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The EU is about to make Facebook even worse

Big Tech media platforms are dangerous. But the EU's proposed competition laws won't fix it — and could make it worse

The European Union has earned a reputation as the world's foremost regulator of Big Tech companies. Its latest salvo is the recently proposed Digital Services Act (DSA) and Digital Markets Act (DMA). But the inadequacy of these proposals has been exposed by the gripping images of a deadly mob ransacking through the US Capitol.

The attack on the heart of American democracy was incited and planned over Facebook, Twitter, YouTube and other digital media platforms, and it should be a warning to Europe. Unfortunately, the DSA/DMA approach is poorly equipped to deal with the extreme toxicities of the digital media platforms.

These interventions, like many of the previous ones from Commission Executive Vice-President Margrethe Vestager, are narrowly framed around impacts on competition and consumers. The stated goals of the DSA/DMA are to 'foster innovation, growth and competitiveness' and to ensure that 'innovators and technology start-ups will have new opportunities.' But most of the worst atrocities of the Big Tech media business model cannot be dealt with simply by trying to enhance competition and innovation.

Under DSA/DMA, large platforms would face fines for certain anti-competitive practices, but the maximum amount of fine (10 per cent of revenue) would be an insufficient deterrent. Platforms would have greater responsibility for removing vaguely defined 'illegal content' (an EU version of the mostly impotent German Facebook law, NetzDG), but that constitutes a micro-drop in the vast flows of disinformation amplified on these platforms. Facebook alone sees more than 100 billion pieces of content posted *each day*, a deluge that neither its algorithms nor its small army of human monitors can realistically contain.

The proposed legislation also relies heavily on transparency of platforms and algorithms as a means toward oversight and consumer protection, but it will provide little of either. To paraphrase a Silicon Valley slogan, 'A lie can travel halfway around the world before transparency has gotten out of bed.'

The Commission's proposals not only lack regulatory teeth, but like the GDPR they do not fundamentally change the digital platform business model, or project a broader vision for how the digital platforms *should* work. My contacts in Silicon Valley are rolling their eyes with amusement, because they do not believe that DSA/DMA will change very much.

It's not 'social' media

How did we arrive at this fragile moment? Since the birth of the digital media platforms 15 years ago — let's drop the friendly-sounding misnomer of 'social' media — democracies around the world have been subjected to a grand experiment: can a nation's news and information infrastructure, the lifeblood of any democracy, be dependent on digital communication technologies that allow a global free speech zone of unlimited audience size, combined with algorithmic (non-human) curation of massive volumes of mis/disinformation, that can be spread with unprecedented ease?

The evidence has become frighteningly clear that this experiment has veered off course, like a Frankenstein monster marauding across the landscape. Facebook is no longer simply a 'social networking' website — it is the largest media giant in the history of the world, a combination publisher and broadcaster with approximately 2.6 billion regular users, and billions more on the Facebook-owned WhatsApp and Instagram. A mere 100 pieces of Covid-19 misinformation on Facebook were shared 1.7 million times and had 117 million views — that's far more than the daily viewers on the New York Times, Washington Post, Bild, Daily Mail, Le Monde, Süddeutsche Zeitung, FAZ, ARD, BBC and CNN *combined*.

The FacebookGoogleTwitter media monopolies have been mis-used by bad actors for disinformation campaigns in over 70 countries to undermine elections, even helping elect Rodrigo Duterte in the Philippines; and to widely livestream child abusers, pornographers and the Christchurch mass murder of Muslims in New Zealand. How can we unite to take action on climate change when a majority of YouTube climate change videos denies the science, and 70 per cent of what YouTube's two billion users watch comes from its sensation-driven

recommendation algorithm?

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Traditional media use humans to curate what they push into the newsstream, and are subject to certain laws and regulations resulting in a degree of liability. But FacebookGoogleTwitter's robot algorithm curators are on automatic pilot, much like killer drones for which no human bears responsibility or liability. That is dangerous in a democracy. The fact that all three platforms could evict the president of the United States from their services with no judicial process, or attach warning labels to content and algorithmically curate what viewers see, shows that they are publishers, not simply a 'public square' or a global agora of free speech.

As publishers, these platforms have enabled the dividing, distracting and outraging of people to the point where society is plagued by a fractured basis for shared truths, sensemaking and common ground. It turns out that non-human curation, when combined with unlimited audience size and frictionless amplification, has utterly failed as a foundation for our democracies' media infrastructure.

Yet VP Vestager and the Commission do not seem to recognize how its competition frame does little to address these dangerous abuses. The commission's old approach simply does not dig deep enough to grapple with the distinctive qualities of this Big Tech media business model.

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Reclaiming the promise of the Internet

To figure out a better way forward, it's important to recognise that these Silicon Valley businesses are creating the new 21st century public infrastructure of the digital age. That includes search engines, global portals for news and networking, web-based movies, music and live streaming, GPS-based navigation apps, online commercial marketplaces and digital labour market platforms.

The companies like to remind us that they are providing all of this for free, that all we have to do in exchange is hand over unlimited access to

our private data. But that has turned out to be a very high price indeed. Vestager herself has disputed that these services are actually free, at one point declaring 'I would like to have a Facebook in which I pay a fee each month, but I would have no tracking and advertising and the full benefits of privacy.'

So then why is she holding back? The EU should require a whole new business model, based on treating these companies more like investor-owned utilities. Historically speaking, this is what Europe and the US did with the telephone, railroad and power industries, once they scaled to the monopoly size of being 'systemic risks,' as the DSA/DMA phrases it (indeed, Mark Zuckerberg himself has suggested such an approach). As utilities, they would be guided by a digital operating license — just like traditional bricks-and-mortar companies must apply for various permits — that defines the rules and regulations of the business model.

To begin with, such a license would require platforms to obtain users' permission *before* collecting anyone's personal data—i.e., opt-in rather than opt-out. These companies never asked for permission to start sucking up our private data or to track our physical locations, or to mass collect every 'like,' 'share' and 'follow' into psychographic profiles that are used by advertisers and political operatives to target users. The platforms started these 'data grabs' secretly.

Should society continue to allow this practice? Under the proposed DSA/DMA, consumers would have a right to opt-out of content recommendations — but that gets the accountability arrow backwards. The default should be no private data collection by the platforms without user consent. Why is the EU continuing to allow this noxious 'surveillance capitalism'?

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The new business model also should encourage competition by limiting the mega-scale audience size of these digital media machines. Do most users really need the capacity to reach an audience of millions or even thousands? That's bigger than kings, prime ministers and presidents were able to reach through most of human history.

A number of leaders have called for an anti-monopoly break up of these companies. That intervention has merits, but let's be clear: if Facebook is forced to spin off WhatsApp and its two billion users, and nothing else about the business model changes, that will just result in another Big Tech media behemoth. More competition is good, but less so if they are

competing according to the same market rules that the companies themselves have decided.

Beyond competition

So another way to reduce the magnitude of user pools would be through incentives to scrap the targeted-advertising revenue model and switch to users paying a monthly fee, like how Netflix or public broadcasters such as ARD or BBC are funded. That also would likely result in a decline in users, and Vestager has voiced support for it.

Or, the digital media operating license could require that the platforms significantly limit 'audience-size' for all user generated content. And then put Facebook's 10,000 human moderators to work amplifying selected pieces of public-interested information, rather than playing a losing game of whack-a-mole trying to thwart the flood of crazy town disinformation.

Another relevant framework is a product liability model. Imagine the danger if a manufacturer of a pandemic vaccination, or a medical device, could start injecting people, or open up patient's chests and insert their latest artificial organ, without having their products tested and certified *before* widespread use. Nuclear power plants, high speed rail and many other systemically-important infrastructure services follow such a 'precautionary principle' protocol.

The digital operating license also should include restraints on the platforms' rampant use of specific "engagement" techniques that both research and lived experience have shown to be contributing to social isolation, teen depression and suicide, as well as damaging our democracies. These techniques include hyper-targeting of content and advertisements, automated recommendations, addictive behavioural nudges (like pop-up screens, autoplay and infinite scroll), encrypted private internet groups and other 'dark pattern' techniques that facilitate disinformation and manipulation.

With so much at stake, it is not clear why the Commission continues to wield the small hammer of its narrow 'competition' frame. A focus on competition goes back to the Barroso presidency from 2004 through 2014, when its primary strategy was to 'make the EU the most competitive economy in the world.' That drive crashed in the 2008 global collapse, followed by the 2010 eurozone crisis, but its influence survived in Europe's later obsession with austerity. Now it lingers like a lost zombie in the Commission's attempts to create some weak rules for Big Tech.

Ineffective regulations are worse than none at all, since they result in a false sense of governance and could establish a weak international standard. The challenge now is to establish sensible guardrails for this digital infrastructure that harnesses the good and greatly mitigate the dangers from these technologies. FacebookGoogleTwitter have established their own greedy rules that are a threat to democracies (as well as to free market competition). It is time for those self-regulating days to end, and the EU seems to agree. But more powerful and democratic frameworks are needed than its outdated, technocratic focus on competition.



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