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Platform Power

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Media policy always has been concerned with the exercise of media power. Regulatory frameworks are designed to ensure that, whatever power the media may have, it is exercised in a way that aligns with citizen and consumer interests. When the exercise of media power seems likely to reduce media plurality, is there a need for regulatory intervention? If yes, what evidence-base is needed? In an age when digital intermediaries are sitting at the very core a complex media ecology, how can policy makers ensure that media pluralism is maximised, albeit in line with other competing policy goals?

The media ecology includes fixed and wireless access providers, search engines, video streaming services, webhosts, and blog platforms, social media providers, and payment systems. The top 10 websites in the UK in 2014 included Google with 88% of the search market (94% for mobile search), YouTube, Facebook, eBay, BBC, Yahoo!, Twitter, and Amazon, among others. In addition to search, they support content aggregation and their recommender systems rely on the processing user-generated data. These companies operate as market makers or orchestrators - as intermediaries - in the digital media value chain. They sometimes function explicitly as gatekeepers to digital content and information, blocking and filtering in line with their terms of service agreements or with state policy and regulation regarding data protection, copyright enforcement and surveillance. In other instances, their activities are anything but transparent.

These companies are increasingly at the centre of everything we do and learn online. Of course the media ecology also includes incumbent newspaper and television/radio broadcaster organizations. In the UK, the regulator, Ofcom's 2014 Digital Day study shows that total media and communication consumption has grown from over 8 hours of activity in 2010 to more than 11 hours in 2014.¹ Depending on the age cohort and other socio-economic variables, increasing numbers of citizens are using the digital

intermediaries' services to access a growing proportion of their total media consumption.

The presence of these intermediaries in the everyday lives of citizens and consumers is raising major policy issues. Because they are increasingly prominent in the media ecology, digital intermediary responsibility and accountability are important considerations for policy makers especially when they are mandated to hold these companies to account if they are behaving badly. For instance, the European Parliament passed a non-binding measure in 2014 calling for the break-up of Google as a means of diluting its market power. Even if the Parliament does not have the power to enforce this measure, this indicates that intermediary practices can be inconsistent with policy goals.

The digital intermediary challenge for policy makers

There are many reasons that policy makers are finding it challenging to find effective means of addressing competitiveness issues and media plurality concerns. A major reason is the growing complexity of media production and consumption as activity shifts towards the internet. These companies are organised as platform organizations - companies that 'squeeze themselves between traditional news companies and their two customer segments, the audience and the advertisers'.² They benefit from substantial economies of scale and scope of operation. This enables them to exploit enormous information assets including databases and algorithms. A platform is basically 'a reconfigurable base of compatible components on which firms and users build applications'.³ Platform intermediaries use profiling to segment customers - some offering free content, others, paid-for content, and still others, exposure to online advertising. A citizen's search activities may result in referrals to content 'properties' through a variety of intermediary sharing arrangements that support targeted marketing and cross-selling. The platform owner's interest is in aggregating content and shaping traffic flows ultimately to achieve profits and to command high visibility in the media marketplace ecology. Platform organisations are not new to industry, but when they are present in media and information markets, they raise many issues around how public policy should deal with them.

Intermediaries innovate continuously to find ways of locking in or capturing those who visit their platforms using combinations of algorithms and human intervention. In the 1990s 'portal' firms like Yahoo! looked for ways to control what users could do at their

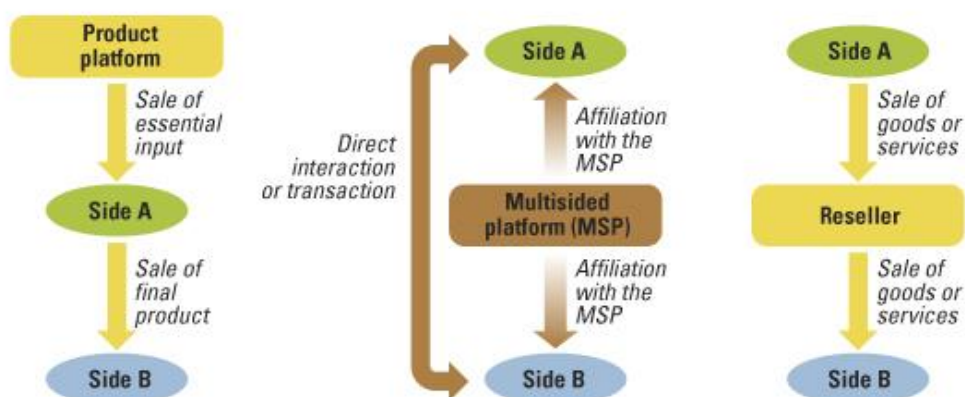
sites and this lead to policy debates about the implications for privacy, freedom of expression, and access to diverse content. ⁴ The world has moved on and we now have open platforms, but the means of control over content gateways have not disappeared – they have become more ubiquitous and less transparent than before.

Today’s intermediaries often compete less on price than on the way people evaluate the quality of their services and they are in a position to exercise their market power when they achieve dominance in the market. The question is whether they use this power in a way that threatens citizen’s rights to privacy, freedom of expression, and access to diverse content. If their editorial or gatekeeping efforts diminish the quality or variety of content accessed by citizens, result in discriminatory treatment, or lead to unwanted surveillance, there is a *prime facie* case for policy oversight. Most of the media ecology intermediaries are commercial companies. They often claim they are neutral ‘conduits’ for traffic and hosts for content creators, but they are more than this. They have the power to influence what ideas citizens are able to find easily and whether the notion of a public sphere for democratic dialogue can be sustained into the future as the media ecology increases in complexity.

The Market Dynamics of MultiSided Platforms

In Europe and in the United States analysts are considering what these developments means for policy and regulation. Economists who study this class of business intermediary call them ‘multi-sided platforms’. These bring together two or more types of economic agents to facilitating interactions, theoretically making all agents better off by coordinating them through their affiliation agreements (see Fig. 1).

Figure 1: Multisided platforms vs Product Platforms and Resellers



Source: Hagiu⁵

Search engine intermediaries, for instance, generate value for three groups: websites by indexing them and making them available through search queries, people who make queries, and advertisers who want to reach people. In this multisided configuration it is quite likely that a platform owner will choose to price at a level that is 'higher than is socially desirable' in some part of its platform business. This means there will be market failures in which social welfare is not maximized within the meaning ascribed to this by economists. Evans and Schmalensee say that 'perfect markets' are not plausible in these kinds of industries. These two leading economists who analyse these platforms, argue that 'exclusive reliance on mechanical measures such as market share or price-cost margins in determining market power is not advisable' in these situations.⁶

Policy makers ignore the complexity of these platforms at their peril. It is essential to have a means of understanding how actors on all sides of a platform are affected by intermediary strategies because indirect network effects really matter. Since economists' results provide little certainty about whether policy intervention is called for in any given case, there can be a strong inclination to do nothing until the evidence of harm is incontrovertibly clear. Some argue that companies like Google, YouTube and Facebook may be near monopolists, but their status is only temporary. The current leaders may have superior technology and be the most innovative, but Schumpeterian creative destruction is likely to topple them eventually; therefore, their strategies and practices cannot be deemed to be anticompetitive.⁷ Regulatory intervention in hybrid heterogeneous networks with contractual alliances with the large platform companies might inhibit innovation. McKnight says the reality is one where:

'enterprises deliver digital services orchestrated in hybrid clouds on virtual machines, using software-defined networks and network function virtualization to enable firms to create, and tear down heterogeneous, policy-compliant servers and networks in an instant as users wish, whilst implementing Over the Virtual Top [services]'.⁸

Other economists say that companies like Google are not multisided players at all and that the 'relevant' market that should be of concern to policy makers is not search, but instead, the whole of the market for personal information in which Google is not evidently dominant.⁹

The media ecology is said to be involved in a complex process of 'platformization'.¹⁰ This awkward neologism aptly characterizes the media market with its tangled vertical and horizontal arrangements. Hybrid platforms are emerging with multiple intermediaries in their value chains. For some of these content control is not an issue, while, for others, it is. A platform provider might decide to privilege content produced by its affiliates in one business segment, but not in another, with a view to maximizing its overall profit margin.

Reactive or Proactive Policy Makers?

Policy makers could wait for economists and other analysts of these industry dynamics to agree among themselves, but they would have a long wait. And, it is not only the economists' view of market dynamics and outcomes that is at stake. For instance, there is relatively little understanding of the subtle ways in which news production and access to content are influenced in the digital platform marketplace. Digital intermediaries promise an abundance of content for citizens and consumers. Policy makers sometimes seem entranced by the technical capacities of intermediaries to create, process and store vast quantities of digital content. It may be suggested that regulatory intervention is needed *only* if there is unambiguous evidence that intermediaries are involved in practices inconsistent with public values such as media pluralism. After all, technological innovation has abolished content scarcity and abundant media is beneficial for all. In a complex ecology it is tall order to underpin claims of market distortion or threats to the public interest with a robust evidence base. But multisided platform operators package up some content and sell it, and these lines of business are used to recover the costs, or to 'subsidize' other lines of business, often content. All subsidies are not harmful of course, but when they are because they result in reduced content diversity, this is when regulatory oversight is needed.

What do the regulator and the public need to know to support a claim that intermediary bias and various other practices need to be curtailed? Even if it is judged that the exercise of market power is only a theoretical possibility, foresight requires continuing attention so that policy makers are not perpetually in reactive mode. Multisided platforms enable direct interactions between two or more participant groups. They are successful because they reduce searching costs and/or transaction costs for those who visit their platform services. This puts them in a privileged position. There is a need for vigilance to know how they are deploying this privilege. A key issue is the quality and

diversity of content that is produced since, for these platform organizations, there is always a trade-off between fostering quantity and quality. However quality is judged it is a consideration in view of the goal of protecting the right of citizens to be informed in a democracy. It is not possible to map the way companies engaged in platform competition are behaving in the old ways by treating them as if they are not platform organizations. Legislation and regulation that is geared to measuring media power in the old ways simply misses the way the industry is developing. Intermediaries involved in platformization are deploying strategies in ways that seek to monopolize segments of their markets. There are risks to citizens that need to be curtailed but policy makers will have no purchase on the consequences of intermediaries' strategies if they look in the wrong places for symptoms of bad behaviour. When intermediaries close off or steer their customers through subscription access to news outlets, for instance, then no matter how trustworthy they are, or how much they promise to protect their customers' privacy, they are managing the content that their consumers are most likely to see. Platform providers can screen out desirable content without the citizen's knowledge just as they can screen out undesirable content. It should not simply be commercial operators that decide what is and is not desirable.

Before the appearance of multisided platforms it was comparatively easy, though not uncontroversial, to assess which media content producers and distributors had incentives to operate in ways that might limit the plurality of the media environment – whether this involved the press or broadcasters. The market concentration of these providers could be measured. There was a broad consensus on where to draw boundaries around media markets and about what should be measured by a regulator. The structural features of platformized markets are continuously changing in ways that are not captured in the assumptions in economists' theoretical models. Policy makers must therefore turn to new empirical evidence to determine whether a given market is dominated by the very large players in ways that are reducing the diversity of content available to citizens.¹¹ This is not only about how the digital spaces citizens encounter are structured in the marketplace; it is also about how the activities of these platform organisations shape meaning through their capacity to engage in the 'construction of audiences'.¹² A key challenge is to work out how to monitor processes that go beyond market dynamics and economic incentives. As a result there is a need for a shift in thinking 'from outcomes to processes, to understand how media organizations and media users are immersed in algorithmically informed online tools'.¹³ Proceeding as if there isn't a 'new emperor with new clothes' means that policy decisions about media

plurality are being removed from the hands of policy makers.

Negotiating an Evidence-base

It is not clear that policy makers are ready to catch up with the fast pace of change,¹⁴ although media plurality issues are receiving policy attention. The European Commission's High Level Group on Media Freedom and Pluralism has been very clear about what is at stake: 'In the context of the current economic and financial crisis and the steps the European Union has taken to address it, the need for democratic legitimacy at the EU level has become an even greater priority'.¹⁵ Its report emphasizes the need for adequate monitoring encompassing the whole of the media ecology. It states that digital intermediaries such as search engines, news aggregators, and social networks should be included in that monitoring. Detailed work has been carried out to design media pluralism measures that focus on media supply, distribution and use.¹⁶ So far, unfortunately, there is no consensus on how these should be implemented and with what force. There is a wide spectrum of views about what would constitute a 'high' risk of diminishing media pluralism, whether political, cultural or geographical.

In the case of a narrower range of media such as news and current affairs where the link between plurality and democracy is self-evident for many policy makers in Europe, there are debates about what constitutes 'sufficient' plurality. In the UK, Ofcom has been developing a methodology that focuses both on content diversity and on the medium used to access content, asking citizen audiences to report on their media consumption. But it is unclear how often monitoring should take place and what thresholds should trigger regulatory intervention. These developments have been criticized for not addressing growth dynamics and changes in supplier strategies, for excluding parts of the media ecology, for lack of clarity about how to establish diversity standards for different types of content, and for the ambiguity around what constitutes 'sufficient plurality'.¹⁷ In the end, all these issues require sensitive political judgements.

Prospects for Effective Regulatory Oversight

There is some way to go to before a consensus on these issues can be reached in the UK and throughout Europe. Collins and Cave are cautious, noting that as steps are taken to develop 'more practicable data-driven ways of assisting judgement', this will lead to 'a mismatch between the degree of elaboration of the concepts underlying plurality and the available data, or to unrealistic expectations about what measurement can do in its initial stages'.¹⁸ The European Data Protection Supervisor puts the case for action more

forcefully, observing that ‘powerful or dominant undertakings are able to exploit “economies of aggregation” and create barriers to entry through their control of huge personal datasets alongside proprietary software which organises the data’.¹⁹ It is of course true that intermediaries’ practices are restrained by citizen resistance to the more visible actions that they regard as being inconsistent, for instance, with privacy protection. Facebook may alter its privacy settings in response. The European Court of Justice has mandated that citizens must have a right to have the traces they leave online deleted, so Google has set up an Advisory Council to address the right to be forgotten. These are sporadic instances of change and they do not tackle the persistent issue of judging the plurality of the media. The capacity of platform providers to screen out desirable content without the citizen’s knowledge is as significant as their capacity to screen out undesirable content. Should platform providers be the sole authorities in these matters? Citizens cannot choose to view what they are not aware of or to protest about the absence of content which they cannot discover. The regulatory challenge is not only about whether platform operators exercise direct editorial control over news content, for example. It is also about whether they are shaping citizen’s online experience in ways that are consistent with optimizing their revenues - a time-honoured strategy, but also inconsistent with fostering a diverse content environment that promotes the goal of media plurality.

Regulatory attention needs to shift to the platform arrangements so that intermediaries do not establish practices without public oversight. It is tall order to create an evidence base to underpin regulatory intervention. In the specific context of news and public affairs content, Google and other large intermediaries are not (yet) in the business of producing news. This may change and regulators need to be able to monitor the emerging control configurations. Instead of focusing on vertical market segments such as transmission/access, content, search/aggregation, the focus must move to the new points of control. For instance, if a dominant platform operator is screening out some news sources, this might trigger regulatory intervention. Large intermediaries have access to libraries of digital content, databases capturing platform user preferences and habits, and they can finance the copyright license payments to control content. These by no means are all new means of monopolisation, but some are and regulators still have a preference for focusing on segmented markets. They need to focus on the webs of vertical and horizontal, often virtual, linkages. The new emperors have new digital tools for exercising their media power, and like their predecessors, these can be used to diminish media plurality.

A European Regulators Group for Audiovisual Media Services (ERGA) has been set up and it is time to ask tough questions about media plurality and what should be done on a continuous basis to encourage and sustain it. Approaches to monitoring both the supply and demand side of emerging platformized media markets need to be agreed and implemented. The evidence needs to be examined by regulatory authorities regularly. The need for normative judgements is not going to disappear. If the media platform organisations have the capacity to serve as, for instance, political 'king-makers', this requires a response before, rather than after, the event.²⁰

Conclusion – Towards Regulatory Innovation

It is time for regulators to be just as innovative as the digital platform industry. Freedom of expression, access to diverse content, and protecting the vulnerable, including children, may be secured to some extent by industry self-regulatory codes. But there will be times when intermediary gatekeeping has a negative impact on broad public interest goals and when this will not be voluntarily addressed by the intermediary companies. Proceeding with silo measures of market power and excluding intermediary platform operators from public interest regulation is no longer a viable way forward. As Just comments, 'democratic, social and cultural ends are pursued predominantly by content- and user-specific objectives, economic goals mostly by objectives related to the promotion of competition and market-power control'.²¹ Achieving both these goals requires a balance, but the intermediaries are not neutral gatekeepers and will not become so as a result of market dynamics. Normative consideration of the need for a plural media ecology and a vibrant public sphere, consistent with democratic practice, must not be sidelined in favour of the economic calculus and audience use indicators that never quite make it to a threshold that prompts regulatory intervention.

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