



Régulation of internet platforms

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Ph Distler

The context

Competition, innovation and investment in telco network infrastructure: the story of the last 20 years

Internet access services has replaced voice telephony as the key telecom service on the the fixed and mobile broadband infrastructures

A central political, sociological and economic issue structuring the debate of Open Internet and Net Neutrality

New players have emerged to facilitate the distribution of content, application and services between users and providers over the internet and some have gained a significant position

- Economic size: Alphabet 535 B\$ market cap, 75 B\$ turnover Income 23
- Taxes: 3-10 %

An existing environment...

Platforms are at the crossroads of several law and regulation domains, such as competition law, data privacy, consumer protection, general commercial law or more specialised laws and regulations addressing electronic commerce and information systems security.

Competition regulation :

- Several cases have been treated by national or european competition regulators (Booking, Expedia, Google...) ;
- Conservation measures can be a fast response ;
- The existing european coordination framework (network of competition authorities) caters for harmonization).

Consumer protection :

- The french data protection (CNIL) and consumer protection (DGCCRF) authorities have recently seen their general powers strenghtened against platforms on:
- Privacy aspects;
- Loyalty and transparency.

As an example, at the european level, platforms are subject to: the consumer protection directive; the regulation on data protection ; the e-commerce directive; the e-privacy directive; the on demand audiovisual services directive.

...which doesn't address all the risks

Platforms are seen as the new internet gatekeepers putting the Open Internet at risk

- the european regulation n° 2015/2120 (TSM) sets a very strong principle of Open Internet and net neutrality. However only the telecom infrastructure aspects, eg telecom operators are covered ;
- Open internet, i.e. the capacity to access and to publish any content on the internet, can be constrained by a chain of players, where some platforms and some terminals have taken a significant power ;
- their position gives them the capacity to control the effective access to services and online applications both for the users and the content providers eg by dereferencing some services or applications ;
- Trust is essential in the digital economy

Europe is the pertinent level...

On these questions a european approach seems to be most pertinent in order to :

- bring unique answers to european wide or even world wide services, in order to minimize the cost of implementation for the concerned parties- which are by construction not geographically rooted-, and maximize their effects
- prevent competition distortion with specific national regulations ;
- facilitate the emerge of a paneuropean market for services.

As expressed in the Commission strategy on the single digital market published in 2015 and the results of the following public consultation launched late 2015 specifically adressing platforms, the pertinence of the european level seems to make consensus.

...but should not prevent national initiatives

Gathering and publishing information on the behaviour of platforms :

- Creating transparency by publishing comparable data on the practices of comparable platforms to enforce self regulation (naming and shaming) ;
- Complexity of implementation due to the variety of suspects ;
- Initial proposal in 2014 by the national digital council in France to develop platform scoring agencies based on crowdsourcing ;
- Needs probably a legal framework to set the rules of the game:
 - 📄 to certify the published information and the scoring process ;
 - 📄 to grant access to required information.

What about additional sector-specific regulation

From telco gatekeepers to Nextgen gatekeepers? :

- telecom regulation has focused on access to essential facility controlling the physical access to the customer (local loop);
- last mile (copper unbundling) or access to the civil works (duct, poles) for the fixed networks;
- some platforms have a similar control on the customer access to content and services over the internet ;
- should the telecom regulatory toolbox be transposed to platforms?
- A complex answer depending on many factors:
 - the efficiency of competition law: sustaining innovation vs disruptive innovation
 - can innovation offset network effect
 - The cost vs benefit
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Conclusion

Being pragmatic and imaginative :

- A more complex situation than for the networks
- Applying existing laws and regulation could be sufficient: will is key
- Fiscality will solve a large part of the problem
- Transparency measures can be an efficient first step: the vampire effect

Steve Jobs' advice to Joel Klein (1998)

"Don't worry about extracting a huge remedy against Microsoft, Jobs told him over coffee. Instead simply keep them tied up in litigation. That would allow Apple the opportunity, Jobs explained, to 'make an end run' around Microsoft and start offering competing products."
Walter Isaacson, "Steve Jobs"

**Thank you for your
attention**

Philippe Distler

- Tél : +33 (0)1 40 47 70 30

- Email :
Philippe.Distler@arcep.fr

- www.arceo.fr

