Competition Policy, Online Platforms and the Mobile Marketplace

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1972-2012: 40 YEARS OF TECH ADVOCACY

Rules/Balancing Interests

- “Multi-sided platforms involve interests that don’t always align. This makes it difficult for platform managers to ensure that various participants create value for one another, and make it likely that conflicts will emerge that governance rules must resolve....This is a juggling act that even giants and geniuses get wrong.” - Parker et al. in *Platform Revolution*

- Platforms, including mobile platforms, are dynamic and different groups of users have different needs, concerns, demand elasticities, etc. If platforms don't get the rules right, the platform falls apart or never gets off the ground.
  - Facebook vs. MySpace/Friendster
  - Symbian vs. Android

- Most attention paid to network effects has focused on the advantages they confer on a first-mover business. But network effects are nuanced and there are negative externalities as well:
  - Search engines – More users make them more attractive to advertisers, but more advertisers doesn’t make platform more attractive to users (some platforms this is a negative effect, i.e. newspapers)
  - Other negatives: network congestion, search costs, and more “bad” content on the platform

Ex-Ante Online Platform Regulation

- The "balancing interests" and rules imposed by platform operators to manage their networks often create calls for regulatory intervention.
  - Rules – Platform operators usually must impose rules to restrain behavior of different groups of users on network
  - Pricing – Prices are often not uniform, prices imposed reflect different demand elasticities of users. (Often one side is subsidized)

- Asymmetric distribution of costs/rules, can create feelings of unfairness, and calls for regulatory intervention/antitrust cases
  - Uber -Tension between users and drivers (surge pricing and strict driver policies)
  - Facebook – French Digital Council pointed to Facebook's refusal to allow a panting that featured nudity as example of company being a threat to free expression
  - Android – OEMS have complained about anti-fragmentation agreements and app distribution agreements → these limit behavior of OEMs for the benefit of users and app developers

Regulatory Treatment of Online Platforms

- Online platforms are very different from one another. Regulations that work for Uber/Airbnb are very different than regulations that should apply to Google search, Ebay or Facebook. In the case of Uber/Airbnb, their markets are more similar to brick and mortar markets (taxis and hotels) then they are to other online platforms, like Youtube or Facebook.
  - E.g. French CEO of Railroad company SNCF named its biggest competitor as online carpooling app BlaBlaCar

- EU’s Investigation of Online Platforms (part of Digital Single Market Initiative)
  - In EU’s most recent communications, the European Commission realized this and committed to a “sector specific approach”, not ex-ante regulation of platforms generally
  - “The need to foster the innovation-promoting role of platforms requires that any future regulatory measures proposed at EU level only address clearly identified problems relating to a specific type or activity of online platforms in line with better regulation principles.” - EC’s May 25 Communication

- Platforms are not a new phenomenon. Everything from newspapers, credit cards, to shopping malls are platforms that operate similarly to online platforms. Furthermore, as the world digitizes, more and more industries are adopting the platform model.
  - E.g. Ladies night at a bar

Competition Policy vs. Regulation

- "Public policy should favor free-market competition over industry-specific regulation of prices, costs, and entry. Such economic regulation should be reserved for the relatively rare cases of market failure, such as the existence of natural monopoly characteristics in certain segments of an industry, or where economic regulation can address an important societal interest that competition cannot address. In general, Congress should be skeptical of claims that economic regulation can achieve an important societal interest that competition cannot achieve."

- U.S. Antitrust Modernization Committee Recommendations

- The economics of platforms are different than traditional markets from Econ 101. As the supply and demand of different user groups are interlinked, the basic economics of these markets are more complicated.
  - For example, it is often profitable, given the demand functions of different groups, to charge above marginal cost on one side of the market and subsidize the other side(s).

- OpenTable: a platform for restaurant reservations, makes money from restaurants when diners use the platform to book reservations. In fact, users get subsidized as they get points that they can cash in for rewards. Traditional economics tells us that below cost pricing should be impossible. Need to look at the whole system when analyzing the economics on a platform.

- Android: Google was accused of predatory pricing for offering free software, which generated a huge backlash from the open source community who saw the complaint as an attack on the very model of how they develop software. The economics of open source involve multiple groups and different business models (i.e. supplying service, selling ads, or making the underlying product -- i.e. smartphone or PCs -- cheaper). These decisions make business sense if you look at the whole system, but if taken in isolation, they can sends false positive signals for a problem.

- Antitrust has made mistakes by focusing on only one side of a multi-sided market. Regulators should look at the platform wide costs vs. benefits before deciding if behavior is anti-competitive or harms consumers.

- Key to look at the platform as a system of complex relationships as opposed to just one-sided markets. Two key takeaways for antitrust regulators: 1) Focus on actual consumer harm 2) Look at the entire system and take into account the interconnected nature of the different platform users. Need to take into account the ripple effects.
  - E.g. Interchange Fee Cases – Merchants shifted costs to users, net effect was negative even though merchants benefited a little