Regulatory Politics and Platform Power: Polanyi for the 21st Century

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The Power of the Platform: The Rise & Maturation of the Platform Economy

Platform power has transformative implications for:

- Competition
- Firms
- Labor
- Technology
- Society
Emerging Regulatory Debates over Platform Power:

- Regulatory politics at inflection point—*laissez faire* techno-libertarianism is no longer politically viable.

- How should governmental authorities respond to platform power? To what ends? Using what tools? At what level of governance?

- No clear answers yet—but we need to clarify emerging regulatory & political dynamics.
Polanyi’s Double Movement for 21st Century Platforms

- **Movement 1:** Expansion of platform firms & markets. Transformative effects of platforms on markets, competition, firms, work, and socio-political power relations (Managerial Control—Private Ordering).

- **Movement 2:** Expansion of regulatory control over platform structure & conduct—re-embedding of platforms. Growing societal support & political momentum to regulate platforms in response to their growing scale, scope, and power (Political/Regulatory Control—Public Ordering).

The Regulatory Trajectory: Beyond Competition?

• “Old” debate (early-2020): Should competition law be strengthened in response to platforms’ growing market power?

• New debate (crystalized over the last year): What expansion of multiple areas of regulation & governance are necessary to address platform power and harms?
Competition Law vs Socio-Economic Regulation:

Competition/Antitrust:

• Narrow & limited sub-category of economic regulation, biased toward market mechanisms & minimalist intervention.

• Mostly **ex post** case-specific enforcement focused on market power & consumer welfare (limited **ex ante** oversight, i.e., M&A review)

• Case-specific *ad hoc* remedies tailored to specific firm & market.

Social & Economic Regulation:

• **Ex ante** proscriptive and/or prescriptive rules governing market behavior.

• Broader range of (economic & non-economic) interests, values, constituencies recognized & protected.

• Rules & enforcement mechanisms override or displace market mechanisms.
The DMA & DSA Proposals: Regulatory Expansion & the Double Movement

DMA—Constraining “gatekeeper” platform market power.
• Missing pieces: No merger review provisions & no structural remedies.
• The most “regulatory” parts of competition law not strengthened.
• Will require further reform OR future expansion of DSA-type regulation.

DSA—Expanding regulation of platform behavior.
• Broader scope of platform coverage & substantive concerns than DMA.
• Expanding use of uniform *ex ante* proscriptive & prescriptive rules.
• Expanding range of objectives = consumer protection, privacy, correct market failures, protection of non-economic interests/values.
• Expanding array of constituencies & interests in regulatory politics.
Advantages of Regulation:

- **Address** market failures & market power abuses **short of breakup**.
  - E.g., platform scaling or control intrinsic to benefits.
  - Especially when the platform is the market.
- **Uniformity** creates level playing field.
  - E.g., prevent regulatory arbitrage (but also may be barrier to entry).
- **Advance** non-consumer interests & non-economic values/ends.
  - Increasingly important as platforms transform society, work, etc.
- **Constrain** role of hostile/inept courts, dysfunctional litigation.
  - Reduce scope & role of judicial interpretation.
  - Legislation may expand regulator’s discretionary authority.
Regulatory Responses & Political Realignments:

• Different regulatory forms appeal to different constituencies.
  • Competition law appeals to businesses dependent on platforms (otherwise wary of regulation).
  • Broader regulation appeals to groups & policy entrepreneurs not served by market competition.

• Regulatory expansion may lead to more unpredictable & complex regulatory politics.
  • More potential interest group coalitions.
  • More policy ends & potential trade-offs.
  • Platform firms will maneuver against each other & use regulatory politics strategically—regulation as sword or shield.
Europe/EU in the Vanguard of Regulatory Change:

• Europe/EU in lead because authorities less conflicted (US treats Big Tech as national champions), yet powerful at global level (compare Australia vs Facebook).
• Likely to embroil EU in growing international conflict over platform regulation.
• Tensions/trade-offs between regulatory uniformity & divergent national regulation may make for counter-intuitive political coalitions/strategies.
  • Who benefits from uniformity? From fragmentation?
Takeaways:

• Early days of a great regulatory transformation.
• Regulatory expansion is re-embedding platforms within social, political & legal frameworks.
• Politics is transforming platform regulation, even as regulatory change will transform politics in unpredictable ways.
• EU is leading new platform regulation & likely continue to amid growing international conflict.
• All signs point to continued regulatory expansion, displacement of private ordering, & subordination of competition law.
When to Use Regulation vs. Competition Policy?

Competition Policy/Antitrust:
- Preserve or restore competition where practicable.
- Where rigidity of uniform *ex ante* regulation unnecessary/too costly.
- Where specific market power abuses/anti-competitive practices are idiosyncratic to firm.

Regulation:
- Prevent/penalize abuse of market power when breakup non-viable.
- Address market failures (the platform *is* the market).
- Creation of level playing field (prevent regulatory arbitrage).
- Advance non-consumer interests & non-economic values/ends.
- Constrain role of hostile/inept courts, dysfunctional litigation.
Paths Not (Yet) Taken? Future Alternatives to Constrain Platform Power:

• Utility model of intensive regulation.
• New institutional forms of countervailing power, e.g.:
    • Cooperatives of dependent firms
    • Allocation of bargaining rights (e.g., Australian news media rules).
• Mandatory licensing of IP.
• Exclusion of foreign platforms.
• Nationalization or partial public ownership of platforms.

• Political viability of regulatory/governance alternatives contingent on success of current regulatory efforts.
Political & Regulatory Dynamics:

• Backlash against platform firms has hit a tipping point, but big platform firms are intransigent. (strategically short-sighted?)

• Beyond economics—potential role of ideological/cultural politics in animating and mobilizing constituencies/coalitions.
  • From left: misinformation, hate speech, harassment, echo chambers fostering radicalization of right.
  • From right: accusations of PC bias, censorship of conservative views, cultural pluralism/anti-traditionalism.

• Hostility to platform-driven Big Tech enables: (1) potential cross-class coalitions in regulatory politics, & (2) pro-regulation alliances at international level.