Reflections on regulation of non-monetary price markets

Roundtable for regulators
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Economic expertise and executive teaching

Digital platform business model design

Close cooperation with e-Conomics

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In itself, a non-monetary price market is nothing special...

1. Multi-sided market
2. Often designed as a digital platform
3. The (monetary) price for some platforms users is set at zero
4. The platform's objective function is like that of other firms: profits

... and neither is competition in such markets a mystery

1. Firms compete in prices as well as quality attributes
2. Competition may drive some prices down to zero
3. For various reasons, firms can get away with erosion of quality attributes (e.g. terms and conditions)
4. Consumers may end up carrying the burden
So far, it seems that we can work with what we have

1. Define the relevant market
2. Apply an adequate model of competition
3. Assess effectiveness of competition
4. Identify abuse of dominance and assess consumer harm

Several developments call for different understanding of
- how competition works
- how firms' behavior may impact society

1. Markets have become more dynamic — what's a market anyway?
2. Societal impact of platforms may dwarf competition problems
3. Technology tends to have unanticipated consequences
4. "Value" is an elusive concept
1. Toolbox of competition policy is no longer adequate

1. See e.g. *Competition Policy for the digital era*, a report for DG Comp
2. Markets are dynamic: authorities should prevent creation of entry barriers, facilitate market entry, and foster innovation
3. On top of this: markets and their "boundaries" are in constant state of flux

*Business models instead of relevant markets are natural starting point for competition analysis*

2. Societal impact of platforms may dwarf competition problems

1. Of course market power may cause problems — but what about impacts that go far beyond the market in question?
2. Tech firms' activities create externalities that may impact the economy or society as a whole
3. "Market failure" can be a misnomer — it's about "societal failure"
4. Should we treat such problems as abuse of dominance, or apply more fundamental measures?
3. Technology tends to have unanticipated consequences

1. Due to complexity, dynamics, intransparency, ignorance and mistaken assumptions
2. Short-term and long-term values are often different, possibly contradictory
3. Since we cannot eliminate all uncertainty, we have to accept responsibility for unanticipated consequences

4. "Value" is an elusive concept

1. Economists measure value with demand functions and willingness to pay
2. The rise of big tech has challenged our understanding of value
3. Not only physical products, but also ideas, data and human attention have value — but can one measure it?
4. Value tends to be fluid over time — in unanticipated ways

*Individuals should not be able to give up certain fundamental rights, even for a price or free service*
In addition, there are ethical implications

1. The consequences of actions may extend over the long-term
2. How should we distribute the benefits of a project and the risks due to unanticipated consequences?
3. We typically apply principles to implement and safeguard ethics
   *E.g.: persons who do not share in the benefits of an action should not bear the costs and risks*

To conclude, a few traps and how to avoid them

- Replacing price-based effects with non-monetary effects, and carrying on
- Using competition law to tackle "societal failures"
- Trying to eliminate uncertainty from the analysis
- Maintaining a narrow concept of value
- Focus on business models; protect process of dynamic competition
- Rely more on other legislation to protect consumers/citizens
- Acknowledge uncertainty (and consider stronger liability for firms)
- Safeguard fundamental rights through principles and processes
Comments on background note

1. Competition law tools need to be adapted
2. Consumer and data protection laws are generic and have more bite than competition law
3. Data protection law — associating data with fundamental rights and acknowledging that value is no market commodity — prevails
4. Will joint application of legal frameworks be effective? Perhaps we need more:
   
   • transparency requirements (data collection, algorithms), to protect consumers and help regulators understand business models
   • stronger liability for firms (w.r.t. unanticipated future harm to citizens)

Thank you for your attention

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Selected references


Van Gorp, N. & O. Batura (2015), "Challenges for Competition Policy in a Digitalised Economy", study by Ecorys requested by European Parliament’s Committee on Economic and Monetary Affairs.
