

Comments on ‘Notice of Proposed RuleMaking: ‘Protecting the Privacy of Customers of Broadband and Other Telecommunications Services’

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These comments are prepared with the aim of clarifying the contribution, insights, and context of academic research we have published on digital privacy and competition (Campbell, Goldfarb, and Tucker, 2015; Kim and Wagman, 2015; Goldfarb and Tucker, 2011a; Tucker, 2014). We highlight three broad concerns: (1) That privacy regulation can strengthen the position of incumbents; (2) That privacy regulation can lead to an increase in prices and inequality (3); that there are ways to design regulations in order to reduce the regulatory burden on firms and consumers.

Digital Privacy and Competition

In Campbell, Goldfarb, and Tucker (2015) we emphasize that privacy regulation can help incumbent firms and reduce competition. In the context of the proposed rulemaking:

- We worry that if privacy choices are embedded in the initial relationship between a broadband Internet access service (BIAS) provider and customer in a way that is not

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easily transferable to other BIAS providers, this could inadvertently create switching costs between BIAS providers. In particular, users may be unwilling to change from their existing BIAS provider to a new and potentially superior entrant if it would mean redoing all their privacy setting choices.

- We also worry in a setting where customer data for the first party marketing of ‘communications-related services’ is allowable on an opt-out basis but third-party marketing is not, that care is taken to avoid creating substantial advantages for large incumbent firms. For example, if a BIAS provider was able to use its own data to market services and target advertising, it will be able to continue to improve and hone its advertising. In contrast, new entrants and smaller competitors will find it difficult to challenge the incumbent’s dominance in terms of identifying and informing potential new customers of communications services that their offerings may be better or cheaper.

Pricing and Access

In Kim and Wagman (2015), we find evidence that consumers, given the option to choose between a more affordable option, which comes with less privacy, and a more expensive option with more privacy, will tend to choose the more affordable option, despite privacy concerns. In the context of the proposed rulemaking:

- We worry that BIAS providers will offer different pricing options depending on whether or not consumers opt to share their data. In particular, BIAS providers may offer a more affordable option that comes with no privacy, which many consumers will choose.
- Conversely, if BIAS providers are unable to price differently based on consumers’ privacy choices, we worry that prices for broadband services, everything else held equal, will increase, which could hamper broadband access in lower-income households. Prices

may increase because BIAS providers would lose revenue sources associated with consumer data. Kim and Wagman (2015) find evidence of resultant price increases following an opt-in approach for transactions in consumer data in the market for mortgages.

Encouraging Consumer Choice

In Tucker (2014), Goldfarb and Tucker (2011a), and Goldfarb and Tucker (2011b) we demonstrate that privacy-enhancing policies can sometimes help advertisers and sometimes hurt advertisers. Therefore, we want to emphasize that the precise nature of the rules will matter a great deal. Extensive efforts should be taken to collect data that illuminate the burden that any new rules will impose on customers hoping to switch providers and the burden any new rules will impose on advertisers, whether incumbent or entrant.

In particular, our research suggests that methods of gaining consent that encourage consumers to feel they have a genuine choice over their privacy can benefit both consumers and advertisers. Tucker (2014) presents evidence that after Facebook introduced its new privacy settings that allowed more control over personally identifiable information and addressed many of its critics' concerns, click-through rates for personalized advertising actually increased. Similarly, Goldfarb and Tucker (2011a) documents that users, particularly privacy-seeking consumers, respond negatively to advertising that attempts to be both (i) immediately intrusive in terms of how visually distracting its ad design is, and (ii) behaviorally intrusive by being targeted towards the type of content that the consumer is seeking online. This suggests that if consumers are given choices over how advertising is geared towards appealing to them, there can actually be an improvement in performance. In contrast, Goldfarb and Tucker (2011b) demonstrates that the European Union's regulations around data use had a detrimental impact on advertisers. Thus, depending on the rules chosen, consumers and firms could be helped or hurt by increased privacy regulation. We therefore encourage extensive testing of the burden of proposed rules before implementation.

We hope that these comments are useful. Please contact us if you have any questions.

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