



Commercial hypertext nudging - should we worry about consumer choice?

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Outline



Hyper(nudge)



Example: consumer steering



Consumer choice



Hypernudge vs. consumer choice



A role for European competition law?

Nudge

“...any aspect of choice architecture that alters people’s behavior in a predictable way without forbidding any options or significantly changing their economic incentives. To count as a mere nudge, the intervention must be easy and cheap to avoid” – C. Sunstein and R. Thaler

Additional criterion: intentionality

Hypernudge

- **Delivered by the use of complex AI and ML algorithms**
- **Dynamically personalised**
- **Predictive**
- **(Often) covert**

Do not impose *physical constraints* upon individuals with strong contrary preferences to choose otherwise; they impose highly personalised *cognitive constraints* that hinder the exercise of free choice.

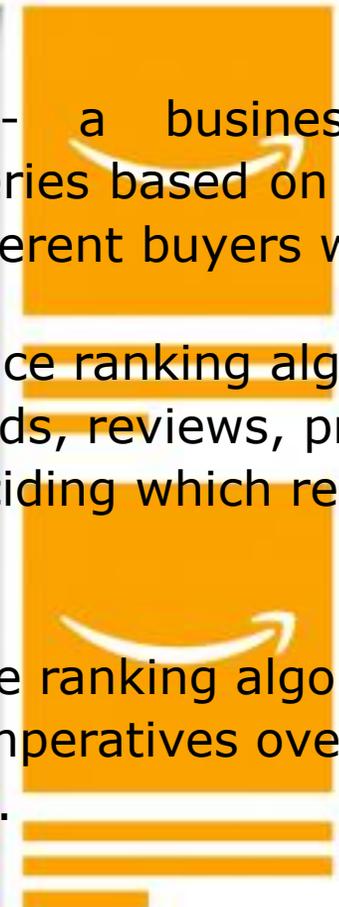




Example: consumer steering



- Consumer steering - a business practice that personalises consumers' search queries based on their data, meaning that for the same search query different buyers would be shown different results.
- E.g. Amazon Marketplace ranking algorithm takes into account factors such as keywords, reviews, price, images, and sales conversion rates in deciding which results are most relevant to the search.
- In 2019 September, the ranking algorithm was updated to favour company's economic imperatives over consumers' interest (relevance or best-selling listings).





find it all

Where To Look For What You Need.

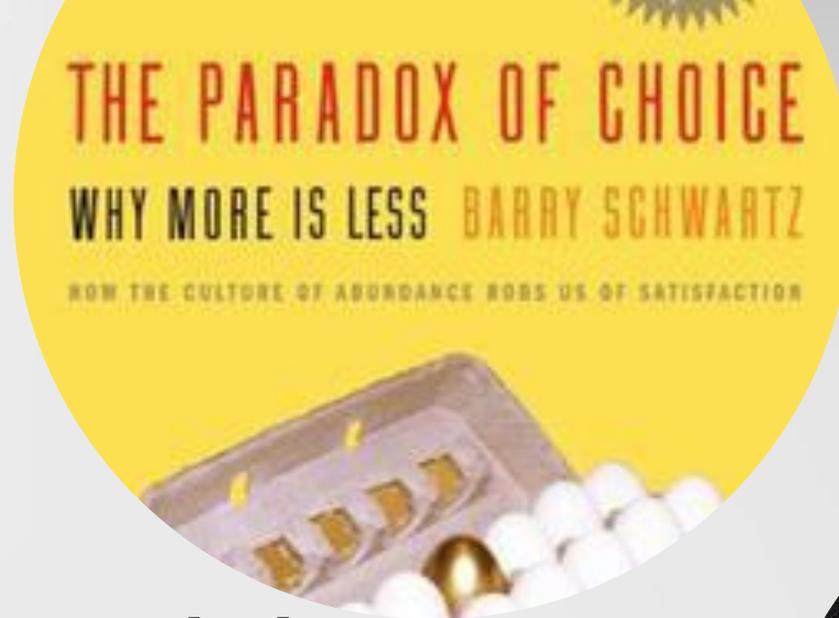


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Consumer choice

- Consumer choice is the possibility and the right for a consumer to choose freely between the products and services corresponding to their needs and economic partners they wish to deal with.
- It may be viewed as one of the components of consumer welfare.
- The digital economy has shifted the current competition law enforcement focus towards the non-price parameters of competition.



Hypernudge vs. consumer choice

- The paradox of choice issue
- Personalisation of choice environment may lead to efficiencies e.g. relevance
- However, characteristics of hypernudges create possibilities for abuse that is difficult to spot
- For win-win situations: the interest of the choice architect and the nudgee must concur.



A role for European competition law?

- Opaqueness of hypernudges leaves room for abuse - giant techs may engage in self-preferencing behavior
- Does it fall within the scope of competition on merits?
- E.g. *Google Search (Shopping)* showed that design choices matter – hypernudges provide more targeted and effective form of steering



Thank you!

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