DIGITAL PLATFORMS
@European Parliament

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General Secretary of the
French Digital Council
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Le Conseil national
du numérique

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- **The French Digital Council** is an independent advisory commission.
- Our mission is to advise the French government on any questions related to the impact of digital technologies on the economy and society
- The board is composed of 30 (thirty) volunters members all appointed by the French President and they represent the digital ecosystem at large. It gathers researchers, entrepreneurs, VCs, activists and representatives of the civil society*, in a very multistakeholder approach*.

We issue opinions and recommendations on a vast spectrum of topics: from net neutrality to online platforms, e-health, education, tax models or… of course, e-government.

Apart from this mission, the Council is really meant to be an

interface between the government and the digital ecosystem. We like to consider ourselves as a "public lobby", a lobby for those who don't have one – citizens, SMEs, startups who don't have the time, the money to assert their interests in front of public authorities.

Internet as a Commons

- **A decentralized network based on open communication protocols**

Challenges ahead

- **Centralization and commercialization through dominant positions**

WHOLE EARTH CATALOG

access to tools
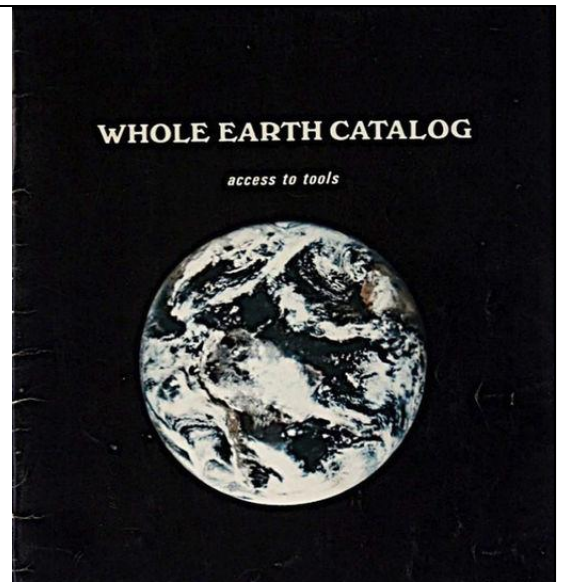
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The Internet has grown to an essential resource for the economic, social and cultural development of our societies.

The Internet is understood here as the whole arrange of applications based on the global network, obviously including the Web.

From the beginning, these applications were built in a way to allow horizontal communications based on equality between peers. Technical but foremost political decisions, as open protocols and standards, were established in order to preserve the ability of the global community of users to have an equal access to the network.

The Internet should be considered as a Commons.

What does this mean?
·   Commons are resources managed by communities, who

define by themselves how the resources are governed and who gains access to them. It is a concept based on the works of Nobel Prize Winner Elinor Ostrom – who focused her research on environmental commons.

- · If it's easy to affirm that the Internet was a commons when it was still a network merely used by a small community of scientists – today is a completely different story : we have a transnational network used by billions of people and machines.
- · But still, we believe that the objective of Internet Governance rules should be to preserve the ability of the community of users as a whole to engage in the definition of these rules, which means allowing states, business and civil society to contribute.

This public space made up of internet infrastructures is increasingly threatened, notably by the centralization and commercialization through the dominant positions held by giant Internet companies.

This poses important and new questions about how we choose to organize and regulate our digital societies, and how Internet governance models can be developed and implemented to ensure fair and democratic participation.

Monopolization of Internet infrastructures and services by companies such as Facebook and Google has gone hand in hand with privacy intrusions, surveillance and the unbounded use of personal data for commercial gain.

As we all interact in these centralized commercial platforms that monetize our actions we see an effective enclosure and

manipulation of our public spaces. Decentralization and democratization of the Internet infrastructure and activities is essential to keep a free, open and democratic Internet for all to enjoy equitably.

I will try to explain during this presentation how the key principles that have allowed the development of the Internet as a decentralized and open network can be translated into regulatory principles and policies that preserve the Internet as a commons, beyond physical infrastructures.

from neutrality
to fairness
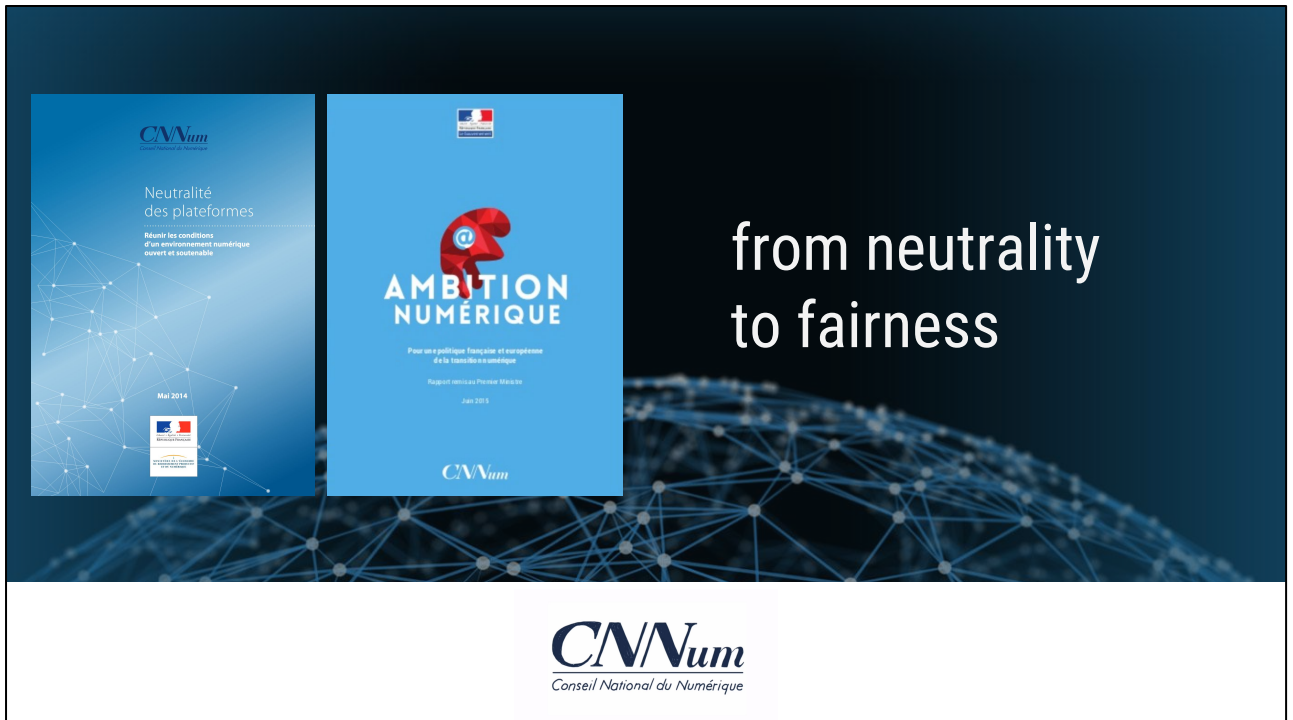
- 3 years ago (in 2013), the French government asked the Council to issue an opinion on online platforms and how to regulate them.

- The report was published a year later, in may 2014. It was the end result of a public consultation, which gathered over a 100 stakeholders, including government officials, representatives of major internet platforms, claimants involved in the Google antitrust procedure, business federations, lawyers, researchers, etc.

- Last year, the French Prime minister entrusted the Council with the mission of leading a national consultation on digital issues. We received more than 17 000 contributions from the public. This five month debate was a way to take forward our work on online platforms, which led to the report "Ambition numérique" (literally Digital Ambition) --> most of the recommendations we issued are now being implemented in French law.

So we started our work on online platforms after a first opinion on net neutrality. In this opinion, the very first of the Council, we took a strong position in favor of this principle, which is essential for ensuring freedom of communications and free enterprise in the information society.

But in this opinion, the Council noted that digital society doesn't only consist of actual networks and pipes. **ISP are not the only gatekeepers, online platform also play a crucial role in the access to the information society**. Therefore, we should draw the consequences of this situation and ensure that the growth of online platforms, while extremely useful and innovative, doesn't hamper the use of the internet as a forum for creation, free expression and the exchange of ideas.

>> In other words, **platforms play a vital role in ensuring that the principles of net neutrality are effectively upheld**.

- This is how we came up with the concept of platform neutrality, even though we don't ask Facebook to be as neutral as an ISP should be. On the contrary, platforms organize and prioritize the information, this is precisely what is asked of them. We introduced the concept of neutrality in order to initiate a debate and provide a reading grid highlighting the fact that net neutrality and platforms fairness are really two sides of the same coin. Both ISP and platforms can be gatekeepers. The same logics should apply.

We know speak of platforms fairness principle.
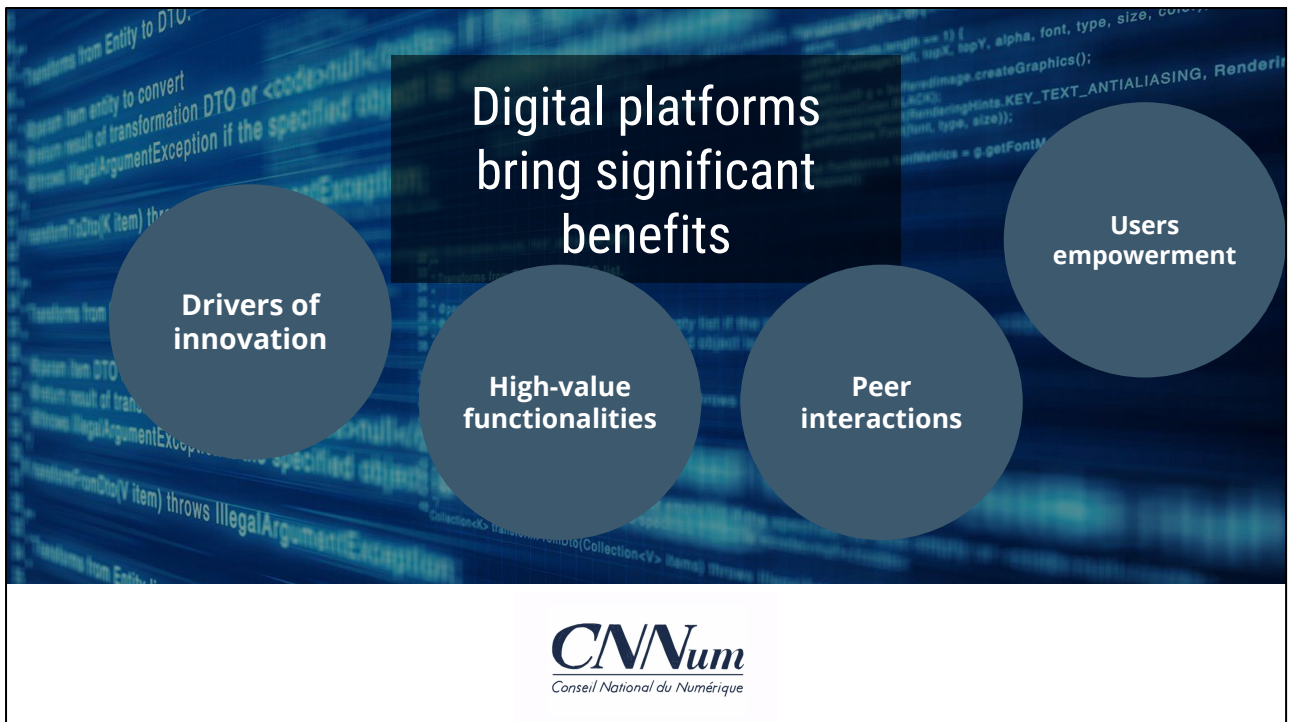
Before we even consider the concerns that platforms may raise, **let's not forget that nothing is black and white.**
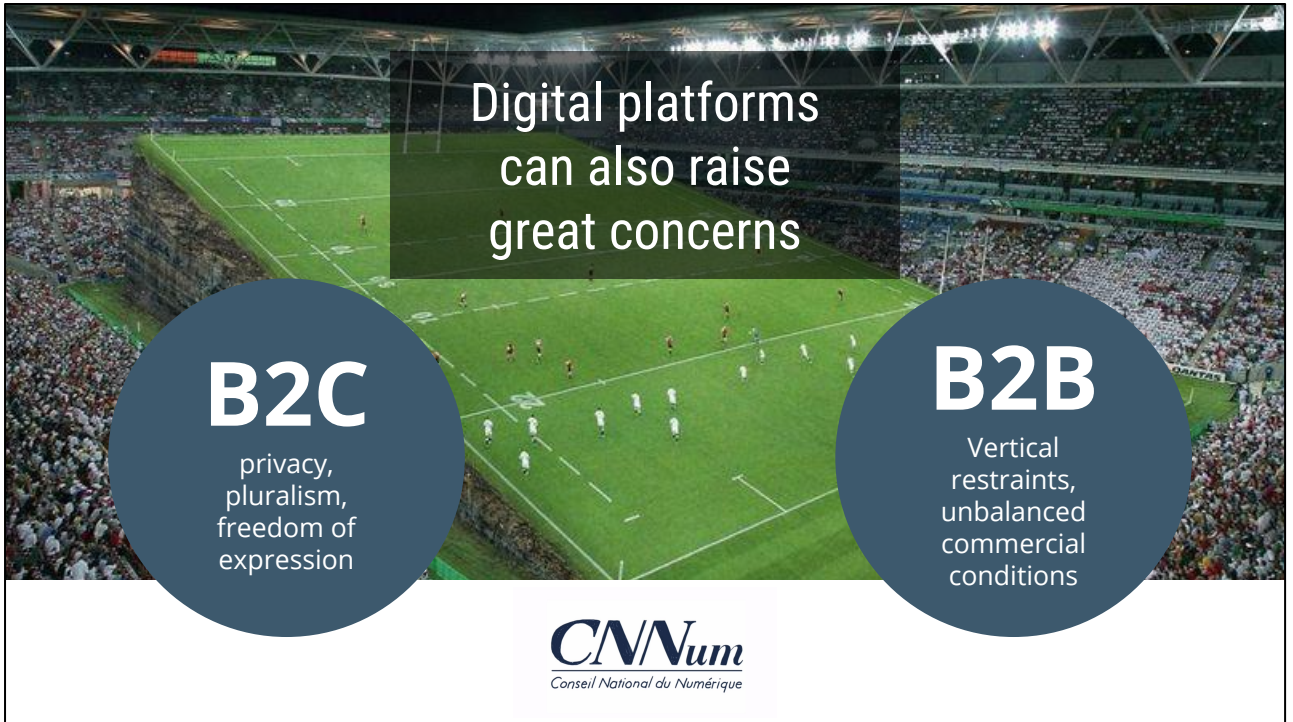
In our opinion, online platforms - especially the largest - play an ambiguous role in building this new economy.

Indeed, from an economic point of view:

- online platforms can be seen as the drivers of **innovation**.
- Their growing success has largely contributed to the **development of the digital economy**, and through it, the general economy.
- They offer **high-value functionalities;**
- they optimise dealings between customers and vendors and **give rise to new value chains and businesses.**

From society's point of view:

- platforms are used by private individuals to interact socially with their peers.
- Those platforms help empower individuals, disseminate knowledge and provide individual and collective options.

Digital platforms can also raise great concerns

B2C
privacy, pluralism, freedom of expression

B2B
Vertical restraints, unbalanced commercial conditions

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Yet, platforms can raise some concerns, both at B2B or B2C levels.

B2C

Given the prescriptive role they play, many of these platforms shape and determine the way we access data and information. In doing so, they often combine usefulness with opacity. For example, they do not always make it easy to determine whether the shown results are advertising, a generic algorithmic selection, a customisation or a preference for the platform's offering.

In our opinion, the relationship between the platform and its customers can raise **3 main concerns**: pluralism, freedom of

expression, and of course, privacy.

- **As for pluralism, we are witnessing the emergence of informational 'filter bubbles'.** I mean the intellectual isolation than can occur when a website makes use of algorithms, to personalise and selectively assume the information a user would want to see, and then give information to the user according to this assumption. Platforms like Google are more likely to present only information that will abide by the user's past activity. This can cause users to get significantly less contact with contradicting viewpoints... **We believe that this poses an important threat to pluralism.**

- **A second concern relates to a sort of privatisation of the control of freedom of expression.** Online platforms define their own set of rules regarding what content is authorized and what content can be withdrawn. For example, Facebook has attempted to ban the posting of Gustave Courbet's Origin of the World.

- **The third concern might me the most prominent and relates to the right for privacy.** Let's be honest, it is clearly impossible to be sure of what the platform is going to do with my data once it was collected.

B2B

Online platforms have become quasi-inevitable intermediaries, for the suppliers as well as for the consumers.

While they offer quality services to professional users - letting suppliers benefit from great network effects - some online platforms might abuse this economical power to **impose significantly unbalanced commercial conditions to them**.

When an online platform is **vertically integrated**, it might restrain competition by **decreasing the visibility** of the offers of its competitors, at the benefit of its own offers. This phase of development can be the source of protests, complaints as seen recently in the mass retail and telecom sectors or in the European Commission's Google investigation.

This position allows the platform to capture a great part of the value created by third-parties, increasing their economic dependency.
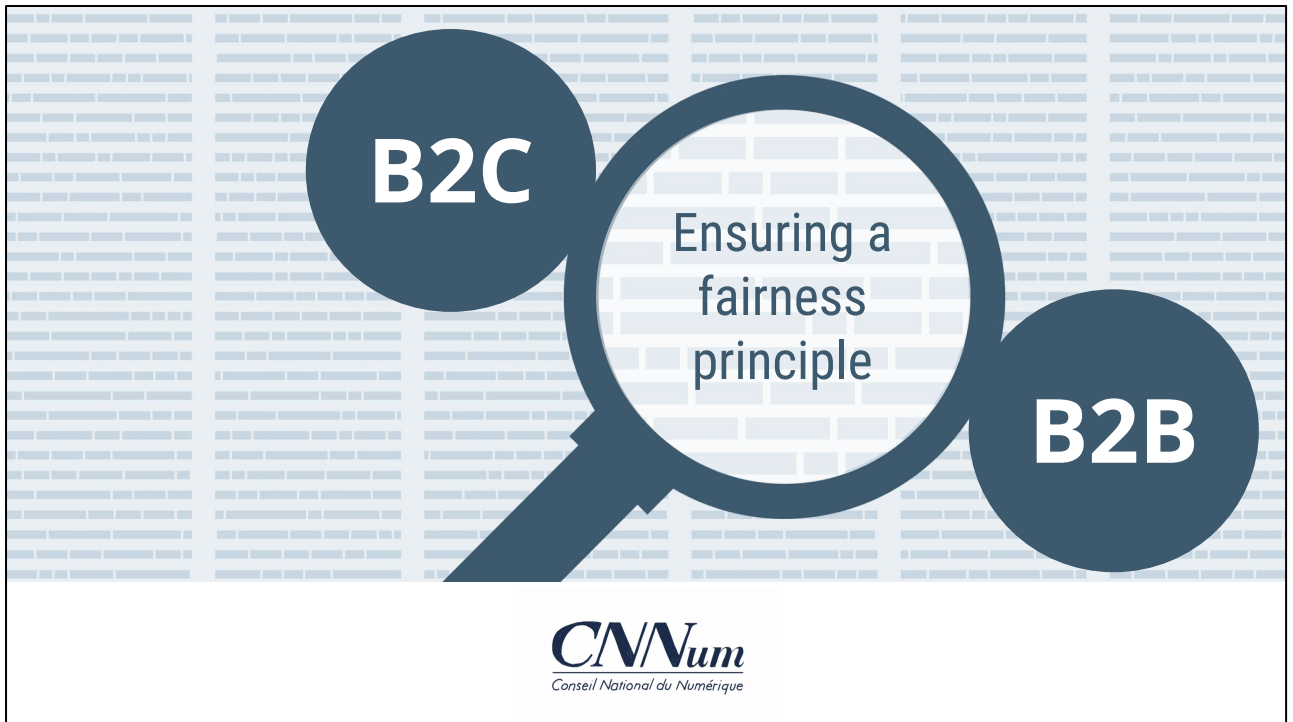
B2C

In this extremely fast-moving environment, there is no doubt that a strict and prescriptive regulation wouldn't age gracefully.

However, it *is* essential to address some of the issues that are raised by economic development of online platforms.

This is why we call for flexible tools and principles.

Our main recommandation is to enforce a principle of **fairness for the largest platforms**,
understood as a principle of transparency and accountability for the platform that reached a critical mass.

This fairness principle might arise purely from competition among

platforms.

But where it doesn't come about on its own, we believe that law should step in to ensure it does.

What do we mean by platforms fairness ?

In short, the platform should do what it says and say what it does.

Therefore, transparency and information are crucial aspects of fairness - the *say what you do* part.

➔ **For the users, it means that the terms of service should be accessible to the common man. Indeed,** "*I have read and agree to the terms of service*" is the biggest lie on the Internet. Nobody reads the terms. We can't blame the users: TOS are often too long and complex to read, although it is crucial that the users understand the implications of what they are signing.. Several studies have shown that it would take a month to read the terms of the services we use on a daily basis. **Fairness therefore implies that the terms of service be complete and understandable for the average user** - "user-friendly", really - especially when the platform has became major and almost inevitable.

Efforts could then be put in standardising the terms that are common to most services. It would be helpful to work with industry professionals to draft best practices on information design.

➔ **For the suppliers and the BtoB relationships, fairness could imply minimum prior notice, to avoid overly abrupt changes to, for example, parameters which are decisive for the survival third-party businesses** (e.g. sudden change of terms of use, of access conditions to API, sudden change of search engine algorithm...).

◆ For example, last year, Twitter CEO Jack Dorsey apologized to developers, for the instability of its API - Twitter regularly shut access to resources without notice - combined with the aggressive commercial practices towards third-party applications.

Additionally, fairness applies to the behavior of the platform - the *do what you say* part.

Both in the B2C and B2B relationships, there is a great information asymmetry with the platform. It is precisely because the platform knows a lot more informations than I do that it can hide what it knows from me, deceive or manipulate.

Yet, the platforms often act as **advisers**. A good search engine advises its users on where to find the most relevant information. A social network gives me a windows on my friends' lives, and nowadays it even chooses which of my friends' post I should see first.

However, this relationship is incredibly opaque.

When I search for an information, Google could easily steer me to sites that serve its goals, not mine, because he has commercial relations with them. We've already seen that Facebook could manipulate the mood of its users by changing its news feed. Does Amazon recommends me this book based on my taste, or is it because it needs to use up its stocks?

So we advocate for more transparency.

Platforms
rating agencies

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In order to enforce this fairness principle, we believe in a new form of regulation.
>> In this innovative world, it is crucial that we adopt a disruptive approach.

That is, to open the monopoly of regulation. Adopt a more flexible, and crowd-based regulation in order to complement and overcome some weaknesses of traditional tools.

As the information economy grows, trust and reputation are becoming a bigger part of the equation.

This is why the French Digital Council proposes the creation of a european "platforms rating agency",
to evaluate the behaviors of digital services. Those agencies would rely on an open network of contributors:

a centralized agency relying on a decentralized crowd, a decentralized expertise.

It would offer a canal for information feedback, **federating a wide variety of potential expertise:**
developers, designers, lawyers, consumers associations, and the communities of researchers.

Those agencies **would examine and rate specific aspects of the platforms,** both in the BtoC and BtoB levels:

- comprehensiveness of the terms of service;
- detect some user interfaces crafted to trick people into doing things, such as signing up for recurring bills, disguised ads, forced disclosure, etc.
- stability of the APIs for developers;
- commercial behavior;
- but also, why not, harmful tax practices...

Just like the current credit rating agencies, this agency's role would be to **clarify the choice for consumers, b**usinesses (who want to develop an app within a platform), investors (who want to invest in an app developed within a platform), shareholders, public authorities...

This idea is getting more and more support.

Last year, the Germans have already launched an agency quite similar, *der Marktwächter Digitale Welt* - please forgive my german: literally the "guardians of the market in the digital world". This agency relies on a collaborative approach, and it provides a canal for information feedback and empirical observations from the consumers' associations. The goal of

this agency if to detect the potential abuses more quickly.