

All Powers to Consumers

When dealing with digital innovation from the perspective of consumer protection, we instinctively tend to focus almost exclusively on risks, potential abuses and specific violations of the regulation in force. This perspective, rightly focused on the here and now, however, is inevitably limited, short-sighted and therefore risks not to grasp fully the essence of our times, of the revolution we are experiencing and of the extent to which our own interests as citizens are more widely at stake. Let me therefore, at least once, reverse this cliché and try to raise the bar starting from the consideration that **consumers are no longer just weak subjects and as such worthy of particular protection, but they are also and above all the protagonists of the new digital markets, in which they disclose their personal data.** The protection of the economic interests of consumers in the market, as we will see better below, opens a whole new perspective for consumerism as engine for development.

Four are the relevant trends to consider in this perspective:

- **The digital ecosystem is now clearly unbalanced.** In recent years, a significant reduction in competitive dynamics has meant that, although technological development has remained exponential, the added value transferred to end consumers by the major Internet players has instead considerably weakened. Can we still say that we are satisfied - as we certainly were at the beginning of the 2000's - with the benefits that innovation and technology are providing us? As far as I am concerned, the answer is clearly no! There is still a lot, too much, that we could and should do with the new technologies, given their potential, to improve the lives of millions of people. The innovation/competition tradeoff has been caught in a worrisome loop not only for the users, but for the ability of the system itself to hold. Therefore, **it is urgent and in the general interest to find solutions to rebalance it, paraphrasing William Gibson, one could argue that “the future has been here with us for too long not to expect it to be more evenly distributed”.**
- **A growing number of consumers are expressing their fundamental rights as citizens on digital platforms,** privately owned and governed by general terms and conditions of contracts. This is an absolute novelty in the history of mankind in the face of which the power of states and their public enforcement systems and jurisdiction appear fairly obsolete. We are realizing so shamefully late that virtual dynamics, although absolutely concrete and real, are undermining the basic principles of our Democracies. Here, too, it is necessary to imagine as soon as possible a new framework that is future-proof. On the one hand, justice cannot be entrusted *tout court* to platforms under the threat of holding them responsible for the conduct of their users. Otherwise our rights and interests would risk being administered by robots that respond to algorithms and shareholders rather than to laws and constitutions. On the other hand, today one of the typical and most effective tools for consumer protection, i.e. the unfair commercial practices legislation, can already be used widely as a vehicle for private enforcement of citizens' fundamental rights within digital platforms. **It is, therefore, crucial that the platforms themselves, building on the theory of essential facilities and common goods, begin to open up, acknowledging specific roles in their governance to intermediate bodies of our society.**
- **The spread of predictive algorithms and machine learning,** already at this early stage, clearly demonstrates that, together with significant opportunities for consumer well-being, it may involve some risks of an unacceptable restriction of their freedom of choice. The main objective of strong cooperation between market players, institutions and civil society organizations should in this case be to ensure that artificial intelligence does not destroy or controls human beings, but, on the contrary, strengthens and enhances them. The technology we have created to expand our freedom cannot and must not be transformed into a coercive and limiting system. In the meantime, **while safeguarding the central role of the human being in the information society, we must also ensure that fundamental rights are**

written in computer codes by default, ensuring that the fundamental values of our society remain firm and are not altered in a society where machines will gain ever more importance.

- **Data have become an essential resource for the growth of our economy**, they can also be an essential resource in the future for job creation and for the progress of our society. On the basis of GDPR rules we can already say that the value generated from data cannot and must not be considered in conflict with adequate consumer protection. However, an overly bureaucratic interpretation of the rules must not prevail and, above all, we must finally overcome the sort of fundamentalism in any approach to personal data protection that is solely and exclusively linked to their inviolability. In this respect, **the monetization of data should always be considered possible, except for sensitive data, provided that consumers are clearly allowed to give their informed, voluntary and deliberate consent and that they are given a fair share of the value created through the processing of their data.** In short, we hope we can finally achieve a more complete and secular vision of the economic value of personal data. If data are the new currency, trust is nevertheless its guarantee. Without trust, we run the risk of breaking the whole system.

We are approaching the 2020s and, in some ways, as in the *Roaring Twenties* of the previous century, we are living in times of particular social and technological breakthroughs, but new and recurring cycles of history should also lead us to pay particular attention to the inherent risks of systemic economic crises, such as the devastating Great Depression of 1929, when customers massively withdrew their savings from banks. As a matter of fact, there is no guarantee that the same cannot happen again, *mutatis mutandis*, in relation to data processing authorization, wherever trust is not reconfirmed. One thing is certain, **there is no real innovation, if it does not bring benefits to end consumers, citizens, Individuals.** The best way to avoid the most apocalyptic visions related to the so-called “siliconization of the world”, avoiding a very dangerous degeneration, is then to **return Individuals their central position in the future evolution of the information society, as well as consumers, with their legitimate economic interests, at the center of the emerging data market.**

This, indeed, seems to me a battle of historical importance, in which a modern, pragmatic and far-sighted consumerist movement should challenge itself. While it continues to **strengthen its leadership in the field of private enforcement and intervene whenever there are clear and unacceptable violations to catalyze the interests of a significant critical mass of consumers**, - as in the recent class action against Facebook for the unlawful exploitation of personal data, for which the organizations belonging to Euroconsumers Group have already collected almost 200.000 claims in 4 different European jurisdictions, - it should also be able to **look beyond the protection of the status quo, interpreting its mission in an forward-looking and dynamic perspective.**

The real challenge we face, if we really want to improve the present, is, in fact, firstly to imagine the future and then, in order to make it truly attainable, to find the courage to overcome the often sterile and fruitless opposition between the fundamental rights of citizens and consumers and entrepreneurial freedom. Only through contamination and collaboration with the main forward-looking market players will we be able to transform our strength into a positive “enzyme” in the new data economy and to promote a more balanced digital ecosystem, characterized not only by respect for rights, but also by the ability to share economic benefits with consumers, citizens and Individuals, whose data are now essential for the development of any products or services.