

# AAAAGH!!

Antitrust for  Digital Markets

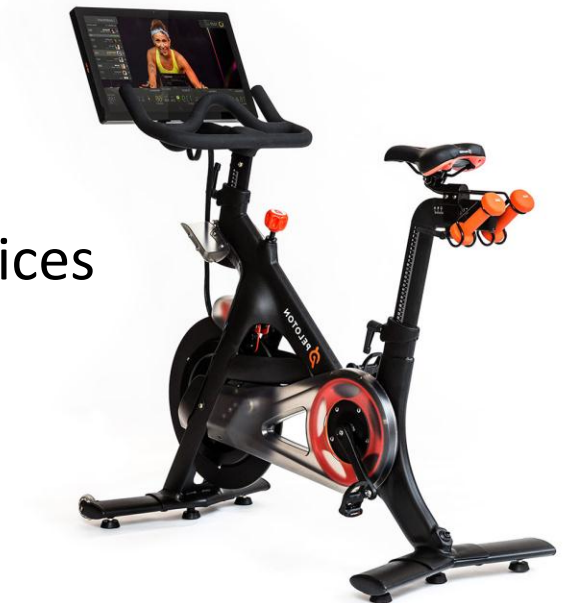
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# Digital Markets: Meaning

- Mostly: virtual, rather than physical, marketplaces.
  - The trade itself is organized through digital markets.
- Digital markets also mean: digital products (mostly content, but not only), digital distribution.
  - Non-content products:
    - Virtual currency
    - Services



(With present technologies, commodification of services means a transformation of service into content.)





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- **Digital markets are also used to soften the boundaries of the firm.**
  - The distinction between contract and integration is blurrier.
  - Prime example: the sharing (“gig”) economy.

# Economics of Digital Markets

- **Platforms** (previously known as “multiside markets”)
- **Changing paradigms about information:**
  - Information is abundant, not scarce.
  - Information is inexpensive for platforms but still expensive for others.
  - Unstructured data can be analyzed systematically.
  - Data analysis is entirely automated.
- **Social concerns regarding the use of information:**
  - Privacy
  - Bullying
  - Personalized pricing that factors cognitive biases (super first-degree price discrimination).

# Law of Digital Markets

- Contracts replace copyrights and other IP rights.
- Through arbitration clauses, consumer rights are minimized.
- The classifications of “employee” and “independent contractor” collapsed.
- Cyberlaw.



# Antitrust for Digital Markets

**Core Principle: *Competition laws regulate competition, not “other things.”***

**Lessons Not Learned:** It is tempting to use competition laws to regulate things that are not directly related to competition or not related at all to competition.

- Consumer protection
- Privacy
- Small businesses
- National interests
- Democratic values (e.g., freedom of speech).
- Employees
- Income inequality
- Other values (e.g., “you can’t make up such stuff”).

# Antitrust for Digital Markets

**A Preliminary Note for Russian Competition Policies:** the limits of “anti-monopoly” and “antitrust” policies.

# Antitrust for Digital Markets

## **Keeping the eyes on the ball: Competition in markets with platforms**

- Digital markets create a lot of noise in antitrust because they upset markets, but they do not challenge existing policies.
- Many people believe that existing policies are good enough for digital markets or, alternatively, antitrust should not apply to platforms.
- At present, it is myopic to insist that existing tools don't require a major calibration. Competition policies are vulnerable to dominant ideologies and beliefs.
- The trends around the world are significant.



# Antitrust for Digital Markets

- A “softer” distinction between contracts and integration (the boundaries of the firm)
  - Controversies over platforms establish large-scale conspiracies (e.g. Uber).
  - New controversies over “duties to deal.”
  - A likely tension related to the relationships between large corporations and gig workers.
    - High efficiency: more flexibility and less rights.
- Conspiracy through algorithms.
- Proof of anticompetitive effects and big data.

# Antitrust for Digital Markets: Specifics

## **Predictions...**

- A shift in the approach to unilateral conduct.
- A shift in the approach to vertical restraints.
- A change in the approach to inference of conspiracy in the absence of direct evidence.
- A rise of policies regarding employment and labor: from non-compete covenants to semi-duties of firms seeking regulatory approvals.
- Changes in evidentiary standards and procedural rules.
- Leading platforms are likely to take actions that will escalate conflicts between agencies and platforms, as well as social unrest.

# A Closing Comment

- As society, a global society and in every country, we are witnessing massive changes in markets that impact many sectors unfavorably.
- Changes in markets have antitrust consequences.
- The broad effects of the changes are a source of social and political unrest, which lead to very poor policies.
- It is important to recognize that in such circumstances there are no “great policies.” ***The best policies minimize the social costs of unreasonable restraint of trade in a period change.***