

Consumer sovereignty and competition law: from personalization to diversity

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Practices of personalized exploitation

Uber Starts Charging What It Thinks You're Willing to Pay

The ride-hailing giant is using data science to engineer a more sustainable business model, but it's cutting drivers out from some gains.

By **Eric Newcomer**

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Why personalized exploitation is also a competition problem

- **Restrictions of freedom of choice** by dominant firms also lead to **competitive harm**
- Boundaries between legal regimes as discussed in US literature no longer apply:
 - antitrust law remedies market failures external to consumers
 - consumer law remedies internal market failures happening ‘inside the consumer’s head’

Towards personalized markets and market power over individuals?

1997 European Commission Notice on Market Definition:

a relevant market consists of *'all those products and/or services which are regarded as interchangeable or substitutable by the consumer'*

'a narrower, distinct market' may be defined when a distinct group of customers *'could be subject to price discrimination'*

Competition intervention for personalized exploitation

- Competition analysis looks at the effects on consumer welfare as a whole, allowing for subsidization
- Calculation of consumer surplus is no longer possible in case of dynamic, personalized offers
- ‘**Personalized welfare**’ standard: limit analysis to affected consumers by looking at exploitation of vulnerabilities
- Intervention threshold: substantial harm for affected consumers, in terms of extent or nature of the harm
- Remedy: ban to use certain information for targeting
- Outcome: protection of the **diversity of offerings**

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