

## Seminario Concorrenze - Concorrenza Digitale e Big Data

Panel discussion

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**DISCLAIMER:** Views expressed in this presentation are my own, and do not represent Ofcom's



#### Panel discussion:

- 1. What are the theories of harm?
- 2. What regulation?



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## **1.1. What harms might arise in digital markets?**



Digital markets are susceptible to a range of potential negative impacts, in areas such as:

#### **Privacy**

- Excessive data extraction
- Nuisance from targeted services (especially excessive advertising)
- Abuse of people's data or exposure to risks (e.g. Cambridge Analytica)

#### Harmful content

- Self-harm (Molly Russell case)
- Terrorism (e.g. Christchurch)
- Antivax
- Disinformation and political influencing

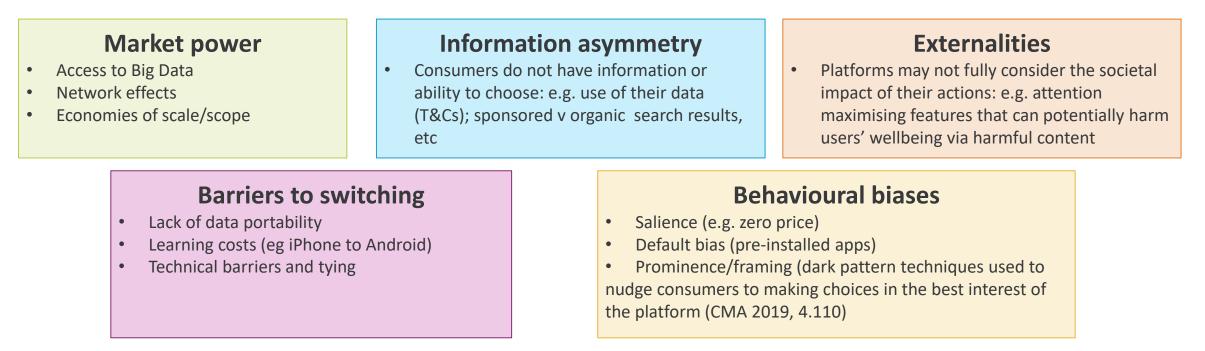
#### Harms to competition

- Price
- Quality
- Variety
- Innovation



## **1.2.** Harms as a result of market failures digital markets?

Digital markets characteristics might lead to market failures or market imperfections – Ofcom (2019)



Characteristics often mean competition is *for* the market rather that *in* the market – but is it?

And can this form of competition address market failures?



## **1.3.** How can these market failures lead to harms in digital markets?

Interactions between market failures could also lead to a range of other harms

#### **Privacy**

- A dimension of competition?
- Take it or leave it choices
- Behavioural biases and information asymmetry
- Externalities and weak competition leading to underinvestment in data security
- GDPR as a barrier to competition?

#### Harmful content or conduct

- Weak competition (and behavioural biases) may dilute incentives to address harmful content (e.g. Disinformation)
- Competition for attention may encourage extreme content (click bait or echo chambers)
- Political influence e.g. see Liberini et al (2018)

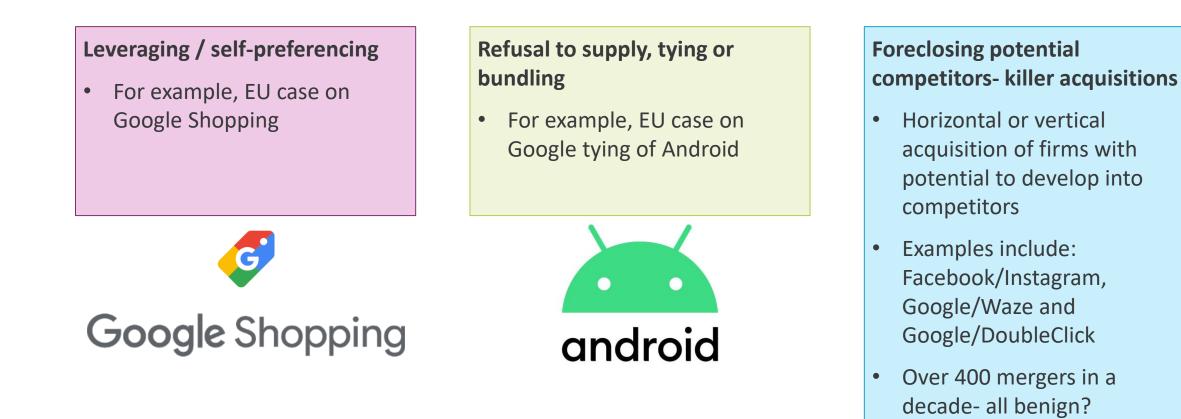
#### Competition

- Exclusionary or exploitative conduct impacting across different markets
- E.g. Extracting rents from digital advertising resulting in reduced revenues for publishers and risk to their sustainability: negative impact on journalism (and ultimately democracy)



## **1.4.** What *competition* harms might arise in digital markets?

Competition harms can be exclusionary: Foreclosure of competition





## 1.5. What *competition* harms might arise in digital markets?

...but also exploitative

How to judge if prices are "too high"? Too much data extracted? Current offer is take it or leave it

A zero price might still be excessive

Competitive price might be negative, i.e. paying consumers for their data Other forms of exploitation beyond price – such as setting exploitative terms Passing data on to trading

partners or even selling data to third parties

...excessive prices for digital advertising? These can result in higher prices for consumers.

Competition Policy on its own is unable to address a wide range of harms



#### Panel discussion:

- 1. What are the theories of harm?
- 2. What regulation?

# 2.1. Is ex-post competition policy sufficient, or do we need ex-ante regulation?

Competition cases complex and lengthy, and with no clear solution:

Financial penalties? Any effective remedies? Unsuitable to address market remedies

Do we need to regulate? Who should be regulated?







## **2.2.** Is competition policy sufficient, or do we need ex-ante regulation?

#### What form could ex-ante regulation take?

# Tirole's "participative antitrust"

- Regulators work with industry or other parties to develop, refine and monitor regulations, without casting rules in stone
- Code of Conduct (CMA, 2019)

#### **Furman's Digital Markets Unit**

- Code of conduct for firms with Strategic
  Market Status
- Data mobility and open standards to encourage interoperability
- Data openness to facilitate entry
- Review of merger policy
- More use of interim measures

## ACCC digital platforms inquiry

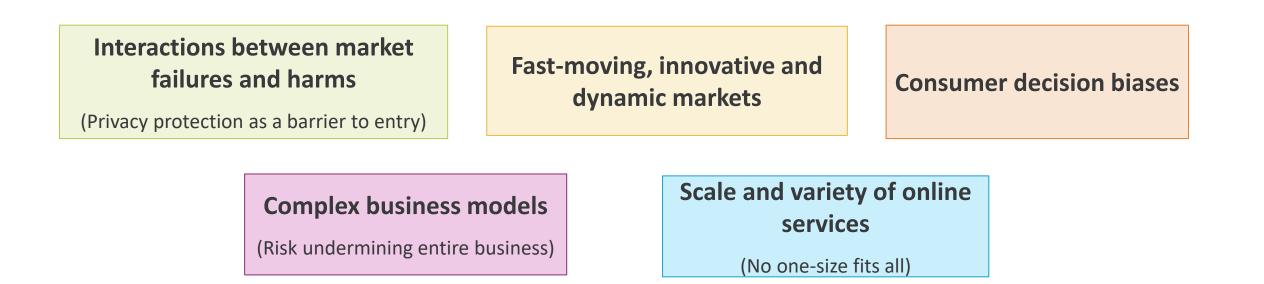
 23 recommendations covering mergers, online platforms, digital advertising, media policy and privacy

...or could structural break-up be a better option?



## **2.3.** Is competition policy sufficient, or do we need ex-ante regulation?

Several challenges in regulating online services – risk of regulatory failure?



... and cannot regulate unilaterally global platforms, need international harmonization...



## "Regulators and economists must be humble; they will learn by doing and their policies should not be cast in stone."

Tirole (2019) <u>https://think.ing.com/opinions/jean-tirole-regulating-the-disrupters/</u>



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