

Intelligence MEMOS



From: Konrad von Finckenstein
To: The next Minister of Innovation, Science and Economic Development
Date: October 30, 2019
Re: **DEALING WITH INTERNET GIANTS**

There has been increasing concern worldwide about the powers of the Internet giants commonly known as the FAANGs, (Facebook, Apple, Amazon, Netflix and Google) and how to control, regulate or deal with them.

All collect massive amounts of user data and aggregate it to provide the economic engine for their enterprise.

So far two clear trends have emerged:

Strengthening Privacy

Worldwide, there is concern about the invasion of privacy, or at least the use of private data, by these internet giants without user consent or knowledge. As a result, there have been movements to strengthen privacy regimes. The two most comprehensive approaches have been the EU's General Data Protection Regulation (GDPR) and the California Consumer Protection Act (CCPA). Both aim to establish privacy principles and oblige organizations to comply with them. The focus has been on consent to the collection and use of data, the ability of the Internet user to check and correct data, and liability for the unauthorized use and collection of user data.

Increased use of Competition Law

The EU, but of late also the US, has gone after Internet giants focusing on their use of massive data aggregation to engage in anti-competitive activity. Google, for instance, was billions of Euros for using its search engine to drive business to its own websites and discriminate against competitors using the data.

While using privacy and competition laws to go after internet giants can be salutary, there is really no conceptual framework for 'regulating' or at least normatively restraining some of the worst abuses of the Internet as outlined by [Tim Wu](#) among others.

The web today is the principal source of innovation and inventions and no policy maker want to restrain that. Similarly, no one in Canada wants to interfere with the concept of net neutrality, i.e. the principle that Internet service providers should enable access to all content and applications regardless of the source and without favouring or blocking particular products or websites.

How then should one approach the obvious unhealthy domination of the internet like the FAANGs?

Philip M. Napoli, a Professor of Public Policy at Duke University, [suggests](#) that one should think of 'user data' as being a public resource, similar to how we deal with the radio spectrum. Therefore, massive aggregators of user data, like the FAANGs, should be regulated. Such regulation would obviously include:

- Defining a massive aggregator of user data.
- Disclosure of what data is amassed.
- An obligation to anonymize such data and make it impossible to re-engineer the anonymization.
- Limits on the use to which the data may be used.

Much work needs doing before such a concept could become policy and be legislated. The definition of various terms, first and foremost of who is considered a "massive aggregator of user data" has to be carefully thought through.

But Napoli's approach is a good beginning for a new conceptual framework of how to rein in Internet giants without losing the tremendous benefits of the Internet we know today.

Canada should convert this conceptual framework into a workable policy, and advocate its adoption internationally and thus lead the world in advancing policy solutions to dealing with the complex issue of internet giants.

The Hon. Konrad W. von Finckenstein, Q.C., was Chair of the Canadian Radio and Telecommunications Commission, a Federal Justice and Commissioner of Competition.

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