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ROADMAP ON THE ENVIRONMENT AND DIGITAL

Competition and regulation of platforms

Interoperability case study social networks

50 measures for a national agenda and European in the service of a digital sober, responsible and at the service of sustainable development goals

SUMMARY

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EDITORIAL

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The competitive question is at the heart of the reflection on the regulation of digital, given the characteristic of the market dominated by large non-European platforms. **Without mastering competition issues, it seems difficult to achieve the other regulatory objectives.** For example, to fight against overexposure to screens, it is not enough to act on attentional processes, for example by limiting the time spent in front of screens. We must also act on everything that contributes to making people dependent. Of the same In this way, the fight against hatred on the Internet cannot be fully effective if we are not interested in the position of social networks such as Facebook on the market. **The control of such issues raises the question of the articulation between the right competition and asymmetric regulation, *ex ante*.** The underlying model is obviously that of telecommunications, where the operators considered as being powerful in a relevant market, at the end of the procedure market analysis, are subject to specific obligations, in particular in terms of access and interconnection. **This model cannot be transposed as which, even if it can inspire certain proposals aiming to bring out alternative players to offer more choice to the user.** One of the proposals flagship would be to create a form of interoperability of platforms and in particular social networks. This is what the Council wished to examine in the context of the present study which favors a very concrete approach to the question to better fuel the debates on regulation which sometimes lead to excess generality.

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Regulating platforms is a challenge in many ways, given the variety of transactions they handle is great. Also, in **order to take into account the specificity specific to each of them, this study chooses to focus on on a particular category: social networks, widely used in the society, generating billions of daily interactions globally.** Due to their dominant position in this market, a limited number of networks structure all uses. Also the question of interoperability appears it in first intention a measure able to limit the effects of foreclosure specific to this position. This is what this study intends to analyze in detail. If in the digital world, interoperability is at the heart of exchanges, it naturally seems a remedy for the powers of social networks. In this regard, **the detailed examination of the technical, legal, and economic feasibility shows, however, that this measure turns out to be much more complex to operationalize.** Therefore, if interoperability is desirable, it alone will not be enough to resolve the various issues raised by social networks to our societies.

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SUMMARY OF THE STUDY

What is interoperability?

There is no commonly accepted definition of interoperability in terms of which concerns digital services. Etymologically, the term interoperate comes from the Latin inter operis, which means to work together. There exists a definition in the directive on the legal protection of programs computers [1] as being " *the ability to exchange information and use mutually exchanged information* ", but which specifically concerns the case of software protection. Without being defined, interoperability appears by elsewhere among the purposes of the regulation of electronic communications [2] . Finally, interoperability is known from copyright [3] when it regulates the use technical measures to protect works [4] .

The Council considered it necessary to carry out a concrete case study to shed light on the debate on the relevance of this measure. He chose to focus on social media platforms that are often targeted by supporters interoperability, as communication services. However, interoperability can be applied to other types of platforms [5] , so that **the issues and recommendations resulting from this study can be with a view to a more global regulation of platforms.**

Why interoperability?

Sometimes presented as a miracle solution to competitive problems raised by large platforms, interoperability is not straightforward. Again should it be determined on which market (s) it should be implemented and which would be its objectives.

In the case of social networks, defined as " *services allowing users to connect, share, communicate and express themselves* " on the web or on a mobile application [6] , interoperability could allow users a social network to interact with the services of other social networks, and / or switch. **This differs from data portability, which simply allows users to retrieve their data and transfer it to another network social,** under Article 20 of the General Data Protection Regulation personal data (GDPR).

In the social media market, several public policy objectives can be assigned to interoperability. It would above all make it possible to animate competition between platforms by combating network effects; she would also strengthen the freedom of choice for consumers who might more easily from one social network to another. At the same time, interoperability could strengthen users' control over their data, in the extension of the right to data portability. Finally, some are considering it as a tool in the service of the fight against hate content.

1 §10 of Directive 2009/24 / EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of programs computer

2 Article 61 of Directive 2018/1972 of 11 December 2018 establishing the European electronic communications code .

3 Art. L. 331-5, al. 4, CPI: "technical measures must not have the effect of preventing the effective implementation of interoperability, with respect for copyright (...) ".

4 Technical protection measures (Digital rights management or DRM) are devices whose objective is to control the use of digital works (books, videos, music) by preventing the user from performing acts not authorized by the rights holder, such as copies.

5 See in this regard Article 4 of the Bill to guarantee consumers' free choice in cyberspace, tabled in the Senate on October 10, 2019, which targets operators of online platforms within the meaning of Article L. 111-7 of the Consumer Code.

6 European Commission, decision of 3 October 2014 , FACEBOOK / WHATSAPP, COMP / M.7217, point 46.

Which platforms?

Before determining the forms that interoperability can take, it is necessary to

to delimit the social network platforms that could be concerned.
All the actors interviewed agree on the fact that **only the greatest social networks should be subject to an obligation of interoperability** where appropriate, so as not to impose disproportionate obligations on the networks emerging social issues.

Should we therefore restrict ourselves to dominant players in the social media market? in the sense of competition law or go further? The question deserves to be because **the delimitation of the relevant market, which consists of the products and substitutable services for the consumer, here comes up against free access as well than the diversity of existing social networks.** In any event, the right competition alone cannot capture all the externalities negative generated by major social media platforms.

Also, the Council tries **to articulate the different approaches which characterize systemic or structuring platforms, to identify a position common.** If the constitutive criteria may differ, the reasoning is the even: due to their essential position on the market, some players should be imposed specific rules, such as the interoperability of their services. **Therefore, a set of indices can be considered to define the "systemic"** nature of the **platforms:** the nature of the activity (management access to information, activities of general interest or of a sovereign nature, etc.), the existence of massive network effects, the control of a considerable volume of non-replicable data, the essential situation in a multi-sided market or the ability of the actor to define the market rules himself, but also the overall effects on the community outside the economic field and its power influence on sensitive areas of the social bond, or the relationship of dependence between the platform and the users.

What features?

In view of the hearings, **the establishment of a common protocol for one or several features are preferred over opening existing APIs of large platforms.** An approach by functionalities rather than by categories of platforms would in fact prevent dependence on the smallest actors. This would in no way prevent the obligation of interoperability to be imposed on large platforms.

In the telecommunications sector, the subscriber of an operator can directly contact the subscriber of another operator. Likewise, for emails, the user of a service can contact any other person from another service. ***What* about social networks, which have a wider variety of features?** In the context of the hearings, the actors did not supported full interoperability, which would consist in making interoperable all features. Also, the Council identified **three gradual options interoperability between social networks - not mutually exclusive:**

1. The interoperability of social graphs, which would allow the user to maintain the relationships acquired on the previous social network, when he joins a new ;

2. The interoperability of instant messaging, which would empower the user from a network A to send or receive messages from a user of a network B;

3. Interoperability of content, which would give the user the possibility of consult (option 3.1), publish (option 3.2), or even interact with the content (option 3.3) on a third party social network.

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What impacts?

Despite the fundamental and plural objectives that interoperability could continue, **it is not certain that users, or even social networks emerging, are eager to benefit. Indeed, freedom of choice of consumers promoted by interoperability can be put into perspective by practical,** due to the segmentation of uses and multi-homing. This increased freedom of choice could, moreover, be counterbalanced by

a reduction in the right to privacy in view of the flow of data to personal character that this implies. Any initiative in this regard should therefore be accompanied by solid guarantees in terms of data protection, agreement with national and European regulatory authorities.

Regarding social networks - both dominant and emerging - the hearings report a mixed cost-benefit balance. If the financial cost stricto sensu can be moderate, large platforms could be affected by a lack to gain, because their business model is based on the exploitation of data personal users. Above all, interoperability would not always fit in the direction of better competition for the benefit of small social networks, nor even as part of their innovation strategies.

What regulation?

In positive law, the regulator has several legal foundations potential to ensure the interoperability of social networks, like the law electronic communications or competition law. **Especially more than the notion of the right to interoperability tends to emerge through the right copyright and consumer law.** However, the limits of the rules existing to grasp the question lead to question the relevance a new form of regulation.

On the principle of regulation, a cautious approach is recommended by the Council.

- Indeed, in view of the risks raised in the impact assessment, **it would be preferable to examine, as a first step, the effects of implementation of the right to data portability,** allowing users to transfer their data from one social network to another.
- At the end of this examination, if the Government wished to introduce a interoperability obligation, **this initiative should be part of the a more comprehensive reform of platform regulation** that would integrate economic and societal aspects, at European level (*Digital Services Act*).
- **Asymmetric and ex-ante regulation could thus specifically target systemic platforms, including in their relations with consumers,** in addition to the P2B [7] regulation which would continue to apply to all platforms in their relations with user companies [8] .
- Where appropriate, **interoperability could be recognized as a right of the consumer,** insofar as it meets their needs to control its data, as well as to communicate its digital tools.

7 Regulation 2019/1150 of 20 June 2019 promoting fairness and transparency for companies using intermediation services online.

8 Impact assessment of the European Commission on the Digital Services Act published on June 2, 2020: see options B.1, B.2 and B.3 considered by the Commission, in particular option B.3: '3. Adopt a new and flexible ex ante regulatory framework for large online platforms acting as gatekeepers: This option would provide a new ex ante regulatory framework, which would apply to large online platforms that benefit from significant network effects and act as gatekeepers supervised and enforced through an enabled regulatory function at EU level. Tea new framework would complement the horizontally applicable provisions of the Platform-to-Business Regulation (EU) 2019/1150, which would continue to apply to all online intermediation services ".

On the implementation of the regulation, the Council recommends to apply principles of necessity and proportionality in several respects.

- **The scope of the interoperability obligation should be strictly limited systemic social networks,** defined both by quantitative criteria (market share, number of users, etc.) and qualitative **such as ownership critical data, or the impact on users' cognitive systems.**
- **The degree of the interoperability obligation should be minimal,** taking into account given the potential negative impacts on the one hand, for social networks and secondly, for users, such as privacy risk. Thus, **a gradual approach should be favored (option 2: messages snapshots or option 3.1 content consultation).**
- **The format of the interoperability obligation should be part of a framework**

general, leaving flexibility to national regulators as well as to agreements between platforms, on the telecommunications model. The choice of the competent regulator could vary according to the objectives and interoperability options: ADLC, ARCEP (option 2), or ARCOM (option 3.1).

INTRODUCTION
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Faced with the challenges raised by the digital economy, **many reflections are underway at national and European level to regulate large platforms, especially non-European ones.** In this context, several tools regulatory potentials are highlighted, in particular the interoperability of services. This was envisaged to improve competition in the digital age within the framework of the citizen consultation of the "states general of the new digital regulations "organized by the National Digital Council in 2019, under the aegis of the Prime Minister [9] .

However, it is clear that **there is no commonly defined definition admitted of interoperability with regard to digital services.** Etymologically, the term interoperate comes from the Latin *inter operis* , which means work together. There is a definition in the protection directive of computer programs [10] as being " *the ability to exchange information and mutually use the information exchanged* ", but which specifically concerns the case of software protection. Without being defined, interoperability is also one of the purposes of the regulation of electronic communications [11] . Finally, interoperability is known from the law author [12] when this regulates the use of technological protection measures works [13] .

Sometimes presented as a miracle solution, interoperability is not easy. **It is necessary to determine what would be its objectives and in which market (s) it should be implemented.** This is the reason why the Council considered it necessary

conduct a concrete case study to inform the debate on the relevance of this measure. He chose to focus on social media platforms that are often targeted by advocates of interoperability, as communication.

In the case of social networks, defined as " *services allowing users to connect, share, communicate and express themselves* "on the web or on a mobile application [14] , **interoperability could allow users a social network to interact with the services of other social networks, and / or switch.** However, this interoperability can take different forms depending on the objectives pursued. In addition, **it differs from data portability, which allows the user to recover their data and transfer them to a other social network [15] .**

Also, **its deployment raises many questions that the Council wished to study, in** order to highlight its potential benefits and risks for a given sector:

- the regulatory objectives pursued by the interoperability of networks social (1);
- the scope of platforms and functionalities to be submitted to interoperability (2);
- the challenges of interoperability for social networks and their users (3);
- the legal foundations of an interoperability obligation, where applicable (4).

9 National Digital Council: Synthesis of the "Competition" Digital General Meetings, May 2020.
10 §10 of Directive 2009/24 / EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of programs computer.
11 Article 61 of Directive 2018/1972 of 11 December 2018 establishing the European electronic communications code.
12 Art. L. 331-5, al. 4, Intellectual Property Code: "technical measures must not have the effect of preventing the implementation effective interoperability, while respecting copyright (...) ".
13 Technical protection measures ("Digital rights management" or DRM) are devices whose objective is to control the use digital works (books, videos, music) by preventing the user from performing acts not authorized by the rights holder, such as the copies.
14 European Commission, decision of 3 October 2014, Facebook / WhatsApp, COMP / M.7217, point 46.
15 Article 20 of Regulation 2016/679 of April 27, 2016 on the protection of individuals with regard to data processing of a personal nature and to the free movement of such data.

CHAPTER 1
INTEROPERABILITY, A REGULATION TOOL SOCIAL NETWORKS?

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1. THE COMPETITIVE PROBLEM IN THE NETWORK MARKET SOCIAL

Decryption of the business model dominant social networks

In the age of the digital economy, the hegemony of major platforms is regularly questioned. In its Digital Ambition [16 report], the National Digital Council had defined the notion of platform as a service acting as an intermediary in access to information, content, services or goods, most often edited or provided by third parties (transport, information, accommodation, commerce, social relations…). Beyond its only technical interface, it organizes and prioritizes these contents in order to of their presentation and their connection to end users. The law for a Digital Republic of October 16, 2016 enshrined the notion of "meta platform "since under Article L. 111-7 of the Consumer Code, is qualified as online platform operator any natural or legal person offering, in a professional capacity, paid or unpaid, a online public communication based on [17] :

- 1 - Classification or referencing, using computer algorithms, content, goods or services offered or posted by third parties;
- 2 - Or the bringing together of several parties with a view to the sale of a good, provision of a service or the exchange or sharing of content, good or a service.

However, **depending on the sector in which they fall (transport, commerce,**

housing, social relations, research, etc.), platforms can deeply differ in their exchange structures and the externalities they generate [18] . Thus, in the field of social relations, business models are based on largely on the collection and massive exploitation of user data as well as on network effects:

- **On the one hand, social networks in a dominant position have privileged access to their users' data, which can create a barrier to entry on the market for their competitors [19] .** Indeed, social networks are models two-sided business, i.e. the service is free for one side of the model (consumers) and paying for another (professional users: advertisers, etc.) Also, the lack of financial compensation for consumers is enabled by the use of their personal data which allows targeted advertising [20] . User profile can be developed based on published data (photos, texts, videos, etc.), but

16 Report of the National Digital Council "Digital Ambition", June 2015.

17 Law n ° 2016-1321 of October 7, 2016 for a digital republic, art. L. 111-7. - I.: "is qualified as an online platform operator any natural or legal person offering, in a professional capacity, paid or unpaid, a communication service to the public online based on:
"1 ° The classification or referencing, by means of computer algorithms, of content, goods or services offered or put online by third parties;
"2 ° Or the bringing together of several parties for the sale of a good, the supply of a service or the exchange or sharing of content, good or service ".

18 Digital Renaissance, " Regulating digital platforms: why? How? 'Or' What ? », May 2020.

19 See the Bundeskartellamt B6-22 / 16 "Facebook" decision, February 6, 2019 : the German competition authority relied on personal data to characterize Facebook's abuse of dominant position resulting from the combination of data from of its various messaging services but also of third-party services, to feed the Facebook profile. Note that this decision was however suspended by the Dusseldörf Regional Court of Appeal ("Oberlandesgericht") in a decision of 26 August 2019 .

20 Autorité de la concurrence website: "The Autorité delivers its opinion on online advertising", March 6, 2018: the Autorité defines targeted advertising like "cobblestones, banners, skins which are integrated into the content of a site to be seen by Internet users", which is distinguished from advertising so-called classic linked to "search" searches.
See also: "Who benefits from the click?" "Valérie-Laure Benabou, Judith Rochfeld, Corpus Collection, Odile Jacob Editions, 2015. and" Free, a concept at the frontiers of economics and law "Nathalie Martial-Braz, Célia Zolynski Editions LGDJ, 2013.

also data generated indirectly using plotters on the device of the user, such as navigation and geolocation data [21] . Thus, in the case of Facebook, targeted advertising would represent 98.5% of its income [22] . However, other social networks have a business model based in part on the subscription model ("Freemium" model [23]).

- **On the other hand, direct network effects play a major role in the market social networks, which are above all communication networks: the** more there are people who use the service, the more valuable the service, therefore the more people start using it and so on [24] . Indeed, for the user, the number of people with whom potentially to come into contact is a overriding criterion, in terms of ergonomics or respect for privacy, in the choice of platform [25] . What is more, this network externality is reinforced by the effect of " *winner takes all* ", that is to say that the one who exceeds a certain threshold in the market takes hold of much of it.

These characteristics give rise to the constitution of dominant positions, which may be problematic for free competition in the network market social. If there are 3.2 billion active users on social networks, that is 42% of the world's population [26] , the main social networks are Facebook, Whatsapp, Instagram, Messenger and WeChat. In the first quarter of 2020, Facebook had 2.603 billion monthly active users [27] , WhatsApp - 2 billion [28] , Messenger - 1.300 billion, WeChat - 1.203 billion [29] and Instagram - 1 billion [30] . What's more, 4 of the 5 most influential social networks belong to the Group Facebook, which finds itself in a market where it has no real competitor. Yes other social networks manage to emerge [31] such as Twitter (321 million monthly users in 2020), Snapchat (210 million monthly users), LinkedIn (260 million monthly active users) or Tik Tok (800 million monthly active users in 2020), their number of users remains much lower.

The dominant position of these social networks is perpetuated through an effect locking, i.e. the consumer remains captive within the same good or service due to high change costs [32] . In particular, a platform that has become dominant may have an interest in limiting its compatibility for secure the portions of the market it has conquered [33] . **One of the main ways is to make it technically impossible for competitors to launch a interoperable service.** European Digital Rights (EDRI) [34] refers to "walled gardens ", that is to say platforms or services which deliberately enclose

users to prevent them from freely choosing a competing offer. Sure this point, the report of the British Competition Authority on the platforms digital and online advertising [35] notes that Facebook may have restricted the capacity third-party companies to develop services in direct competition, through clauses of non-reproduction of the basic functions of the network, or via the reduction of its APIs " *which allowed consumers to invite their friends to use other applications or publish content on multiple platforms* ". Therefore, despite many controversies concerning this social network, financial data shows a continuous increase in its number of users [36] .

21 CNIL: Targeted online advertising: what are the challenges for the protection of personal data? January 14, 2020.
22 Facebook, Inc. page 33 : $ 17.383 billion in advertising revenue out of $ 17.652 billion in total revenue as of September 30, 2019, advertising therefore represents 98.47% of income.
23 Like the professional social network LinkedIn or Xing, which offers several offers to its users ranging from a free version to a professional paid version, which gives access to more features.
24 According to the law of R. Metcalfe, the value of a social network is proportional to the square of the number of its participants.
25 Digital Renaissance Report: Platforms and Competitive Dynamics, September 2015.
26 Emarys 2019. 10 social media figures to remember in 2019 [Infographic].
27 Facebook Q1 2020 Results.
28 WhatsApp: number of users.
29 WeChat: number of users 2020.
30 Instagram: active users .
31 Agence Tiz - Ranking of social networks in France and around the world in 2020 .
32 Digital Renaissance report, op.cit., September 2015.
33 Report of the National Digital Council on platform neutrality, May 2014 .
34 EDRi Position Paper on the EU Digital Services Act, April 9, 2020.
35 CMA, Online platforms and digital advertising, Market study interim report, December 2019.
36 Facebook Q1 2020 Results.

The gradual emergence of alternative social networks

New social networks are emerging on a national or European scale, with business models different from those offered by the platforms non-European in a dominant position.

In particular, some operate with decentralized systems, which are often free software [37] :

- **One of the major decentralized social networks is Mastodon [38] , a microblogging platform [39] ,** which claimed more than 3 million user accounts worldwide in 2019 [40] . It was created in 2016, following to the publication of the open letter of Mark Zuckerberg [41] , the founder of Facebook, in January 2017, which encouraged developers to create a global and open community. This social network is not hosted on a central server, so that the user maintains greater control over his personal data, because he can go through the server of his choice to use the service. In addition, he advocates the absence of advertising, collection of personal data or navigation information.

- **Like Youtube, PeerTube [42] is a decentralized alternative that offers viewing and sharing of videos.** This network operates on the principle of a federation of instances hosted by autonomous entities. PeerTube does not use advertising nor does it use algorithms recommendation. It is however possible to remunerate the creators thanks to the "donate" button below the videos.

These two social networks use the ActivityPub [43] protocol , the standard developed by the W3C, which makes it possible to be interoperable with other networks decentralized social services (for example, it is possible from a Mastodon account to comment on a video posted on a PeerTube instance).

Other platforms offer sovereign social media models which aim to protect user data in a given territory.

- **In France, the Whaller social network, created in 2011, is based on the principle of algorithmic neutrality,** i.e. the display of flows in the Whaller spheres is chronological and is not modified according to the data of the user. It is a versatile social network that combines and separates different uses (personal, professional). Terms of use specify that the personal data of users " *will never be displayed publicly, used or communicated outside the framework of Whaller.com Services* " [44] .

- **At European level, a social network project funded by the Commission European Union ("Helios") [45] , within the framework of the H2020 Program [46] tends to combine a decentralized and sovereign model.** Indeed, this platform

decentralized, blockchain-based, aims to provide users complete control over information about their privacy, their documents, and their content sharing, within a European framework.

Whether they are projects or active companies, their market positions nevertheless remains in the minority vis-à-vis the large extra-European institutions that offer closed solutions.

37 That is to say that they make their codes and their protocols publicly available ("in open source") and that they are easily reusable.
38 Mastodon social network website.
39 A microblogging is an online short text service. (example: Twitter).
40 Bastamag.net: "Mastodon, Diaspora, PeerTube…: free "alternatives to the giants of the Net and their Orwellian world", October 11 2019 .
41 Open letter from Mark Zuckerberg, January 2017.
42 Peertube social network website .
43 W3C website: ActivityPub: W3C Recommendation 23 January 2018.
44 Whaller social network website .
45 Website of the Helios social network project.
46 The digital review: "a competitor social network of Facebook funded by Europe" , August 2019.

2. INTEROPERABILITY, AT THE CROSSROADS OF DIFFERENT POLICY OBJECTIVES PUBLIC

As part of the modernization of the regulation of digital platforms proposed by the European Commission [47] , the interoperability of services has was envisaged as a potential tool for regulating large platforms [48] . It would be part of the Digital Services Act [49] , which would be intended to pursue competitive objectives, but also societal objectives such as regulation of online content [50] . This approach joins the various initiatives recent ones promoting interoperability as a transversal regulatory tool platforms, and focusing on one or more policy objectives public.

Strengthen competition between platforms

While competition law is being adapted to scale national [51] and European [52] , many players are pointing their limits in the face of platformization of the economy. If the Competition Authority recalls that established concepts of competition law still constitute an approach relevant to digital issues [53] , it nevertheless opens the way the implementation of new obligations aimed at preventing and sanctioning anti-competitive behavior.

In particular, interoperability is presented by many actors as a potential tool for competitive regulation of platforms, because this would make it possible to fight against direct network effects on a market (telecommunications, banks, etc.) and the resulting barriers to entry for competitors.

- **In 2019, the Stigler [54] report highlighted that network effects were a major cause of the lack of competition in many markets digital,** in particular that of social networks (in other words, " *I want to be on social media where my friends are* "). This issue competition linked to network effects was particularly present in the telecommunications sector, before the implementation interoperability between mobile operators in the United States [55] .

47 Political guidelines for the next European Commission 2019-2024 .
48 Internal note from DG Connect entitled "Digital Services Act" of 9 April 2019: the interoperability of services is considered "when this interoperability makes sense, is technically feasible, and can increase consumer choice without hampering the ability to grow businesses (especially smaller ones). "
49 Impact assessment of the European Commission on the Digital Services Act published on June 2, 2020 : "Examples of such remedies

that would be adopted and enforced by a competent regulatory body (in principle acting at the EU level) could include platform-specific non-personal data access obligations, specific requirements regarding personal data portability, or interoperability requirements ".

50 European Commission press release of 19 February 2020: "Shaping Europe's digital future". See also impact assessment of the European Commission on the Digital Services Act published on June 2, 2020: "the high-level goals of the Commission's intended proposal for a new Digital Services Act are to reinforce the internal market for digital services, to lay down clearer, more stringent, harmonized rules for their responsibilities in order to increase citizen's safety online and protect their fundamental rights, whilst strengthening the effective functioning of the internal market to promote innovation, growth and competitiveness, particularly of European digital innovators, scale-ups, SMEs and new entrants ".

51 The Autorité de la concurrence has already held two public consultations on the subject, in particular the public consultations of 20 October 2017 on the modernization and simplification of merger control and of June 7, 2018 on the proposed introduction of a ex-post merger control.

52 The ECN + directive of 11 December 2018 notably made it possible to generalize the use of protective measures by the authorities of competition and by allowing them to take action with a view to pronouncing such measures.

53 Contribution of the Competition Authority to the debate on competition policy in the face of challenges posed by the digital economy , February 21, 2020.

54 Stigler Committee on Digital Platforms: Final Report, 2019.

55 AT&T was forced to connect calls made by T-Mobile consumers.

The report therefore suggests that a similar reasoning could be considered for social networks.

- **The Furman report [56] published in March 2019 recommends continuing the mobility of personal data and open standards [57]** when these increase competition and innovation. In particular, this could stimulate the entry of new companies into the digital market that would interoperate with established platforms, while allowing consumers to move and control their data more easily.

- **Similarly, the expert report submitted to the European Commission "Competition policy for the digital era" [58] of April 2019** estimates that interoperability is a possible vector for promoting competition adapted, under certain conditions, to the specificities of the economy of platforms dominated by some players.

However, this competitive approach comes up against limits, as it can be difficult to identify the harms of platform users digital in the absence of the criterion of payment of a price [59] . Now, as shown previously, social networks offer seemingly free services for the benefit of consumers, in exchange for the collection of their data personal in order to carry out targeted advertising. **The notion of harm to good be consumers as understood by competition law existing [60] may thus be difficult to argue.** However, the rules of law of consumption apply to these exchanges of personal data, as evidenced by the work of the Unfair Terms Commission on contracts for the provision of social media services [61] .

Restore consumers' freedom of choice

From the consumers' point of view, interoperability would promote freedom of choice, by facilitating the transition from one social network to another. According to the European Digital Rights Association [62] , the majority of users remain on dominant platforms because the others are also there, and this " *same if they do not offer the best deal or if they treat users in a way unfair* ". Interoperability would therefore reduce the power imbalance between platforms on one side and users on the other, and would allow them to choose their own online community.

Thus, many players put forward the more consumerist notion consumer freedom of choice as a justification for using interoperability.

- **In the note from the Electronic Communications Regulatory Authority, posts and press distribution (ARCEP) on platforms structuring digital systems [63] ,** the Autorité is in favor of a ex ante regulation detached from a classical dominance analysis allowing rapid intervention when necessary, upstream the materialization of the damage. This regulation could include the portability of essential data of structuring platforms

56 Furman Review (2019), Unlocking digital competition: Recommendation No2.

57 Article 4 of Law No. 2004-575 of June 21, 2004 on confidence in the digital economy: "By open standard we mean any communication, interconnection or exchange protocol and any interoperable data format and whose technical specifications are public and without restriction of access or implementation ".

58 Digital policy for the digital era - A report by Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer.

59 It has long been accepted that the object of the consumer's obligation is always the payment of a price. However, the platforms challenge this systematism, because their apparent free access is not for payment, but for data which are considered from a personal point of view by the GDPR. See in particular: SAUPHANOR-BROUILLAUD Natacha (direction), Consumer contracts - Common rules, Treaty of civil law collection (edited by J. Ghestin), 2nd ed., LGDJ, 2018.
60 Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU).
61 ABUSIVE CLAUSES COMMISSION: Recommendation no.14-02 of 7 November 2014, Contracts for the supply of network services social and Opinion n ° 18-A-03 of 6 March 2018 on the use of data in the internet advertising sector
62 EDRi Position Paper on the EU Digital Services Act, April 9, 2020.
63 ARCEP "Structuring digital platforms. Elements of reflection relating to their characterization ", December 2019.

(in order to limit transfer costs) and / or interoperability for the benefit of end users.

- **In this perspective, the bill aimed at guaranteeing free choice of the consumer in cyberspace** [64] **,** adopted at first reading by the Senate on February 19, 2020, establishes the interoperability of platforms as a pillar regulation geared towards consumers' freedom of choice.

- **At the same time, an initiative by Quadrature du Net, bringing together 75 organizations for the defense of freedoms,** professional organizations, hosting providers and associative ISPs, called on the State to act so that large platforms (Facebook, Youtube, Twitter, etc.) become interoperable with other Internet services [65] in order to free consumers from them. Indeed, this would allow them to sever contractual relations with a dominant social network and change it, without losing their social ties.

It appears that the competitive and consumerist approaches are, *in fine* , complementary insofar as the fight against network effects and the entry on the market new social networks would offer consumers more choice of platforms. In other words, "the *more tools there will be having the ability to interoperate, the less the market will be apprehended by major players and the more consumers will have the choice of their tools* " [66] .

Strengthen users' control over their data

Interoperability could, finally, extend the right to data portability as enshrined in GDPR [67] **.** Indeed, if the GDPR encourages managers treatment to develop interoperable formats allowing the exercise the right to data portability, this right does not necessarily imply interoperability [68] .

However, it emerges from the hearings that **data portability is not always deemed sufficient to ensure the right to informational self-determination of users** [69] **, a** legal principle defended by the National Digital Council [70] .

- The main argument put forward is that **recovering your data not allow users who migrate from one platform to another to continue to interact with their old contacts,** which does not encourage the change of platform *in fine* .

- Other interviewees believe that **portability alone does not allow to sever the contractual relationship with the major social networks which massively collect users' personal data,** sometimes illegally. Interoperability would allow users to leave these social networks and withdraw their consent to these practices.

- Finally, it was also stated that **data portability would be facilitated by interoperability, insofar as the exchange channel data would be automated.** Currently, this transmission of a controller to another is not made mandatory by

64 Bill to guarantee consumers' free choice in cyberspace, tabled in the Senate on October 10, 2019.
65 Open letter for the interoperability of large online platforms, May 2019: The letter thus considers that "migrate to these services would also allow to escape the toxic environment maintained on Facebook, Youtube or Twitter. These giants promote the dissemination of contents that keep our attention as well as possible, often the most anxiety-provoking or caricatured. (...) It is urgent to allow any no one to escape the surveillance and toxicity of these large platforms by joining free, decentralized and large-scale services human without harmful consequences on its social ties. "
66 "The right to interoperability: study of consumer law ": Thesis by Marie Duponchelle, supervised by Ms. Judith Rochfeld, April 9, 2015.
67 Article 20 of Regulation 2016/679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data personal character and the free movement of such data, and repealing Directive 95/46 / EC (general data protection regulation).
68 §68 of Regulation 2016/679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data personal data and the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation).
69 See in this sense law n ° 2016-1321 of October 7, 2016 for a digital republic and law n ° 78-17 of January 6, 1978 relating to data processing, files and freedoms , of which article 1 provides: "The rights of individuals to decide and control the uses made of data of a personal nature concerning them and the obligations incumbent on the persons who process these data are exercised within the framework of the (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, of Directive (EU) 2016/680 of the European Parliament and of the Council of

April 27, 2016 and this law. "
70 Report of the National Digital Council "Digital ambition", June 2015.

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GDPR [71] . Also, the risk is that the data is recovered in a format specific to the platform and very often unsuitable for use by a third-party platform.

In addition to the right to privacy, **interoperability could also contribute to the freedom of expression [72] of users on the Internet,** in the same way as management of hypertext links. Indeed, "the *Internet is indeed particular importance for freedom of expression and information, guaranteed by Article 11 of the Charter, and the hypertext links contribute to its good functioning as well as the exchange of opinions and information in this network characterized by the availability of immense amounts of information* " [73] . This reasoning could, in certain respects, be transposed to interoperability social networks.

Regulate hateful content

Finally, a link can be established between the interoperability of social networks and combating hateful content online.

- **As part of the proposed law aimed at combating hatred online [74] , on which the Council had already voted in March 2019 [75] , the question of the interoperability of platforms has been the subject of several amendments.** While the proposal places a burden on digital platforms obligation to remove illegal content such as incitement to hatred, racist or anti-religious insults, interoperability would constitute a complementary tool in the fight against said content. Indeed, this "would *allow victims of hate to" take refuge "in other platforms with different moderation policies, while being able to continue to exchange with the contacts they had established until then* " [76] . However, in its final version [77] , it should be noted that the law did not include these proposals.

- **The aforementioned open letter [78] from Quadrature du Net also puts emphasis that interoperability would allow users to no longer find themselves captive to a platform and its hateful content.** According to the contributors, free and decentralized social networks would be structurally less inclined to favor the proliferation of content hateful.

- **Finally, Twitter CEO and co-founder Jack Dorsey launched a group of work aimed at designing a decentralized standard for social networks, specifically in order to combat hate speech and disinformation [79] .** In particular, it would relieve him of deciding what content is allowed. or not and what content is offered to users in priority.

71 Article 20 of Regulation 2016/679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data personal character and the free movement of such data, and repealing Directive 95/46 / EC (general data protection regulation).
72 Article 11 of the Charter of Fundamental Rights of the European Union .
73 CJUE, n ° C-160/15, Judgment of the Court, GS Media BV v Sanoma Media Netherlands BV and others, September 8, 2016.
74 Bill to combat hate content on the internet tabled in the National Assembly on March 20, 2019 .
75 Position of the National Digital Council on PPL aimed at combating hatred on the Internet, March 2019.
76 Reason for amendment N ° COM-12 dated January 30, 2020 presented by Mr Frassa to the Senate Law Committee .
77 The bill aimed at combating hateful content on the internet was definitively adopted by the National Assembly on May 13 2020: see provisional adopted text.
78 Open letter for the interoperability of large online platforms, May 2019: The letter thus considers that "migrating to these services would also allow to escape the toxic environment maintained on Facebook, Youtube or Twitter. These giants promote the dissemination of contents that keep our attention as well as possible, often the most anxiety-provoking or caricatured. (...) It is urgent to allow any no one to escape the surveillance and toxicity of these large platforms by joining free, decentralized and large-scale services human without harmful consequences on its social ties. "
79 ICT Journal: "Twitter wants to create a decentralized standard for social networks", December 2019.

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However, for some, interoperability could on the contrary facilitate dissemination of hate speech between several platforms, especially since users would not necessarily be safe on smaller platforms that have fewer means to regulate such hateful content. Other actors also believe that the interoperability of social networks could elude the issue of content regulation by transferring responsibility on the user victim of hateful content, incited to change platform on optionally. Likewise, the distribution and withdrawal of the illegal content concerned by the Directive on copyright and related rights in the single market digital [80] raises issues in terms of intellectual property law, in case of interoperability. Finally, according to one interviewee, this raises the question of the interoperability of the information necessary for the development of algorithms facilitating the moderation of content itself, in order to allow networks interoperable to meet their obligations.

It appears that different objectives can be assigned to interoperability on the social media market. If this can allow communication through different platforms with a view to opening up social networks, this can also be a more radical tool to break with a business model based on the collection of personal data and targeted advertising. These different lenses command different technical options.

80 Directive 2019/790 of April 17, 2019 on copyright and related rights in the digital single market and amending directives 96/9 / CE and 2001/29 / CE .

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CHAPTER 2
WHICH PLATFORMS AND WHAT FUNCTIONALITIES TO SUBMIT TO INTEROPERABILITY?

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1. THE DELIMITATION OF PLATFORMS TO SUBMIT TO INTEROPERABILITY

Interoperability is not a comprehensive solution for all platforms, and should be subject to a restrictive approach depending on the objective continued in a given economic segment. In the social media market, all the actors interviewed agree on the fact that an obligation interoperability should be limited to the largest players where appropriate, so as not to impose disproportionate obligations on social networks emerging. Also, the Council proposes two possible approaches - competitive or systemic - to delimit the platforms concerned by interoperability.

A competitive approach: according to their position in a relevant market

It is important to question the scope of interoperability in the light of players in a dominant position in the social media market. A position dominant being characterized in a product or service market determined [81] , this presupposes defining the contours of the relevant market social networks. **However, given the diversity of social networks, the question of the relevant market appears fundamental here.** Indeed, it can hardly be conceivable of making a multi-use social network interoperable (example: Facebook) with a professional social network (example: LinkedIn), to the extent where the services offered are not intended to cover the same types of use.

Identifying the relevant social media market

In competition law, the relevant social media market is the subject of relatively strict interpretation. Defined as " *the place where meet supply and demand for a specific product or service* " [82] , a relevant market makes it possible to identify the perimeter within which the competition between companies and to assess, secondly, their market power. **In order to determine whether any products or services are in the same relevant market, the latter must be considered as substitutable for the consumer.**

In the case of social networks, defined as " *services allowing users to connect, share, communicate and express themselves* "on the web or on a mobile application [83] , this would mean that once the average user would switch to another social network in order to use the same features as those offered by the first, the two platforms would belong to the same relevant market. However, in decision-making practice, the meaning of relevant social network market is particularly restrictive.

81 The concept of a dominant position was defined by the CJEU in case 2/76 United Brands Company and United Brands Continentaal BV v Commission of the European Communities of February 14, 197 as being: "a position of economic power held by an undertaking which gives it the power to obstruct the maintenance of effective competition on the relevant market by providing it with the possibility of independent behavior to a significant extent vis-à-vis its competitors, customers and, ultimately, consumers. The Hoffman judgment (CJEU, Feb. 13, 1979, Hoffmann-La Roche / Commission of the European Communities, C-85/76) specifies that "such a position, unlike a situation of monopoly or quasi-monopoly, does not exclude the existence of a certain competition but puts the firm that benefits from it in a position, if not to decide, at least to significantly influence the conditions under which this competition will develop and, in any case, to behave to a large extent without having to take it into account and without this attitude prejudices him. "

82 Opinion of the French Competition Authority n ° 18-A-03 of 6 March 2018 on the use of data in the advertising sector on internet .

83 European Commission, decision of 3 October 2014, Facebook / WhatsApp, COMP / M.7217, point 46.

On the one hand, a platform that offers basic functionalities of a social network will not always belong to the social media market. So, in its Facebook / WhatsApp (2014) [84] and Microsoft / LinkedIn (2016) [85] decisions , the European Commission has estimated that professional social networks belonged to a relevant market distinct from those of the social networks used

in a personal capacity, because of their distinct uses. Likewise, the platforms of video sharing is not explicitly included in the networking market social. On this point, the German Competition Authority (the *Bundeskartellamt*) has considered Youtube to be a content sharing and entertainment service, although presenting certain features in common with those of the networks social [86] .

On the other hand, the same social network can register in several markets relevant at the same time, depending on the product or service concerned. For example, instant messaging services are seen as complementary to basic functions of social networks, and would therefore be located on a separate market. In this regard, in its aforementioned Facebook / WhatsApp decision, the Commission found that the Facebook Messenger service was provided on the relevant market for communications services, distinct from the market for social networks [87] .

Finally, the substitutability analysis may be biased, insofar as neither the price (in this case free), nor the quality are the determining criteria which incite the user to change or migrate to another social network. The main criterion remains the fact of being able to stay in touch with as many people as possible, and that even if the quality of service deteriorates.

The limits of the competitive approach based on relevant market

In view of the hearings carried out by the Council, the restrictive approach to the market relevant is not always appropriate for defining the perimeter of networks dominant social policies and hence that of interoperability.

First, the distinction between photo / video and text content can be discussed. One of our interviewees recalls that in computer language, a video is not fundamentally different in nature from a text. In doing so, a video sharing platform (example: Youtube) could be qualified as a social network in the same way as a microblogging platform (example: Twitter), since the basic functionalities of social networks are reunited. In this regard, **the interministerial mission on the regulation of networks social [88] has included video or photo sharing platforms in social networking services** mainly offered, that is to say the " *platforms social networks, which can be generalists like Facebook, Twitter or structured around a type or format of content like YouTube (videos), Pinterest (photos), TikTok (short videos), Snapchat (short videos and photos)* [89] ".

Then, the border between personal and professional use of social networks may seem superfluous in some cases. If we focus on interoperability interaction, the specific framework in which this interaction takes place would be accessory. The major question would rather be to know what content is put available to which circle of users. However, this can be modeled in terms authorization and / or authentication of contacts, more than social network himself.

84 European Commission, decision of 3 October 2014, Facebook / WhatsApp, COMP / M.7217, point 62 .
85 European Commission, decision of 6 December 2016, Microsoft / LinkedIn, COMP / M.8124, point 87.
86 Bundeskartellamt, 6th division, Decision of 6 February 2019, B6-22 / 16.
87 §50 of the decision M.7217, Facebook / WhatsApp cited above "The Notifying Party does not pronounce itself on the existence of a distinct market for social networking services. However, the Notifying Party submits that in any WhatsApp event is not active in such potential market in competition with Facebook. This is notably due to the lack of core social networking functionalities in WhatsApp ".
88 This interministerial mission mobilized seven high-level experts and three permanent rapporteurs from departments of the ministries Culture, Interior, Justice, Economy, Prime Minister's services - DILCRAH and DINSIC - and administrative authorities independent - ARCEP and CSA.
89 Public report on the Social Media Regulation Mission, 07 May 2019.

In any event, the current competition law cannot be sufficient as it stands to capture all the negative externalities generated by large platforms [90] . In this regard, the European Commission has announced the initiation of the review of the criteria for defining the relevant markets [91] in order to adapt to the specificity of the structuring platforms "intervening on multi-sided markets, with a new character, and in which several platforms of more or less equivalent size may be present ". It is still necessary to have previously identified what are these platforms called structuring.

An asymmetric approach: according to their systemic character

The search for platform identification criteria systemic

In view of the hearings, the criterion of the platform's power should be essential to delimit the obligation of interoperability. Because of their position unavoidable in the market, some major players should be imposed specific rules, such as the interoperability of their services under certain conditions. This asymmetric regulation hypothesis is consistent with the approach of European Commission, which envisages the interoperability of the services of large platforms having a "significant" share of a market [92] . In France, the Directorate General of the Treasury [93] is also in favor of proactive, proportionate and targeted regulation on structuring platforms, such as the obligation to develop technical standards facilitating interoperability of services and possibilities for user migration.

It is nevertheless necessary to identify the criteria constituting these platforms that could be qualified as systemic or structuring. When of the general assembly of digital technology [94] , the contributors were in favor of following criteria: infrastructure control, number of users, or still the amount of essential data held by each operator dominant. **Since then, several authorities such as ARCEP [95] and the Autorité de la competition [96] have forged their doctrine to identify the scope of these large platforms.** While the identification criteria may sometimes differ, an approach common ground around the notion of structuring platform. This one is based on quantitative criteria such as the number of users, the share of market, or the financial capacity of the platform, but also more qualitative such that access or possession of quality data, or the control exercised by the platform with regard to its users (captivity) or third-party companies (addiction).

At European level, this approach can be found in impact assessment of the European Commission relating to the Digital Services Act [97] , which defines the large platforms, in particular by the significant network effects, the size of the user base and / or the ability to use data on the whole steps. **For its part, the German draft law on "Competition**

90 Digital Renaissance: "Regulating digital platforms: why? How? 'Or' What ? », May 2020.
91 Relevant market: Eu
relevant and Defining r
92 Internal note from I ered "when this
interoperability makes ow
businesses (especially smaller ones). "
93 Trésor-Eco n ° 250 - Digital platforms and competition , November 2019.
94 National Digital Council: Synthesis of the "Competition" digital States General, May 2020.
95 ARCEP "Structuring digital platforms. Elements of reflection relating to their characterization ", December 2019.
96 Contribution of the Competition Authority to the debate on competition policy in the face of the challenges posed by the digital economy, February 21, 2020.
97 European Commission impact assessment on the Digital Services Act published on June 2, 2020 .

and digital "introduces the notion of asymmetry [98] to impose obligations *ex ante* to large platforms and strengthen sanctions related to practices tending to restrict the portability of data or the interoperability of services. The project states that a platform would be characterized as' *of importance major for competition between markets* ", in view of its position dominant in one or more markets, its financial strength, its integration vertical or diversification into ancillary markets, its access to data critical to the competition, or the decisive nature of its services for the development of the activities of other market players.

However, for some interviewees, the main criterion for imposing interoperability would rather reside in the constraining power of the platform on its users. One of the manifestations of this power of constraint would be precisely the fact that we cannot leave a social network without losing the links that we created there. It is therefore the actors who have such power to constraint which should be subject to an interoperability obligation. Note

finally, that an interviewee considers on the contrary that it should, **not develop interoperability with large non-European platforms, but rather between services in Europe in order to promote digital sovereignty.**

Thus, the pilot members of this study consider that the notion of systemic platform remains to be specified. It could arise from the notion competition for essential infrastructure, which should be expanded [99] . The notion of a systemic platform cannot be understood only by competition law. It must take note of the infrastructural character beyond economic powers, in particular concerning their consequences on democratic and cognitive systems. **Therefore, a bundle of clues can be considered to define the "systemic" nature of platforms:**

- the nature of the activity (management of access to information, activities of interest general or of a regal nature…);
- the existence of massive network effects;
- control of a considerable volume of non-replicable data;
- the unavoidable situation in a multi-sided market or the capacity to the actor himself to define the market rules;
- the ability of the actor to place the regulator in a strong position of asymmetry of information ;
- the overall effects on the community outside the economic field and its power influence on sensitive areas of the social bond;
- the dependency relationship existing between the platform and the users, etc.

The implementation of the interoperability of social networks systemic

The interoperability of systemic social networks can be achieved through two main ways:

- **An obligation to open some of their interfaces application programming (API) [100] :** the creation and opening of certain APIs of a systemic social network would allow users of other services to interact with those of the said network. The interest of this approach lies in the possibility of specifically targeting the large platforms concerned to implement interoperability, while leaving the smallest players

98 Article 19a of the preliminary draft law introduces a new generic concept of "enterprises of major importance for competition between markets ".
99 BEAUVALLET, Godefroy. "Platforms and essential facilities " in: FONDATION PARIS DAUPHINE GOVERNANCE AND REGULATION. Digital conference summary and essential facilities. Breakfast of the Governance and Regulation Chair, Paris-Dauphine University, March 24, 2016.
100 An API is a standardized set of functions that serves as an interface through which software provides services to other software.

free to implement the same APIs or not. This tool has already been implemented place by major platforms for certain features - between 2010 and 2015, Facebook had temporarily provided open access to customers third-party instant messengers [101] . Closing this API demonstrates that APIs remain controlled by the dominant platform, which can make them evolve at his will. Therefore, any actor basing his development on these - in particular the smaller social networks - could register in a situation of dependence vis-à-vis large platforms.

- **The development and implementation of a standardized and common protocol:** if the obligation of interoperability weighed on the largest players, all social networks wishing to benefit from it should implement the protocol in the same way. As part of the hearings, social networks decentralized have positioned themselves more in favor of common protocols to all social networks. These protocols should be standardized by a standardization authority, and not by a company which is subject to to its own economic interests. For example, the Activity Pub protocol of W3C [102] is implemented by many social networks (Mastodon, Pleroma, PeerTube, WriteFreely, Pixelfed, Funkwhale…). Indeed, some interviewees argue that it is better to reason by functionalities,

and not by platform category. Therefore, they recommend putting in place of functionalities by protocols (example: microblogging) rather than by large platforms. This leads us to examine the functionalities subject to interoperability.

101 The Open Graph Protocol.
102 W3C site: W3C recommendations on the Activity Pub protocol.

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2. IDENTIFICATION FUNCTIONALITIES INTEROPERABLE

In the telecommunications sector, the subscriber of an operator can directly contact the subscriber of another operator. Likewise, for emails, the user of a service can contact any other person from another service. *What about* the social media sector, which is experiencing a wide variety of features? In the context of the hearings, the actors did not supported full interoperability, which would consist in making interoperable all features. **Also, the Board identified three distinct options not mutually exclusive: the interoperability of social graphs (2.2.1), instant messaging (2.2.2) as well as content (2.2.3).**

Option 1 - The interoperability of social graphs

Brad Fitzpatrick, former Social Graph API developer at Google, defined the social graph as the " *global map of everyone and how they are linked* " [103] . In other words, **it is the extent of the mapping of social relations a social network, which provides information on the terms of our connection between**

individuals: location, work, interests ..., unlike a list of contacts which only includes the identifiers of individuals.

Whether by opening existing APIs of large platforms or by definition of a standard API, the objectives of graph interoperability social would be:

- **from the point of view of competing social networks:** give the news platforms access to data from existing social graphs104, in the compliance with legislation relating to the protection of personal data and in particular subject to the free and informed consent of individuals concerned;
- **from the user's point of view:** allow him, when he joins a new social network, to maintain all the relationships acquired on the previous social network.

API could allow users to export contact lists an existing platform and invite them to join the new platform, or even automatically update new contacts on the different user platforms. This would remedy the problem of losing friends by changing platform and fighting the network effect direct. However, one interviewee specified that in order to respect the principle of minimization of personal data of GDPR [105] , it would not be a matter of uniting the entire graph of the two social networks but to connect certain points of the social graph corresponding to the user's contacts only. Currently, this is hardly implemented by social networks. One of the initiatives major in this sense was *Open Social* , a set of APIs developed by Google in 2007 to make the functionalities of the social graph interoperable, by continuation integrated into the work of W3C on the social Web in 2015 [106] .

103 BradFitz.com site : Social Graph Problem, 2007.
104 CMA, Online platforms and digital advertising, Market study interim report, December 2019.
105 Article 5 of Regulation 2016/679 of April 27, 2016 on the protection of individuals with regard to data processing of a personal nature and on the free movement of such data, and repealing Directive 95/46 / EC (general regulation on the protection of data): "personal data must be (...) c) adequate, relevant and limited to what is necessary with regard to the purposes for which they are processed (data minimization) ".
106 W3C website: OpenSocial Foundation Moving Standards Work to W3C Social Web Activity.

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On the basis of the right to data portability, it is already possible for the user to retrieve his contact list as it exists at a time T on existing social networks. Unlike interoperability which allows to make the systems communicate directly with each other, portability allows transfer pre-existing contact lists. In this regard, LinkedIn offers a function for importing contacts on the social network from the email address of the user. However, in the context of hearings, portability as a this would only be the first step to migrate more easily within the framework interoperability. Indeed, if the contact list contained only the names and first names - not unique identifiers of a person who would be common to several networks such as email address or telephone number -, this could pose homonymous problems. Above all, reuse effective contact lists is not necessarily easy for the user depending on the received format, so that this one cannot always re-import its list of contacts on the new platform.

Thus, in order to maximize the effectiveness of portability, it should be done in an interoperable and standardized format. However, under the GDPR, there is no obligation of interoperability of data subject to portability [107] . In this regard, Google, Facebook, Apple, Microsoft and Twitter are working to in place of an open-source data portability platform for service, the "Data Transfer Project" [108] , which presents portability as a remedy the lack of interoperability between social networks [109] . This could include several types of data (photos, calendars, etc.) including contact lists. The project extends data portability beyond a user's capacity download a copy of their data from their service provider, by offering the user the possibility of initiating a direct transfer of his data to and from any participating vendor. However, note that this requires suppliers who participate in opening up their data in order to be able to access those of other participants.

If the interoperability of social graphs, or failing that the portability of lists number of contacts, can be implemented independently, this option is not not considered sufficient by most of the interviewees. Indeed, even though the user who migrates to a new platform would keep his contacts, he still has to be able to continue contacting them.

Option 2 - Messaging interoperability snapshots

Within the meaning of the European Electronic Communications Code, messaging Instant is an electronic communications service, and more particularly an " *unfounded interpersonal communications service on dialing* " [110] , unlike dial-based SMS. This includes all the so-called Over-the-Top (OTT) players who provide communication services relying on operator networks telecommunications: Whatsapp, Messenger, Viber, Skype, etc.

The interoperability of electronic communications may appear to be obvious in several sectors: emails (through protocols such as SMTP, POP and IMAP) or SMS (essential requirement under Postal and Electronic Communications Code [111]). It is not the same

107 Recital 68 of Regulation 2016/679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46 / EC simply states that "there is encourage data controllers to develop interoperable formats allowing data portability ".
108 Data Transfer Project website.
109 Data Transfer Project website : How does DTP work.
110 Directive (EU) 2018/1972 of 11 December 2018 establishing the European electronic communications code: §17: " interpersonal communications are services that enable the interpersonal and interactive exchange of information, including services such as traditional voice communications between two people, but also all types of electronic mail, services messaging or group chats. "
111 Post and Electronic Communications Code, Article L. 32.

for dominant social networks: the user of a network A cannot send or receive messages from a user of a network B. However, the functionalities are relatively similar, since it involves contacting the person, whether either by email, phone or messaging. **In addition, there is already a standard specific for instant messaging, the XMPP (*Extensible Messaging and Presence Protocol*) [112] of the Internet Engineering Task Force (IETF).** So, between 2005 and 2013, Google Talk was an instant messaging service based over this XMPP protocol. Through the use of an open protocol, users could communicate with interlocutors using other instant messaging compatible with XMPP, before Google developed its own closed Hangouts solution.

However, in view of the competitive objectives pursued, the interoperability of the functionality of instant messaging would only be beneficial if it was set up between several different social networks. Indeed, Facebook is currently setting up cross-messaging within its own Group, namely Messenger, Whatsapp and Instagram. This interoperability within a same social network in a dominant position does not appear in favor of entry new players on the market, who will not be able to benefit from it.

If the interoperability of instant messaging is generally perceived by interviewees as a necessary first step towards the interoperability of social networks, it would not be sufficient insofar as it leaves out many basic social media features, namely everything that affects published content.

Option 3 - Interoperability of content

In view of the hearings conducted by the Council, three varying and progressive degrees could be considered in the establishment of interoperability of contents of social networks, ranging from simple consultation to publication, up to the interaction with content.

Option 3.1: viewing content

From the perspective of a gradual approach, interoperability could be

set up for the sole consultation of content on social networks. This would allow users of competing platforms to access certain content of a given social network in real time, such as content public and those published by the user's contacts. This would facilitate migration from one platform to another by users, who could keep an eye on the publications of their contacts.

To do this, the RSS standard would appear to be a simple and effective means. to set up, with an implementation cost that would be insignificant. This standard is already implemented by some platforms such as YouTube, which allows you to view videos from your network from another platform. The Twitter timeline was also visible through this, during a time [113] . However, this in no way implies the possibility of publishing, or even of comment on said videos, which may require a feature authentication of people on this third-party network (example: certify that the user who comments on a Youtube video is the Facebook user that he claims to be).

112 XMPP standard website.
113 Twitter RSS feeds - Feeder Knowledge Base.

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Option 3.2: Publishing content

A more elaborate option would allow users to publish their posts beyond their social network (" *cross-posting* "). In particular, users who would decide to change platforms could still share their content with their old contacts who would have remained on the social network initial. For some of our interviewees, this would be a basic feature with that of instant messaging, both necessary for setting up restricted interoperability: " *fundamental interoperability is needed: when I want to post an idea, I have to be able to control who sees it, in which network, without copying and pasting it in all social networks* ".

There are already protocols for creating and publishing content on social networks. In 2015, the W3C set up a working group to assess the interoperability needs of social networks. In 2018, the organization officially recommended ActivityPub, an open standard for decentralized social networks [114] . It provides an API going from a client to a server for creating, updating and deleting content, as well an API between servers to allow federation of notifications and of content. For microblogging (example: Twitter: tweets must be less than 280 characters), there is Micro Pub which is a creation protocol and publication of short content. The implementation of these protocols is based on however on a voluntary basis by the participants, which does not include the networks social in a dominant position.

Nevertheless, it emerges from the hearings that a platform must be able to protect its latest features to differentiate itself from competitors and attract the users. The functions most likely to be made interoperable are therefore the most established, the use of which has become the norm and constituting more of an added value as such (example: microblogging: short messages, the ability to re-share them, to bookmark them, to follow their author and it is up to him to follow us in return). However, in practice many innovative features are *ultimately* taken over by the various social networks (example: "stories" on Snapchat, the "like" of Facebook).

Option 3.3: Interaction with content

This last option attaches to any interaction with published content, whether to comment or "like". The user of a third-party platform could thus react to content published on a dominant social network, or on the contrary receive the reactions of other users on the content that he will have published on the said network.

However, in view of the hearings, this feature would raise more technical difficulties, in particular accepting the conditions of use of the platform to be able to receive the reactions of its users.
In addition, each social network has specific interaction methods. (example: "like" to a whole range of reactions offered by Facebook), that do not deserve to be interoperated, otherwise they could the signature and demarcation of the latter.

114 W3C site: W3C recommendations on the Activity Pub protocol

CHAPTER 3
WHAT ISSUES INTEROPERABILITY FOR NETWORKS SOCIAL AND USERS?

1. A COST-BENEFIT BALANCE SHEET MIXED FOR NETWORKS SOCIAL DOMINANTS AND EMERGING

The financial stake

In the context of the hearings conducted by the Board, **the direct cost incurred by the platforms in the event of interoperability was judged to be low to moderate according to the different actors** [115] **.** In general, the costs would be as follows:

- development costs, which would be insignificant;
- day-to-day management costs, which may involve company adaptations in terms of training or recruitment to carry out these missions.

The magnitude of the costs may, however, depend on the tool used to implement place interoperability. As part of a common protocol, like Activity Pub, standards are available free of charge and can be implemented without having to pay a license to anyone. The cost of implementation of a family of features, even for small social networks, would be relatively low. Conversely, if APIs are opened by large platforms, there is a higher maintenance cost for these APIs for the latter, insofar as the evolution of successive versions may generate operating expenses.

However, beyond these costs, which remain moderate, interoperability could create a shortfall for the dominant social networks. Indeed, whether the user can continue to access some of their services without being there registered, income related to the collection of personal data and advertising targeted could be significantly reduced in this hypothesis, even challenge the business model of these platforms. Overall, the subject is considered " *excessively aggressive for the business model of large platforms* "according to the Secretary of State for Digital, Cédric O [116] . In this regard, an interviewee proposes an alternative system of cost sharing between operators on the model of telecommunications operators. **Under these conditions, a dialogue with stakeholders is necessary in order to reconcile the specificity of existing business models and the implementation interoperability.**

The economic stake

From a competition point of view

While interoperability is intended to increase competition, **it paradoxically could strengthen the dominant positions of social networks.**

- Even under the assumption of asymmetric regulation, several interviewees believe that interoperability could provide more data to large platforms, due to the importance of their social graphs. In practice, the risk would be that Internet users systematically publish

115 This does not include dominant social networks, which have not commented on this point.
116 Nextinpact: "Forcing interoperability on platforms? Cédric O's doubts and prudence ", June 2019.

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their content on these major platforms, including from networks emerging social media, given the number of subscribers and resulting views. Also, large platforms would be able to collect more personal data of consumers.

- In addition, for some emerging social networks, interoperability with large platforms could be seen as a potential intrusion from them in their systems (identification of users, messages, content…). For this reason, they might be more favorable to the maintaining closed systems as they exist today.

From the point of view of innovation

According to the aforementioned Furman report [117] , **interoperability could stimulate innovation within social networks in a dominant position.** Indeed, the most large social networks no longer need to compete with each other to attract new users and thus have little incentive to improve quality of their offer. In this sense, interoperability could encourage them to innovate more to attract and retain users. Nevertheless, the establishment of standards municipalities could give rise to the creation of de facto standards.

On the one hand, innovation can be more or less preserved depending on the means put implemented.

- **The opening of APIs by large platforms appears to be more flexible first of all, because it would allow the dominant platforms to evolve their APIs** and be able to develop new functionalities as we go along, as EDRI [118 points out] . Nevertheless, this would involve in addition, the risk that the largest players impose standards interoperability with the smallest [119] .
- **Thus, recourse to a standardized common protocol would appear better at even to establish a common and fair denominator,** therefore that all the platforms concerned get involved in the process standardization.

On the other hand, the impact on innovation may be different depending on the functionalities concerned.

- **In order to preserve the specificity of the economic models, all of interviewees agree on the fact that interoperability should be limited to a *minimum* common standard** , if necessary supplemented on a case-by-case basis. Indeed, the capacity of services to launch new features or to update products. In addition, an auditioned recalls that interoperability only concerns the interface between at least two services: each can be distinguished by its performance, reliability, its user interface, its policies (freedom of expression, management of personal data…). In addition, a protocol does not prohibit the addition of other features.
- **Nevertheless, certain specificities of social networks would risk everything likewise to see themselves homogenized under cover of a compatibility of data models.** For example, the social network Whaller offers a model based on the tightness of networks, i.e. a user can belong in a compartmentalized way to several networks at the same time with his profile (personal, professional), while others still stand out for their constraints (character limitation on Twitter).

Thus, interoperability would not always be in the direction of better

competition for the benefit of small social networks, or even within the framework of their innovation strategies.

117 Furman Review (2019), Unlocking digital competition.
118 EDRi Position Paper on the EU Digital Services Act, April 9, 2020.
119 This point was also raised in Senate Report No. 301 on the proposed law aimed at guaranteeing consumers' free choice in cyberspace, February 5, 2020.

The legal issue

On entrepreneurial freedom

Enabling the interoperability of social networks could have an impact positive on the freedom of enterprise, guaranteed by the Constitution [120] and European Union [121] . Indeed, by breaking down technical barriers and technological, new platforms would be able to enter the social media market. However, this also involves imposing openness and / or standardization obligations for businesses. However, a cost that is too high to comply with technical requirements could discourage actors from developing their social networks. Also, according to the judge administrative [122] , the implementation of interoperability could be reconciled with the freedom to undertake, as long as it respects the principles of necessity and proportionality.

On intellectual property

According to the INPI (National Institute of Intellectual Property) social networks as such are not patentable inventions, so making interoperable two social networks would not infringe their rights of intellectual property. However, some features that are deployed on the networks are, like the news feed function of Facebook, who obtained a patent by the United States Patent Office under a new method for displaying a news feed in an environment social network [123] . In addition, **in the event of interoperability of content (option 3), copyright infringement by content raises the question of distribution responsibility between the different platforms that disseminated it.** Note that in its aforementioned opinion [124] , the Council of State recalls that platform interoperability would be a new exception to the general principle of legal protection of technical standards [125] , like computer programs [126] . However, the new directive on the right copyright and related rights in the digital single market [127] maintains the scope of the principle of legal protection of technical standards, including for platforms.

On business secrecy

In principle, the interoperability of social networks should not be hampered by business secrecy. In order to be covered by trade secrets, a information necessary for interoperability should take the following: to be known by a limited number of people, to be of value commercial, actual or potential and be subject to protective measures reasonable to maintain secrecy [128] . Nevertheless, the directive business secrets specifies that the principle may be subject to exceptions to the for the protection of a legitimate interest recognized by Union law or the national law [129] . In view of the competitive objectives and freedom of choice of users, a legal obligation of interoperability could possibly give rise to trade secrecy adjustments, if necessary.

120 Article 4 of the Declaration of the Rights of Man and of the Citizen (1789).
121 Article 16 of the Charter of Fundamental Rights of the European Union (2000).
122 Opinion of the Council of State on the bill aimed at guaranteeing consumers' free choice in cyberspace, 6 February 2020.
123 Patent No. US8171128B2 "Communicating a newsfeed of media content based on a member's interactions in a social network environment ", Google Patents: the method includes monitoring various activities and storing these activities in a database thus generating a plurality of information.
124 Opinion of the Council of State on the bill aimed at guaranteeing consumers' free choice in cyberspace, February 6, 2020.
125 Article 6 of Directive 2001/29 of May 22, 2001 on the harmonization of certain aspects of copyright and related rights in society some information.
126 §15 of Directive 2009/24 of 23 April 2009 concerning the legal protection of computer programs: "the reproduction of code of a computer program or a translation of its form which may prove essential in order to obtain the information necessary to interoperability of an independently created program with other programs ".
127 §7 of Directive 2019/790 of April 17, 2019 on copyright and related rights in the digital single market and amending directives 96/9 / CE and 2001/29 / CE.
128 Article 2 of Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of know-how and undisclosed business information (trade secrets) against unlawful acquisition, use and disclosure.

129 Article 5 of Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of know-how and undisclosed business information (trade secrets) against unlawful acquisition, use and disclosure.

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2. AN UNCERTAIN BALANCE BETWEEN FREEDOM OF CHOICE AND THE RIGHT TO PRIVACY USERS

As a preliminary point, it should be noted that this impact assessment is not comprehensive and focused on consumers, as the subject of this study is located at the crossroads between competition law, of consumption and the law of personal data. There are others issues specific to professional users that we will not address not in this study.

The impact on freedom of choice

The positive impact of interoperability on users' freedom of choice implies that the latter seize this opportunity. However, we can to question their effective will to change platform, if necessary.

The financial criterion

In the majority of cases, the services offered by social networks are free, so that the financial criterion appears to be of little use for the user. In addition, if we integrate the costs of changing from a platform to a other (" *switching costs* "), it will be all the more reluctant to change. Indeed, the familiar user of a platform has acquired habits, fulfilled forms, or even authorized certain applications to access data of his account [130] . **These individual change costs are supplemented by collective change costs, i.e. the training acquired by the user is complementary to similar training acquired by others users.** This standard externality reinforces the locking effect for the user, who could remain captive of a platform, that it either interoperable or not. Also, the implementation of interoperability should be accompanied by a reflection on the limitation of these change costs, for example through pedagogy and training in the use of new platforms.

The ethical criterion

In recent years, users have tended to become aware of the impact digital technology on their privacy, and in particular the importance of protecting their personal data. This leads some consumers to bring legal actions against the platforms concerning the illegality of the processing personal data of consumers, as evidenced by an action group led against Facebook in 2018, joined by 12,000 people. [131] Thus, for ethical reasons, users no longer hesitate to change platforms for models that are more respectful of personal data, even if it means losing the link with their contacts. Nevertheless, this trend remains *de facto* minority, if we are to believe the number of users of social networks dominant. According to one interviewee, a large part of users would feel forced to stay on major social networks because of the effects of network, and only interoperability would make it possible to "free" users from this constraint. **This statement can be qualified, insofar as major platforms are trying to strengthen their protection policies**

130 BENAVENT Christophe, "Platforms: collaborative sites, marketplaces, social networks… how they influence our choices", 2016.
131 Why attack Facebook, Claim against Facebook Ireland Limited 1. Procedure.

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of privacy, precisely in order to maintain consumer confidence. By allowing individuals to decide on privacy settings of their data, they keep or recover the feeling of keeping control over their private life [132] . For these same reasons of confidence, it is not certain that users necessarily switch to a platform which is unknown to them.

The ergonomic criterion

Another aspect to consider when choosing consumers lies in the ergonomics and design of the platforms. One of our interviewees states that " *if people stay on platforms it is not because they are closed, but because they are addictive because of their dark patterns* ". Thus, users would remain on dominant social networks, not because of technological barriers such as shutting down systems, but due to psychological barriers. Another interviewee believes that if the effect of network is undeniable, consumer captivity is considerably reinforced by the attractiveness of the platform's design. These issues are part of the logic of the attention economy, which sees added value of a user increase according to the time he spends on a platform and, accordingly, the volume of data it can send and the number of advertising solicitations it may receive. For this purpose, different forms of design can be deployed: *infinite scrolling, gamification,* notifications, are all practices that will nudge (unconsciously direct) the user and lead him, without his being aware of it, to increase the time he devotes to the platform.

The criterion of use

Generally, users tend to compartmentalize their uses through several social networks, in order to manage circles of a different nature (professional, personal relationships, romantic relationships, etc.). It's the phenomenon of "multi-homing", which refers to the fact that a user uses to the same service several platforms simultaneously [133] . Thus, in France, a user would have 6.8 social media accounts on average [134] . For a auditioned, this would illustrate the ease with which consumers can download, use and switch between digital services, without the need for use interoperability. What is more, interoperability could causes this segmentation of uses through a common digital identity on several social networks. Nevertheless, one of our interviewees notes that a identity common to several social networks does not in any way prevent multiple identities. In doing so, users can, if they wish, continue to segment their uses and digital identities. For example, in the telecommunications sector, interoperability in no way prevents to have several numbers (example: a personal number and a number professional).

The impact on the right to privacy

So that interoperability is a step forward in terms of rights and freedoms, this should in no way be a source of invasion of privacy and personal data of users. However, its implementation implies a increased flow of user data.

As a preliminary point, the work to establish interoperability should necessarily take into account the privacy of users. For example, in the case of the Activity Pub protocol, the W3C indicates that " *all the work of*

132 BENAVENT Christophe, "Platforms: collaborative sites, marketplaces, social networks… how they influence our choices", 2016.
133 Digital Renaissance Report: Platforms and Competitive Dynamics, September 2015.
134 We are Social: Digital Report 2020 French .

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standardization go through a systematic review system on questions of security, accessibility and privacy to ensure that technical standards do not create new risks for users ". In any event, the the implementation of interoperability should be in strict compliance with the framework existing legal framework, in particular GDPR [135] . Indeed, it provides safeguards to guarantee the informational self-determination of users, including on interoperable platforms: information, consent, rights of access, right of rectification, right to be forgotten, right to portability, or even right opposition. **However, despite the protection by the existing legal framework, the Board identified two major risks: loss of user control on data and the dispersion of data controllers.**

The user's loss of control over their data

The user of a social network must retain control over their data. As soon as there is a data transfer between a network A and B, the user must be able to be informed, and if necessary give free consent and enlightened [136] , and / or if interoperability amounts to registering on network B to join the conditions of use of the third party social network [137] . However, in the event of interoperability, the user may not be aware of the processing of his data by third-party social networks, and *a fortiori* consent to them. In this regard, the CNIL was able to put in December 2017 the Facebook Group for lack of information and specific consent when transferring contact lists between Whatsapp, its subsidiary and Facebook [138] . In this case, when creating his Whatsapp account, the user was not informed that their data could be transmitted to Facebook, even without having a Facebook account.

On the other hand, the collection of data carried out for the purposes of targeted advertising should in principle be carried out only on the basis of the consent of users according to the CNIL [139] . Whenever a user has not provided their consent to the collection of its data, such processing would therefore be illegal. It was recently recalled by the CNIL [140] in its decision of January 21, 2019 against from Google for lack of transparency, unsatisfactory information and lack of valid consent for the personalization of advertising. Thus, in practical, the user of a social network A who would interact with users or would consult content on a social network B should therefore not see its data collected by this network B for targeted advertising purposes.

In case of interoperability of social graphs (option 1), there is a risk that the data of social network A are transferred to social network B, without the consent of the persons concerned. This issue has been raised by the social network Facebook as part of the White Paper on Data Transfer Project [141] , about identifying users on uploaded photos with tags, or exporting contact lists. Nevertheless, the transfer of profiles, contact lists or even social graphs do not always involve sharing the identity of users. Indeed, through encryption methods, the identifying databases can be hidden (example: the method the hash of customer information used by Facebook for its audiences custom [142]), which would give rise to nicknames or names

135 Regulation 2016/679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data personal data and the free movement of such data, and repealing Directive 95/46 / EC (General Data Protection Regulation).
136 Article 4 of the GDPR defines the consent of the data subject as being "any free, specific manifestation of will, informed and unambiguous by which the data subject accepts, by a declaration or by a clear positive act, that data of a personnel concerning it are subject to treatment ".
137 Acceptance presupposes consent that is not vitiated under the terms of article 1130 of the Civil Code.
138 CNIL formal notice against Facebook, December 18, 2018.
139 CNIL: Targeted online advertising: what are the challenges for the protection of personal data? January 14, 2020 .
140 Deliberation n ° SAN-2019-001 of the CNIL of January 21, 2019 pronouncing a pecuniary sanction against the company GOOGLE LLC : at Following the group action of the 12,000 people mentioned above, the CNIL pronounced a penalty of 50 million euros against the company GOOGLE LLC in application of the GDPR for lack of transparency, unsatisfactory information and lack of valid consent for the personalization of advertising. The restricted committee recalled that the extent of the processing operations in question requires that users to keep control of their data and therefore sufficiently inform them and put them in a position to validly consent.
141 Data Transfer Project White Paper, July 2018.
142 Hashing is a type of cryptographic security method that converts information in your customer list into code random. See Facebook for Business .

different from one social network to another. These data would remain, in any case of cause, subject to the GDPR.

With regard to the interoperability of instant messaging (option 2), this is not necessarily easy to apply when end-to-end encryption is deployed to ensure the confidentiality of communications. This technique ensures that even the email service provider will not be not able to access the content of communications. If the principle of the confidentiality of private communications is enshrined in the Convention European Union for Human Rights [143] and has the potential to apply to any private communication, European communications law electronic mail does not yet explicitly include instant messaging, although the future ePrivacy regulation may provide for it in the long term [144] . In France, this obligation derives from the Penal Code [145] and the law for a Republic Numeric [146] .

Also, to ensure the confidentiality of communications, certain messaging snapshots allow the sender of a message to encrypt it with the key recipient's public address, so that only the recipient of the message is ability to decipher the message and read its contents [147] (example: Whatsapp). To do this, each mail user must be able to know the public key of the person to whom he wishes to write. **In the case of couriers interoperable, this would imply being able to know the public key of the user of another service.** This difficulty of implementing encryption end to end has already been put forward to explain the difficulties to make interoperable messaging [148] .

In the event of interoperability of content (option 3), users could be obliged to adhere to the conditions of use of the various social networks if they wish to benefit from it. Indeed, any user of a network A that would post content or comment on network B would produce personal data - user pseudonym, content publication or interaction - and metadata (time, place of post or interaction). However, the collection of this data requires contractual basis with the social network, through the acceptance of the conditions of use.

However, some restricted interoperability options could allow to rule out any contractual relationship with a third party social network. For example, the simple consultation of content - in particular published publicly, that is that is, that are visible to anyone without an associated account - would not impose not necessarily the user to adhere to the conditions of use of the network. Likewise, unlike the opening of APIs by the large platforms which would assume the acceptance of their terms of use by users, the establishment of a common protocol would allow users to access to the social networks of their choice without contracting with them. However, this would suppose a form of global organization in terms of conditions uses.

143 Article 8 of the European Convention on Human Rights proclaims the right of everyone to respect "for his private life and family, home and correspondence ".

144 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58 / EC .

145 Article 226-15 of the Penal Code .

146 Article 68 of Law No. 2016-1321 of October 7, 2016 for a Digital Republic .

147 Note that this functionality can also be applied to group messages.

148 " *You can already send and receive SMS texts through Messenger on Android today, and we'd like to extend this further in the future, perhaps including the new telecom RCS standard. However, there are several issues we'll need to work through before this will be possible. First, Apple doesn't allow apps to interoperate with SMS on their devices, so we'd only be able to do this on Android. Second, we'd need to make sure interoperability doesn't compromise the expectation of encryption that people already have using WhatsApp.* », Mark Zuckerberg, A Privacy-Focused Vision for Social Networking .

The dispersion of responsibility for social networks

Interoperability can raise liability challenges social networks, both for content and for data protection. In particular, the aforementioned Furman report raises the following hypotheses:

- " *If a friend in my network uses an information feed application whose*

poor privacy standards, what if he makes a misuse of the information contained in my message? Likewise, if a friend posts damaging content that appears in my news feed, who is responsible for monitoring this content - the app from which my friend posted it, the news feed app through which I consulted it, or both? " [149] .

Thus, two types of responsibilities can be engaged, whether rightly the processing of personal data or because of hosting of content, due to the distribution of content in violation of copyright or any other illegal content, hateful content [150] for example. However, the following part relates to the impact of interoperability on the right to life private and is limited to understanding the responsibility of social networks as that they process personal data.

In the event of a breach of the security obligation for data processing [151] , that may give rise to a violation of user privacy, the question responsibility arises. This is because when data is transferred from a actor A to actor B, the distribution of responsibility is not straightforward [152] . In view of the hearings carried out by the Council, interoperability could give place in a combination of responsibility of the two social networks.

- In the context of the right to data portability arising from article 20 of the GDPR, the individual requests the transfer of data from actor A, controller, to actor B, who in turn becomes data controller vis-à-vis the individual, without actor A being able to "Obstruct", nor that he has any responsibility for the activities of actor B. The person thus has relations with each of the actors A and B, unrelated.

- It is different in the case of interoperability, which would give rise to data flow and regular round trips between the network A and B. The networks would thus be - in a certain way - linked in the responsibility.

Also, the user would potentially be confronted with a multiplicity data controllers, implementing levels of protection higher or lower. In addition, if we take into account the entire chain responsibility [153] , which includes the subcontractors of each of the networks social, it seems difficult for the user to identify who holds their data and to whom he could turn in case of non-respect of the protection of its data.

149 Furman Review (2019), Unlocking digital competition: Report from the Digital Competition Expert Panel .
150 Bill to combat hate content on the internet adopted on May 13, 2020: see provisional adopted text .
151 Article 32 of Regulation 2016/679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data personal character and the free movement of such data, and repealing Directive 95/46 / EC (general data protection regulation).
152 See in this regard the Cambridge Analytica case , where the social network Facebook was notably accused of having transferred data to third parties, without control.
153 Article 28 of Regulation 2016/679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data personal character and the free movement of such data, and repealing Directive 95/46 / EC (general data protection regulation).

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The link between freedom of choice and right to privacy

In order to simultaneously guarantee freedom of choice and the right to privacy, viewed through the prism of informational self-determination, interoperability should allow the user to choose which data he wants to share or not and on what social network.

Indeed, in view of the hearings conducted by the Council, interoperability would be a freedom for users, as long as they are able to choose with which social network they want to communicate. Conversely, **the user should be able to**

oppose its content being visible on a particular social network.
For example, the decentralized social network Mastodon offers options allowing to restrict exchanges with certain platforms.

Thus, La Quadrature du Net considers that: " *interoperability is precisely the idea that people can control what data they put on which network social* " [154] . Likewise, EDRI notes that "as interoperability implies transfer of personal data from one platform to another, users should always have a free and informed choice to interconnect or not with users of other platforms. Users should therefore keep the control of their personal data by deciding themselves features and services (public posts, "likes", direct messages, events, etc.) that they wish to share between platforms " [155] .

The balance between freedom of choice and the user's right to privacy would lie therefore in the control that it has over its data. This would cover the possibility to choose which data would be shared, and with which networks social.
This would result in interoperability of the platforms in principle, subject to for the user to want to benefit from this feature or not.

In view of the above, and despite the fundamental objectives that interoperability could continue, **it is not certain that users, nor even emerging social networks, are eager to benefit from it.**
In particular, the freedom of choice of users promoted by interoperability can be put into perspective due to the segmentation of uses and multi-homing. **This increased freedom of choice could, moreover, be counterbalanced by a reduction in the right to privacy** in view of the circulation of personal data that this implies. Any initiative in this regard should therefore be accompanied by solid guarantees for the protection of data, in agreement with national and European regulatory authorities.

154 Quadrature du Net website: "data portability: under pressure, Facebook is fighting back", October 7, 2019.
155 EDRi, Position Paper on the EU Digital Services Act, April 9, 2020.

CHAPTER 4
WHAT INSTRUMENTS LEGAL FOR PROMOTE

INTEROPERABILITY?

1. LIMITS OF THE REMEDY TO EXISTING LAW

In order to ensure interoperability in the social media market, several legal instruments can be mobilized. The limits of existing rules do, however, raise questions about the relevance of a new form of regulation.

Obligations under communications law electronic

It is first the law of electronic communications that comes to mind. **The liberalization of telecommunications and their regulation were founded from the outset on the game of access and interconnection between networks and on interoperability.** This is one of the purposes pursued by the Code European Electronic Communications 2018 under the implementation of the internal market for communications networks and services

electronic [156] . By virtue of its article 61, the regulatory authorities mission to encourage and if necessary ensure this interoperability.

They are also able to impose it on courier services interpersonal skills that have entered the new scope of regulations [157] . This only concerns services with a high level of coverage and use by users [158] . We can to ask, however, how far the perimeter of communications law electronic systems could expand and if, in any case, it could inspire a specific regulations concerning platforms. It was anyway the approach of the authors of the proposed law on the protection of consumer in cyberspace [159] .

However, there is a limit to the use of this model, which is due to the fact that the content of social networks are not affected by the regulation of communications electronic [160] . However, the interoperability applied to social networks goes beyond single issue of end-to-end connectivity to include the functionalities that were presented. According to the Council, in the state of the law, **this legal instrument would be appropriate to implement a restricted interoperability option instant messaging features (option 2),** but would rule out other basic functionalities of social networks, namely everything related content (texts, photos, videos, etc.). This would in fact exclude platforms without instant messaging and offering many functionalities of a social network.

Obligations under competition law

Competition law makes it possible to sanction the abuse of a dominant position of a company refusing to give access to a resource when the exceptional circumstances identified by the Magill [161] case law are

156 Directive 2018/1972 of 11 December 2018 establishing the European electronic communications code.
157 §149 of directive 2018/1972 of 11 December 2018 establishing the European electronic communications code.
158 §151 of directive 2018/1972 of 11 December 2018 establishing the European electronic communications code.
159 Draft law aimed at guaranteeing consumers' free choice in cyberspace, tabled in the Senate on October 10, 2019, see article 4: "when the ability of non-professional users to access communication services to the public online and to communicate through them is compromised due to a lack of interoperability for reasons other than those aimed at ensuring security, integrity or proper functioning of such services, the Electronic Communications and Postal Regulatory Authority may impose obligations to the providers of these services in order to make them interoperable ".
160 §17 of Directive 2018/1972 of 11 December 2018 establishing the European electronic communications code: "services which do not not meet these requirements, such as (...) social networks (...) should not be considered as communications services interpersonal ".
161 CJCE, April 6, 1995, aff. C-241/91 and C-242/91, Magill, Rec. 1995, p. 808.

combined: the behavior is an obstacle to the appearance of a new product for where there is a potential demand (i), the refusal is not justified (ii) and allows companies in a dominant position to eliminate all competition from the market derivative (iii).

The concept of essential facility can thus concern all the installations (material or not), held by a dominant company, which prove to be not easily reproducible and access to which is essential for third parties to exercise their activity in the market [162] . If a resource is qualified as essential, the company in a dominant position must then allow its competitors to access said resource, in order to protect the game from competition on a downstream, upstream or complementary market [163] .

It is on this basis that the European Commission found, in 2004, that the Microsoft company had abused its virtual monopoly on the market PC operating systems by limiting interoperability between PCs Windows and Competitor's Workgroup Servers [164] . Also, the Commission required the company to open its operating system to allow third-party software publishers to offer compatible software with Windows. This interpretation was subsequently validated by the European judge [165] .

At the national level, the Competition Authority has also been able to impose sharing clientele databases on the basis of reasoning close to that of the theory of essential facilities. In its Engie [166] decision , it therefore considered that the company in a dominant position on the gas market had to " *share part of its customer database with its competitors so that the latter can fight on equal terms with the incumbent operator on markets open to competition* ".

However, the use of competition law to enforce interoperability between social networks has limits. Indeed, it is still necessary to establish that the social network abuses its dominant position in a given market by refusing interoperability with other competing platforms [167] . However, circumstances exceptional circumstances must be met to qualify an abuse of a dominant position essential facilities on the ground. **Thus, the social graph of a large network social can be difficult to replicate in economic conditions reasonable, but not always essential to enter the market** (example: TikTok). In addition, the theory of essential facilities does not apply to players in the same relevant market, but only "upstream, downstream or complementary ', which would possibly limit its scope to only platforms in complementary markets (example: platform of video sharing / micro-blogging platform).

Also, the Autorité de la concurrence suggests adapting the notion of infrastructure essential to take into account the importance of data or the existence large user communities [168] . In particular, it raises the need ensure the interoperability of modes of access to these platforms or databases data. In this sense, within the framework of the general states of the digital, the group Trans Europe Experts had suggested extending to large platforms " *a obligation to share certain essential data on the model of the concept essential patent, like the data necessary for interoperability* " [169] .

162 Frédéric MARTY and Julien PILLOT, "Criteria for the application of the theory of essential facilities within the framework of the European competition ", Reflets et perspectives de la vie économique 2011/4.
163 Annual report of the Court of Cassation "Competition Law", 2005.
164 European Commission press release: ' Commission concludes Microsoft investigation, imposes corrective measures aimed at changing his behavior and imposes a fine ", 24 March 2004.
165 Judgment of the Court of First Instance (Grand Chamber) of September 17, 2007 , Microsoft Corp. v Commission of the Communities European Communities, Case T-201/04.
166 Decision of the Competition Authority n ° 17-D-06 of March 21, 2017 on practices implemented in the supply sector natural gas, electricity and energy services.
167 GRAEF Inge, Data as essential facility - EU Competition Law, Data Protection and Online Platforms (2016).
168 Contribution of the Competition Authority to the debate on competition policy in the face of challenges posed by the digital economy , February 21, 2020.
169 National Digital Council: Synthesis of the "Competition" digital States General, May 2020.

However, the European Commission has recently reaffirmed a restrictive interpretation of the theory of critical infrastructure, facing to digital platforms in a dominant position [170] . Thus, within the meaning of the law of competition, the large platforms would not necessarily be to be considered critical infrastructure, and should not be subject to obligations to open their tools to the market. However, the Commission leaves the door open to specific regulation which would define the relevant criteria and thresholds likely to trigger the application new regulatory obligations, like the rail sector [171] .

Towards a right to the interoperability of social networks by reference to copyright and copyright consumption?

The concept of interoperability, when it involves copyright, has a special meaning. It aims to allow the user to access content digital in an undifferentiated way whatever the tools.

It is not guaranteed as such, but **it is expected that the installation technical measures for the protection of works must not prevent interoperability [172] .** Thus, the owner of the rights to the technical measure must provide the information essential to this interoperability to the editors of software, technical system manufacturers and service operators. Taking into account the interests of the user / consumer is growing even if the latter is not the obligee. This brings some authors to make the observation or wish for the advent of a right to interoperability.

Copyright and electronic communications law converge here in meaning that they provide access to essential information to guarantee interoperability, even if its purpose is different [173] . **It is therefore justified to ask if a right to interoperability of social networks would not be**

possible by following the reasoning of those who are favorable to it to access to digital content [174] **.**

In particular, **interoperability could be recognized as a right of consumer, insofar as it meets their needs to control their data, as well as to communicate its digital tools.** If applicable, this right should necessarily be part of the preservation of a balance between the protection of copyright and related rights and that of the right to interoperability. In the light of freedom of expression, the right to interoperability could be to social networks what the freedom of use of hypertext links is in the structuring of content on the Internet [175] .

170 European Commission, March 31, 2020, E-000595/2020, Response given by Executive Vice-President Ms Vestager on behalf of the European Commission.
171 Concurrences Review, "Essential infrastructures: The Commission does not intend to change the doctrine with regard to the application of the from essential infrastructures to digital platforms in a dominant position " , 31 March 2020.
172 Art. L. 331-5, al. 4, CPI: "technical measures must not have the effect of preventing the effective implementation of interoperability, with respect for copyright (...) ".
173 For explanations on interoperability in consumer law and intellectual property law: SAUPHANOR-BROUILLAUD Natacha (direction), Consumer contracts - Common rules, Treaty of civil law collection (edited by J. Ghestin), 2nd ed., LGDJ, 2018.
174 "The right to interoperability: study of consumer law ": Thesis by Marie Duponchelle, under the supervision of Mrs. Judith Rochfeld, April 9, 2015.
175 See in this sense CJEU, n ° C-160/15, Judgment of the Court, GS Media BV v Sanoma Media Netherlands BV and others, 8 September 2016, cited above.

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2. THE RECOMMENDATIONS OF THE NATIONAL COUNCIL DIGITAL FOR A NEW REGULATION

On the principle of regulation

With regard to the risks of interoperability raised in the assessment of the issues for social networks and [176] users . the Council considers that **it would be better to examine, as a first step, the effects of the implementation of the right to data portability,** allowing users to transfer their data from one social network to another. In particular, large platforms are currently implementing a [177] data transfer project that could be effective in enabling users to migrate from one platform to another other. In particular, the inclusion of contact lists within the framework of this project could partially remedy the direct network effects, subject to respect users' right to privacy.

At the end of this examination, if the Government wished to introduce an obligation interoperability, the Council considers that **this initiative should be part of the framework of a more comprehensive reform of the regulation of digital platforms.** Indeed, this tool is not intended to be self-sufficient in view of the objectives of public policies pursued and should include a panel of tools, available to national regulators, for example.

Also, **the implementation of ex ante and asymmetric regulation appears necessary,** in addition to competition law, in order to be able to impose rules specific to large so-called "systemic" platforms.
In addition, **this regulation should take into account the economic aspects and competitive, but also societal and consumerist linked to models large platforms** [178] **.**

In any case, **such a regulation could not be done in a coherent way. and harmonized only at European level, even internationally within the framework debates at the OECD. According to the Council of State** [179] **,** " *the objective of protecting interests of users and consumers of digital services offered on a global market would be likely to be better reached by adopting new European Union arrangements for communication services to the online audience and competition* '. Thus, **the European level could be privileged, in particular within the framework of the Digital Services Act, in addition to the P2B** [180] **regulation .** Indeed, a specific regulation could target the platforms systemic including in their relations with consumers, while the P2B regulation would continue to apply to all platforms in their relations with user companies [181] .

176 See part 3 of this study: "the challenges of interoperability for social networks and users".
177 "Data Transfer Project" cited above.
178 See part 1.2 of this study: "interoperability, at the crossroads of different public policy objectives".
179 Opinion of the Council of State on the bill aimed at guaranteeing consumers' free choice in cyberspace, February 6, 2020.
180 Regulation 2019/1150 of 20 June 2019 promoting fairness and transparency for companies using intermediation services online .
181 Impact assessment of the European Commission on the Digital Services Act published on June 2, 2020: see options B.1, B.2 and B.3 considered by the Commission, in particular option B.3: '3. Adopt a new and flexible ex ante regulatory framework for large online platforms acting as gatekeepers: This option would provide a new ex ante regulatory framework, which would apply to large online platforms that benefit from significant network effects and act as gatekeepers supervised and enforced through an enabled regulatory function at EU level. Tea new framework would complement the horizontally applicable provisions of the Platform-to-Business Regulation (EU) 2019/1150, which would continue to apply to all online intermediation services ".

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Finally, in view of the aforementioned risks weighing on the ecosystem, the Board considers **that prior consultation with the entire ecosystem is necessary before introducing such a tool into the legal landscape.**

On the implementation of the regulation

If the interoperability of social networks were introduced as part of a more global regulation of platforms, the principles of necessity and proportionality should guide its establishment in several respects.

First, the scope of the interoperability obligation should be limited strictly to large social networks in order to let the smallest free platforms to benefit from it or not, depending on their business models, development strategies etc. If the criteria for identifying these networks social "systemic" or "structuring" were mainly to take into takes into account the quantitative aspect (number of users, market share etc.), **more qualitative aspects should also be taken into account, such as the possession of essential data, or the impact on the cognitive system users and the dependence or even addiction that results from it.**

In order to respect this perimeter, the opening of APIs by the major platforms could be relevant in order to specifically target a category of actors. However, in order to prevent them from maintaining control over these APIs and impose a standard on smaller platforms, it would seem preferable to use a standardized protocol. **A protocol of standards or APIs could be developed and enforced by the designated regulatory authority, which would be responsible for monitor its implementation by the major platforms** [182] **.**

Second, the degree of the interoperability obligation should be minimal, given the potential negative impacts noted by the Board, both on social networks than on users. Thus, **a gradual approach should be privileged, starting by introducing a light option (option 2: possibility send and receive instant messages or option 3.1 possibility of consult content).** After monitoring and evaluating the effects on the market over a given period, the measure could then be renewed, reinforced or withdrawn by decision of the European Commission, in agreement with the authorities competent national regulations.

Finally, the obligation of interoperability should be part of a framework general, while leaving flexibility to national regulators as well as agreements between platforms, based on the telecommunications model [183] **. The obligation could be based on a general principle of access to information necessary for the implementation of interoperability,** just as in copyright [184]

or in electronic communications law for network access [185] . She should also rely on the definition of the necessary technical elements. However, the scope of this access for social media platforms remains essentially determined by technical and political arbitrations: choice of interoperable functionalities, means of implementing interoperability (standardized protocol or opening of existing APIs [186]), etc.

The choice of the competent regulator could also vary according to the objectives and the functionalities concerned by interoperability. In particular, the circulation data that interoperability would imply is a cross-cutting issue personal data law, competition law and consumption, or even the law of electronic communications for messages snapshots. Rather, current practice reveals a siled approach. So,

182 See in this sense the aforementioned Stigler report which considers that "the regulatory authority could impose the application of standard protocols or APIs and tightly control the process to prevent competition from being undermined by the actions of the dominant company ".
183 In telecommunications law, companies receiving requests for interconnection to their network must negotiate and conclude interconnection agreements with the operators concerned.
184 Art. L. 331-5, al. 4, CPI: "Providers of technical measures provide access to information essential to interoperability in conditions defined in 1 ° of article L. 331-31 and article L. 331-32. "
185 Art. L34-8, al. 1 Post and Electronic Communications Code: "Interconnection or access are subject to a legal agreement private between the parties involved. This agreement determines, in accordance with the provisions of this code and the decisions taken to its application, the technical and financial conditions for interconnection or access ".
186 See part 2.2 of this study "identification of interoperable functionalities".

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in the aforementioned Facebook / Whatsapp case [187] , the transfer of contact lists had been apprehended by the CNIL in terms of personal data in France, but has also been dealt with by the Competition Authority in Germany on the basis of the abuse of a dominant position even if it applied the law of personal data [188] , or on the basis of consumer law in Italy [189] . The solutions would therefore lie in enhanced coordination between regulatory authorities and within their capacity to apply the law of personal data when necessary.

If we consider that interoperability primarily pursues competitive objectives in the social media market, the Competition Authority could be responsible for monitoring compliance with these obligations *ex ante*, like merger control. This one also comes to acquire a new service specializing in the digital economy [190] , who would be able to grasp the technicality of competitive problems related to the interoperability of social networks. However, the application of the law competition is not automatic and remains conditioned the company's behavior (example: refusal or restriction of interoperability services).

In a more consumerist approach, particularly in view of the objective of freedom of the user to choose the contents and services on an open Internet, the implementation of the interoperability of social networks could be part of the Arcep missions. In this regard, the proposed law aimed at guaranteeing the choice of the consumer in the aforementioned cyberspace intended to give him the power impose on digital service providers the obligation to remove barriers, technical or legal, to the interoperability of services and to sanction these last if any [191] . In particular, **the competence of ARCEP appears to ensure the interoperability of instant messengers (option 2 of the study), as "guardian of exchange networks in France" [192] .**

Finally, it is possible to consider regulation from the angle of audiovisual content. Indeed, the AVMS directive has extended the scope of audiovisual regulation video sharing platforms and social networks, as soon as the provision of videos by the user constituted an essential functionality of said network [193] . In addition, at the national level, the draft law on communication audiovisual and cultural sovereignty in the digital age [194] entrusts missions extended to the Audiovisual Communication Regulatory Authority and digital (ARCOM resulting from the merger of the CSA and the High Authority for dissemination of works and protection of rights on the Internet, Hadopi [195]). **Yes interoperability had to concern content (option 3 of the study), it could then be relevant to entrust its regulation to ARCOM.** This would in any case come within the current mission of the CSA, responsible for ensure " *market access to the audiovisual media service* " and that " *a consumer protection* [196] . "

In any case, **the competent regulator should work in coordination with the CNIL in the implementation of this regulation in order to ensure compliance the protection of personal data and the privacy of individuals as well as**

of the effectiveness of their freedom of choice, thanks to free and informed consent.

187 Les Echos: the CNIL gives formal notice to WhatsApp for illegal transfer of personal data, 19 Dec. 2017.
188 Bundeskartellamt, 6th division, Decision of February 6, 2019, B6-22 / 16.
189 Le Monde: WhatsApp condemned in Italy for sharing data with Facebook, May 16, 2017.
190 Autorité de la concurrence website : the Autorité creates a digital economy service, January 9, 2020.
191 Articles 4 and 6 of the bill aimed at guaranteeing consumers' free choice in cyberspace, tabled in the Senate on October 10 2019.
192 Arcep website: Our missions.
193 §5 of Directive 2018/1808 of 14 November 2018 amending Directive 2010/13 / EU aimed at coordinating certain provisions laws, regulations and administrative procedures of the Member States relating to the provision of audiovisual media services (Directive on audiovisual media "), given the changing market realities" if Directive 2010/13 / EU is not intended to regulate social media as such, it should apply to such services if the provision of user-created programs and videos in is an essential functionality. The provision of user-created programs and videos may be considered to constitute an essential functionality of a social media service if the audiovisual content is not merely incidental or does not constitute a minor part of the activities of this social media service. "
194 Bill No. 2488 relating to audiovisual communication and cultural sovereignty in the digital age, registered at the presidency of the National Assembly on December 5, 2019.
195 CSA website: "CSA / Hadopi: signature of the agreement on the foreshadowing of the merger of the two authorities", January 13, 2020.
196 CSA website: "What are our missions"?

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- Penal Code
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HEARINGS AND EVENTS

Lists of people interviewed

- Mr. Serge Abiteboul, French IT specialist, member of the ARCEP College, researcher at ENS Paris and research director at INRIA
- Mr. Rafael Amaro, director of the competition law division at Trans Europe Experts
- Mr. Stéphane Bortzmeyer, computer scientist specializing in computer networks at the Association French for Internet Naming in Cooperation (AFNIC)
- Mr. Régis Chatellier, in charge of prospective studies at the Digital Innovation Laboratory (LINC) at the CNIL
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- Mr. Arthur Dozias, project manager in the economy, markets and digital department at ARCEP
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- Mr. Thibaut Girka, co-developer at Mastodon
- Mr. Dominique Hazael-Massieux, president of the workshop on the interoperability of social networks at W3C
- The Privacy Policy team of Facebook EMEA
- Mr. Stéphane Lhermitte, economy, markets and digital director at ARCEP
- Mr. Arthur Messaud, lawyer at Quadrature du Net
- Ms. Marion Panfili, Deputy Head of the Office for Tertiary Activities and Competition to the General Directorate of the Treasury
- Mr. Benoît Piédallu, engineer, member of the Quadrature du Net
- Mr. Pierre Antoine Rault, developer at Peertube
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- Ms. Chantal Rubin, head of the regulation of digital platforms serving of the digital economy at the Directorate-General for Enterprises (DGE)
- Ms. Marne Strazielle, communications director at Quadrature du Net
- Mr. Lucas Verney, engineer at the Directorate-General for Enterprises (DGE)
- Ms. Célia Zolynski, Director of the Intellectual Property and Digital Law Department at Trans Europe Experts.

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Events to which CNNum has contributed

- June 4, 2019: Hearing of Mrs. Annie Blandin by the Senate on digital sovereignty;

- January 8, 2020: Hearing of Mrs. Annie Blandin, Mr. Henri Isaac, Mr. Vincent Toubiana and Ms. Myriam El Andaloussi by the Senate on the bill to guarantee free choice the consumer in cyberspace;

- January 22, 2020: Hearing of Ms. Annie Blandin, Mr. Henri Isaac and Ms. Myriam El Andaloussi by the National Assembly on the regulation of platforms;

- February 24, 2020: Participation of Mr. Charles-Pierre Astolfi in the round table on regulation structuring platforms organized by the Ministry of the Economy and Finance.

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It is placed with the minister responsible for digital technology. Its statutes have been amended by decree of 8 December 2017. Its members are appointed by decree of Secretary of State in charge of digital for a period of two years.

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ROADMAP ON THE ENVIRONMENT AND DIGITAL

50 measures for a national agenda and European in the service of a digital sober, responsible and at the service of sustainable development goals