldman CEO: *‘This is an expensive business to be in, if you don’t have ... scale’*

4. Forced access: infrastructure vs data

- Concern: platform discrimination vs market power
- Telecom precedent: local loop unbundling, essential facilities doctrine
- Platform equivalent?
 - Platform **infrastructure**: guaranteeing (equal) access ~ prohibiting discrimination
 - Platform **data**: promoting competition in platform market by helping entrants scale learning curve (effective?)
 - Applying essential facilities doctrine: (i) facility objectively necessary to compete effectively on a downstream market; (ii) refusal likely to lead to the elimination of effective competition on the downstream market
→ only app store infrastructure and *unique* data?
 - Broadening essential facilities doctrine? Upset careful balance + more targeted interventions
 - Discrimination – non-discrimination remedy/rule
 - Market power – data portability

Should America's Tech Giants Be Broken Up?

Is it time to break up the big tech companies?

Big tech platforms could be broken up, says Nobel-winning economist

The case for ending Amazon's dominance

It's Time to Break Up Facebook

IT'S TIME TO BREAK UP FACEBOOK

'Start by breaking off WhatsApp and Instagram'

Is It Time to Break Up Google?

KU LEUVEN

5. Break-up

- Concern: platform market power/vertical integration = source of misconduct
- Telecom precedent: *Bell Company* (consent decree), *Microsoft* (attempt)
- Platform equivalent?
 1. **Horizontal** break-up: reducing market power incentivizes good behaviour
 - Inefficient due to network effects (size matters)
 - Possibly ineffective (are 7 ‘Facebabies’ more privacy protective than 1 Facebook?)
 - Not durable: winner-takes-all dynamic may re-establish dominant platform
 2. **Vertical** break-up = targeted structural separation regime (discussed above)
 3. Break-up of **past acquisitions** (Wu, Warren – e.g. *Facebook/Instagram*)
 - Lines of divestiture already drawn + more limited effect on incentives to invest + loss of efficiencies mainly in case of vertical acquisitions (so not *Facebook/Instagram*)
 - However, question of counterfactual



Thank you!
Questions?

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