

DOTTORATO DI RICERCA IN DIRITTO ED ECONOMIA
XXV CICLO

**ANTITRUST AND REGULATION IN
THE EUROPEAN UNION:
SELECTED TOPICS**

ABSTRACT

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INTRODUCTION

This thesis goes along two relevant dimensions: a geographic dimension, the European Union, and a methodological one, law and economics. The geographic dimension appears clearly from the topics covered by the three articles. They all belong to the economic analysis of European law, be it public or private. This choice has been the unavoidable consequence of having luckily spent a long period in the Centre for European Policy Studies. This Brussels-based think tank has indeed been a special place to observe the making of EU policies.

The other relevant dimension is, obviously, the law and economics methodology. This methodology allowed me to touch upon different issues, while still keeping a firm hook in the general research question “what are the effects on the ground of a given norm or institution?”. Once the two relevant dimensions have been mentioned, a brief overview of the specific issues covered by each article is provided below.

The first article analyses the governance of the EU policymaking process, namely a specific horizontal tool, the Impact Assessment. The Impact Assessment is a methodology which, starting from the analysis of the *status quo* and from the policy objectives, aims at assessing the effects of a legislative proposal in terms, often quite rough, of costs and benefits. The paper proposes an analysis of how effective the European Commission is in using the Impact Assessment to steer the EU policy cycle. The answer is, in a nutshell, that the Commission uses the Impact Assessment quite effectively to this purpose, although some criticalities still persist. It is worth mentioning that the topic is not dealt with from a political science perspective. Indeed, it belongs to the field of *meta* law and economics, as it does not analyse a specific legislative provision, but an institution – in North’s sense – used to regulate the production of legislative provisions.

The second article deals with Google, namely with the antitrust case initiated by the European Commission against Google itself. More specifically, the article develops a critique of the theory of two-side

markets, and then tries to answer the question whether Google operates in a two-sided market. In short, the answer is “probably not”. The article goes on proposing a different theorisation of Google, as a retailer of users’ personal information, which are then monetised via targeted advertising. Transforming Google from a two-sided market into a vertical value chain implies innovative results in terms of antitrust analysis. In particular, it helps in better understanding how relevant markets in the Internet ecosystem should be defined.

The third article analyses a class of firms, the intermediaries of personal information, which operate in different industries, from search engines to cloud computing providers, from social networks to supermarkets and financial institutions. The research question consists of exploring whether the economic regulation deals with this class of firms in a consistent manner, and the answer is, in short, “no”. This analysis is supported by three cases studies showing how the competition process and the development of certain business models depend on how the European legislators will decide to revise the legal framework on data protection.

IMPACT ASSESSMENT AND THE POLICY CYCLE IN THE EU

Giacomo Luchetta*

Abstract

With the Communication on Smart Regulation issued in October 2010, the European Commission tried to foster a better management of the whole policy cycle. According to that Communication, amending policy proposals must be preceded by an *ex post* assessment of the current situation, allowing “closing the policy cycle”. This paper tries to answer the question whether the EU Impact Assessments System is fit to steer and close the policy cycle, and what is the relation between *ex ante* IA and *ex post* evaluations “on the ground” so far. This is done via a macro and micro analysis, based on scorecard approach and three case studies, comparing the EU IA system performance with a theoretical benchmark derived from the EU policy document and process. The paper concludes that the EU Impact Assessment system, as it is currently designed and implemented, it is not yet fit to steer and close the policy cycle. To achieve this goal, all the analytical and empirical layers of the policy cycle should be fully dealt with since the *ex ante* phase.

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IS THE GOOGLE PLATFORM A TWO-SIDED MARKET?

Giacomo Luchetta*

Abstract

Probably not. Unlike other platforms, such as operating systems, credit cards, or night clubs, where a single transaction is performed via the platform, two different transactions take place on Google. Users look for search results in exchange of personal data, while advertisers look for users' attention, i.e. to be matched with the "right" user. Whilst operating systems, credit cards, and night clubs would be meaningless if either of the two sides were missing, search engines (like TV or newspapers) can exist under different market configurations. Indeed, in search engines network externalities run only from the number of users to advertisers, and not the other way around.

Building upon this analysis, a non-bilateral construction of the relevant market where Google operates is proposed. Google operates as a retailer of users' personal information. In the upstream market, it buys users' personal information from large retailers and final consumers in exchange of search services or upon monetary payment. Then, it uses the personal information collected to sell targeted advertising to advertisers in the downstream market. Based on this market construction, the allegations against Google are analysed as alleged violations of competition law along this vertical chain.

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This article has been presented at the 23rd European Regional Conference of the and the 3rd PhD Seminar of the International Telecommunications Society, Vienna, 1-4 July 2012; at a lunchtime seminar of the IBBT - SMIT, Studies on Media, Information & Telecommunication, Vrije Universiteit Brussel on the 29 of October 2012; and at the SIDE-ISLE (Italian Society of Law and Economics) 8th Annual Conference, University of Roma Tre, 13/15 December 2012.

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THE LAW AND ECONOMICS OF INTERMEDIARIES OF PERSONAL INFORMATION

Giacomo Luchetta*

Abstract

This paper explores a class of firms: the intermediaries of personal information. In the economics of personal information, scarcity is no longer the only, and foremost, determinant of value. The most important determinant of value becomes connection. Adapting what Gervais (2012) claims to be the first law of an information-flooded cloud-modelled economy, value is not derived from scarcity but rather from the fact that those who value it most will find it. Personal information is the raw material to create connections. Intermediaries collect personal information in exchange for goods or services, regardless of whether they actually need that information to perform their main activity, and use this information to connect other goods and services with the users who value them most, e.g. via personalisation or targeted advertising. Many firms in many different sectors are, or could become, intermediaries of personal information, from Google to supermarkets, from telecom operators to insurance companies.

The descriptive analysis of this industry has consequences in terms of business model and regulatory approach. As for the former, it is worth exploring the conditions for which a firm could profitably become an intermediary of personal information and thereby exploit untapped resources for revenue generation. As for the latter, an imperfect understanding of the economics of personal information creates the risk for misaligned norms, and therefore for an uneven competition.

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