

More Competition or More Regulation of Digital Markets?

Revisiting the Market Failures Theory and the Case for Hybridization of Competition and Regulation Laws

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1 Introduction (and the Enduring Debate Either about Competition Goals, or about the Consequences of Technology)

Digital markets are commonly considered to be a distinct form of market, possessing special features which, due to their extremely rapid evolution, are difficult to address with the traditional instruments of competition law and even regulation.¹ Consequently, there is an endless debate about what should be the objectives of competition policy.²

This paper will reflect on whether digital markets effectively challenge the traditional tools of regulation and whether the interplay between competition and regulation should be reconsidered since, notwithstanding the novel challenges that developing technology continuously creates, the “discourse of modernity” and the impact of technological challenges is an old one and a somewhat exhausted narrative.

While the initial perception was that digital markets would strengthen the position of consumers by bringing transparency and allowing them to more easily compare various potential suppliers, the major beneficiaries have, in fact, been and continue to be the digital platforms that are continuously gaining market power. Electronic platforms have evolved substantially and are increasingly based on the collection and utilization of data, including personal data. The largest platforms, known collectively as GAFA (Goo-

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¹ See e.g. Kuenzler (2023), p. 2, on the discussion about the impact of Digital Markets Act (Regulation EU 2022/1925), arguing that “Data-driven markets require a distinct frame for conceptualizing novel types of harms – third-generation competition law”.

² See Crampton and Facey (2002), pp. 28–29 and Page (1991). And Gal (2019), p. 21, defends that “[...] challenges to the social contract [...] require that the goals of competition law be broadened, in appropriate cases, to include distributional effects.”