



Brief Comments on the Interim Report

As the presiding conclusion of the study, at this stage, maintains that regulatory reform is preferred to a market investigation, the considerations of these comments will focus on this division in relation to the theory of market and platform dynamics presented in the report. However, the intention is to identify areas in the study which remain under-explored or under-attended to, either theoretical or practically - yet, remain arguably within the scope of research and investigation for the next study. The goal here is twofold in terms of identification of rights-forward feasible alternatives to the existing status quo, as well as a signal to the market of the clear regulatory interest in some of such alternatives - thereby establishing a clearer line for internal research and development interests in major firms to hedge bets against future regulatory innovation and extreme governance scenarios.

The following is a brief expansion on the core position of the Institute for Innovation and Public Purpose's considerations and positions on regulatory strategy, regulatory capacity, and shaping markets subject to algorithmic rents. Beyond any of the below, there is a continuous and clear need to expand on how public sector capacity enhancement can be established and maintained in such clear environments – including internal technical competency development, as well as novel investigative strategies and training programs.¹ Furthermore, that any regulatory actor need not step back from making clear and nuanced positions on the future direction of platform dominated markets; that such actors have a responsible to expand the scope of conventional market failure analysis to consider the broader role that innovation in platform economies can deliver with foresight and creativity to the wider UK society, enhancing the global vision of the UK as a leader in tech and platform ethics. UK regulators have an opportunity to shape the UK data market instead of merely fixing a failure, as well as the broader consideration of shaping the assumed relationship of targeted advertising and behavioural profiling's to competitive advantage of firms and sectors.²

¹ For further discussion, see: Kattel, R., Drechsler, W. and Karo, E. (2019). *Innovation bureaucracies: How agile stability creates the entrepreneurial state*. UCL Institute for Innovation and Public Purpose, Working Paper Series (IIPP WP 2019-12). Available at: <https://www.ucl.ac.uk/bartlett/public-purpose/wp2019-12>

² For further discussion, see: Laplane, A. and Mazzucato, M. (2019). *Socialising the risks and rewards of public investments: Economic, policy and legal issues*. UCL Institute for Innovation and Public Purpose, Working Paper Series (IIPP WP 2019-09). Available at: <https://www.ucl.ac.uk/bartlett/public-purpose/wp2019-09>



Finally, that the position the UK takes on understanding, diagnosing, and addressing the problem of algorithmic rents, as well as the precarious competitive conditions in markets dominated by platforms with SMS, can serve as a lighthouse for regulators around the world in similar dilemmas. Innovation is political, and few areas of the economy demonstrate this more than the arena of big tech.

The following comments should neither be seen as exhaustive nor representative of the full opinion of all staff at the Institute for Innovation and Public Purpose.

1. Concerning Market Power and Platform Dynamics

The report effectively surveys the function of the UK ad market, pointing at the modern economics of the internet - wherein the question of effective and targeted advertising creates new pricing and monetisation promises for large and small actors. We agree with the suspicions of the report regarding pricing power, third party bargaining power, barriers to scale, and barriers to entry, among others.

However, what is at stake beyond short run targeted advertising theory of effective internet monetisation is the question of how such firms expand the scope of data collection and analysis - the scope of investigation implied by targeted and behavioural advertising opens a wider domain of data collection and analytic capabilities, as well as internal service and research development.

As such, the question of long run feasibility of alternative models is being established by firms leveraging short to mid run advertising dominance - this means the optionality of adjustment to future market conditions is being incubated in dominant firms, who may leverage this as future offerings. What this means is that market power in platforms includes optionality in change to future disruptive conditions that is fundamentally dissimilar from previous versions of monopolies and anti-trust considerations, even as recent as Microsoft anti-trust decision of 20 years ago.

This is made further clear by the assumed functional value of users for both Facebook and google - wherein, alternatives such as Bing, Ecosia, DuckDuckGo may be intermittently championed, but when push comes to shove, google tends to win out for search; and for Facebook, there is no functional alternative for English speaking countries for the same kind of experience. The predominant question would be interoperability and network exporting - the ability to move your WhatsApp contact list to signal or telegram, as well as third party use and integration into Facebook. Facebook's advantage is sustained by a difficulty in network conversion - attack this conversion difficulty and you free up a larger opportunity



for changing from Facebook. The presumption of an unstable market position given through the example of Myspace remains, as pointed out in the report, a potentially misleading example for a number of reasons, not the least the wide difference in consumer understanding and use of social media between the two eras. In regard to google and the sharing of click and query data to rival search engines, the question of the management and facilitation of large-scale social data sharing may require additional institutional analysis and capacity building with the potential to establish a public-private social data review and management institution.

In short, it remains fundamentally unclear what really counts as competition in the platform space - when the dimensionality of consumer experiences increases, and the scope of attention and cognitive engagement is dissimilar to other kinds of services and goods. The diversity of functions within these platforms means a diversity of potential areas for 'scope creep' in regard to expanding pricing power or expanding their defensibility relative to emerging firms.

The implication is that the choice over regulatory reform may not be functionally neutral to an independent analysis of existing market power dynamics – rather, it will lay claim to different ways to imagine how the future of not only pricing dynamics, but fundamentals of how such pricing dynamics are created and leveraged at all.

2. High Level Guidelines

The question of guidelines as opposed to a series of descriptive positions is intended to enable more agility and fluidity in response to changing conditions. However, such flexibility likewise allows not only for a wider domain of hard-to-argue-with misinterpretations, as well as unclear movement from description to prescription in relation to platform phenomena. Clear language explanations for behaviour will need to be pursued for sub-guideline items and recommendations, and specific area-oriented descriptions. A continuous listing of operations and tools with clear language can be used to help parse through competing perspectives and approaches from both the media, academia, and firms themselves.

The expected issue in that in regulatory concerns that have existential risks for firms, the ambiguity of language can be used to argue that a practice such as behavioural targeting is really 'something else.' Such as the case of gaming firms labelling the otherwise known practice of lootboxes as 'surprise mechanics' in an attempt to avoid the acceptable remit of gambling rulings over such practices, as well as claims of the use of addictive features of



such mechanics as a driver of additional purchasing behaviour in consumers.³⁴ Such linguistic issues are to be expected, and the primary issue is not simply a change in language – but that such language will be used to create a conceptual landscape for policymakers and the public where the causal mechanisms and value drivers are harder to locate and attribute, or there are more steps supposedly needed to make certain kinds of causal arguments.

Such will be the proverbial doubled edged sword of higher-level guidelines in an attempt to avoid locking in policymakers to one or another interpretation.

3. Open Choice

It is unclear whether or not the choice architecture intervention is sufficiently large in scope or mechanism to have the intended effect. We agree that the simple and straightforward initial option to pick your browser, as well as search engine, should be industry standard for items - particularly as advantages from browser, OS, and search ownership in terms of android compound for unique advantages in advertising and other markets for Google. However, in practical terms, for most users this is a false choice absent real alternatives - which, again, there are functionally none. Any expectation of mass consumer exit or shift from such platforms needs not only alternative platforms but a deeper understanding of the nature of how consumers view the sunk cost of their experience, data, images, videos, and other such engagement with the relevant platform.

The question, as such, becomes one of a concern for what counts as agency; wherein, privacy and fairness have a pragmatic limit when absent of clear mechanism design for choice architecture. The implication is not simply choice over system nor transparency into use of data, but expanded choice over data use. A wider review of the total choice architecture and its relationship to algorithmic advantages, cognitive priming, and other such effects needs a more exhaustive review from a regulatory agency. This will allow a more concerted focus on the behavioural implications of SMS from AI enabled firms, beyond its function in driving market power.

4. Clarity of Existential and Economic Options for Firms

In order to make the best use of high-level guidance-oriented regulations, there needs to be a clarity for google, Facebook, and other relevant firms concerning the policy options and

³ For transcript, see: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/digital-culture-media-and-sport-committee/immersive-and-addictive-technologies/oral/103191.html>

⁴ Madigan, Jamie. "What The Heck Are Surprise Mechanics?" *Forbes*, Forbes Magazine, 19 Aug. 2019, www.forbes.com/sites/jamiemadigan/2019/08/19/what-the-heck-are-surprise-mechanics/.



political will to exercise them. In particular, whether or not divestment in the context of google is really the feasible nuclear option - or whether there are alternative 'nuclear options' to consider in terms of their long-term bets, dominance over algorithmic innovation, or other such areas.

Otherwise, the report makes it seem as though high level guidance will serve as the medium option relative to a more extensive set of economic measures to take against Facebook and google in their advertising revenue, so as to convince these firms not only to better regulate themselves relative to market position but the wide range of other functions these firms have in other sectors - such as question of fake news moderation. This would require a consideration of whether or not a new group of alternative competitors, without explicit incentives to develop privacy options, would work to alleviate the fundamental criticisms. Competitive ethical differentiation needs more investment and incentives.

5. Concerning Unilateral and Multilateral Pursuits against Google and Facebook

A presiding concern has been whether or not a functional anti-trust approach in the UK would count as a true anti-trust action relative to the ostensive global position of these firms. Naturally, this brings the reality that global firms are in fact US firms - or rather, they are proverbial summer weather global firms and winter US firms. Furthermore, while global taxation efforts remain a considerable place to start - the question of the risk of regulatory capture for accounting rules remains present. Additional analysis should be pursued regarding scenarios for unilateral and multilateral anti-trust action against global actors.

6. Imagining Post-Advertising Alternatives to Internet Economics

The grant for the web program from the Mozilla Foundation is a 100-million-dollar initiative to reward innovators for pursuing autonomy and privacy conserving monetisation models to rethink the economics of the internet.⁵ There remains an opportunity, as well as consumer demand, for focused investment into alternative solutions to improve the relationship between privacy and monetisation, to move beyond the hypothesis that the future of advertising is behaviourally dependent. The parallel consideration is to invest and increase the scope of market penetration of fundamental solutions such as agency, privacy, fairness, and transparency by design. Naturally, as these are high level principles, the diversity of ways they can be interpreted remains wide – as such the current stage of investigation remains market discovery. However, this discovery stage needs to be deepened and

⁵ See following for further details, <https://www.grantfortheweb.org/faq>



broadened, not only to see what kinds of solutions function but to organize clearer exit paths for critical innovations so as to increase the reliability of increasing entrepreneurial entry and research avenues.

7. Public Management of Social Data

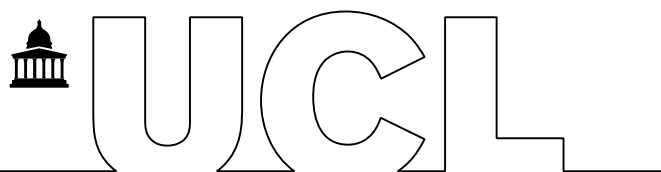
Social data, as much as data generated by public institutions, can hold clear value and risks for broad segments of society, including digitally illiterate and inactive users. The question then becomes the nature of ownership and operation.

However, the report has too little coverage on alternative public-private arrangements for high-risk and privacy-constraining data activities - for instance, data trusts or public information management institutions - to mediate data collection and public information processing. A broader review of functional alternatives relative to behavioural profiling and targeting data should be considered. Such institutions would accelerate a portability and personal data management agenda as well. This should be further considered so as to open operations on some elements of these firms to further scrutiny through public investigations of practices, replication of targeting, and other such services so as to identify internal systematic biases.

8. Investigation into Future of Behavioural Advertising

The parallel to investigations into alternative mechanisms for consumer correction is the concern over whether or not the best future for the public, and private, value of advertising comes from improving the scope of behavioural analysis and intervention. The speculative concern is that the scope of behavioural advertising may increase the remit of research, testing, and incentives of advertising firms, as well as the market at large, to focus further on the nuances of choice architecture that exceed reasonable commitments to deliberation and move into preference modification. In other words, a concern over the power that certain firms leveraging algorithmic capacity as well as exceptional scale have to capture the value from the 'behavioural surplus' of online consumer actions.

Beyond discriminatory phenomena, there needs to be a more public and concerted effort to establish the real value of targeted advertising - so as to better differentiate claims regarding scope of data collection and processing relative to pricing regimes for advertising. Without clearer language and reasoning, the opinion remains that governments which refuse to further investigate or regulate such actions are, for lack of a better expression, sanctioning the creation of the modern equivalent of digital tobacco companies. The further point is to establish thresholds of inclusion of mechanistic evidence for discrimination, appeal, and



other such conditions for people to intervene on the nature of how they are targeted, and when. The issue either becomes whether there should be a limit to the use of certain kinds of social data, and the pursuit of inferences derived from such data, to drive pricing and advertising design.

9. Alternative Mechanisms for Consumer Correction of Online Harms

While the report makes clear reference to data portability, the question of alternative mechanisms for consumer correction of market power and online harms remains under-discussed. The primary example remains whether or not consumer behaviour should be monetarily compensated for providing data through queries and clicks. Wherein, users are currently considered uncompensated digital labourers. There are many good and needed counter points to this, as indeed such a response would like give grounds to further sacrificing privacy rights, as well as developing potentially highly negative incentives regarding ownership and access mechanism to facilitate such payments. The point, however, is that a consideration is recommended for a broader range of alternative consumer-oriented mechanisms for reinforcing the idea for any given user of the stakes, monetarily and fundamentally in terms of rights, of their online behaviour may help to further clarify the range of business model interventions and their potential impact in consumer facing markets.

10. Political Advertising and Electoral Data Management

With increasing remit to collect and process social data comes inevitable spill over in other sectors with needs to advance agendas, whether ostensibly positive or malicious.

The question of political advertising remains under-discussed, as does the use of social and behavioural profiling to drive nuanced targeting. The issue is not simply direct targeting but indirect targeting through community reaction dynamics. There is a need to collect more sophisticated analysis of political advertising and misinformation dynamics to drive voting preferences. This has been further clarified from calls for a political advertising database for review and assessment.⁶ In such cases, the social and political implication of strategic market status beyond market power become clearer.

⁶ Howard, Philip N. "A Way to Detect the Next Russian Misinformation Campaign." *The New York Times*, The New York Times, 27 Mar. 2019, www.nytimes.com/2019/03/27/opinion/russia-elections-facebook.html.