

**Regulating Digital Platforms:
Historical Lessons & Current Examples**

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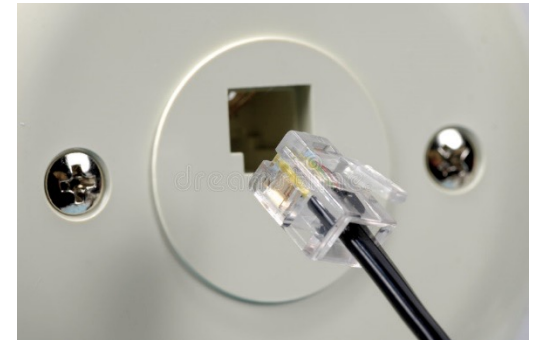
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Regulation of Emerging Technologies

- Railroads
- Food and Drug Safety
- Telecommunications
- Local Utilities & Electricity
- Financial Sector & Insurance
- Worker & Product & Automobile Safety
- Airplane Safety and Airline Competition
- Air and Water Quality

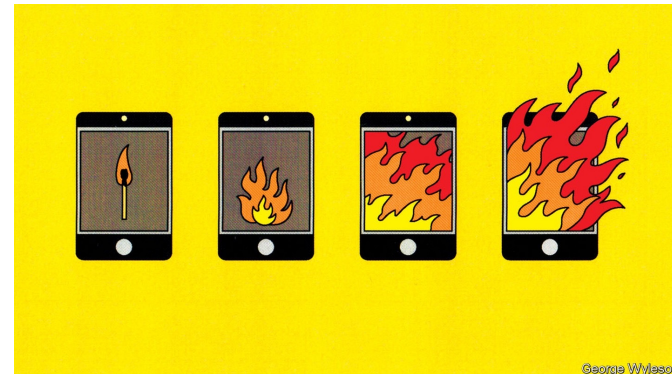
Lessons from Telephone Regulation

- Regulated Monopoly/Bottleneck
 - Local Telephone Facilities/Service
- Equal Treatment Rules
 - Common Carrier Regulation
- Boundary with Competitive Products
 - Customer Premises Equipment
 - Local vs. Long-Distance Telephone Service?
 - Telephone Service vs. Information Services?
- Boundary for Digital Platforms??
 - Integration of New Features into the Core Product



Digital Platforms: The Time Has Come

- Technology & Business Models Have Matured
- Strong Incumbency Positions
 - Scale Economies, Network Effects, Big Data
- Enormous Social & Commercial Impact
- Digital Platform Harms
 - Spread of Misinformation
 - Cybersecurity Risks
 - “Surveillance Capitalism”
- Please Use Liability Rules & Property Rights!
- Harms From Lack of Competition?



Platform Regulation: General Principles

- Regulating Innovative Industries is HARD
- Need an Expert Agency with Ample Resources
- Need to Work with Industry Participants
 - But Avoid Both Industry Capture & Rent Seeking
- Need to Experiment, Learn & Adjust
- International Harmonization is Desirable
- Need for Bespoke Rules
 - Each Major Platform is Unique
- How Will Industry Respond to Proposed Rules?
 - Counterfactual Analysis is Fundamental

ACCC Digital Platform Services Inquiry

- Laying the Foundation for Regulation with Detailed Investigations
 - Report Findings Based on Solid Evidence and Business Reality, Not Politics or Ideology
- ACCC and UK CMA Are Looking Good!
 - Compare with United States & European Union
- Good Start, But Now Comes the Hard Part
 - The Devil is in the Details
 - Goal is to Promote Competition, Not Weaken Big Firms
 - Avoid Vague Rules Relating to Product Design
 - How Would Product Design Changes Over the Past Decade Have Been Treated?

Example: Apple App Store

- Apple Requires App Developers to use Apple's Payment System for In-App Payments
- Apple Often Charges a 30% Fee
- ACCC: Rule Requiring Apple to Allow App Developers to Use Alternative Payment Systems?
 - Interim Report No. 2, p. 78
 - Unlikely Such a Rule Would Lead to Lower Total Fees
 - Apple's Fees Are Largely for Access to Apple iOS and App Store, Not for Payment Processing
 - Apple's Payment System Arguably Enables Apple to Efficiently Collect Apple's Fees for In-App Content

Example: Choice Screen for Search

- ACCC Seeks Authority to Require a Choice Screen for Search Engines on Mobile Devices
 - Goal is to Promote Competition in Search
 - ACCC Interim Report No. 3, p. 10
- Likely Effects of Mandatory Choice Screen
 - Limits How OEMs Can Configure Devices to Best Serve Consumers
 - Higher Device Prices
 - Might Have Minimal Effects on Search Usage, Based on European Experience
 - Might Assist Growth of Rival Search Engines

Example: Freedom for Business Users to Communicate with Consumers

- ACCC Considering Requiring App Marketplaces to Allow Developers to Inform Consumers of Off-Platform Payment Options
 - Interim Report No. 2, p. 82
- Rule Improves Consumer Information and Promotes Cross-Platform Competition
- No Threat to Platform Trust & Safety
- Could Be Meaningful Because A Small Number of Cross-Platform Gamers Account for a Large Share of In-App Purchases

Digital Platform Regulation: Suggestions

- Do Not Impose Rules That Prevent Platform Owners From Adding Valuable Features
 - Even if Such Innovation Harms Other Firms Operating on the Platform
- Do Not Impose Rules That Prevent Platform Owners From Expanding into Adjacent Markets
- Focus on Rules That Enable Emergence of Rival Platforms & Cross-Platform Activity
- Establish Strong Consumer Privacy Rights