

Privacy and Antitrust

April 2021

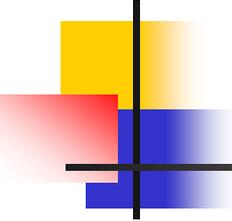
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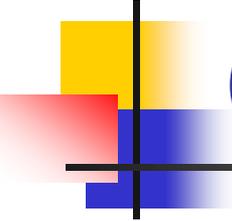
** UCL and Hellenic Competition Commission

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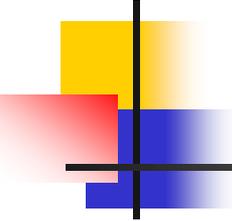
This presentation is based on three academic papers with Ioannis Lianos

- Restrictions on Privacy and Exploitation in the Digital Economy: A Market Failure Perspective, JCLE (long one)
- Antitrust and Restrictions on Privacy in the Digital Economy, *Concurrences Review* (medium one)
- Giving Away Our Data for Free is a Market Failure, ProMarket (short one)



Dominance of Internet platforms (Google, Facebook) easy to establish

- Google is dominant in Internet search in the EU, the USA, and many other jurisdictions
- Facebook similarly dominant in social network market



Peculiarity of these markets of two-sided platforms

- Despite their monopoly power, dominant Internet platforms charge a zero price to users
- The platforms sell information they collect on users to advertisers
- The users (or rather their personal information) become the product

Two-sided platform Google provides free Internet search, collects user info, sells to advertisers



Google

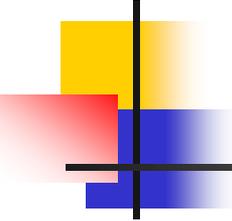
User info



Free search

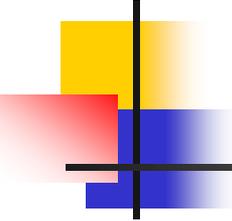


Green arrow:
payments to the
platform



The dominant platforms

- Require user to “opt-in” by default in their collection of personal information
- Collect information from users such as IP address, location, search results, “likes,” uploaded information, ...
- These data are combined with other purchased data (e.g. health data) and public data (e.g. census data) to create a user profile that is sold to advertisers and marketing companies, including for political marketing

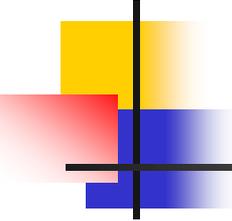


In principle, there are **two markets** because there are two products

(A) Internet search sold by Google to users

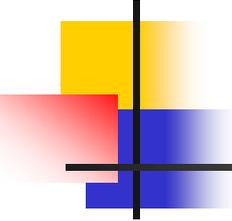
(B) User personal information bought by Google from users

- In a competitive world, these markets would function separately
- Given variations in the willingness to pay for search and in the value each user places on their privacy, some users would decide to participate in both markets, some in only (A), some in only (B), depending on market prices



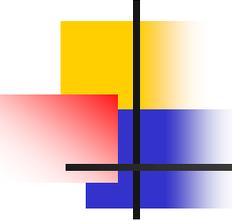
A glimpse at the competitive world

- Users vary widely on the value they place on privacy and in the value of their personal information to the platforms
- In a competitive market for personal information, some users would participate, and others would not
- Variation across users in the value of their info to platform
- Transaction prices for the sale of personal information would also vary and likely be individually negotiated between a platform and the user



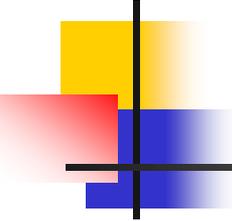
How would a market work in the but for world?

- In a functioning market, some people would be paid for providing personal data, even if they already receive free search
- Some users may prefer to pay for search and not provide personal data for free
 - A subset of these users might sell their personal data if offered a high enough price by Google



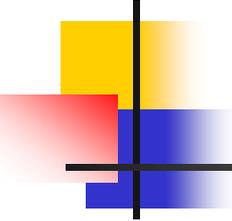
At status quo, Google imposes on users a “take it or leave it” contract whereby

- a user cannot “buy” Internet search if she does not “sell” her information to Google
- both transactions are done at zero price
- Google is able to impose this requirement contract because of its monopoly power in the Internet search market



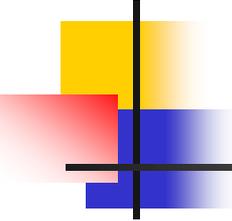
Market failure in the acquisition of user information

- Market for selling personal info is killed and price is set to zero
- Zero price is arbitrary and underlines the market failure in the acquisition of private user information
- Present privacy regulations (e.g. in the EU) ignore this market failure as an antitrust matter and are based on “rights” of users



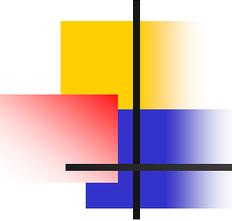
Restoration of but for world in the market for user personal information requires

- Change the default regime from “opt-in” to “opt-out”
 - Google (and Facebook) has no incentive to make this change; *it has to be done by regulation*
- Even if changed to “default opt-out” now, because of its long-term market dominance, Google can overcharge users or not pay them the competitive price to opt-in, acting as a perfect price discriminating monopolist



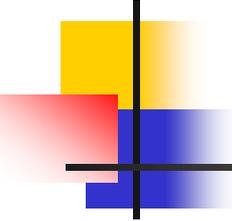
Positive effects of requirement on platform (1)

- Platform appropriates data directly from the user that is highly desirable to an advertiser or a political campaign
- The appropriation of personal information improves the quality of profiles sold to advertisers and enhances the digital platform's market position in advertising



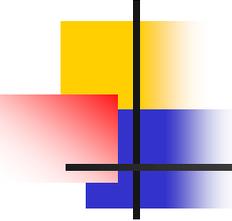
Positive effects of requirement on platform (2)

- Data has network effects that improve the quality of the primary services of the platforms
- The appropriation of more personal information enhances the dominance of Google and Facebook in their respective primary markets for Internet search and social networking



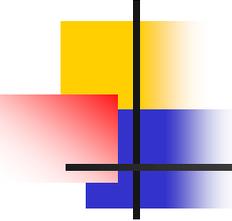
Positive effects of requirement on platform (3). Dominance enhanced.

- The platform does not pay for personal data except by a payment in kind with a service that has a negligible incremental cost
- Without monetary payments, the platform always benefits from the appropriation of data in exchange for its service, even when the data has small benefits in increasing the quality of the user profile sold to advertisers or small network effects in other services sold by the platform



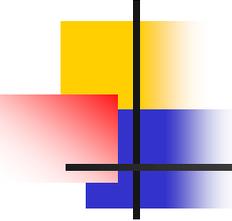
Harms of requirement on users compared to competition

- (1) The market failure harms users who would be willing to pay for the primary service of the platform but are not willing to give their personal information to the platform at zero price (and therefore presently do not participate in market B)
- (2) Some of the users participating in the market at zero price would be compensated at a positive price under competition



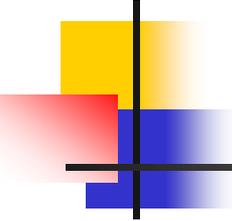
Harms of requirement on users compared to competition (cont.)

- (3) The market failure, through the acquisition of data, enhances the dominant position of digital platforms in their respective primary market A
- (4) The enhancement of the dominant position in the primary market allows platforms to make more users accept the requirement contract
 - thereby increasing the group of users who accept the requirement contract and the harm to them



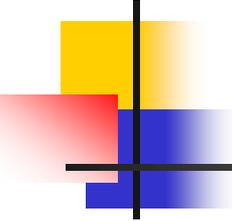
Users harmed under asymmetric information

- Users do not know the value of their data to advertisers and/or the digital platforms that harvest them as they have no information of its value in digital platform's transactions with advertisers and infomediaries on the other side of the platform
- Users may underestimate the value of their privacy or this value may increase over time in the perception of the user



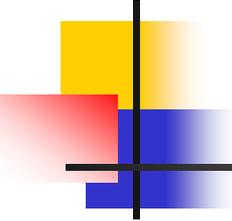
Harm to competition and innovation

- Risk that the mode of competition and innovation in the industry will be frozen at a suboptimal equilibrium from the perspective of data protection
 - since the implemented data extraction strategies may generate superior levels of profitability for the platforms that manage to harvest most of the personal data, leading to increasing returns to scale and learning-by-doing, resulting in long term dominance



Remedies: “opt-out” by law is required

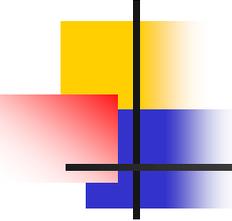
- A required first remedy is to change the default regime to “opt-out” in the collection of personal information
- Users would opt-in if they so wish
 - EU has adopted the opt-out regime in the GDPR based on an approach of “rights” rather than antitrust



Remedies (cont.)

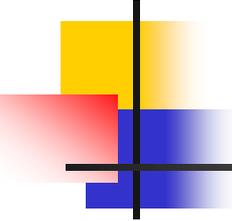
- But “opt-out” is hardly enough because of the asymmetrical bargaining power between the user and a dominant digital platform that can act as a monopsonist utilizing significant user-specific information

Structural remedies could include

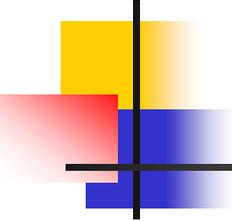


- (1) a horizontal break-up of the platform (for example Google to Google1, Google2, etc. that start as identical companies) to enhance inter-platform competition
- (2) a rollback of previous mergers, for example with Facebook spinning off Instagram and WhatsApp
- (3) vertical separation by prohibiting the platform from doing business in vertically related markets, for example Google spinning off its online travel agency business

Data separation & data-use breakup

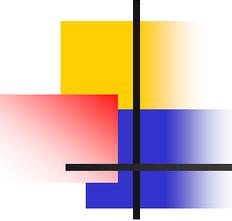


- “Data separation” policies may be implemented more easily than structural break-ups and could serve to reduce the data advantage that some platforms have in view of the time people spend online and within each platform’s ecosystem
- Need not focus only on the dominant platform and the companies controlled by it but may also expand to a partial break up of their third-party ecosystem
- Some “light-touch” separation may be achieved by policies that require digital platforms not to use personal data harvested from members of their ecosystems unless they have the explicit consent of these members for the envisaged use
 - This may break the continuity of the data resources the platform commands as part of the economic entities it controls from the data resources that are provided to it by its third-party ecosystem



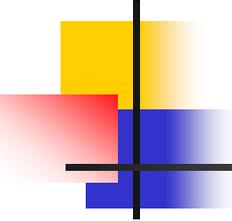
Non-exclusive licensing

- instituted through a licensing agency that would collect the data from each user and distribute to platforms
- The user would be paid the combined sum of all the amounts that the relevant companies are willing to pay
- To determine the “fair” value, one would need to refer to the value of the data in a competitive market
 - Not currently possible as there is no competitive market, and network effects ensure that a competitive market will not have egalitarian market shares
- Digital platforms are likely to exercise their buying power, resulting in downward pricing pressure in the market for personal data depriving the users from a portion of their revenues
- A possible solution would be for competition authorities to facilitate users collectively bargaining



Remedy: data portability

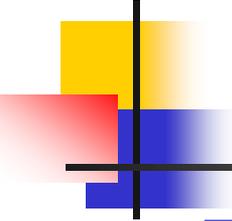
- providing users with the ability to export their social graph or their search history
- Could ensure the free flow of personal data and that users are not captive to a limited number of digital platforms



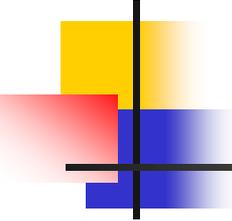
Interoperability remedies

- may help to intensify inter-platform competition, thus contributing to a better protection of privacy-related competition

How would interoperability work?

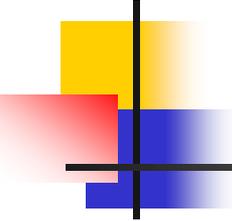


- Facebook would be changed from a closed to an open communication network by adopting an open API for user messages, chats, posts, and other communications
- Enabling its users to send messages to users of other social networks and could unlock privacy-related competition between Facebook and other social networks, by eroding the number and identity of users' barrier to entry of Facebook



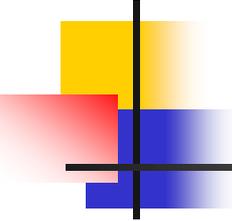
Interoperability remedies

- Similarly, Google could open APIs that would allow users to submit queries simultaneously in multiple browsers as was the case in the early days of the Internet



Concluding remarks

- Although privacy regulation has a “rights-based” approach, traditional antitrust also applies because Google and Facebook imposed a market failure in the market for personal user information
- Should change default to “opt-out” and restrict the market power of Google and Facebook to avoid them implementing perfect price discrimination towards the users/sellers of personal information



Concluding remarks (cont.)

- Various harms to users and competition
- Additional harms at status quo if users face imperfect or incomplete information
- We propose several different types of remedies, including horizontal and vertical separation, data separation, data portability, and interoperability