

CCI Workshop on Competition Law and Policy

Competition Policy and Internet

Rohini Lakshané
Program Officer
Centre for Internet and Society
rohini@cis-india.org
October 20, 2016
CC-BY-SA 4.0

Social Networking Services (SNS)

SNS: Facebook, WhatsApp, Seina Weibo, Vkontakte

“Prosumers”

Two-sided market: User-to-user connections; Point of Contact for advertising products and services targeting specific groups

Facebook:

Users need to accept Terms of Use

Has implications for users’ freedom of expression and privacy

Forces decisions upon its users

Is a walled garden

Enjoys unprecedented network effects

Network effects

A common and defining feature of network industries is the fact that they exhibit increasing returns to scale in consumption, commonly called “network effects”.

A market exhibits network effects (or network externalities) when the value to a buyer of an extra unit is higher when more units are sold, everything else being equal.

Markets with strong network effects where firms can choose their own technical standards are “winner-take-most” markets.

(Economides, 2006)

Network effects

Direct network effects: Number of users

Indirect network effects: Complementary products and Advertising

A firm with a large market share has more complementary goods, hence more valuable.

Lock-in

Multi-homing and switching to new/ alternative networks is technically possible for users.

But users are locked-in.

Barriers to entry into new networks/ exit Facebook:

Lack of data portability

Users prefer not to keep creating profiles on new/ different networks.

Shifting costs to other SNS are huge since the people and businesses you want to reach are present in Facebook but not other SNS.

No access to Facebook's network graph.

Hence no true alternatives.

(De facto) Standard

Direct and indirect network effects are so strong that they facilitate the development of one standard, and thus a monopoly.

Inexhaustible returns: In economic terms, Facebook prevents the surplus from its gargantuan network from being distributed equally amongst all the users and, in turn, tries to internalise all the surplus.

Essential Facilities Doctrine

Exists in the US and the EU.

Dominant firms are subject to specific rules of conduct under Article 102 TFEU, as they must not abuse their privileged position.

EU Commission *Guidance* (2008)

Facebook can be termed as a “social utility” (Danah Boyd)

Facebook marketplace: buy and sell things with friends and strangers. No longer only a social networking service.

Competition law in India has not evolved to envision this scenario.

Interoperability

Interoperability as an essential facility: Forcing interoperability requirements on other platforms to lower the inter-communication costs with network effects

EU Microsoft judgement (2007): refusal to disclose interoperability information.

“Microsoft had abused its dominant position in PC Operating systems by withholding critical interoperability information from its competitors. This meant that providers of rival work groups server operating systems were unable to compete effectively even though they were rated more highly by users than MS' products on parameters such as reliability, security and speed.”

...

Interoperability

“A dominant undertaking could reward its investment by seeking appropriate compensation for it as well as by restricting the availability and/or the access to the outcome of its innovation efforts, but only for the time necessary to ensure an adequate return on the investment... The Commission would also consider the respective values that are at stake and especially, on the one hand, any possible positive effects on incentives to follow-on investment from allowing access and on the other hand, the need to allow consumers to benefit from innovation brought about by the dominant undertaking’s competitors.”

Interoperability

Guidance may have been influenced by the notion of "indispensability" prevailing in Microsoft, which rather than focusing on whether the interoperability protocols could be "duplicated" by competing suppliers, emphasised the importance of interoperability to enable competing suppliers to operate viably in the relevant market. (Maurer and Scotchmer, 2014)

Interoperability

Interoperability through open APIs

Facebook Connect: Incompatible with OpenID

Open Social: a public specification (environment, APIs and web-based apps) for social networks. Now integrated with W3C.

Data portability

Facebook allows individuals to sync across devices, copy their own information as a backup or to move it to a different site, but prohibits third parties from copying the same data.

Social networking providers could also promote data portability by standardising the format of the data.