

Market Power & Platform Power in the Digital Economy

Ariel Ezrachi

Slaughter and May Professor of Competition Law

The University of Oxford, Centre for Competition Law and Policy



Competition dynamic

Significant benefits,... *but* concerns over virtual competition

- ▶ Network effects
- ▶ Economies of scale and scope
- ▶ Data as critical input
- ▶ Advanced analytics and data collection
- ▶ Asymmetry of information and analytical power
- ▶ Key gate keepers
- ▶ Stealth - tracking, harvesting, targeting and manipulation
- ▶ Zero price markets and quality degradation



Aggregated effect

OK, ... *but what's new?*

- ▶ Aggregated effect, Tipping effect
Network effects, limited (true) outside options, control of ecosystem, innovation 'Kill zones', ...
- ▶ Limited competition in key markets
- ▶ Competition for markets requires significant innovation, ...
- ▶ Sustained market power
- ▶ Market power below threshold
- ▶ Remedies limited in their effectiveness



Welfare Effects

- ▶ Exclusion - Exclusivity, tying, and self favouritism.
- ▶ Upstream effects - Bargaining power, scraping, e-monopsony.
- ▶ Exploitation - The things you own, end up owning you.

- Illustration -

- ▶ Self favouritism
- ▶ Quality degradation
- ▶ Behavioural discrimination
- ▶ Game makers



1 - Self-favouritism

- ▶ Case AT.39740 – Google Search (Shopping)

- ▶ Google gave its own comparison shopping service an illegal advantage.
- ▶ ‘Google to stop its illegal conduct... refrain from any measure that has the same or an equivalent object or effect... comply with the principle of giving equal treatment to rival comparison shopping services and its own service - apply the same processes and methods to position and display rival comparison shopping services.’

- ▶ Amazon investigation

- ▶ Apple investigation

Some parallels to the discussion on retail competition:

- ▶ Vertical Competition
- ▶ Bargaining power & Private labels
- ▶ Downstream rivals do not gain sufficient access.
- ▶ Control over interface
- ▶ Access to downstream data
- ▶ Control over customer data collection

- ▶ Can you have equality in vertical competition?
- ▶ Chilling effect & free riding $\leftarrow \rightarrow$ Exclusion, extraction & leveraging

- ▶ 2014 - EU Commission Report - The economic impact of modern retail on choice and innovation in the EU food sector

2 - Quality degradation & Exploitation

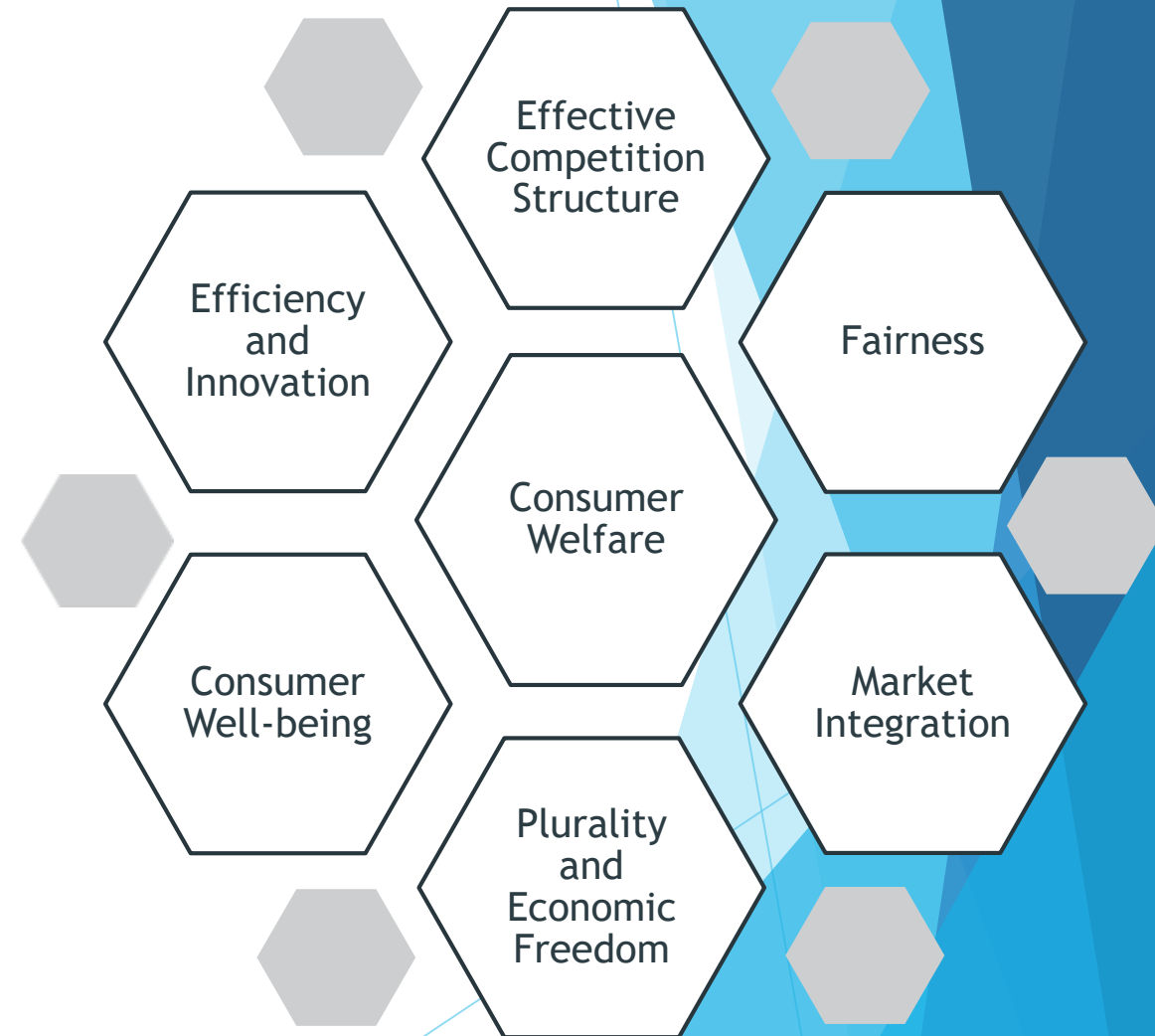
▶ Facebook

- ▶ Market power & Network effects → Limited outside options → Quality degradation & Exploitation
- ▶ Gathering and combining data from multiple sources.
- ▶ Degradation of quality - Privacy
- ▶ Excessive data collection ?

- ▶ Bundeskartellamt imposed restrictions on Facebook's freedom to process data

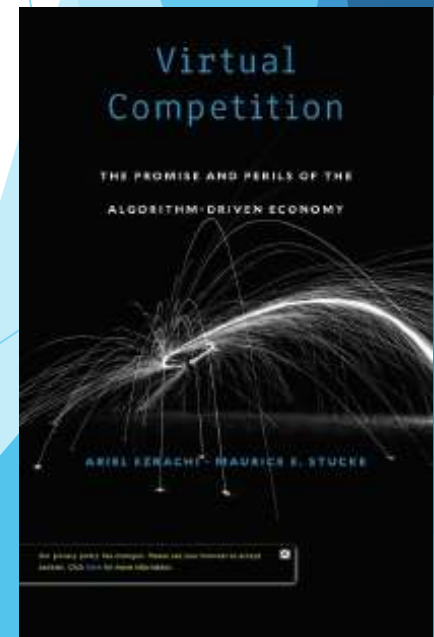
Policy considerations

- ▶ Is this a competition problem?
- ▶ Consumer protection problem?
- ▶ Welfare effects...
- ▶ Price effects...
- ▶ Empower consumers?



4 - Behavioural Discrimination

- Maintain complete control over the user relationship
- Controlled Ecosystems: *The Truman Show*
- Friction and outside options.
- Exploit emotional bias. ...”*moments when young people need a confidence boost.*”...” *insecure,*” *defeated,*” *anxious,*” *silly,*” *useless,*” *stupid,*” *overwhelmed,*” *stressed,*” and *a failure.*”
-
- The role and limits of digital comparison tools (DCTs)
- Fairness as a limit of behavioral discrimination.
- Minimize the Perceived Unfairness through Framing Effects



The Digital Butler

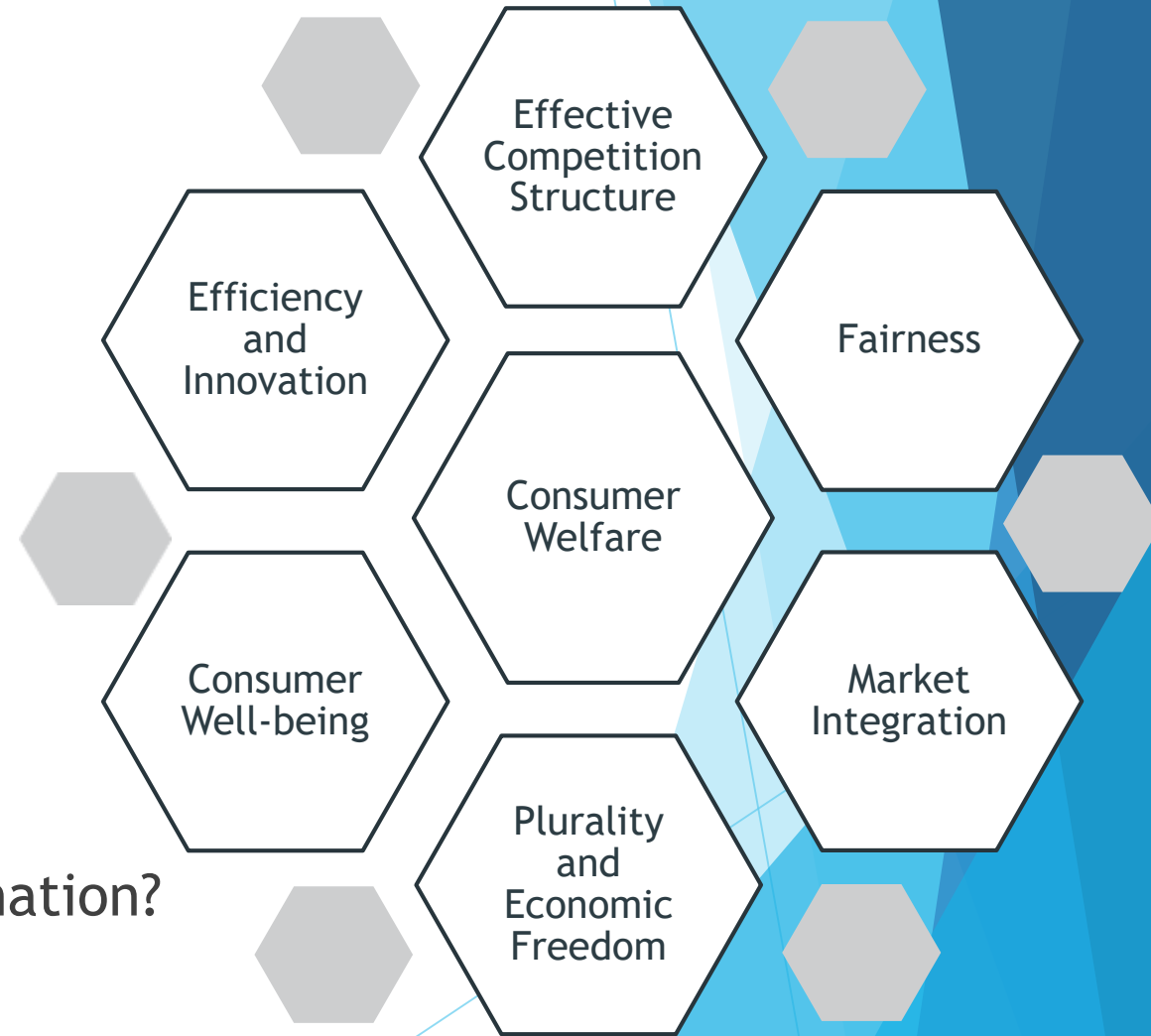


WHAT YOU NEED. WHEN YOU NEED IT.



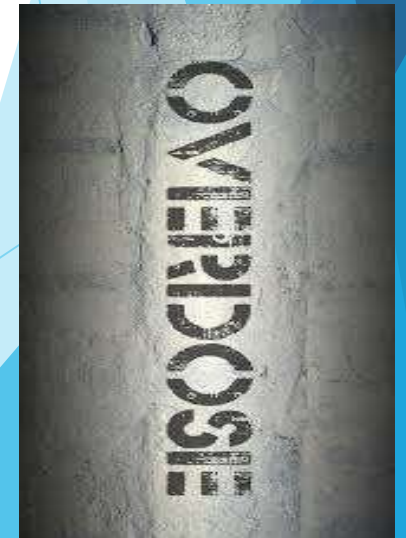
Policy considerations

- ▶ Is this a competition problem?
- ▶ Consumer protection problem?
- ▶ Welfare effects...
- ▶ Price effects...
- ▶ Welfare effects -
 - Third degree or first degree price discrimination?
- ▶ Empower consumers?
- ▶ What is the market? How wide?



4 - Game Makers

- ▶ Platforms can obtain higher margins when they position themselves as a mandatory bottleneck between partners and customers.
- ▶ Perception of competitive environment
- ▶ Thousands of providers compete for our attention
- ▶ Thousands of advertisers bid to reach us
- ▶ Ample choice.
- ▶ Opacity and distortions as key.
- ▶ The hunger games ...



A man and a woman are standing on a stage. The man, on the left, is wearing a dark, textured suit jacket over a white shirt and a dark tie. He has dark hair styled back and is smiling, looking towards the woman. His right arm is raised, and he is holding the woman's hand. The woman, on the right, is wearing a bright red, strapless, off-the-shoulder dress. She has dark hair styled up and is looking towards the man. Her left arm is raised, and she is holding the man's hand. The background consists of a perforated metal screen that is illuminated from behind, creating a grid of light points. The lighting is warm and dramatic, highlighting the couple against the dark background.

The Game Makers

Global Perspective - What to do?

Is there a competition problem?

EU Law

- ▶ Prevent distortion of competition
- ▶ Ensure fair competitive market
- ▶ *Google*
- ▶ *Amazon*
- ▶ *Facebook*
- ▶ Parity (Booking,...)
- ▶ Regulation - GDPR, E-privacy...

US Antitrust law

- ▶ The market ability to correct
- ▶ Prevent chilling effect
- ▶ No competition harm

Yet,...

- ▶ Inequality
- ▶ Political condemnation,...
- ▶ Elisabeth Warren ...



Competition policy for the digital era

A report by
Jacques Crémer
Yves-Alexandre de Montjoye
Heike Schweitzer

Digital Platforms Inquiry

Preliminary report

December 2018

Unlocking digital competition

Report of the Digital Competition Expert Panel

March 2019

REPUBLIQUE FRANÇAISE
**Autorité
de la concurrence**

Only the French version is authentic and it prevails in
the event of its differing from the translated version.

CHICAGO BOOTH | **Stigler Center**
for the Study of the Economy and the State
George J. Stigler Center for the Study of the Economy and the State
The University of Chicago Booth School of Business

Committee for the Study of Digital Platforms
Market Structure and Antitrust Subcommittee

Opinion no. 18-A-03 of 6 March 2018
on data processing in the online advertising sector

Final reflections

- ▶ New market reality - Enforcement needs to adapt.
- ▶ The limits of price-centric approach.
- ▶ The limits of static analysis.

- ▶ Be mindful of over/under intervention.

- ▶ Combined Ex-post & Ex-ante approach.