

Question 1: Key Missing Issues

Issues and Points: 30 point baseline

30

<p>1. Failure to address (FTA) general obligations of common carriers (as <i>Express</i> cases make clear, common carrier status typically arises through some sort of legislative or constitutional enactment and scope of common carrier obligations is controlled through that; we have that here): -2</p>	
<p>2. FTA scope of common carrier obligations (again, from the <i>Express</i> cases, the fact that the taxi cab companies have common carrier obligations vis-à-vis the traveling public doesn't mean that they have similar obligations as to entrants who might find some sort of access to their assets valuable; being a common carrier doesn't, per the <i>Express</i> cases, make you a common carrier of other common carriers; here taxi cabs have no history of making location information generally available): -3</p>	
<p>3. FTA economics/business issues posed by ICI entry (at least at this stage, ICI isn't actually expanding the number of cars in service; it is just creating a new interface to the cab system; that seems to be about matching cabs and users differently and possibly providing different services (advertising in the app?), getting user data (to do what?) or something else; the traditional concern with entry in these industries is cream skimming, which usually means serving only relatively profitable customers but it isn't clear what ICI intends): -3</p>	
<p>4. FTA Terminal Railroad essential facilities type access claims (<i>Terminal Railroad</i> is an example of using antitrust to create an access right; that is what the entrant is looking for here, but that would entail bringing and winning an antitrust action; that isn't an easy path and there is no assurance that that would be successful and almost certainly not on the timeframe that would matter for the entrant's business): -3</p>	
<p>5. FTA access regime as possible update to taxi regulations (local taxi businesses are typically heavily regulated, especially in 2008; we know that the SFCC plays a regulatory role here though the prompt doesn't set out the full scope of its authority; creating some sort of standardized data access regime could have strong advantages in making more efficient use of the existing taxi cabs): -3</p>	
<p>6. FTA possible pricing scheme for data were some sort of access granted (pricing in network industries has typically been cost-based (see the <i>Thornburg</i> cases) but there is probably very little incremental cost to generate the data here given the already installed GPS infrastructure; that might suggest a very low price; if the SFCC wanted to be aggressive like the FCC was under the 1996 Telcom act, they could choose a low price to spur entry): -4</p>	
<p>7. FTA use of Ramsey pricing idea re data access (but bigger picture approach here is to see the taxi business as having a new second service, data provision, along with ride service to customers hailing cabs; you might want to lower the prices on cabs to the public and bump up prices on the data on the assumption that the data buyers would have relatively inelastic demand for that data): -3</p>	
<p>8. FTA possible constitutional issues from data pricing regime (given the path from <i>Smyth</i> to <i>Duquesne</i>, there aren't likely to be any issues associated with this): -1</p>	
<p>Total Deductions</p>	

Question 1: Additional Points

1:	
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Question 1: Final Score

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Question 2: Key Missing Issues

Issues and Points: 40 point baseline

40

<p>1. FTA natural monopoly status of maps information (creating detailed maps, both 2D and 3D, is a substantial undertaking but this is ultimately about investing resources and harvesting opportunities intelligently, meaning that firms with enormous resources can do this with the requisite investment (start with Google, Apple and Amazon) and other firms are well-placed to piggyback on their existing infrastructure to do this as well as they have extensive vehicle fleets on the ground every day and those just need mapping tech added to them (think USPS, all of the delivery firms (UPS, FedEx, DHL and more)); this looks as if we could have multiple firms doing this, and yes there would be duplication (think Brandeis in <i>New State Ice</i>), but also competition): -4</p>	
<p>2. FTA possible regulatory regime for map information (maybe three angles on this: access; nondiscrimination; quarantine the forced access question presumably depends a lot on whether you think map info of the sort at issue here is a natural monopoly or not, which was just addressed; hard to justify forced access if the maps market could be competitive; both the nondiscrimination and quarantine ideas raise double market questions, meaning that our regulator is focused on how choices in one market impact the extent of competition in another market (e.g., would Google have a substantial advantage in D&DD because of its (for now) superior map information, in which case we might want some sort of nondiscriminatory access to the Google maps info to preserve parallel competition in D&DD; again, that seems unnecessary if map info is competitive; and a quarantine always comes at the cost of reducing competition in some market): -4</p>	
<p>3. FTA natural monopoly status of communication protocols (there is no obvious limit on the number of communications protocols that we could have; this is like the number of languages that humans speak; that could be infinite; but the real issue here is one of communication externalities vs competition (the more people who speak “your” language the more valuable it is, but languages aren’t all equally efficient and we could imagine actual language competition): -3</p>	
<p>4. FTA possible regulatory regime for communication protocols (the key question here interoperability and whether that will be achieved through voluntary standards setting of the sort that we saw in the DVD materials or whether this is more akin to the FCC-blessed rules for the HDTV transition; given the shared airspace for drones (and you might say the same thing on the ground for droids) this looks much more like HDTV than DVDs and you could imagine a regulator (see below) pushing the industry to agree on a shared protocol): -4</p>	
<p>5. FTA possible new regulatory agency to address D&DD (two natural angles on this I think; the first is to assess the role that existing agencies might play in this space; although we didn’t discuss this in class, the FAA controls the air and actually does have some drone rules in place; we could discuss how good a job the FAA is doing – see the Boeing situation – but they are clearly the agency with the most relevant expertise on the drone part of this, though presumably they have no obvious jurisdiction over land-based droids; the FTC has been aggressive in using its generic Section 5 authority though even with its breadth, it isn’t clear that the FTC would have a general power to address either the maps or communications protocol issues; all of that suggests that you could create a new tech regulator to deal with the droids issue or you might put that authority into the hands of the U.S. post office, see below): -6</p>	

<p>6. FTA possible special role for U.S. post office (a key role for the post office has been ensuring full and fair access to the mail system throughout the country; that means access – no abandoned areas (especially rural America) and postage stamp pricing (we don't price based on your particular cost of service but instead set standard rates that apply everywhere); the original postal monopoly was designed to make sure that the cross-subsidization that that system contemplated wasn't undercut by cream-skimming entry; the emergence of separate delivery systems has undercut that vision; and it isn't clear that private firms would have any real incentive to make a new D&DD world similarly universal; that said, one response to this is to say that ideas are more important to democracies than stuff and while it made sense to ensure full idea participation for all citizens via the post office, equivalent rules regarding stuff delivery aren't as essential to democracy; the extent to which we want to create a D&DD public option through the post office must depend on the extent to which we want to separate ideas and stuff; and as noted above, you could imagine the USPS as the droid regulator though that would almost certainly put them in the ref/player situation if the USPS had its own droid fleet, as the prompt seems to contemplate): -8</p>	
<p>Total Deductions</p>	

Question 2: Additional Points

<p>1:</p>	
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Question 2: Final Score

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Question 3: Key Missing Issues

Issues and Points: 30 point baseline

30

<p>1. FTA basic historic structure of the U.S. post office (as discussed above, universal access at the same prices; commitment to full democratic access; controlled by the government with built-in subsidies if required; lots of privacy; mainly U.S. focused with, presumably, international interconnections): -3</p>	
<p>2. FTA key features of Facebook (for-profit entity organized as two-sided platform; really a media company financed by targeted advertising based on accumulated data from users; while based in the U.S., fully international with many more users outside of the U.S. than in the U.S.; zero universal service obligations with full rights to block and allow access to the platform within the broad discretion of Facebook, though subject to generally applicable laws such as those related to discrimination, harassment and more): -3</p>	
<p>3. FTA recent history of breakups in U.S. (we have relatively limited experience with forced break ups in the U.S.; Glass-Steagall is the great historical example and a parallel effort here would require new legislation; an antitrust effort under SA2 would require identifying some sort of antitrust liability for FB, though FB could agree to be broken up of course in the face of an action as AT&T did): -3</p>	
<p>4. FTA importance of universal access/interoperability (a break up of FB, see below, which meant that different users couldn't reach each other could cause substantial harm to users and force them into higher transaction cost multihoming; a break up would want to insist upon some sort of interoperability across the new mini FBs to avoid that, just as you could reach anyone with a letter within the postal system): -3</p>	
<p>5. FTA role of Section 230 in shaping platforms (FB has enjoyed the protections of Section 230 which has let it construct its platform largely free of the types of liability faced by offline publishers): -2</p>	
<p>6. FTA difference between post office and Facebook re moderation and filtering (USPS does almost none of this, which there is increasing political pressure on FB to do more to shape the content seen on FB): -2</p>	
<p>7. FTA possible merger reversal break up of FB (this presumably would focus on the Instagram and WhatsApp purchases, both of which went through appropriate antitrust channels; reversing those with antitrust wouldn't be straightforward, but the more interesting question is what we think that would accomplish; the services are used meaningfully differently through were they separate we might expect more direct competition between them; would the benefits of that flows to users with more privacy protections? To advertisers so that they captured more of the returns from targeted ads?): -2</p>	
<p>8. FTA possible vertical/horizontal break up of FB (return to the discussion of the Microsoft break up, where both horizontal and vertical break ups were put on the table; the obvious horizontal break up would replay the merger discussion just undertaken, while, like the Baby Bills, the Baby Zucks would, if coupled with interoperability, allow more competition in social networking to take place to see what might evolve): -2</p>	

9. FTA possible regulations of FB (we could regulate privacy directly (think GDPR) or force FB to offer ad-supported and paid versions (though that would quickly take us into rate setting with all that that entails); we could cut back Section 230, at least for significant firms like FB and Google, and could require more direct moderation though that would almost certainly raise, at least in the U.S., first amendment issues); -2	
Total Deductions	

Question 3: Additional Points

1:	
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Question 3: Final Score

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