

Policy Brief 2014-04 – version 2

industriAll European Trade Union demands a regulation of monopolistic digital platforms

A contribution from the manufacturing workers' perspective

Digital platforms exert a natural monopoly

Many dominant digital-based companies exert a **monopoly** on their market (e.g. Facebook, Google, Amazon, Apple iTunes, GooglePlay and App Store, eBay, etc.). This monopoly bears on the **distribution platform** of the tangible or intangible goods being sold, respectively: one-to-many inter-personal communication, Internet searches, high-diversity cultural products, music, on-line applications, second-hand products. Access to the end customer of this category of goods is only possible through this platform. It is a "natural" monopoly, due to the technical and cost advantages of size in a network, which favour the largest player and reinforce their dominance on the market. It is also a **worldwide** monopoly, due to the fact that the Internet eliminates the obstacle posed by physical distance. This means that, in theory, the area covered by a retailer could constitute the entire planet – or an entire linguistic domain (whilst in the "physical" world it is restricted to a given geographical radius around each point of sale).

This position of monopoly leads dominant digital platforms to also being the only possible sales channel for their suppliers along the whole supply chain: telecommunications operators, infrastructure manufacturers, software developers, authors of cultural works (e.g. films, music, books), etc.

The technical means through which digital platforms control access to the final customer and exert pressure on their suppliers are:

- the capture of “**big data**” that supports the statistical prediction of customer behaviour
- the usage of **opaque** algorithms to determine which products or documents will be displayed to the customer first. Such algorithms can be subject to discretionary changes of parameters, so as to arbitrarily and selectively favour or impede one supplier or the other
- **cross-subsidisation** of activities, where profitable monopolistic segments allow the firm to practice dumping prices on others (even giving out the product / service for free) – thereby driving competitors out of the market.

As with other examples of Unfair Trade Practices, gathering evidence is made more difficult by the **climate of fear** that the digital platforms exert on their suppliers.

Monopolies extract undue rents from their customers and suppliers

The most classic textbook economics teach that any monopolist extorts a **rent** from its **customers**, due to the fact that it can afford to charge a price which is higher than the one that would deliver an economic and social "optimum". This monopoly rent has no economic justification - and no moral justification either. They also impose their (often unfair) trading conditions on these captive customers and reduce their choice.

At the same time, by being the only possible purchaser and having a **dominant role** in the value chain, these monopolies generate turnover, but almost no margin, for their **suppliers**, and **concentrate all the value** in their hands. They deprive suppliers along the whole upstream value chain of any possibility of maintaining their equipment, investing or innovating, and the supplier's workers of decent salaries and working conditions. By filtering the content that reaches the end user, they also are a danger for democracy and for cultural diversity.

industriAll Europe demands a regulation of monopolistic digital platforms

As mentioned, digital platforms are "natural" monopolies. In the early 20th century, the solution adopted within the U.S. oil sector was to break up the Standard Oil monopoly into smaller State-sized companies. However, in the case of digital platforms, this is not an option. The customary economics textbook answer to this problem in other network-based sectors (e.g. electricity, telecommunications networks) is to **regulate** the monopolist, so as to force it to charge the social optimum price, to behave in an ethical way with its suppliers and to ensure that it has a culturally and politically diverse offering which actually reaches the end user (in earlier times, just after the Second World War, governments even nationalised the private monopoly to make sure that this behaviour was indeed delivered).

IndustriAll Europe therefore demands that the European Commission **regulate** the operations of digital platforms that have reached a position of monopoly on their segment of the European market. This regulation should be managed by a **single European regulator of digital on-line services**.

The **content** of such regulation should include the following items:

1. "Big data is open data"
2. Introduce a "fair" search algorithm
3. Dismantle cross-subsidisation structures
4. Prevent Unfair Trade Practices.

Big data is open data

Any organisation (large or small, private or public) that gathers large amounts of data (and, more specifically, of personal data) in the European Union should be required to **anonymise** it, and to **replicate** it into a **public, freely accessible, Europe-wide, open data repository**, under a common, open standard (e.g. an XML profile) for all to use (e.g. economic, academic, public and non-

governmental groups or bodies). Thus, any "Big Data" in Europe would be managed as "Open Data". Personal (i.e. nominative, non-anonymous) data, however, would remain under the strict protection of existing European law. This protection of personal data encompasses both data collected in private life, and data collected in the workplace.

The justification of this regulation is as follows:

1. The **value** of "Big Data" lies in its **size**, meaning that the larger the amount of data, the more value the global community could extract from it. There is a justification, therefore, to ensure the mutual gathering of data between all interested parties, so as to obtain an even larger data set.
2. This **shared** resource is a **common good**, which would thus be legitimately managed by the public authorities to ensure that access to it be fairly provided. It gives serious consideration to what has so far has been little more than an advertising slogan: "Data is the new oil". If so, then it is a public resource, that must be publicly managed for the common good, and for which the public authority has the responsibility to allocate exploitation rights.
3. By guaranteeing all operators in society open access to the Big Data, this policy ensures that the **economic stakeholders** are rewarded for their **creativity** and for the **quality** and **innovativeness** of their exploitation **algorithms** – which is what deserves to be publicly supported – and not for their monopolistic stronghold on the raw material (the data) – for which there is no moral nor economic justification whatsoever.
4. It allows **public scrutiny** into the nature of the personal data being gathered by private corporations, and would allow human rights organisations to make sure that this data is indeed being lawfully collected.

Introduce a “fair” search algorithm

All websites that sell products or select information should include a “**fair**” search algorithm.

Defining such an algorithm is a difficult task. However, a “**concentric search**”, whereby all relevant results are first displayed in a **random** order (this randomness being controlled by third party inspection of the source code), with an easy option to **refine** search **within these results**, could be a first, viable, technical option which merits further investigation¹.

When such a transparent and fair search option is available, the suppliers suffer no economic pressure from the digital platform, because they cannot be discriminated against in a discretionary manner. They can generate more value added, provide better, more innovative products, and better, fairer working conditions for their own workers and for those of their suppliers. A “fair” search algorithm also brings advantages in terms of freedom of information and cultural diversity, by ensuring that the range of information or digital content being displayed to the final user is

¹ While it is beyond the technical competence of industriAll European Trade Union to provide a full solution to this problem, we hope to show, through this proposal, that at least one simple and feasible solution exists – albeit unsophisticated. The existence of such a solution proves that: (1) early implementation is feasible, and (2) further research makes sense. This [discussion](#) may be an indication of how central the “search within results” feature is to retain control on one’s search strategy.

neither biased nor limited in favour of the advertisers' interests, or their political or cultural preferences.

The website would be free to keep its existing search engine, and would thus propose two alternative options to the user:

- its current model, where an opaque, potentially biased, algorithm provides the information to the end user "for free"², whilst favouring the interests of the platform and those of its submissive suppliers
- the transparent, fair model mandated by the regulation, where this "fair" search algorithm is implemented and certified by an independent third party. Here, the user can be requested to explicitly pay³ to use the service – but with the added certainty that s/he is obtaining the results (products or documents) that s/he (and not the digital platform) has chosen.

Dismantle cross-subsidisation structures

When a digital platform has reached a monopolistic position in a given linguistic domain in the European Union, it should be **legally separated** from the rest of the company, in order to prevent cross-subsidisation and price distortions on the market⁴.

Thereby, the economic inefficiencies of distorted prices, and the unfair competition to non-subsidised operators, would be eliminated.

This separation would, however, only be performed in cases where this monopoly exists, and therefore, where the rents that this monopoly is generating are distorting the market. It would not be performed in normal industrial situations, where the mature product or product line is generating the self-financing capacity necessary for the firm to innovate or to diversify into new markets.

Prevent Unfair Trade Practices

As in any situation where a very high level of power asymmetry exists along the value chain, specific measures must be taken to protect the weaker party in the transaction against **Unfair Trade Practices** (UTPs). These practices were defined by the European Commission, DG Internal Market, in its Green Paper of 2013⁵, and include: "*failure to provide sufficient information about contract terms, demanding payments for goods or services that are of no value to the contractant, unilateral*

²The costs being borne by the real paying customer, i.e. the supplier paying the advertisement and all the other fees, discounts, etc...) "If it's free, you're not the customer: you're the good being sold".

³Either with on-line micro-payment solutions (that are yet to be developed, or are emerging, such as the EU-based [SatisPay](#), and have been long-deserved to counter-balance the hegemony of the advertisement-funded model), or via a subscription model with a "remember me" function.

⁴ As proposed by the European Parliament in its [Resolution on supporting consumer rights in the digital single Market](#) (2014/2973(RSP)

⁵"Green Paper on Unfair Trade Practices in the Business-to-Business food and non-food supply chain in Europe", document COM(2013) 37 of 31st January 2013.

or retroactive changes of contract terms, as well as payments for fictitious services" and "transfer of commercial risk".

The unfair behaviours being experienced in the digital economy in situations of severe power imbalances are not, in essence, any different from what may be experienced in other value chains of the physical world. They are only more intense due to the higher concentration of power, and are faster due to the pace at which things evolve via the internet. They deserve to be acted upon in the same manner as Unfair Trade Practices elsewhere – but at European (and not Member State) level, and by a single agency.

The “single European regulator of digital on-line services”, as demanded above, should be allowed to receive information on Unfair Trade Practices by any operator in the digital world, and to handle it **confidentially**, so as to protect its informant against the risk of retaliation by the stronger party. It should then be entitled to engage in **legal action** to repress these UTPs, while protecting the plaintiff from retaliation.