

PLATFORMS AND NETWORK INDUSTRIES

Randy Picker

Spring 2019

1. You should read the instructions, the entire exam and all of the questions before answering any of the questions.

2. This is an open-book (but not open network), three-hour in-class examination. You may consult any materials you wish, except that (i) you may not consult anyone else and (ii) you may not search during the exam on the Internet or on any database service (such as Westlaw or Lexis/Nexis). Please do not discuss the exam with anyone until the examination period is over.

3. This examination consists of four pages (including this page of instructions). Please make sure that you have all of the pages.

4. There are three questions. Questions will not necessarily be weighted equally so be sure to look at the heading to each question to see what percentage of your grade is given for each question.

5. **Your answer should be no more than 3000 words.** Penalties may be assessed for failure to comply with these rules and, in the fashion of the EU competition authority, the size of the penalty will be intended to deter violations of the rules. Alternatively, I may just stop reading the answer after 3000 words.

6. Answers should be written in full English sentences and should refer to specific statute sections and cases where relevant. If an exam question is unclear, point out the ambiguity and then answer the question to the best of your ability.

7. In answering the questions, you should assume, except as otherwise provided in the exam itself, that the applicable version of any relevant statute is that set forth in the class materials. **The law is the law of today, even if the exam is set at a different time.**

8. Good luck!

NOTE: APPLY THE LAW AS IT EXISTS TODAY, NOT AS IT EXISTED IN THE HISTORICAL SETTING OF THE FACT PATTERN

Question 1 (30%; your answer should be roughly 900 words)

The year is 2008. The Apple iPhone was launched in 2007 and Apple opened its app store in July 2008. The world of apps promised a powerful new functionality based on these new devices. A new start up, InstaCab, Inc. (“ICI”), had created a downloadable app to connect consumers to taxicabs. ICI hoped to launch its service in urban areas across the country, but it planned to start in San Francisco, as ICI was based in Silicon Valley. The cab market was subject to extensive local and often different regulations in each of the cities that ICI intended to enter.

Each of the three local San Francisco taxicab companies had installed GPS devices in their cabs to radio back to the dispatch center where the cabs were located at a given moment. ICI wanted access to that information to use it in their new app, but the incumbent cab companies didn’t want to deal with the upstart.

ICI approached the San Francisco Cab Commission (the “SFCC”) seeking an order from the SFCC to require the cab companies to give ICI access to the GPS data in real time. The local ordinances regulating the cab companies provided that the cab companies were “common carriers” and ICI sought to claim that that status entitled it to the GPS information.

Question: You work for a commissioner at the SFCC. He would like an evaluation of the argument that ICI is raising or any other arguments that ICI would likely raise in a proceeding over possible access to the GPS data. In addition to that, should you conclude that there was some basis to give ICI access to the requested data, the commissioner would like your assessment of the terms and conditions under which access would be given to ICI.



Question 2 (40%; your answer should be roughly 1200 words)

We have jumped forward to the year 2021 and drone and droid delivery services (known in the trade as D&DD) are on the verge of becoming part of everyday life. Drones fly, while wheel-based droids travel along the ground. Both run off of electricity and thus offer real environmental advantages compared to more car trips using gasoline-powered engines.

Both drones and droids required detailed location information—2D and 3D maps to put it simply – to navigate safely and of course each needs a variety of sensor information to assess live items (cars, people and other drones and droids among other things). Google had been an early mover in

the mapping space, though other firms were building up their own mapping capabilities. These other firms included Amazon, Uber, FedEx and the other delivery companies and even the U.S Postal Service (USPS). But Google remained the gold standard here and it had declined offers from other firms who would like to license its mapping information. Google itself has not yet entered the D&DD business though there were rumors that it was considering doing so.

Even with all of the territorial information being assembled, there was a concern that separate decisions by the D&DD firms would lead to direct conflicts – even crashes – by the drones and droids, especially across firms. The drones and droids within a particular firm each operated using the same communications protocol and so they were in constant communication with each other. That meant they knew how to avoid each other to avoid collisions. But different firms used different communications protocols and there was no guarantee that an Amazon drone would speak to a USPS droid. D&DD crash videos were quickly becoming a thing on YouTube and Facebook.

Question: You work for a member of Congress, that rare member who doesn't feel beholden to simple labels like Republican or Democrat and who just "wants to get it right." Call her Congresswoman Goode. Goode would like to know how to think about the mapping information and the D&DD communications protocols. She wants to know the circumstances, if any, in which platform or network industries-style regulations might be appropriate here; what those might look like were they to be enacted by Congress; whether it might be sensible to create a new agency that in turn would have broad regulatory powers; and whether there is some distinctive role that a public entity like USPS might play here.



Question 3 (30%; your answer should be roughly 900 words)

We are back to today. Consider this statement:

"The idea that Facebook should be broken up is silly. Facebook is the modern equivalent to the post office, warts and all. When the United States was young, it was critical to establish a national communications system to bind the nation together as a whole. It was essential to make it possible for everyone in the country to communicate with everyone else and the fact that it wasn't cost justified to ensure service in some areas, particularly rural areas, didn't matter. The U.S. post office was just the price of doing business in a young democracy. And it would have made no sense to talk about breaking up the post office. We wanted a monopoly to make the post office work.

Now with Facebook, we have a platform on which everyone can talk to everyone. Not one by one necessarily, but in the aggregate, the entire country is on Facebook or could be if it wanted to be. Just as it would have made zero sense to have separate, incompatible post offices, it would make no sense to have ten different Facebooks. If there are things that we don't think are working on Facebook, Congress should pass new legislation to address those issues. But we should start that discussion by taking off the table the idea of breaking up Facebook. Facebook is the new post office, only better."

Question: Discuss. Agree or disagree, in part or in full, but be sure to draw upon specific examples from the course that support the positions you take. And if you believe that some type of legislation is a superior remedy to breaking up Facebook, please sketch out what that legislation would do.

