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Conference Paper

Bork's Hoax: Antitrust and the Internet Market

23rd Biennial Conference of the International Telecommunications Society (ITS): "Digital societies and industrial transformations: Policies, markets, and technologies in a post-Covid world", Online Conference / Gothenburg, Sweden, 21st-23rd June, 2021

Provided in Cooperation with:

International Telecommunications Society (ITS)

Suggested Citation: Alleman, James (2021) : Bork's Hoax: Antitrust and the Internet Market, 23rd Biennial Conference of the International Telecommunications Society (ITS): "Digital societies and industrial transformations: Policies, markets, and technologies in a post-Covid world", Online Conference / Gothenburg, Sweden, 21st-23rd June, 2021, International Telecommunications Society (ITS), Calgary

This Version is available at:

<https://hdl.handle.net/10419/238003>

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Bork's Hoax: Antitrust and the Internet Market

Abstract

James Alleman*

Robert Bork's *Antitrust Paradox* (1978) has been justification for lack of antitrust behavior for over four decades. His test essentially asks if consumers are harmed by the pricing practices of the firm in the market in which they purchase the good or service. Even if these firms are monopoly or oligopolies in their fields with huge economic rents, if they pass this test, no action is taken against them. "Bigness is not bad." This narrow view, *inter alia*, ignores two- and multisided markets (MSM) where the appearance of "no harm" is addressed to only one side of the market. The correct view is to examine all the markets impacting potential harm to consumers. It illustrates the harm which is "free" to the users, but advertisers pay dearly for the ability to micro-focus on potential consumers of their products. Facebook and Google are used as examples. This advertising cost is added into the sales price of the product, resulting in consumers being harmed by the embedded advertising costs in the products or services purchased. We argue here, using Bork's own criterion – except to expand it to the other side of the market and eliminating producer's surplus – that much needed antitrust action has been ignored by this narrow criterion. This analysis indicates that antitrust action is long overdue after considering two-sided markets. In addition, we argue that his "consumer welfare" criterion is misleading and liable to deceive, thus the hoax.

The Bork critique is a hoax in two ways: Bork's analysis does not include the other side of the market. The cost of advertising has to be included in the price of the products being sold in order for the firm to remain in business. So, clearly, the price of goods and services is increased by the cost of advertising, thus reducing consumers' surplus. The second flaw is Bork's definition of "consumer welfare" – it includes the economic rents of the firm – all at a cost to consumers. Enhancing the wealth (profits) of corporations in the name of efficiency was not the purpose of the antitrust laws.

We address the Bork Paradox on its own terms by examining the second side of the market which harms consumers *indirectly* by increasing the price of the products and services they purchase. Using the corrected Bork metric – both sides of the market and no producer's surplus – the estimated loss of consumers' welfare in \$60.4 and \$43.7 billion respectively from Google and Facebook, respectively.

Keywords: Advertising, Antitrust, Bork, competition, consumers' surplus, digital markets, Information and Communications Technology (ICT), internet, platform economics, monopoly, regulation, two-sided/multisided markets. .

JEL Codes : D42, D43, K21, L12, L13, L22, L51, L96

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BORK'S HOAX: ANTITRUST AND THE INTERNET MARKET**

OVERVIEW/INTRODUCTION

The Robert Bork's *Antitrust Paradox* (1978) has been justification for lack of antitrust action for over four decades. The test essentially asks if consumers are harmed by the pricing practices of the firm in the market in which they purchase the good or service. Even if these firms are monopolies or oligopolies in their fields, if they pass this test, no action is taken against them. "Bigness is not bad." This narrow view, *inter alia*, ignores two- and multisided market (MSM) where the appearance of "no harm" is addressed to only one side of the market. It is a hoax! The honest view is to examine all the markets impacting the harm to consumers, but not profits of the firm. We argue here, using Bork's own criterion – except to expand it to the other side of the market and correct for the inclusion of producer's surplus – that much needed antitrust action has been ignored by the narrow criterion. In addition, we argue that Bork's definition of "consumer welfare" is inappropriate. Indeed, wrong! since he includes rents (producer's surplus) accruing to the firm in his definition (Klobuchar 2021, p. 135)¹.

This paper reviews the Bork arguments and analyzes how they are inappropriate without considering both sides of the markets. It illustrates the harm which are "free" to the users, but advertisers pay dearly for the ability to micro-focus on potential consumers of their products. Facebook and Google are used as examples. When advertising is added into the sales price of the product, the result is that consumers are harmed by the embedded advertising costs in the products or services purchased. Currently, antitrust action has not been implemented *inter alia*, because of the Bork criterion. This analysis indicates that antitrust action is long overdue after considering two-sided markets.

Dominance in markets has additional societal harm that is not addressed by the Bork criterion, even the multiple market version. These include threats to democracy and privacy, the dangers of oligarchy and plutocracy, the effects on market structure and big data usage concerns. None of these are touched on by the traditional consumer harm approach based on prices – the Bork thesis. Moreover the lack of antitrust actions, particularly with respect to internet platforms has led to very large dominate firms – Alphabet (Google), Amazon, Apple, Facebook, and Microsoft – makes any actions more difficult. Their strength gives them political clout which they would not have had if their size had been tempered early in their growth. Thus, in addition to the traditional antitrust remedies, other actions and potential remedies are required in the context of large internet platforms.² Our current concerns about corporate power which are not covered in the document are threats to democracy, privacy and the misuse of personal data.

** This paper is updated from Alleman (2020).

¹ See Willig (1976) for the definitive discussion of consumers' surplus.

² The neo-Brandeisian movement has much to offer and is an area for future research.

Three antitrust suits have been filed against Google³ and two against Facebook⁴ in the United States. The European Community, which has been more aggressive in its pursuit of Big Tech – Facebook, Alphabet (Google), Amazon, Microsoft, etc., is considering additional rules and regulation of the sector. The United States, until recently, has been timid in its application of antitrust laws: In part, because administrations were enamored of Big Tech; in part because the antitrust laws were not designed for network industries⁵. This weakness was amplified by the “Bork Paradox” which only searched for consumers’ *direct* harm. This has, inappropriately, blunted or muted whatever powers the antitrust laws have had and distorted the meaning of “consumer welfare”.

However, alternative approaches to antitrust and Big Tech are emerging. The first addresses the Bork Paradox on its own terms by examining the second side of the market which harms consumers *indirectly* by increasing the price of the products and services they purchase. Viewed in this perspective, the Paradox turns out to be a Hoax! Second, the “New Brandeisian” approach focuses more on market concentration and its impact on competition, innovations, economic growth, and product quality. Unique to network industries is consumers’ harm *via* the use of their data. Privacy is compromised and used in inappropriate ways. The data are used to target laser-like advertisements, political ads, and misinformation/fake news to the consumers from whom data was extracted. While this is a significant issue, we do not address it here. To compound the issue, in the case of Google, it is the retailer, wholesaler and middleman – it controls all parts of the digital advertising market, allowing monopoly pricing of its ads and it gives preference to its services.

Facebook, Amazon, Apple, Microsoft, and Google have transformed society since their emergence; the changes wrought by their services have had ripple effects that are both positive and negative.⁶ On the positive side, soaring consumer access to information, news, social networks, and entertainment have been stimulated by the ever-more ubiquitous and falling prices of broadband fixed and mobile bandwidth.

However, negative effects have likewise been stark. Certainly, there have been huge disruptions caused by e-commerce. In addition, fake “news”, and mis-information have been spread *via* the social platforms. Elections have been manipulated by bad actors (Wylie, 2019); brick-and-mortar stores are closing, etc.

The coronavirus pandemic has highlighted the importance of internet platforms. People who could, tele-worked from their homes. Tele-medicine is becoming more common; distance education at all levels has surged with the physical closing of schools – K to 12 and at the university level. E-commerce which had been steadily growing, exploded with “shelter-in-

³ While the October 2020 suit by the Department of Justice (DoJ) and eight states is significant, it does not address the second side of Google’s market – its monopoly on advertising (Stoltz 2020).

⁴ In December 2020. Facebook was sued by the Federal Trade Commission (FTC) and forty states.

⁵ With the release of the “Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations” (MRR) by the Subcommittee on Antitrust, Commercial and Administrative Law (2021) offers hope that this is changing. The House of Representatives has also introduced five bills to control big tech (Kang 2021).

⁶ Facebook, Amazon, Apple, Netflix, and Google are referred to by the acronym FAANGs. In Europe, Microsoft is added to the list and Netflix is eliminated. They are referred to as GAFAMs.

place” orders. Thus the entrenched positions of internet giants will only be enhanced in this environment (Wu 2020). Social control of these giants is even more critical now.

The United States has not been as aggressive as the European Commission in its antitrust approach, in large part due to the deregulation trend in the eighties and Bork’s *Antitrust Paradox* (1978) book which argued that unless consumer welfare and competition were adversely impacted, there was no need for antitrust intervention. This paper shows that both these conditions exist in the internet space, despite the hands-off approach of the US regulatory authorities and its acceptance in many judicial decisions.⁷

This paper addresses the monopolistic aspect of the internet giants. In the single-sided market, monopoly pricing is well defined – as well as tests for predatory behavior – not so with multisided markets. Since the definition of markets is central to the legal enforcement of antitrust statutes, the paper examines non-transactional multisided markets for their potential for determining consumers’ harm and welfare effects, as well as defining monopoly and predatory pricing in this context. In addition to rent seeking by these economically dominant firms and loss of consumers’ welfare by pricing practices, loss of innovations, economic growth, etc., the internet giants give rise to two other issues: the privacy threat and threats to democracy. Privacy violation is not simply the collection of data for commercial use to target ads to users, but has been used in more malevolent ways: political manipulation, collecting data from children, and government surveillance. The Cambridge Analytica incident was a wakeup call on the malevolent use of users’ data (Wylie 2019). The use of social media on Facebook and Twitter, in particular, to spread misinformation and facilitate fraud has raised legitimate concerns about their responsibility for undermining democratic institutions, instigating cyber-bullying, enabling identity theft, and distorting public opinion.

These issues are not addressed in this paper except to note that their significant market power (SMP) and dominance can amplify, aid and abet these malevolent actions by the internet platforms. Here, we are concerned with the economics consequences of the SMP of the internet giants.

The paper is divided into six sections beginning with this section. The next section briefly describes the market structure of network industries, the third section describes the Bork Antitrust Paradox and its problems and why Bork’s “consumers’ welfare” criterion has been applied incorrectly. We show how it can be corrected, but note that this is only part of the problem with market dominance by internet platforms. We discuss the economic threat of Facebook and Google. . The fourth section examines potential remedies and solutions, and why remedies require more than the internal controls that have been proposed by the firms. The last section summarizes and makes tentative conclusions.

THE MARKET STRUCTURE OF NETWORK INDUSTRIES.

In additional to the traditional economics of scale and scope, network effects (the more people on the network, the greater its value) and control over data serve as a means of dominance and stifling competitive policy and entrenching monopoly positions.

⁷ Bork’s book has many critics – from both economists and lawyers. See Khan (2017) and Klobuchar (2021).

Facebook, Google and other internet giants gain their position from the existence of positive externalities, enhanced by network effects, such that the service becomes more valuable to users, the more users there are.⁸ Adding users makes the service more valuable, which attracts more users, which in turn makes it more valuable, and so forth.

Facebook and Google have significant market power as measured by their Herfindahl-Hirschman indices (HHI) by several different definitions of markets. They range from 8,476 for Google in the market for search to 2,024 for Facebook in the market for social media – representing “highly concentrated” to “moderately concentrated” markets (Alleman and Taschdjian 2019).⁹

The uniqueness of the internet market structure should be considered – control over data leads to concentration, and other anti-competitive conduct otherwise not available to non-platform businesses.

BORK’S HOAX

Due in large part to Bork’s Antitrust Paradox (1978) which looked at short-term price changes’ impact on “consumer welfare,” in the 1970s legal thinking on how antitrust enforcement started to change and continues today.¹⁰

Posner (1976) and other University of Chicago group members suggested that only price theory is the way to look at antitrust. They believed that market power will not exist for long and it will soon disappear. According to this line of thought, one need not worry about entry barriers, exclusion, foreclosure, predatory pricing, etc. which would prove a barrier to competition.

The Chicago school has even argued not to be concerned with predatory pricing, which rarely occurs according to them, because the monopolist would not be able to recoup the money lost with below-cost pricing. As noted by Khan (2015), in this digital era “recuperation” fails to capture the current dynamic of today’s market particularly in the internet platforms.

Antitrust guidelines of the Federal Trade Commission (FTC) and Department of Justice (DoJ) do not totally rely on price effects but in practice they seem to do so. Predatory pricing is pursued by the authorities, the courts have put a “recoupment” test on the practice. That is, the firm can recover the money it lost while practicing predation, including the time-value-of-money. This test makes it difficult for the plaintiff to overcome (Vaheesan 2015).

For full explanation of the history and development of antitrust policy and the Bork Paradox see Khan (2017) and Klobuchar (2021).

Alternative View

⁸ That is not to say that these firms do not exhibit economies of scale and scope, but this is not their main competitive advantage.

⁹ HHI is the sum of the squares of the market share of the largest firms in the market namely $HHI = \sum s_i^2$ where s_i is the market share of the i^{th} firm. The United States Department of Justice would consider this to be “moderately concentrated” (HHI 1,500 to 2,000), which is considered “highly concentrated” in the United Kingdom. The threshold for “highly concentrated” is 2,500 in the United States (Hall 2019).

¹⁰ Bork changed his position on leverage when he became a consultant for Google (Khan 2018). The power of money!

Two-sided/Multisided Markets

Internet platforms are much different from many other lines of business; in particular they have two-sided markets. That is e.g. Facebook and Google provide their services, social connections and search respectively, for free, but charge advertisers for laser-like precision directed toward their “free” clients.¹¹ Thus, to apply the Bork consumers’ welfare criteria without producer’s surplus, both sides of these markets should be examined simultaneously. When applying this total look at consumers’ welfare defined as traditional consumers’ surplus (Willig 1976) to Facebook and Google the welfare effect of their dominance is in the order of 104.1 billion dollars.¹² Thus far, the antitrust authorities have not viewed the dominance in these terms.¹³ The metric of “consumer welfare” needs to measure the impact in both markets including the market on the final consumer; this is what Alleman *et al.* (2020) has done and recalculated here for calendar year 2020.

What is the cost to consumers and society of this market power? It is significant. Initial estimates of Google’s and Facebook’s social cost in terms of consumers’ welfare loss are \$60.4 billion and \$43.7 billion, respectively, an increasing cost to consumers of at least \$104.1 billion dollars including the dead-weight loss on an annual basis for 2020. The cumulative loss since 2016 to 2020 is over 350 billion dollars (see Figure 1 and Figure 2.)

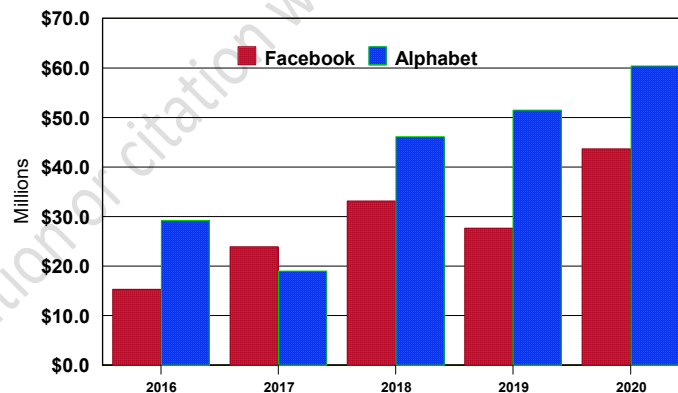


Figure 1 Annual Consumers' Surplus Loss
Source: SEC a & b 2021

¹¹ The Supreme Court’s decision in *American Express* addressed a two-sided transactional market, not the case of a “media” platform which is non-transactional such as Facebook and Google and many other internet platforms (*Ohio et al. v. American Express Co. et al.* 2017, Katz 2018). Each internet platform has a different business plan e.g. Amazon is much different from Google and Facebook

¹² Recalculated for 2020 calendar year based on methodology in Alleman, *et. al* (2020).

¹³ With the Trump’s administration’s Attorney General, antitrust may be determined with which corporation the Trump was annoyed. Not encouraging (McCabe and Kang (2020)).

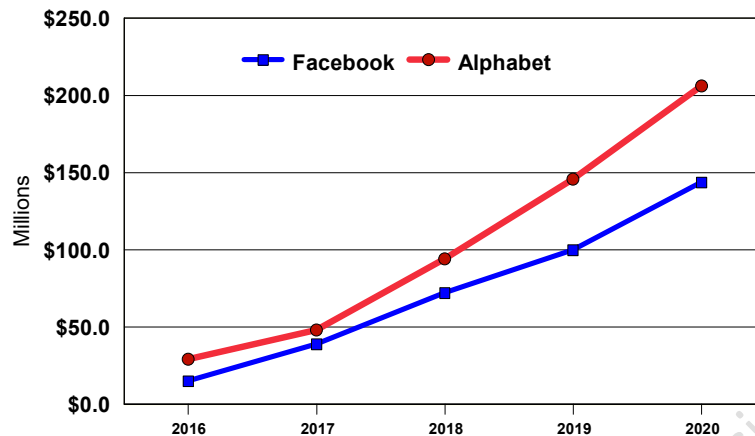


Figure 2 cumulative Consumers' Loss: 2016 – 2020
Source: SEC a & b 2021

It demonstrates and quantifies that dominant internet platforms can create three major harms to consumers:

- Increasing prices to consumers *via* added costs to the products being advertised,
- Elimination (or non-emergence) of competition in markets to the products being advertised,
- Increasing prices to consumers beyond the cost of advertising *via* the market power of the *remaining* firms in the market of the products being advertised. (Alleman et al. 2020).

Because Facebook and Google and other internet giants are two-sided markets their economic rents are “hidden” from the public. On the user-side of the market, prices are zero – “free.” On the other side of the market, Facebook’s and Google’s revenues are derived from advertising which appears when the users go to various web sites. Facebook and Google can extract exorbitant prices for ads, since they are virtually the only source that can target ads directly to potential customers. This is where the economic rents are not so obvious. Since the late 1970s, the antitrust authorities have focused, with few exceptions, on the users’-side of the market, which in the case of internet giants, is free. Where is the price gouging? On the other side of the market! Even without applying the Brandeisian approach, this should trigger antitrust action, but it has not.

Bork’s Lacuna

The Bork approach ignores the legislative history of the Sherman Act which was much more inclusive in a political economy sense. It should include the interest of all stakeholders: workers, entrepreneurs and citizens. But just as important, it should be promoting competition and competitive markets. Legislative history of the Sherman Act also indicates that there was concern about monopolies *per se* and the elimination of competition. Indeed one purpose of the legislation was to ensure a dispersion of political power – plutocracies would be promoted

by too much concentration. This is where antitrust authorities have failed miserably. Amazon, Google and Facebook have all had over 200 acquisitions during their relatively short lives, many of which would have been potential competitors.

The impact of price discrimination or pricing below-cost are much different in the digital arena versus analogue products such as the classic razor and razor blades example where the razor is sold cheap and the blades are expensive or in the case of newspapers which sell papers to the public (some papers even give them away) and sell advertising on the other side of the market. With respect to price discrimination, it is difficult to tell with platform economy the prices charged to individuals. With artificial intelligence, every user of Amazon's platform, for example, can be quoted a different price. What price/prices would be used to determine recoupment?

Anecdotal evidence suggests that Amazon may even discriminate *via* geographic areas with the same customer. The data collected by these internet platforms also makes them uniquely different from brick-and-mortar stores which have a much more difficult time to collect all their customer data and match it with other data on their customers.

In addition, research has shown that using the consumer welfare framework of Bork's has led to slower economic growth, lack of innovation and reduced opportunities for new entrants (Kwoka 2014).

REMEDIES AND SOLUTIONS

As noted in the introduction, the internet giants need some form of social control not only for the economic issues: monopoly profits, predatory pricing, elimination of competition, etc. but also for their threats to democracy and privacy (Alleman and Liebenau 2017, Wu 2016).¹⁴ The controls of the latter are important issues and can be handled, *inter alia*, by such tools as the "fairness doctrine," identifying sources of advertisements, or fake news. While the issues on privacy and threat to democracy are important and should be addressed, this paper only suggests solutions to the economics issues highlighted in this paper. However, by reducing the monopoly power of the internet giants, the solutions will buttress the tools to control these other problem areas.

Internal Tools: Promises not fulfilled

While Facebook and Google have called for regulation of internet platforms, this is self-serving in order to frame the regulation in their favor – it gets the "solutions" they want rather than what is best for the society. Facebook, Google and others could internally fix their problems, if they desired to, but there are no incentives for them to do so. Indeed, they "break things" and ask for forgiveness later. They are always quick to apologize when they get caught doing something inappropriate, questionable, or illegal and promise to take corrective measures. However, the promises are not fulfilled in many cases. Indeed, Facebook, Google and others

¹⁴ The recommendations are adapted from Alleman and Taschdjian (2019).

have not and do not conform with the current rules.¹⁵ How can we expect them to correct their behavior without external measures? We cannot, so we turn to examine external remedies.

Antitrust

Antitrust action is an obvious method to reduce the power of the giant internet platforms by breaking them up. Unfortunately, based on the lack of action on the various acquisitions of GAFAMs, this may not be a realistic strategy with the current Bork approach. Amazon's behavior illustrates how antitrust policy has been eroded. In May of 2018 Amazon raised the price of Amazon Prime by 20 percent, a clear sign of monopoly power (Rubin 2018). It also practices predatory pricing, thwarts competition, creates barriers to entry; but the current view of antitrust law, the neoclassical one, does not consider these practices deleterious (Khan, 2017). For Facebook and Google, the DOJ and FTC, apparently, only view one side of the market – the consumers' side – not the advertisers' side, who pay excessive prices because of the unique market position of the platforms. But if these regulatory units were to look more closely at the old tools of antitrust – structure, conduct and performance, as well as the advertising side of the market – they might have a different view (See Alleman *et al.*, Khan 2017).

Alphabet (Google), Amazon and Facebook have acquired many different firms with little or no antitrust scrutiny, many of which have become major parts of their business. Alphabet (Google) has acquired 243 companies (Wikipedia 2021a). Facebook has acquired Instagram, WhatsApp, Oculus VR, and some eighty plus other companies, many of which could be spun off (Wikipedia 2021b). The breakup of these companies would be complex but feasible. A set of smaller firms would ameliorate some issues of market dominance.

As we have seen, antitrust analysis as posited by the Chicago School is a poor tool. The precedent of imposing behavioral obligations on operators found to possess Significant Market Power (SMP) was established in the telecom industry for purposes of establishing interconnection between incumbents and new entrants. Such an approach should be examined for GAFAM companies.

Regulation: Treat as Utility:

An obvious method of regulating internet giants is treating them as a public utility (Feld 2019; Abernathy, et al. 2019). They have become a vital infrastructure, critical to the economy, but under virtually no social control. These internet platforms, particularly Facebook and Google, have suggested that they should be regulated, but this would be a self-serving agenda, as noted above. Moreover, these firms have yet to control fake political posts from outside the country, "hate-speech," fake news, and a variety of malevolent posts. Their discipline and response have not been adequate. It does suggest that any internal controls by the company are problematic. As a utility, the regulatory authority could use a variety of tools which are reviewed below.

¹⁵ See Singer (2018) for the several violations of regulatory rules by Facebook and Google.

Data Portability

Internet giants such as Facebook and Google have collected a variety of data from their users¹⁶ and supplemented with third party data in order to pursue their business strategy of focused advertisements aimed at their users. It would be extremely difficult for any company to duplicate this data set. By making the data portable, it would loosen the power of network externalities which allows the internet giants to dominate the market.¹⁷ A requirement that this data be “portable” among internet platforms would go a long way to allowing competition into these markets. If correctly structured, this would allow more transparency. Moreover, users could select what data they wish to keep private and what can be used publicly, or at least shared among the platforms. It would also allow the user-side of the market the ability to amend incorrect data, just as consumers can correct false financial information held by credit rating agencies. A secondary effect might be for the providers of the data – in this case, the household consumer – to recognize the value of the asset (financial details, addresses, personal and family details, marital status, hobbies, contact points, etc.) that they are giving away.

Rate of Return Regulation/Profit constraints/Price-caps

In the utility industries: power, water, telecommunications, etc. have large capital requirements which gives the utility economies of scale, and hence, monopoly control of the market. The regulatory solution to this market failure has been to control the rate-of-return (RoR) on assets in order to emulate the competitive outcome.¹⁸ But in the case of internet giants, it is the network externalities which give the GAFAMs their monopoly power; hence, the RoR does not offer a solution. Network externalities have to be confronted.

In response to the issues associated with the RoR, many regulators adopted price-caps controls. This requires that the regulated firm could only increase its vector of prices by an index of inflation less a factor for efficiency. After its introduction in the United Kingdom, it has been extensively used in the telecommunications industry by countries around the world. Price has the valuable function of allocating valuable resources; thus in order for price-caps to be applied to the internet sector, prices would first have to be set at “costs” and then the price-caps could be implemented. Finding the correct “costs” would be an issue, but this may be overcome.

SUMMARY/TENTATIVE CONCLUSIONS

First, Bork’s definition of “consumer welfare” or consumers’ surplus is flawed in that it include the excess profit or economic rents that the firm can gain through its monopoly pricing. This stretches the definition of consumers! While allocative efficiency may be obtained with monopoly pricing, it means that less is produced and prices are higher – all a cost to the consumer. Antitrust law were, historically, designed to protect consumers, not enhance the wealth of corporations in the name of efficiency. This observation is even more compelling in a

¹⁶ User is used here to denote the suppliers of *their data* to the GAFAMs. The United States Congress is beginning to recognize the value of the data (Lohr 2019).

¹⁷ A model for this might be with the EU’s ‘open banking’ initiatives, embodied in the ‘Payment Services Directive 2’ [PSD2] (European Union 2015). The UK and some Latin American companies have versions of this regulation.

¹⁸ A long and extensive literature exists on the problems with this and price-caps methods of regulation.

dynamic context, where significant market power (SMP) can restrain competition, retard innovations and stifle economic growth.

The second flaw in Bork's analysis is not including the other side of the market. Albeit the impact is not as visible and it may be difficult to disentangle the benefits of advertising in the Facebook and Google cases, from the harm of monopoly pricing of advertising services. Targeted advertising and political ads maybe useful to some consumers¹⁹. In many cases these ads may not be beneficial, indeed consumers would lose welfare due to the time involved in reading and deleting unwanted advertisements. In any case, the cost of advertising has to be included in the price of the products being sold in order for the firm to remain in business. So, clearly, the price of goods and services is increased by the cost of advertising.

Traditional antitrust and regulatory tools rely heavily on static economic analysis to determine relevant markets and assess market power. Careless application of the tools to control monopoly power can lead to policy errors that undermine the dynamism of technological change and reduce consumer welfare. In a dynamic environment, antitrust and regulatory oversight is necessary.

This analysis is preliminary in proposing to incorporate two-sided analysis into the consumers' surplus criterion. Other cross-market effects may be critical in examining welfare effect on consumers, but at this juncture, they are not obvious.

Using the "corrected" view of the consumers' surplus criterion, GAFAMs' pricing behavior has several consequences: It raises prices for the goods advertised, since these costs must be covered by the selling party to stay in business. This is at least \$35.8 and \$22.2 billion for Google and Facebook, respectively. This harms consumers, obviously. An additional harm is the dead-weight loss generated by monopoly pricing. The total welfare loss is at least \$53.7 and \$33.2 billion for Google and Facebook, respectively. Collectively, the two internet giants create a welfare loss of nearly \$87 billion dollars! And, increasing continually going forward. Second, it thwarts potential competition on the consumers side of the market. Only those with deep financial pockets can afford the cost of advertising; the others will be excluded from entering the market. This harms consumers by eliminating competition in the market for the product being advertised, and, once again, ensuring a higher price for consumers. This higher price is in addition to the increase in price due to the cost of advertising. It amplifies the harm to consumers of the price increase due to advertising costs.

The irony is that the platform is eliminating competitors not from its market – it already has a monopoly – but from its clients' market, the buyers of space/advertising on its platform. This has a secondary effect of increasing the market power of the seller of the products. To the extent that these firms have significant market power they can charge higher prices for the products they are advertising, causing additional consumers' harm.

GAFAM's platforms are eliminating competition and harming consumers, which are grounds for some form of social control – the combined effect makes an even stronger case for treating

¹⁹ It has been argued that focused advertisements may be useful to some consumers (Steiner 1973), but the net benefit to the consumers of the use of their data has not been shown to this author's knowledge .

internet platform giants as a utility and regulating them and/or vigorous antitrust actions for injurious conduct and performance. The “market” approach, advocated by Bork and his followers, will not correct the problems. Proactive action is needed.

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