

CPI's Europe Column Presents:

# Problems with the European Commission's Platform Survey and Lessons Learned from the Economics of Multi-Sided Platforms and Privacy<sup>1</sup>

*By James C. Cooper, Douglas H. Ginsburg, Bruce H. Kobayashi, Koren W. Wong-Ervin & Joshua D. Wright  
(Global Antitrust Institute, George Mason University)<sup>2</sup>*



**CPI** COMPETITION POLICY  
INTERNATIONAL

Copyright © 2015

Competition Policy International, Inc. For more information visit [CompetitionPolicyInternational.com](http://CompetitionPolicyInternational.com)

January 2015

*The hype about online platform competition and about the sharing economy has led several competition authorities across Europe to launching market investigations and studies on the subject. The first obstacle facing such exercises is the broad scope of the online platform concept itself and the complexity and diversity of platform markets. Gathering the right market data and making the right interpretation of it is already a challenge. As suggested by the Global Antitrust Institute at George Mason University School of Law in this month's column, any intended regulatory intervention in platform markets should be rooted in sound economic analysis. – Juan Delgado*

The European Commission (EC) recently published a public consultation on the Regulatory Environment for Platforms, Online Intermediaries, Data, Cloud Computing, and the Collaborative Economy. According to the EC, the aim of this wide-ranging consultation was to understand the role and impact of online platforms on various fields such as on-line services, content and privacy issues, free movement of data, and the so-called “sharing economy.” The consultation consisted of a lengthy survey with the opportunity to submit a written comment. On December 29, 2015, the Global Antitrust Institute (GAI) at George Mason University School of Law submitted a comment in response to the consultation in which it: (1) raised concerns that the EC’s survey methodology and design is not conducive to generating reliable and policy-relevant data; (2) provided an economic analysis of platforms and multi-sided markets; (3) outlined the dangers to competition and consumers of new ex ante regulation designed to regulate platforms, as opposed to relying upon existing European competition and consumer protection laws to address any potential anticompetitive effects or consumer harm arising from conduct by platform owners; and (4) discussed the economic analysis of privacy and data security and its implications for new regulation. This short article summarizes the GAI’s comment, which can be found in full at the link provided below.

*Concerns that the EC’s Survey Methodology and Design is Not Conducive to Generating Reliable and Policy-Relevant Data*

As the GAI explained in detail, providing specific examples of problematic questions, there are several problems with the EC’s survey, including the use of “yes/no” questions (which introduces a systemic source of bias that has produced an inflation effect of 10% across a number of studies); a self-select Internet survey approach (with its inherent selection bias); closed-ended questions that do not provide an exhaustive list of response options; and ambiguous and potentially prejudicial questions. These problems led the GAI to express concern over whether the survey methodology and design the EC employed in this consultation is conducive to generating reliable and policy-relevant data.

*The Economics of Platforms and Multi-Sided Markets*

The GAI set forth the basic economics of multi-sided platforms, emphasizing that an important economic feature of the complexities and interdependencies of platforms is that even relatively small changes can hinder the efficient operation of platforms and negatively affect

innovation. The economics of platforms and multi-sided markets implies that the application of many of the standard regulatory principles developed in the nonplatform setting will likely lead to perverse results in the platform setting. Indeed, the economic literature that has developed since 2000 shows robustly that many results derived from models of one-sided businesses generally do not apply to multi-sided platforms that serve different interdependent customer groups.

### *The Dangers of Ex Ante Regulation and the Benefits of Relying on Existing European Competition and Consumer Protection Laws*

The GAI cautioned that creating ex ante regulation prohibiting undesirable conduct by platforms risks sacrificing the benefits of platforms by imposing rules that may lack the flexibility of existing European competition and consumer protection laws. Indeed, a key benefit of relying on the existing laws is that they proceed primarily through fact-specific case-by-case analyses, which are more likely to maximize consumer welfare than are ex ante regulations.

In discussing the topic, the GAI considered the economics of regulation, including the theoretical basis for economic regulation and the problems of regulatory capture and of “public choice,” offering three “lessons” to the modern regulator. First, absent a significant and identifiable market imperfection, there is no valid basis for an economic regulation. Second, an identifiable market imperfection is a necessary, but not sufficient basis for economic regulation. Other solutions, including private ordering or reliance on existing and more flexible laws, may be preferred options. Third, there should be a strong but rebuttable presumption against regulation favoring incumbents over new entrants or accepting invitations from disgruntled firms to have the competition agencies sue their rivals. Applying these lessons, the GAI advised against regulation partly because no such market imperfection appears to exist in the platform sector and existing European laws will more likely maximize consumer welfare. Indeed, the sector appears to be characterized by a wealth of competitive high-tech markets and platforms, with a plethora of new entry and innovation, all signs of competitive markets. Moreover, as explained in the comment, the imposition of regulation is likely to make things worse.

### *The Economic Analysis of Privacy and Data Security and Its Implications for New Regulation*

A central feature of many online platforms is the collection and use of consumer data. More recently, with the rise of “big data,” algorithms also are using large and diverse datasets of consumer information to predict propensities. These practices create clear benefits for consumers: customized content, access to relevant offers, and better security. At the same time, however, they can give rise to privacy concerns. Although there are many different definitions and views of privacy, a core element of privacy as it relates to online platforms is the ability to control the amount of personal information that is available to others.

As the above suggests, there is an inherent tradeoff when regulating data flows: some segments of the population may derive privacy benefits, but retarding firms' ability to collect and use data also results in fewer transactions and a lower quality platform experience, both of which lower consumer welfare. What is more, in light of the recent advent of the "Internet of things" and of big data, restrictions on the collection and use of data can deprive society of benefits outside of the commercial sphere, such as discovering more effective medical treatments, policing strategies, or farming techniques. All of this strongly suggests that regulators should employ a benefit-cost framework focused on consumer welfare, and rooted in economic analysis, to guide privacy policy. There is widespread agreement that the adoption of an economically-grounded consumer welfare standard in competition law has been extremely beneficial to consumers. A consumer welfare approach to privacy regulation—one that would focus on actual harms to consumers, and rely to the extent feasible on revealed preference as opposed to survey data, anecdotes, and hypotheticals—similarly would provide benefits to consumers. According to the suggested analysis, restrictions on the use of big data for differential pricing are premature. Such pricing may enhance consumer welfare, improve income distribution, and, in some circumstances, lower prices for all consumers, and there is little evidence that firms are engaging in differential pricing.

---

<sup>1</sup> Full comment submitted by the GAI to the EC on December 29, 2015, available at [http://masonlec.org/site/rte\\_uploads/files/GAI\\_Comment%20on%20EC%20Platform%20Consultation\\_12-29-15\\_FINAL.pdf](http://masonlec.org/site/rte_uploads/files/GAI_Comment%20on%20EC%20Platform%20Consultation_12-29-15_FINAL.pdf).

<sup>2</sup> Professor of Law Joshua D. Wright, Ph.D. (economics), is the Executive Director of the GAI and a former U.S. Federal Trade Commissioner. Koren W. Wong-Ervin is the Director of the GAI and former Counsel for Intellectual Property and International Antitrust at the U.S. Federal Trade Commission. Professor of Law Douglas H. Ginsburg is a Senior Judge, United States Court of Appeals for the District of Columbia Circuit, Chairman of the GAI's International Board of Advisors, and a former Assistant Attorney General in charge of the Antitrust Division of the U.S. Department of Justice. Professor of Law Bruce H. Kobayashi, Ph.D. (economics), is a GAI Senior Scholar and Founding Director. Associate Professor of Law James C. Cooper, Ph.D. (economics), is the Director of the Program on Economics and Privacy at the Law & Economics Center, George Mason University School of Law.