LE GROUPE LA POSTE

SHAPING COMPETITION POLICY IN THE ERA OF DIGITISATION

Groupe La Poste's Contribution to Panel 2's discussions:

DIGITAL PLATFORMS' MARKET POWER

Foreword

As an actor both involved and affected by the digitisation of the economy, Le Groupe La Poste welcomes the European Commission's initiatives to shape competition policy in the era of digitisation and is eager to contribute to the reflections and the panel discussions on digital platforms' market power.

Let's go back to the reasons why a company such as La Poste is interested in issues related to the regulation of digital platforms. Over the past 25 years, the postal sector has been shaken by two major revolutions. First, there has been the complete opening of the European postal market to competition. This process, initiated in the early 1990s, was completed on January 1, 2011. The second revolution, and probably the most important, has been the digital revolution that hit the postal operators of the entire world. The spread of information and communication technologies is changing the face of postal services around the world. The postal service is no longer seen as the primary means of connecting people and businesses wherever they are and this is threatening our traditional role, the physical transport and delivery of mail.

In this context, postal operators must reinvent their business model to become actors of the digital economy in which we are evolving, while continuing to handle the SGEI their national government has given them. As the same time as contributing to regional planning thanks to a huge network of postal points of contact, guaranteeing a universal access to postal and banking services, and delivering newspapers and magazines, La Poste has launched a major transformation for its business, with a primary ambition: to become the big company of local human services, connecting people as a trusty intermediary. For instance, La Poste is contributing to digital inclusion of senior or disabled people, has developed a service to stay up senior people, has created tools allowing individuals to store, control and share their data and documents through secure digital mailboxes (Digiposte), has developed a service of certified digital identity, and so on. In other words, our goal is to become a multi-sided digital and physical platform.

To reach this objective, we are strengthening our positions in the sectors in which we have experience and assets (parcel delivery, financial services) and investing in new activities (personal services, digital identity certification, secure storage of documents, opening of the network to other public services, etc.). However, our best efforts would be useless if there is no fair level playing field in the new ecosystem dominated in Europe by a few major players, the so-called GAFA (Google, Amazon, Facebook and Apple). This is the first reason why we believe that the Group is legitimate to contribute to reflections about digital platforms' market power. The second reason that establishes our legitimacy to speak about this topic is related to the fact that we are an input provider of the e-commerce value chain in which some powerful platforms operate.

Causes and consequences of digital platforms' market power

Some companies have reached strong market positions and are controlling key infrastructures of the digital economy worldwide. For instance, according to latest estimates, the world market share of Google on the search engine market reached 90% in July 2018[1]; Apple Inc. has 51% of the smartphone

[1] http://gs.statcounter.com/search-engine-market-share.

market[2]; and Amazon respectively 49% and 22% of the U.S. and Western European e-commerce market[3] [4].

It is undeniable that part of the success of these superstars (the “GAFA”) is based on their merits (excellence of their products and services, ingenuity, spirit of conquest, and so on). Their dominant position on their core market is also explained by “natural” economic mechanisms at works on digital markets: the combination of demand-side network effects and supply-side economies of scale creates a “snowball” effect once the service succeeds in attracting a critical mass of users, and market dynamics naturally tend to strengthen the strong and weaken the weak (Shapiro et Varian, 1998).

However, more and more revelations show that these giants have also implemented more “borderline” strategies as, before them, dominant firms in the “old economy” (see for instance the charges for foreseen obsolescence of iPhones, the so-called Amazon’s “Gazelle Project” in the publishing sector in 2004, the price war leading to acquisition of Quidsi by Amazon in 2011, the protests in Germany against working conditions on Amazon facilities, the fiscal optimization plans and the EU Commission investigations about illegal State aids, the condemnation for abuse of dominance established by EU Commission against Google and so on).

All these cases illustrate the potential harms that could be induced by the power these companies have acquired. In this contribution, we will focus on competitive concerns, but many others issues arise, regarding privacy, autonomy, rise of inequality, democracy and so on. In particular, we will deal with the gatekeepers’ position acquired by these operators on their core markets that gives them a strong bargaining power vis-à-vis their suppliers and their customers who are locked-in “golden prisons”[5] and that allows them to enter in other markets (by a leverage effect). Before providing some preliminary food for thought about ways to address these issues, we will focus on the need to reconsider antitrust doctrine and better identify harmful behaviours through ad-hoc economic studies.

Competitive concerns: lock-in and leverage effects

As Lina Khan (2018a) explained, economies of scale and network effects have led to the rise of key online gatekeepers, serving effectively as infrastructure for digital markets. They have captured control over technologies that other firms rely on to do business in the online economy. For producers, retailers, advertisers, and app developers looking to reach users and consumers, these platforms are vital intermediaries and even, in many circumstances, the unique option. The platforms generate too much business and attract too many eyeballs for firms to bypass them entirely. Consequently, platforms can use their gatekeeper power to extort and extract better terms from the users that depend on their infrastructure.

These drawbacks are not purely theoretical. Several “affairs” like the Gazelle Project of Amazon[6] prove that platforms could use their power to extort and extract better terms from the users that depend on their infrastructure. The Google Shopping case[7] also illustrates that leading platforms could effectively

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[2] https://www.investopedia.com/news/apple-global-smartphone-market-share-more-50-first-time/.
[3] https://techcrunch.com/2018/07/13/amazons-share-of-the-us-e-commerce-market-is-now-49-or-5-of-all-retail-spend/?guccounter=1.
[4] https://ecommercenews.eu/why-amazon-struggles-in-europe/.
[5] Mounir Mahjoubi, Interview on France Inter, 17th March 2018.
[6] According to Brad Stone, Jeff Bezos regarded the publishing business as a “sickly gazelle”: once small publishers who leaped at the chance to get better distribution through Amazon in the early 2000s, became dependent on Amazon for sales, Amazon turned the screws, demanding longer pay periods and lower discounts. Publishers who didn’t “pay to play” would get unfavorable treatment on Amazon, making their books more expensive and harder to find.
[7] In 2017 the European Commission fined Google $2.7 billion for “systematically giv[ing] prominent placement to its own comparison shopping service” and “demot[ing] rival comparison shopping services in its search results,” leading traffic to third-party websites to plummet.

take advantage of their privileged position to favour their own related operations. A recent study undertaken by Ecorys (2017) for the European Commission confirms that business users are highly dependent on the platforms: "*These findings match a broader signal received from business users that they are highly dependent on platforms, notwithstanding actual or potential multi-homing. Consequently, many of the business users have indicated that they try to avoid any conflict with platforms, fearing a negative impact on their business. This applies especially to conflicts with the largest platforms, as business users indicate that often no viable alternative for these major platforms exists due to their scale, geographic range and the number of (potential) customers active on the platforms*" (p. 93). This unbalanced bargaining power between businesses and the platform to which they are affiliated could lead to exploitative abuses.

Platforms can also use their dominant position in one market to enter in a separate or ancillary market (by a leverage effect). Again Amazon is a perfect illustration of this phenomenon. The firm has grown from a pure online bookseller in 1995 to one offering a dizzying array of products, services and devices. From retailer, Amazon is progressively becoming producer of various products and provider of various services. In its 2017 SEC filing Amazon considered as its main current and potential competitors the following entities:

- online, offline, and multichannel retailers, publishers, vendors, distributors, manufacturers, and producers of the products we offer and sell to consumers and businesses;
- publishers, producers, and distributors of physical, digital, and interactive media of all types and all distribution channels;
- web search engines, comparison shopping websites, social networks, web portals, and other online and app-based means of discovering, using, or acquiring goods and services, either directly or in collaboration with other retailers;
- companies that provide e-commerce services, including website development, advertising, fulfilment, customer service, and payment processing;
- companies that provide fulfilment and logistics services for themselves or for third parties, whether online or offline;
- companies that provide information technology services or products, including on- premises or cloud-based infrastructure and other services; and
- companies that design, manufacture, market, or sell consumer electronics, telecommunication, and electronic devices.

This long list illustrates the vertical integration strategy implemented by Amazon and the use of its dominant position in its initial core business as a lever to enter into adjacent markets.

Two prerequisites before dealing with ways to address these concerns: to reconsider antitrust doctrine and to better identify harmful behaviours

According to Khan (2017), the current competition law, notably in the USA, is unequipped to capture the architecture of market power in the modern economy. Focused on consumer welfare on one hand, on market shares on the other hand, the current antitrust framework is ineffective to deal with the so-called "Amazon Paradox".

Dominated by the Chicago school of thought, which considers that predatory strategy is irrational and implausible, and that vertical integration leads to efficiency gains, the current antitrust doctrine underestimates the risk of predatory pricing and the fact that vertical integration across distinct business lines may prove anticompetitive. Yet, Amazon has specifically built its dominance through aggressively pursuing growth at the expense of profits[8] and as we saw before, has diversified its activities, entering in various levels of the e-commerce value chain. From a short-term consumers' point of view, the low price/high quality strategy of Amazon sounds good. However, the picture could be less impressive in the future if Amazon would decide to increase its price after killing all potential competitors (the "natural" consequence of a predatory pricing strategy). Moreover, from a global welfare point of view (taking into account producers' surplus in addition to consumers' one), the power Amazon has on e-commerce market sounds less good, as we will explain in the following paragraphs.

In this context, Khan recommends to broaden the set of harms that a lack of competition breeds and to replace the consumer welfare framework with an approach oriented around preserving a competitive process and market structure. But broadening the set of harms implies to identify them and to better understand the mechanisms at works in the digital economy and give some insights to guide authorities' decisions.…

Jointly with professors at Toulouse School of Economics, La Poste has investigated for several years issues related to the relationships between e-retailers and parcel delivery operators. In particular, we have examined the consequences of the development of marketplaces in the e-commerce sector for the various stakeholders and notably postal operators which have a parcel division.

Let's recall that, in 2000, Amazon launched its marketplace. Founding a marketplace is a way for the original retailer to monetize its original customer base by displaying on its website the buying options provided by other e-retailers in exchange of a fee. As intermediary platform, the marketplace offers a showcase to sellers, and provides tools to the different parties (producers/retailers and consumers/buyers) which simplify trading: online payment system, inventory management, authenticated information about the seller and/or the buyer, various warranties and more and more often integrated delivery services.

At a first sight, this model appears to be a win-win agreement. Consumers benefit from additional buying options, both in terms of product variety and pricing, and small retailers benefit from Amazon reputation and more visibility. However, as emphasized by Borsenberger (2015), this model has drawbacks and raises several competitive concerns. Firstly, by placing Amazon (as a retailer) in direct competition with the firms using its marketplace, this form of integration creates a potential conflict of interest, incentivizing the platform to privilege its own goods and services over those offered by third parties. Secondly, this model could end up making small e-retailers economically dependent from the marketplace and lead to a larger degree of concentration in the e-commerce sector, making Amazon the dominant, if not the unique retailer selling goods to e-consumers. Thirdly, not only Amazon could monopolize the (downstream) e-commerce market, but it could get a position of monopsonist on the (upstream) input markets related to e-commerce activities (the dominant, if not the unique buyer of inputs entering in the e-commerce value chain, like parcel delivery service). Paul Krugman already denounced the monopsony power of Amazon in the publishing sector in October 2014[9]. Parcel delivery operators are under the same threat: UPS says that it is "pleased to offer Amazon Sellers special services and shipping discounts"[10], up to 37% off UPS's standard list rates; D. Trump denounced the "Amazon's shipping deal" and ordered a review of USPS tariffs[11].

To further investigate this issue, in a paper published in 2016, Borsenberger et al. examined the consequences of the growth of marketplaces' activities on parcel delivery sector. They argued that from a parcel delivery operator perspective, marketplaces create a secondary delivery market, which

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[8] According to the New York Times, Amazon has posted an annual profit for only 13 of the past 21 years and has reinvested profits into cheaper prices and R&D.

[9] https://www.nytimes.com/2014/10/20/opinion/paul-krugman-amazons-monopsony-is-not-ok.html.

[10] https://www.ups.com/mrd/promodiscount?loc=en_US&promoCd=BLTBNQGJ7

[11] https://www.nytimes.com/2018/04/12/us/politics/trump-postal-service-amazon.html

undermines its ability to differentiate prices between its customers (the e-retailers) according to the volume and the characteristics of the parcels they sent (size, weight, place where they enter into the postal process, degree of upstream sorting, and so on). Marketplaces effectively act as parcel aggregators, consolidating the parcels sent by their affiliated sellers. By concentrating the volume of parcels provided to a delivery operator between the hands of a single customer (the marketplace), the latter has a higher bargaining power. Consequently, it may be in a position to negotiate more attractive commercial terms for the provision of delivery services than individual affiliated sellers. Notice that parcel delivery is a market characterized by fixed costs and returns to scale which typically lead to volume-discount pricing schemes. In this context, the authors showed that the growing bargaining power of marketplaces in their negotiations with parcel delivery operators in several European countries could raise concerns, notably if this prevents the latter to cover their fixed costs and calls for a transfer from the government to finance the provision of the postal universal service. They concluded that from a social point of view, it is better to have balanced bargaining powers between the delivery operator and the marketplace. This brings us to another lesson, namely that the market power of the delivery operator cannot be assessed solely by considering its market share. Indeed, this analysis has shown that even a monopoly operator may effectively have little market power, because of the monopsony power of marketplaces.

This year, Borsenberger et al. studied the consequences of the vertical integration of a retailer into the parcel delivery activity. The economic literature on vertical mergers yields mixed results. Indeed, a vertical merger generates a number of potential benefits. These include most significantly, the elimination of successive monopolies or oligopolies and thus of the double marginalization these entail. However, on the downside, it also involves the danger of “foreclosure”. This concept covers a wider range of anti-competitive practices made possible by a vertical merger, including the extension of market power in one market segment (upstream or downstream) to a different market segment (leverage effect), the possibility to raise competitor’s cost, etc. In the postal sector this issue is particularly relevant: some big retailers/platforms already have significant market power in their relevant markets, which gives them monopsony power towards parcel delivery operators. Vertical integration is likely to exacerbate this market power and make it spill over to the upstream delivery market. This paper analyses how delivery operator, customer and overall welfare are affected by this potential spillover effect. It shows first that the comparison between independent oligopoly and integrated monopoly involves a tradeoff between competition and double marginalization which will have the opposite effect. If demand is linear, the competition between at least 3 independent firms on each level (upstream and downstream) would yield larger surplus than an integrated monopoly. With constant elasticity demand, on the other hand, it is always better to have independent firms than an integrated monopoly. Secondly, the authors consider a setting where the number of firms is endogenous and determined such that gross profits cover fixed costs. While the integration of a single retailer-delivery operator pair may initially be welfare improving, the resulting market structure may not be sustainable. In other words, it will imply that some operators or retailers can no longer cover their cost and exit the market. Furthermore, there exists a range of fixed costs for which the integrated monopoly emerges (following a single integration) and is welfare inferior to the initial independent equilibrium even when the reduction in the number of fixed costs is taken into account. Within this setting the authors also show that multiple integration is typically welfare superior (for a given total number of firms) to the integration of a single retailer-delivery operator. Third and last, they consider an extension wherein customers differ according to their location, urban or rural, involving different delivery costs. It shows that urban integration (some sort of “cherry picking” strategy) is more likely to have an adverse effect on welfare than full integration (whole territory coverage).

All these findings echo the strategy of Amazon. Indeed, Amazon has already acquired or partly controls delivery logistics players in several European countries: for example, Amazon has acquired a minor stake in Yodel in the UK and a 25 percent stake in Colis Privé in France. Amazon is now going to enter into delivery logistics under its own banner with a "cherry picking" strategy: it makes its own deliveries in the most attractive urban neighborhoods like Paris or Toulouse in France. In line with our theoretical conclusion, Wysman (2015) argues "*Amazon is unlikely to be interested in physically delivering parcels where and when it is not financially feasible*". According to the theoretical conclusions of Borsenberger et al. (2018), such a strategy is detrimental to social welfare, distorting bargaining power between Amazon and delivery operators and potentially leading to the monopolization of both upstream and downstream of retailing market (via a foreclusion effect). In this context, we plead for a careful scrutiny of any attempt of Amazon to vertically integrate the parcel delivery sector by competition authorities, as the French one did when Amazon planned to fully acquire Colis Privé.

Reflections around the ways to address concerns related to platforms' power: from level playing field promotion to breaking-up solutions

If the dominance of some giants is undeniable, some economists nevertheless consider that the GAFA operate in contestable markets (Marty, 2017) and that a too rigid *ex ante* regulation would have counterproductive effects and would reduce collective welfare. Even if they admit that some factors effectively favour a greater concentration of markets online rather than offline, they consider that many others push in the opposite direction: the "multi-homing" nature of consumers and service providers; the heterogeneity of demand; and the intensity of innovation and competition (Budzinski and Köhler, 2016). According to them, the giants' dominance would only be transitory. They therefore recommend a "laissez-faire" policy, restraining public intervention to the promotion of a level playing field in order to give equal weapons to old and new competitors (not imposing different regulations on different competitors on the basis of an arbitrary industry classification).

For an *ex ante* regulation proponents, the argument according to which competition is "one click away", is not entirely convincing as some platform markets tend to remain stable or even more concentrate (the strongest actor reinforcing its dominant position). According to Ciriani and Lebourges (2018), the worldwide market share of Google's Search engine has been stable around 90% from 2010 to 2017; the world market share held by Google's smartphone OS (Android) has increased from 4% in 2009 to 82% in 2016, while Apple's OS (iOS) world market share has remained stable at 18% over the same period; the market share of Google Chrome, the world leader in the market of internet browsers, has increased from 30% in July 2012 to 52% in February 2017; in the social networking market, the world leader Facebook has raised its market share from 8% in 2008 to 42% in 2016 (the second largest online network, YouTube, acquired by Google in 2006, reached a 25% market share in 2016, starting from 7% in 2008).

Ex ante regulation proponents consider that online markets are moving towards natural monopolies (Dewenter and Rösch, 2012) and platforms are becoming a form of public good or essential infrastructure leading to gatekeeper and leverage concerns. So, it might therefore be risky to simply wait for disruptive innovation to rearrange the market structure, knowing that in some cases, damage is irrevocable. This justifies a close scrutiny of online dominant platforms and call for a regulatory framework of the dominant position, based on the obligation for dominant players to provide non-discriminatory and equitable access to their platforms.

Some economists (as Luigi Zingales, Jonathan Taplin, Scott Galloway, Marcos Lima, Olivia LaVecchia and Stacy Mitchell) go even further and ask for dismantling Amazon, Facebook and Google, as AT&T at the beginning of 1980's. According to Jean Tirole (2018)[12], this extreme solution could be detrimental: *"Breaking up firms only for the sake of reducing their power may fail to accomplish our goals. For*

[12] https://qz.com/1310266/nobel-winning-economist-jean-tirole-on-how-to-regulate-tech-monopolies/

example, breaking up Facebook into five Facebooks would do little to address privacy concerns. In the past, we have broken up Standard Oil, AT&T, railroad, and electricity systems. Regarding internet platforms, we need to give it more thought."

La Poste fully supports this view: such an extreme solution need to be implemented cautiously and much knowledge must be gathered in order to define the best solution to manage digital platforms' market power. We presume that the best solution could be different for a platform like Amazon, whose market power is based on both intangible and physical assets, and for an actor like Facebook who draws its market power from network externalities.

Already in the late 19th century, as recalled by Khan, the Congress believed that breaking up the railroads would hamper U.S. national transportation system, and made the choice to design a regime to prevent railroads from abusing their power: railroads were submitted to "common carriage" rules, providing equal access on equal terms, and had to publicly list their prices. This helped scale back their power to arbitrarily hike prices and extort the farmers and suppliers reliant on the railroads to get to market. Introducing "common carriage" for platforms would be one way to tackle their gatekeeper power by requiring a platform to treat all commerce flowing through its infrastructure equally, preventing a platform from using the threat of discrimination to extract and extort.

Nevertheless, according to Khan (2018), this would not be enough. She recommends to recover a principle of structural separation and to prohibit some entry in business line to limit the ability of dominant platforms to leverage their platform advantage into other areas. Such measures would prevent platforms from engaging in business activity that places them in direct competition with the firms using their platforms and help eliminate the conflict of interest that platforms face when they own both the pipes and the products flowing through them.

According to us, the concepts of economic dependence and exploitative abuse could also be a useful tool to address some concerns related to platforms' power. Until now, these concepts have only been used against firms benefitting from exclusive legal rights as noticed by Bougette et al. (2017). They could be usefully applied against firms that have obtained their market position on the merits.

Last, we want to underline that the proposal for a "Regulation on promoting fairness and transparency for business users of online intermediated services" published on the 26th April 2018 by the Commission, goes in the right direction. This proposal addresses the issues of unfair contractual clauses and trading practices identified in platform-to-business relationships but we think that more could be done to prevent exploitative abuses linked to monopsony power that a marketplace like Amazon could acquire vis-à-vis their input providers (producers, affiliated e-sellers, publishers or parcel delivery operators) and to set a more balanced environment in which all actors along the value chain could bargain one equal footing.

Conclusion

The discussion around how to tackle platform power is just beginning. But it is urgent to shed light on all these issues. For sure, firms should not be condemned merely because they are "big" or possess valuable big data. Companies that achieve a leading market position – even a dominant one – by virtue of innovation, investment, ingenuity and efficiency should not be penalized for doing so. Imposing a penalty for excellence removes the incentives to pursue excellence. However, former merits do not justify the use of market power to defend and extend it by weakening or eliminative competitors. Such anti-competitive practices must be sanctioned.

If dismantling the GAFA is today questionable because of a lack of knowledge about the real consequences of dominant position in the digital economy, the need to restore a level playing field between economic actors is undisputable. First steps have been initiated by the Commission to restore a level playing field in the fiscal area. More should be done in the competition area, in order to promote efficiency without forgetting fairness and equity for both rivals, users and input providers of dominant platforms.

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