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WHAT HAVE THE INTERMEDIARIES EVER DONE FOR US?

By Dirk Auer & Lazar Radic

Intermediaries may not be the consumer welfare hero we want, but more often than not, they are one that we need. Policymakers often assume that intermediaries and centralization serve as a cost to society, and that consumers are better off when provided with "more choice." Concrete expression of this view can be found in regulatory initiatives that aim to turn "closed" platforms into "open" ones (see, in Europe, the Digital Markets Act; and in the United States, the Open App Markets Act and the American Innovation and Choice Online Act). Against this backdrop, we explain that, as with all economic goods, intermediation involves tradeoffs. Intermediaries emerge when it would otherwise be too difficult (or too costly) for groups of users to meet and interact. There is thus no guarantee that government-mandated disintermediation — such as that contemplated in the European DMA and the U.S. AICOA bill — will generate net benefits in a given case. The ongoing Epic v Apple proceedings are a good example of why it is important to respect the role of intermediaries in digital markets, and the unique benefits intermediation can bring to consumers. The upshot is that intermediaries are far more valuable than they are usually given credit for.

I. INTRODUCTION

One assumption that undergirds much of today's policy discussions is that intermediaries are inherently parasitic on the groups they intermediate among. While this notion has been translated into modern language, the sentiment is ancient, as it taps primal prejudices that are as old as time. Over the centuries, an array of folk wisdom has been employed to castigate various middlemen, from tradesmen to insurers to mortgage and travel brokers to, of course, Marx's vampiric "capitalist," who "intermediated" between workers and consumers.[2] As economist Abba P. Lerner observed in 1949:

> At least since the 18th century, social discontent has tended to focus on the figure of The Middleman, who is conceived to be a kind of parasite earning his living in some obscure way at the expense of the "productive" elements of society. This conception of the parasitic role of the trader has played an important part in political movements of the Left and the Right, both on a popular and on a high ideological level.

Lerner was right, but the impulse arguably harkens back even further. In ancient Rome, "all trade was stigmatized as undignified…the word mercator [merchant] appears as almost a term of abuse."[3] Earlier still, Plato's "Republic" — a work that laid the foundations for Western political thought — held that "all the classes engaged in retail and wholesale trade…are disparaged and subjected to contempt and insults."[4]

What these social taboos throughout history share have in common is the view that intermediaries are — as Lerner put it — an "excrescence on the body economic." They are profiteers, exploiters, go-betweens seeking to profit from the hard work of others. In sum, the intermediary is the classic modern villain.

The latest iteration of this view takes particular aim at intermediaries in digital markets, especially the so-called platforms. The platforms' critics posit that consumers would always be better off in a decentralized system that minimized the role of "the middleman" and allowed them to freely combine products from across the spectrum of potential trading partners.[5] This would expand choice and reduce prices, or so the story goes.[6] According to this logic,[7] platforms are especially to be regarded with suspicion when they offer bundled goods or operate "walled gardens" (i.e. closed or semi-closed systems), while interoperability, open source, and decentralization are always laudable features of any market.

Concrete expression of this view can be found in regulatory proposals that have emerged on both sides of the Atlantic that aim to turn "closed" platforms into "open" ones (see, in Europe, the Digital Markets Act; and in the United States, the Open App Markets Act and the American Innovation and Choice Online Act).[8] In addition, several recent decisions and pending antitrust cases raise similar claims: that intermediaries arbitrarily decide who can be on the market, that they charge "too much," that they don't innovate enough, or that they exploit app developers and even consumers.[9]

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2 See Adam Hayes, *Middleman*, Investopedia (Aug. 24, 2021), https://www.investopedia.com/terms/m/middleman.asp; Dave Lindorff, *Insurance Industry: The Parasite That Feeds on US Public Health System*, Common Dreams (Mar. 25, 2009), https://www.commondreams.org/views/2009/03/25/insurance-industry-parasite-feeds-us-public-health-system; https://daily.jstor.org/marxferatu-teaching-marx-with-vampires/#:~:text=True%2C%20Marx%20didn%27t%20write,the%20more%20labor%20it%20sucks.%E2%80%9D; https://www.commentary.org/articles/abba-lerner/the-myth-of-the-parasitic-middlemanproductive-and-unproductive-labor/; Matthew Wills, *Marxferatu: Teaching Marx with Vampires*, JSTOR Daily (Oct. 30, 2018), https://daily.jstor.org/marxferatu-teaching-marx-with-vampires/#:~:text=True%2C%20Marx%20didn%27t%20write,the%20more%20labor%20it%20sucks.%E2%80%9D; Abba P. Lerner, *The Myth of the Parasitic Middleman: "Productive" and "Unproductive" Labor*, Commentary (July 1949), https://www.commentary.org/articles/abba-lerner/the-myth-of-the-parasitic-middlemanproductive-and-unproductive-labor/.

3 Marian L. Tupy, *Sadly, Trade and Commerce Have Always Been Vilified*, HumanProgress (Sept. 2, 2016), https://www.humanprogress.org/anti-capitalism-has-deep-roots-in-human-history/.

4 Plato, The Republic of Plato (Benjamin Jowett trans. Clarendon Press 1881) (1840). https://www.google.it/books/edition/The_Republic_of_Plato/uqcNAAAAQAAJ?hl=en&gbpv=1&printsec=frontcover.

5 See Ross Schulman, *We Need Alternatives to Big Tech. These Decentralized Tools Might Be the Answer*, New America (Jan. 12, 2021), https://www.newamerica.org/oti/blog/decentralization-competition/.

6 See Margrethe Vestager (@vestager), Twitter (Jan. 11, 2022. 7:45 AM), https://twitter.com/vestager/status/1480883454954946565.

7 See Ross Schulman, *supra* note 5.

8 See *Proposal for a Regulation of the European Parliament and of the Council on Contestable and Fair Markets in the Digital Sector*, SEC (2020) 437 final (Dec. 15, 2020); Open App Markets Act, S. 2710, 117th Cong. (2021); American Innovation and Choice Online Act, S. 2992, 117th Cong. (2022); ACCESS Act of 2021, H.R. 2849, 117th Cong. (2021).

9 https://www.acm.nl/sites/default/files/documents/summary-of-decision-on-abuse-of-dominant-position-by-apple.pdf. See European Commission Press Release IP/22/2764, *Antitrust: Commission sends Statement of Objections to Apple over practices regarding Apple Pay* (May 2, 2022). Autoriteit Consument & Markt, *Summary of decision on abuse of dominant position by Apple* (Aug. 24, 2021), https://www.acm.nl/sites/default/files/documents/summary-of-decision-on-abuse-of-dominant-position-by-apple.pdf.

As this piece explains, however, these stories ignore the tremendous value brought by intermediation and the trade-offs between different business models and different forms of intermediating. If left unchecked, this unhappy narrative can permanently damage digital ecosystems and transfer choices rooted in legitimate product differences from markets, where they belong, to legislators and judges, where they do not. The ongoing *Epic v Apple* proceedings are a good example of why it is important to respect the role of intermediaries in digital markets, and the unique benefits intermediation can bring to consumers.[10]

II. THE VALUE OF INTERMEDIARIES

In Monty Python's "The Life of Brian," a group of would-be revolutionaries bent on overthrowing their Roman overlords gather underground to prep-talk themselves into action. "All the Romans have ever done for us is exploit our fathers, and our fathers' fathers, and their fathers" – they chime. "But what have they ever *done for us?*" their leader, played by the legendary John Cleese, asks rhetorically. As the scene comically reveals in classic Monty Python fashion, quite a bit, actually.[11]

From arts dealers to insurance and travel brokers to marketplaces, intermediaries have been around for millennia for a reason: they have a huge potential to create value.[12] Like John Cleese's rag-tag band of conspirators, however, we have come to take the benefits of some such practices for granted and now only focus on what we perceive, in isolation, as downsides. Instead of this narrow view, we would do well to take a more holistic approach and place intermediaries in their proper context.

Intermediaries emerge when it would otherwise be too difficult (or too costly) for groups of users to meet and interact. In Coasian terms, they reduce the transaction costs that suppliers and customers would face if they tried to do business directly. As Professor Daniel F. Spulber puts it:

> Markets have two main modes of organization: decentralized and centralized. In a decentralized market, buyers and sellers match with each other and determine transaction prices. In a centralized market, firms act as intermediaries between buyers and sellers.
>
> [W]hen there are many buyers and sellers, there can be substantial transaction costs associated with communication, search, bargaining, and contracting. Such transaction costs can make it more difficult to achieve cross-market coordination through direct communication. Intermediary firms have various means of reducing transaction costs of decentralized coordination when there are many buyers and sellers.[13]

This echoes the findings of Nobel laureate Ronald Coase, who observed that firms emerge when they offer a cheaper alternative to multiple bilateral transactions:

> The main reason why it is profitable to establish a firm would seem to be that there is a cost of using the price mechanism. The most obvious cost of "organizing" production through the price mechanism is that of discovering what the relevant prices are. [. . .] The costs of negotiating and concluding a separate contract for each exchange transaction which takes place on a market must also be taken into account.[14]

These economic principles are easily illustrated with a simple example. For most products sold in a supermarket it is inconvenient (if not practically impossible) to buy directly from the producer (especially in the limited quantities that define retail shopping). Absent intermediaries, there would be tremendous costs involved in finding, reviewing, the negotiation the price and subsequently shipping each individual item. Not to mention the tremendous efficiencies supermarkets can achieve in terms of cost savings, reduced carbon emissions (because consumers make fewer store

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10 See *Epic Games, Inc. v. Apple Inc.*, No. 4:20-cv-05640-YGR, 2021 U.S. Dist. LEXIS 172303 (N.D. Cal. Sept. 10, 2021).

11 See Monty Python, *What Have the Romans…- Monty Python's Life of Brian*, YouTube (Jan. 14, 2009), https://www.youtube.com/watch?v=Qc7HmhrgTuQ.

12 See Michael Stevenson, *The Art Market, its Intermediaries and the Components of Value of Art Works in an Historical Perspective* (Aug. 1992) (Ph.D. dissertation, University of Cape Town) (OpenUCT

13 Daniel F. Spulber, *Solving the Circular Conundrum: Communication and Coordination in Internet Markets*, 104 Nw. U. L. Rev. 537, 540 (2010).

14 R. H. Coase, *The Nature of the Firm*, 4 Economica 386, 390 (1937).

trips), and other benefits of intermediation.[15] We would thus expect intermediaries to emerge in such settings, as whatever costs the operation costs they add to the final price of goods are likely outweighed be the aforementioned cost-savings.

In more concrete terms, intermediation can provide desirable goods/services/features that would be costly to replicate via bilateral transactions.

Curation is one such example. A consumer purchasing from a trusted intermediary is faced with a selection of goods it is likely to enjoy, based on past experience or the intermediary's reputation and brand. For instance, out of the millions of goods available on the market, grocery stores select a handful based on relevance, quality, and price. This saves time and reduces searching costs for the consumer. It may also help to avoid the paradox of choice by streamlining (and delegating) a chunk of the selection and decision-making process which might otherwise prove daunting.[16] No wonder then, that in a world of almost crippling abundance and choice, many companies and services differentiate themselves not by the ample range of goods offered but in precisely the opposite, i.e. their expertise and sophistication in picking out the best or most relevant.[17] Think of Spotify's personalized "Discover Weekly" playlist, but also more traditional brick-and-mortar shops that offer an assortment of goods and personalized services in stark contrast with the seemingly infinite range on available at megastores. This de-emphasizes quantity in favor of quality, and shifts the locus of competition from knowing how to offer as much as possible, to knowing what to offer to whom and when.

Intermediaries may also increase safety and security by screening products and producers before they reach users. A hypothetical grocery shopper can be safe in the knowledge that the chicken breasts it buys have been carefully vetted. Admittedly, safety regulations also ensure that producers don't cut corners, but the sellers themselves have a strong vested interest in making sure that what they sell is safe for consumption, and in dropping any producers that prove unreliable.[18] Of course, this doesn't 100 percent guarantee safety, but it likely a more cost-effective way of achieving safety than if shoppers had to screen for safety and security themselves.

Finally, and crucially for digital markets, intermediaries can significantly increase economic output by nurturing externalities that exist between different groups of users. In simple terms, intermediaries can bring together users that want to transact but could not otherwise find each other.[19] Think of online platforms such as Amazon, Uber, Airbnb, or LinkedIn. In these two-sided markets, intermediary increase total output by creating feedback loops that capitalize on the number and quality of users on each side of the platform. The more rooms there are on Airbnb (and the better they are), the more users will join the platform, making it more valuable to owners, etc. Virtuous circles of this sort lead to ecosystems that ultimately benefits businesses and consumers alike. This is notably the case for small businesses that offer niche goods and can reach a wider audience by piggybacking on the ecosystem created by the intermediary. In short, intermediaries can harness cross-group externalities to create vibrant ecosystems.

III. TRADEOFFS, TRADEOFFS

All of this does not mean that intermediaries are always a net benefit and every transaction should be intermediated. Instead, the critical point is about the competitive process. There are vast differences between centralization that stems from government fiat and that which emerges organically.

15 See Jerry Hausman & Ephraim Leibtag, *Consumer Benefits from Increased Competition in Shopping Outlets: Measuring the Effect of Wal-Mart*, 22 J. of Applied Econometrics 1157 (2007); George Nott, *Is Online or In-store Food Shopping Better for the Planet?*, The Grocer (June 4, 2021), https://www.thegrocer.co.uk/sustainability-and- environment/is-online-or-in-store-food-shopping-better-for-the-planet/656712.article.

16 See Barry Schwartz, The Paradox of Choice: Why More is Less (2016).

17 See Stuart Jeffries, *Why too Much Choice is Stressing Us Out*, The Guardian (Oct. 21, 2015), https://www.theguardian.com/lifeandstyle/2015/oct/21/choice-stressing-us-out-dating-partners-monopolies.

18 Kevin Boudreau and Andrei Hagiu compare this to the famous "market for lemons" problem. See Kevin J Boudreau & Andrei Hagiu, *Platform rules: Multi-sided platforms as regulators*, 1 Platforms, markets and innovation, 163 (2009). ("The main reason was a 'lemons' market failure: because it had not developed a technology for locking out unauthorized games, Atari was unable to prevent the entry of opportunistic developers, who flooded the market with poor-quality games. At a time when consumers had few ways to distinguish good from bad games, bad games drove out good ones. The videogame market was resurrected six years later only when Nintendo entered with a set of draconian policies to regulate third-party developers more tightly. Central to Nintendo's strategy was the use of a security chip designed to lock out any game not directly approved by Nintendo.").

19 David S. Evans & Richard Schmalensee, *The Antitrust Analysis of Multi-Sided Platform Businesses*, 7 (Nat'l Bureau of Econ. Research, Working Paper No w18783, 2012). ("A multi-sided platform "has (a) two or more groups of customers; (b) who need each other in some way; (c) but who cannot capture the value from their mutual attraction on their own; and (d) rely on the catalyst to facilitate value creating interactions between them.").

(Dis)intermediation is an economic good. Markets thus play a critical role in deciding how much or little of it is provided. Intermediaries must charge fees that cover their costs, while bilateral contracts entail transaction costs. In typically Hayekian fashion, suppliers and buyers will weigh the costs and benefits of these options.[20] Intermediaries are most likely to emerge in markets prone to excessive transaction costs and competitive processes ensure that only valuable intermediaries survive.

This has important consequences for policymakers. Indeed, there is no guarantee that government-mandated disintermediation — such as that contemplated in the European DMA and the US AICOA bill[21] — would generate net benefits in any given case. Of course, the market does not always work perfectly. Sometimes, market failures give rise to excessive (or insufficient) centralization. And policymakers should certainly be attentive to these potential problems and address them on a case-by-case basis. Policymakers should thus ask themselves whether today's most successful intermediaries are merely (or at least mostly) the result of market failures. In the negative, they should be careful not to undermine the valuable role these platforms perform.[22]

Questions surrounding the future of the cryptocurrency space offer a good illustration of this evolutionary dynamic. For instance, Tyler Cowen recently appeared to sing the praises of decentralization when discussing the future of Web 3.0:

> One person may think "I like the DeFi options at Uniswap," while another may say, "I am going to use the prediction markets over at Hedgehog." In this scenario there is relatively little intermediation and heavy competition for consumer attention. Thus most of the gains from competition accrue to the users. …
>
> I don't know if people are up to all this work (or is it fun?). But in my view this is the best-case scenario — and the most technologically ambitious. Interestingly, crypto's radical ability to disintermediate, if extended to its logical conclusion, could bring about a radical equalization of power that would lower the prices and values of the currently well-established crypto assets, companies and platforms.[23]

While Cowen has a point — disintermediation would indeed have some benefits — it is important not to overlook the tradeoffs involved. For instance, social science literature has long recognized not all consumers are equally sophisticated (think e.g. of Barry Schwartz' distinction between "satisficers" vs. "maximizers").[24] The underlying logic is that consumers vary in terms of tastes, knowledge, priorities, and sophistication. So, what may work for one group may not work for another.

For instance, besides being a renowned scholar, Tyler Cowen is also an extremely savvy investor. What he sees as fun investment choices may be nightmarish (and potentially dangerous) decisions for less sophisticated consumers. So, while a user like Cowan may well be able to reap all the benefits of a decentralized system with almost none of the risks, a less vigilant user may fall easy prey to scams, security breaches, or just terrible investment advice. For Cowen, the intermediary may be a nuisance because it appropriates some of the surplus which would otherwise have been entirely his. For many others, however, the intermediary is a safeguard against financial self-destruction.

In short, it is wrong to assume consumers would be better off if every interaction with producers was "decentralized" (or the opposite, for that matter). Instead, most consumers would benefit from being able to choose between intermediation and disintermediation. Turning every grocery store into an "open" system — essentially, a bazaar — would destroy the benefits of intermediation. But turning every bazaar into a boutique would be equally senseless. Paradoxically, by turning everything into the same thing for the sake of "choice" and "fairness," policymakers would end up *eliminating* choice by government fiat, instead of letting the users decide.

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20 See F. A. Hayek, *The Use of Knowledge in Society*, 35 Am. Econ. Rev. 519 (1945).

21 See *Proposal for a Regulation of the European Parliament and of the Council on Contestable and Fair Markets in the Digital Sector*, SEC (2020) 437 final (Dec. 15, 2020); American Innovation and Choice Online Act, S. 2992, 117th Cong. (2022).

22 See Dirk Auer, *On the Origin of Platforms: An Evolutionary Perspective*, Truth on the Market (July 7, 2020), https://truthonthemarket.com/2020/07/07/on-the-origin-of-platforms-an-evolutionary-perspective/. ("Digital markets could have taken a vast number of shapes, so why have they systematically gravitated towards those very characteristics that authorities condemn? For instance, if market tipping and consumer lock-in are so problematic, why is it that new corners of the digital economy continue to emerge via closed platforms, as opposed to collaborative ones? Indeed, if recent commentary is to be believed, it is the latter that should succeed because they purportedly produce greater gains from trade. And if consumers and platforms cannot realize these gains by themselves, then we should see [other] intermediaries step into the breach – i.e. arbitrage. This does not seem to be happening in the digital economy. The naïve answer is to say that this is precisely the problem, the harder one is to actually understand why.").

23 Tyler Cowen, *How Crypto Could be Like the Music Industry*, Bloomberg (Dec. 20, 2021, 7:00 AM), https://www.bloomberg.com/opinion/articles/2021-12-20/how-crypto-could-be-like-the-music-industry.

24 See Barry Schwartz, Andrew Ward, John Monterosso, Sonja Lyubomirsky, Katherine White & Darrin R Lehman, *Maximizing versus satisficing: happiness is a matter of choice*, 83 Journal of personality and social psychology, 179-190 (2002).

IV. IMPLICATIONS FOR COMPETITION POLICY IN DIGITAL

It's easy to see the implications of the above for today's competition-policy debates, and for the online intermediaries that many critics would like to see decentralized. Particularly salient examples include app store platforms (such as the Apple App Store and the Google Play Store); online retail platforms (such as Amazon Marketplace); and online travel agents (like Booking.com and Expedia). Competition policymakers have embarked on countless ventures to "open up" these platforms to competition, essentially moving them further toward disintermediation. In most of these cases, however, policymakers appear to be fighting these businesses' very raison d'être.

For example, the purpose of an app store is to curate the software that users can install and to offer payment solutions; in exchange, the store receives a cut of the proceeds. If performing these tasks created no value, then to a first approximation, these services would not exist. Users would simply download apps via their web browsers, and the most successful smartphones would be those that allowed users to directly install apps. Forcing these platforms to "open up" and become neutral is antithetical to the value proposition they offer.

Calls for retail and travel platforms to stop offering house brands or displaying certain products more favorably are equally paradoxical. Consumers turn to these platforms because they want a selection of goods. If that was not the case, users could simply bypass the platforms and purchase directly from independent retailers or hotels. Critics sometimes retort that some commercial arrangements, such as "most favored nation" clauses, discourage consumers from doing exactly this. But that claim only reinforces the point that online platforms must create significant value, or they would not be able to obtain such arrangements in the first place.

The above explains why characterizing these firms as imposing a "tax" – as critics of intermediaries have always done, and continue to do – on their respective ecosystems is so deeply misleading. The implication is that platforms are merely passive rent extractors that create no value. Yet, barring the existence of market failures, both their existence and success is proof to the contrary. To argue otherwise places no faith in the ability of firms and consumers to act in their own self-interest.

V. THE EXAMPLE OF APPLE

The above themes have all played out in one form or another in the recent Epic v Apple case.[25] Succinctly, Apple's App Store is a multisided platform connecting app developers and app users, with Apple acting as the intermediary.[26] However, unlike some of its competitors', Apple's platform is "closed" or "semi-closed," meaning that iPhone users can only download apps through Apple's App Store: the iOS doesn't support third-party app stores or what is commonly referred to as "side-loading," i.e. downloading apps directly from the internet. Apple also doesn't allow third-party in-app payment systems on its platform — with the upshot that any such purchases must go through the App Store and pay Apple a 30 percent commission (the industry standard).

Epic Games, the developers behind the massively successful online multiplayer game Fortnite which was distributed (amongst other places) on the App Store, lodged a complaint under the Sherman Act arguing that Apple's model foreclosed competition from other potential app stores and payment systems.[27] Leaving aside the multiple legal shortcomings of Epic's case, there are a wealth of economic reasons why it is unsound to turn Apple's "closed" platform into an "open" one by judicial decree — as Epic essentially wanted.[28]

It is important to understand, in this connection, that "open" and "closed" platforms both have distinct benefits and drawbacks; one is not inherently superior to the other.[29] Closed proprietary platforms like Apple's iOS create incentives for companies to internalize positive indirect network effects, which can lead to higher levels of product variety, user adoption, and total social welfare. As Andrei Hagiu has written:

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25 See *Epic Games, Inc. v. Apple Inc.*, No. 4:20-cv-05640-YGR, 2021 U.S. Dist. LEXIS 172303 (N.D. Cal. Sept. 10, 2021); Geoff Manne, Dirk Auer, & Lazar Radic, *Assessing Less Restrictive Alternatives and Interbrand Competition in Epic v Apple*, Truth on the Market (Apr. 1, 2022), https://truthonthemarket.com/2022/04/01/assessing-less-restrictive-alternatives-and-interbrand-competition-in-epic-v-apple/.

26 See David S. Evans & Richard Schmalensee, Matchmakers: The New Economics of Multisided Platforms, 1 (2016).

27 See Fortnite, https://www.epicgames.com/fortnite/en-US/home (last visited May 18, 2022).

28 See Brief for International Center for Law & Economics as Amicus Curiae, *Epic Games, Inc. v. Apple, Inc.*, No. 4:20-cv-05640-YGR, 2021 U.S. Dist. LEXIS 172303 (N.D. Cal. Sept. 10, 2021.

29 See Jonathan Barnett, *The Host's Dilemma: Strategic Forfeiture in Platform Markets for Informational Goods*, 124 Harv. L. Rev. 1861, 1868-69 (2011). ("If open and closed structures (and all intermediate variants) simply reflect strategic approaches to the underlying trade-off between controlling host opportunism and enabling cost recovery, then the choice of organizational form would appear to be a matter of social indifference that provides no basis for government intervention to guide market outcomes.).

> A proprietary platform may in fact induce more developer entry (i.e., product variety), user adoption and higher total social welfare than an open platform.[30]

For instance, by filtering which apps can access the App Store and precluding some transactions from taking place on it, a closed or semi-closed platform may ultimately increase the number of apps and transactions on its platform, where doing so makes the iOS ecosystem more attractive to both consumers and developers.

Further, there are important and complex inter and intra-group tradeoffs between "open" and "closed" platforms. On the user side, for instance, more vigilant users might be better served by an "open" platform because they find it easier to avoid harmful content; whereas less vigilant ones may want more active assistance in screening for malware, spyware, or software that simply isn't optimized for the user's device. Similarly, some users might genuinely prefer a highly curated, selective experience when it comes to apps — while others may bridle at any such limitations.[31]

Comparable tradeoffs exist on the developer side: Apple's model lowers the cost to join the App store, which particularly benefits smaller developers and those whose apps fall outside the popular gaming sector. In a nutshell, the 30 percent commission on in-app purchases cross-subsidizes the delivery of services to the approximately 80 percent of apps on the App Store that are free and pay no in-app fees. Subscribing to the App Store also gives developers access to Apple's software tools and marketing (approximately 70 percent of small developers don't have a marketing budget).

Of course, Apple's way of doing things isn't the only way — nor should it be. Notably, its main competitor, i.e. Android, has a different business philosophy which allows for a more "open" platform with a more hands-off approach to content distribution and moderation i.e. intermediation between users and distributors. Clearly, to the extent that operating systems and phones can be seen as a form of intermediation between users and developers — they are inherently valuable regardless of the model adopted. But a subtler point is that, as a more active intermediary, Apple brings unique benefits which are not replicated by Android and, *vice-versa*.

In consequence, forcing Apple to adopt the "open" platform model that Epic champions — and that Android embodies — on the basis of the assumption that less intermediation is somehow always better is unwarranted and bad policy. It is also misguided form an antitrust perspective because, in the context of two-sided platform businesses, this would mean sacrificing systems-level competition for the sake of a superficial increase in competition among a small subset of platform users. Thankfully, the district court recognized as much in its ruling.

VI. CONCLUSION

In *Das Kapital*, Karl Marx differentiated between "productive" and "unproductive" labor. He argued that capitalists belonged to the latter group because they were parasites that appropriated the surplus value generated by labor. As Jonah Goldberg has observed in *Suicide of the West*, in doing so, Marx secularized a recurrent religious theme in human societies: the distaste for those that make money without physically appearing to create anything.[32] This has traditionally included, amongst others, tradesmen, money lenders ("usurers"), and of course, the owners of the means of production themselves: the capitalists.

In a sense, digital intermediaries are the new "capitalists" unto which all the scorn, rhetoric and irrationality of the "enemies of the market" is now poured on. And, like other middlemen through the centuries, the new breed is intuitively seen by critics as creating little worth and merely appropriating the value generated by app developers by leveraging the demand of a "captive" (or "locked in") customer-base.

As we have argued, this story of exploitation is disingenuous. Some of the biggest improvements in human welfare have come from savvy intermediaries that connected two groups of people. Indeed: the entire logic of markets, and therefore capitalism, is grounded in this principle. This is not to say that intermediation is always necessary, or a net social benefit. But, if any presumption is going to apply to intermediation, history tells us that — despite our reactionary and primitive instincts — it should be in the opposite direction. Indeed, intermediaries have done — and continue to do — quite a bit for us.

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30 Andrei Hagiu, *Proprietary vs. Open Two-Sided Platforms and Social Efficiency*, 15-16 (AEI-Bookings Joint Ctr., Working Paper No. 06-12, 2007), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=980755.

31 See Sam Bowman, *Breaking Down House Democrats' Forthcoming Competition Bills*, Truth on the Market (June 10, 2021), https://truthonthemarket.com/2021/06/10/breaking-down-house-democrats-forthcoming-competition-bills/.

32 See Jonah Goldberg, Suicide of the West: How the Rebirth of Tribalism, Populism, Nationalism, and Identity Politics is Destroying American Democracy (2018).

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