

Article

Why does (almost) nobody read adhesion contracts? Historical evolution, information asymmetry and the bounded rationality of adherents



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ABSTRACT:

The vast majority of people do not usually read the clauses that make up the adhesion contracts they sign. We know that reading this type of contract is an extremely arduous task due to the length of the contract, the complexity of the language used and the difficulty of finding the relevant information among the whole universe of clauses that make up the contract.

It is a renunciation by individuals to bear the costs of reading, understanding and comparing the different adhesion contracts offered by the market in order to identify the one that maximizes their interests.

Throughout this paper we will develop the reasons why (almost) nobody reads adhesion contracts, analyzing them from the perspective of the Economic Analysis of Law, and then contrasting it with the behavioral economics approach.

PALABRAS CLAVES:

Antecedentes históricos del Contrato, Contrato de Adhesión, Análisis Económico del Derecho, Análisis Económico del Derecho de los Contratos, Equilibrio de mercado, Fallas de Mercado, Asimetría de Información, Economía Conductual, Racionalidad Limitada, Plataformas Digitales

RESUMEN:

La gran mayoría de las personas no suelen leer las cláusulas que integran los contratos de adhesión que suscriben. Sabemos que leer este tipo de contratos supone una tarea sumamente ardua debido a la extensión de los mismos, la complejidad del lenguaje utilizado y la dificultad de hallar la información relevante entre todo el universo de cláusulas que los integran.

Se trata de una renuncia, por parte de las personas, a asumir los costos de lectura, comprensión y comparación de los diferentes contratos de adhesión que ofrece el mercado, a fin de identificar aquel que maximice sus intereses.

A lo largo de este trabajamos desarrollaremos los motivos por los cuales (casi) nadie lee los contratos de adhesión, analizando los mismos desde la perspectiva del Análisis Económico del Derecho, para luego contrastarla con el enfoque de la economía conductual

MOTS CLES :

historique du contrat, contrat d'adhésion, analyse économique du droit, analyse économique du droit des contrats, équilibre du marché, défaillances du marché, asymétrie de l'information, économie comportementale, rationalité limitée, Plates-formes numériques.

RESUME :

La grande majorité des gens ne lisent généralement pas les clauses des contrats d'adhésion qu'ils signent. Nous savons que la lecture de ce type de contrat est une tâche extrêmement ardue en raison de la longueur de ceux-ci, de la complexité du langage utilisé et de la difficulté de trouver des informations pertinentes dans tout l'univers des clauses qui les composent.

Il s'agit d'une renonciation de la part des personnes à assumer les coûts de lecture, de compréhension et de comparaison des différents contrats d'adhésion offerts par le marché, afin d'identifier celui qui maximise leurs intérêts.

Tout au long de ce travail, nous développerons les raisons pour lesquelles (presque) personne ne lit les contrats d'adhésion, en les analysant du point de vue de l'analyse économique du droit, puis en la comparant avec l'approche de l'économie comportementale.

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1 INTRODUCTION

Throughout our lives, people seek to satisfy needs (eating, travelling, shopping). Businesses, in turn, through the production and marketing of goods and services, satisfy these needs. The market is the place where millions of people and companies voluntarily carry out these transactions, invisibly coordinated by a price system.

These economic exchanges, between people and companies, are materialised through contracts. The contract is an agreement of wills through which the contradiction and coordination of interests of the parties is manifested, where each one tries to achieve the maximisation of its profit. The company marketing goods or services tries to earn as much money as possible in each transaction, while the consumer tries to pay the lowest possible price to satisfy a certain need.

Through the *traditional contract*¹ the parties discussed not only the price of the product or service, but every term that was part of the agreement. In this negotiation there was a transfer of information between the parties.

Nowadays, most of the contracts we enter into on a daily basis are contracts of adhesion. When we sign up for a credit card, car insurance, when we apply for a bank loan or even when we install apps on our phone, we are entering into contracts of adhesion.

However, people do not usually read the terms and conditions of adhesion contracts, whether in paper or digital version, as it is an extremely arduous task.

The main objective of this article is to analyse and attempt to provide an answer from the perspective of the Economic Analysis of Law to the fact that most people do not read the adhesion contracts they sign, contrasting it with the approach of behavioural economics.

To conclude this introduction, I will make a clarification: the contracts of adhesion that I will analyse will be those entered into between a company producing goods or providing services, public or private, in the role of predisposer and a human person, in the role of consumer, purchaser or adherent, leaving aside those contracts of adhesion entered into between companies.

2 HISTORICAL BACKGROUND TO PARTY AUTONOMY.

The autonomy of private will is the possibility for all individuals to regulate themselves according to their own interests.

This power in contractual matters is recognised as a sphere of power belonging to individuals, where the state must limit itself to guaranteeing the fulfilment of these voluntarily accepted legal relationships.

The autonomy of private will has played a key role in Western legal systems. This principle had its apogee in the years of liberalism, materialising in the first codes that emerged through the rise of positive legislation with the French Code of 1804.

Liberalism promoted a greater level of individual freedom and sought to limit the coercive power of the state, allowing a space of sovereignty for individuals in which the state would not interfere. The central principles of this school of thought were developed as a consequence of social, political and economic events that had been brewing since the 18th century, mainly as a result of the French Revolution in 1789 and the Industrial Revolution in the 1750s and 1820s. In the former, the political scheme of liberalism was conceived, while

¹ It is that type of contract by which two or more free parties, in a situation of formal equality, express their consent and will to create particular and concrete legal relations.

in the latter, liberalism was consolidated as an economic doctrine, thus giving rise to capitalism ([Echeverri Salazar, 2010, p. 127-144](#)).

This current of thought adopts as its central proposal the free play of economic forces, based on the doctrines enunciated by the so-called "classics" and fundamentally by Adam Smith in his work "The Wealth of Nations", published in 1776. Adam Smith's central thesis is that the key to social welfare is to be found in economic growth, enhanced through the division of labour, which deepens as the extension of markets and specialisation widens ([Smith, 1976](#)).

In this way, the dominance of a new economic-social ideology was affirmed, proclaiming the validity of the fundamental principles of equality and freedom, which were later enshrined in all the Constitutions and continental codifications of the 19th century, especially in Napoleon's Code of 1804.

Napoleon's Civil Code, a child of the French Revolution and the Industrial Revolution, was the first to normativise contract law, regulating it in a way that contributed to the post-revolutionary interests and needs of a society with a new form of economic-social organisation ([Herrera Tapias & Álvarez Estrada, 2015](#)).

Napoleon commissioned jurists to draft the rules, modelled on the Corpus Juris Civilis ("The Body of Civil Law"), published between 528 and 534 at the request of the Roman Emperor Justinian. Subsequently, Napoleon's armies spread the Code throughout much of Europe and then the world, an influence that persisted long after the collapse of the colonial empires ([Cooter & Ulen, 1987](#)).

The conception of a given moment of law in general and of contract in particular depends on the social, political and economic circumstances in the midst of which it is immersed. Law, in general, is not oblivious to what is happening in society ([Echeverri Salazar, 2010](#)).

In this sense, according to the type of contract enshrined at this stage, individual freedom had its application in the freedom to contract. The contract had to be the result of the free decision of the parties, who were free to decide whether or not to contract, with whom to contract and to choose the most convenient contractual figure or type, according to the interests of the parties. Furthermore, the parties were free to discuss the content of the specific clauses that formed part of the contract on an equal footing.

The State, for its part, has the sole function of guaranteeing the execution of the contracts entered into by the parties, in the exercise of individual freedom.

In this way, the contract conceived in the framework of liberal individualism became the final result of a process of offer and acceptance that was shaping the expression of two wills that seek to guarantee their interests, while at the same time seeking to materialise the agreement ([Herrera Tapias & Álvarez Estrada, 2015, p. 26-41](#)).

Thus, through this type of "*classical contract*", where the parties possess similar bargaining power to establish the content of the agreement, the most diverse purposes of economic life were realised, satisfying the particular interests of individuals.

3 CRISIS OF THE TRADITIONAL CONTRACT AND THE EMERGENCE OF THE CONTRACT OF ADHESION.

However, since the massification of contractual relations in the first half of the 20th century, contracting schemes by adhesion to general conditions, commonly known as "adhesion contracts", appeared, and in this way, the traditional conception of the contract began to give way to the latter.

In his 1943 article, "*Contracts of Adhesion - Some Thoughts about Freedom of Contract*", Friedrich Kessler argues that the substantial changes in the way goods were produced and marketed through the explosion of industrialisation and the free market system, based on an unprecedented division of labour, meant that society needed a legal institution elastic enough to guarantee the exchange of goods and services. Thus, according to Kessler, the development of the large-scale enterprise with its mass production and distribution gave rise to the new type of standardised contract (Kessler, 1943).

This new type of contract eliminated the negotiation process for the parties. In this way, the company formulates its content and allows it to automate the conclusion of contracts, using it for each of the negotiations it carries out on the same good or service it markets.

This contract became a fundamental tool to homogenise contractual relations, allowing the company to calculate total costs in advance in order to maximise its profits.

The adhesion contract, according to Stiglitz, is one in which the internal configuration of the contract is arranged in advance by only one of the parties (predisposer, supplier, entrepreneur) in such a way that the other party (adherent, consumer), if it decides to contract, must do so on the basis of that content or not contract (Stiglitz, 1994).

From these definitions, we can affirm that the adhesion contract has two central elements: **I) Predisposition of the content of the contract by one of the parties:** The clauses that make up the contract are drafted by one of the parties, known as the predisposer, for the purpose of being used to carry out a plurality of contracts. These general clauses have the particularity that they are drafted unilaterally and before being presented to the adherent. **II) Imposition of the contractual clauses:** This means that the drafting of the clauses does not arise from a process of negotiation between the parties, but are born on the exclusive initiative of the predisposer and are offered on a "*take it or leave it*" basis. In this way, the adherent has only two options: to contract in accordance with the clauses previously drafted by the predisposer or not to contract. This is a rigid scheme predetermined by the predisposer.

In accordance with the above elements of the adhesion contract, it can be affirmed that the possibility of predisposing a contract presupposes bargaining power and this is only exercised by the professional. In the same way, adhering to a contract presupposes that one lacks this bargaining power. This lack belongs to the adherent/consumer (Stiglitz, 2013).

There are costs involved in entering into market transactions and drafting the contracts to carry them out. In this way, the adhesion contract is a fundamental tool to homogenise contractual relations, allowing companies to reduce their transaction costs, and thus maximise their profits.

The concept of "*transaction costs*" was introduced by Ronald Coase in his famous article "*The Nature of the Firm*" (Coase, 1937). The reduction of these transaction costs by companies is based on not having to negotiate the terms of the contract with each adherent with whom they wish to contract, as they simply present the general conditions to potential customers. This situation generates the following benefits for companies:

Reduction in the price of the good or service: The use of this type of contract speeds up market transactions, since it is not necessary to discuss and negotiate each time the parties try to reach an agreement. For this reason, this reduction in transaction costs in the stage prior to the conclusion of the contract means that companies allocate fewer resources and, therefore, there is a reduction in the price of the service or good that is the object of the contract.

Efficient use of the company's human resources: Taking into account that companies must allocate fewer resources for the conclusion of contracts, due to the fact that their content is not subject to modifications, a large number of contracts can be concluded by a small number of employees, whose clauses were drafted by the company's legal department, taking into account the particularities of each market, allowing for an efficient use of the firm's human resources (Bullard González, 2006).

Discipline of employee performance and reduction of agency costs: Since the content of adhesion contracts is not subject to change, they can be concluded by company personnel without in-depth legal knowledge. In this way, a small number of sales staff can conclude a significant number of adhesion contracts. In addition, many companies use profit-sharing as an incentive for their sales teams, which can sometimes result in employees entering into contracts in situations or under conditions that are not very beneficial to the companies, commonly referred to as "rebellious sales". Through adhesion contracts, by establishing a series of unmodifiable clauses, only agents will enter into agreements under the specific terms enshrined in the adhesion contract, drafted by the company's legal department, making internal control unnecessary in this aspect (Rakoff, 1983, p. 57-168).

Reducing risk and calculating contingency costs in advance: While it is impossible to identify and foresee all contingencies that may arise when drafting a contract, the adhesion contract allows companies to operate on the basis of clauses that have been drafted by specialist lawyers, analysing their legal consequences in advance and calculating risks and liabilities with as much certainty as possible, thus seeking to reduce the number of disputes and claims (Salazar, 2006).

4 ASYMMETRY OF INFORMATION IN ADHESION CONTRACTS.

Markets, given certain conditions, lead to an efficient equilibrium in the Pareto sense, which means that it is not possible to improve the welfare of one agent without harming the welfare of another.

However, there are situations where markets generate inefficient outcomes. In these cases, there are surpluses or potential exchange advantages that are not exploited by market participants, and efficiency in the Pareto sense is not verified (Stordeur, 2011).

These situations are called "*market failures*" and can occur due to different factors, such as the existence of externalities, monopolies, public goods, high transaction costs or asymmetric information.

One of the main conditions for the market to function efficiently is that traders have a good level of information. As Hayek points out, in a system where the relevant information is dispersed among several individuals, prices act as elements of coordination of individual actions carried out by different subjects, centralising the dispersed knowledge and allowing agents to make better decisions. In other words, the price system is a mechanism for communicating information and enabling uninformed market operators to make correct decisions (Hayek, 1945, p. 519-530).

However, there are situations where prices fail to transmit information. In these cases, there are problems of "asymmetric information", where information is too costly or poorly distributed between parties, which is why the extent of exchanges is limited to fewer transactions, with the consequent loss of surplus (Stordeur, 2011).

One of the main objections to the adhesion contract is the introduction of asymmetric information between the parties. The predisposer of the contract, when drafting the terms of the contract, has much more information than the adherent.

Schwartz and Wilde note that asymmetric information has three expressions: First, consumers are said to be uninformed about how contractual terms allocate risks between parties, thus preventing them from choosing those terms that correctly reflect their preferences. Second, consumers may be uninformed about the variety of prices and contract terms offered by different firms in the same market. In this case, consumers may accept bad deals without knowing that better options exist and therefore, firms lack the incentive to offer better terms in their contracts, as this will not increase their profit. Finally, consumers may simply not understand the scope of their contractual relationships

because they do not read or understand the language in which the terms are written. On this point, firms have incentives to take advantage of this ignorance by using technical language and hiding terms that are harmful to consumers (Schwartz & Wilde, 1983).

These objections highlight the existence of an unbalanced adhesion contract, where the parties have different levels of information. In this context of asymmetric information, the adherent cannot (or does not have the conditions to) acquire relevant information in order to compare and decide between different products or services (Cofone, 2015, p. 101-111).

5 ON THE POSSIBILITY OF THE MARKET ACTING (OR NOT) AS A CORRECTIVE.

Economic analysis suggests that in a competitive market where there is complete information, contracts between sellers and consumers will have only efficient terms.

Richard Posner, in his book "*The Economic Analysis of Law*", states that there are two explanations for the predisposer's decision to present the adherent with a contract of adhesion (Posner, 1998, p. 682).

The first, the "*innocent explanation*", is that the seller is just trying to avoid the costs of negotiating and drafting a separate agreement with each buyer. These costs would be too high for a company that enters into contracts on a daily basis.

The second, "*the sinister explanation*", is that the seller refuses to negotiate separately with each buyer because the buyer has no choice but to accept its terms. This implies an absence of competition. If one seller offers unattractive terms, a rival seller, wishing to win the sales, will offer more attractive terms. The process will continue in this way until the terms of the contracts are optimal.

In this way, for Posner, the market can ensure that the general conditions that end up being traded are those that maximise the utility of the adherents. As long as there is competition, the terms present in adhesion contracts will be optimal and, therefore, it does not need any regulation other than that carried out by the market itself.

In his thesis, Posner assumes that there is complete information between the parties, i.e. that both the adherent and the predisposer know the terms of the contract (Posner, 1998, p. 682). However, we know that this is not the case, since the adherents do not have all the necessary information to choose the right contract. The selection between the different contract options has costs of searching and understanding the clauses that are part of the contract, which adherents are often unwilling to bear.

On the latter, Stigler states that the decision to acquire information by rational agents depends on the cost of doing so not exceeding the expected benefits of doing so (Stigler, 1961, p. 213-225).

Schwartz and Wilde developed arguments to explain market equilibria when imperfect information exists, introducing the quality of the product offered by the firm as a variable (Schwartz and Wilde, 1979, p. 543-553).

These authors assume that the entrepreneur can choose to produce either high quality goods or low-quality goods. The costs associated with producing high quality goods are higher than the costs associated with producing low quality goods.

On the other hand, there are the adherents, who are imperfectly informed about the prices and quality of the products offered by the company. That is, they do not know which companies sell low quality products and which company sells high quality products and what price they charge for each of these.

Adherents, in turn, are divided into two groups according to their information search strategy. On the one hand, there are consumers who visit a firm randomly before deciding whether to buy the product or not. These consumers do not invest much time and effort in searching for the combination of price and quality most favourable to their interests. On the other hand, there are those who visit two firms randomly. These authors assume that once the *shopping* task is done, *consumers* are fully aware of the price and quality of the products offered and can thus choose which one maximises their utility. Consumers who are in the first group are called "*non shoppers*" and those in the second group "*shoppers*". (Salazar, 2006).

These authors determine market equilibria in two different cases: when all consumers prefer to buy high quality products and when all consumers prefer to buy low quality products. The market equilibrium reached depends mainly on the percentage of *shoppers*. Thus, when most consumers prefer high quality products, the market equilibrium reached is a competitive equilibrium if and only if the percentage of *shoppers* is sufficiently large. But if the percentage of *shoppers* is small, firms have a comparative advantage by selling high quality products, the market equilibrium will be high quality products but at a supracompetitive price. In case the pool of *shoppers* is small enough not to sustain a competitive equilibrium and firms have a comparative advantage selling low quality products, the market equilibrium will be low quality products at supracompetitive prices.

Gazal criticises this model, mainly because it assumes that adherents search for price and quality at the same time, without taking into account that the search for price is much more economical, since prices can be easily observable, unlike the quality of a product (Gazal, 1999).

The corrective role of the market on sub-optimal terms of adhesion contracts is based on rather restrictive formulations in theoretical terms. Comparing between products, in order to determine the quality of products, is not free of charge for the consumer, as it takes time and effort.

According to Goldberg, companies take advantage of adherents' information to establish a regulatory framework that maximises their interests at the expense of adherents. This happens mainly, according to this author, because the adherents who bear the cost of searching for better contracts are the minority in a market, due to the high costs they have to incur. The market would need a high percentage of adherents who bear the costs of seeking better contracts to influence and correct the inefficient terms that include predisposers (Goldberg, 1974, p. 461-492).

However, this does not happen because of the immense cost of acquiring and processing the information being compared. In this way, Goldberg refers, the market is unable to correct inefficient terms in adhesion contracts, so that adherents end up being regulated by provisions that represent the interests of the predisposer and not their own (Goldberg, 1974, p. 461-492).

George Akerlof, in his article "*The market for Lemons: Quality Uncertainty and the Market Mechanism*", published in 1970, showed that when in a market there is asymmetry of information between the different agents involved and a cost associated with the search

for this information, the quality of the products in this market will be sub-optimal. In these cases, generally, the seller has much more information about the quality of the goods than the buyer, who cannot easily find out the quality of the product before buying it (Akerlof, 1970).

Thus, when products cannot be evaluated by consumers, "low quality" products end up displacing "high quality" products.

That said, for the purposes of this article, let us imagine that there is a competitive market where the products offered are adhesion contracts. There are adhesion contracts with low quality terms for adherents and contracts with high quality terms for adherents. It could turn out that the information costs of checking the quality of the clauses for potential adherents would be very high, since adhesion contracts are often lengthy in their wording and the clauses complex for the average consumer, so they would be time-consuming to process and would probably require a specialist lawyer to assess the risks and likely consequences of entering into the contract. If these costs of acquiring information and processing it are too high, potential subscribers will not read the terms of the contracts when making purchases. This is unless the purchase they are making is sufficiently large or risky to justify reading them. If this happens, and consumers do not review the quality of contracts, contract drafters will have incentives to reduce their costs by reducing the quality of the terms. On the other hand, if a drafter is willing to offer high quality clauses, since consumers are unable to review the agreements, they will be unwilling to pay an additional price for the product in exchange for a clause that is supposedly of high quality but which they cannot verify. In this case, as the quality of the terms included in the contracts cannot be assessed, adherents will only be willing to pay for the premium corresponding to an average contract. This being the case, it would be too costly for providers of high quality contracts to maintain them and bear the additional cost involved, so that they would tend to reduce their contracts to the average quality in order to withstand competition and stay in the market. Obviously, this would redefine the quality of contracts, until there would no longer be high and low quality contracts, but all of the latter type (Cofone, 2015, p. 101-111).

The market for adhesion contracts needs a high percentage of adherents to bear the costs of *shopping* for contracts and comparing their quality, in order to influence and correct inefficient terms included in the predisposers. Of course, this does not happen because the costs of acquiring information and processing it are very high, even higher than the price adherents pay. The task of reading and analysing the full terms of the adherence contract is very costly.

6 LIMITED RATIONALITY OF ADHERENTS.

Traditional economic theory assumes that in the decision-making process people can process and analyse all available information in order to choose the option that best maximises their interests. It assumes that people make clear risk estimates, have the ability to compute the benefits and costs of available alternatives, and have information about the probability of each of the outcomes of possible courses of action, anticipating consequences of each alternative.

However, in recent years, psychologists and behavioural economics scholars have shown ample evidence that challenges the rationality principle proposed by economic theory.

In this way, the rational model would be limited given that in the real world, the optimal conditions for making decisions do not always exist and, in turn, the individual, when making decisions, is limited in time, cognitively limited, does not know all the alternatives

and is unable to process all the information required to make the decision that maximises his or her interests.

The theory of bounded rationality was first expounded in 1979 by Hebert Simon, who recognises the inability of rational theory to fully capture the decision process that individuals carry out. For this author, rationality is constrained due to external social constraints and internal cognitive limitations. The individual lacks full access to all information about the decision to be made in terms of options, risks, degree of certainty (Simon, 1979).

Another of the most important authors in this area of study is the Nobel Prize- winning economist Daniel Kahneman. For this author, contrary to what traditional economic theory maintains, people are not entirely rational, nor entirely selfish, and their tastes are anything but stable (Kahneman, 2012).

Research on decision-making provides a strong basis for the assumption that some of the terms included in adhesion contracts are often invisible to adherents. First, because of the length and complexity of adhesion contracts, adherents will be selective in considering and analysing some of the terms of the contract, making others invisible.

Nowadays, almost all products and services offered are accompanied by adhesion contracts that are characterised by a large number of clauses that are, in turn, complex to understand for the average consumer (Vieira & Barocelli, 2020).

The accumulation of information, in the case of adhesion contracts, has its origin in our market model and in the way in which transactions are carried out. This volume of information has a discouraging effect on the addressee since, as we pointed out above, its mere reading requires high levels of cognitive effort.

The distinction between visible and invisible terms in an adhesion contract is essential for the analysis of the efficiency of adhesion contracts. While market forces should ensure that sellers offer visible terms that are efficient, "invisible" clauses are inefficient due to the strategic behaviour of predisposers who try to increase their profits at the expense of the many non-reading adherents.

The implication of this analysis is that, while it is expected that the market will lead to the provision of efficient and visible contractual terms for the benefit of both adherents and predisposers as a group, this assumption will not be reflected in reality.

Having said all this, we are in a position to state that people do not read adhesion contracts because they are time limited, cognitively limited and unable to process all the information required to make the decision and choose the option that maximises their interests.

Some predictions, explanations and recommendations of orthodox economics lead to incorrect assumptions and assessments of the legal system, so it is essential to incorporate the descriptions provided by behavioural economics in order to improve and understand the limits of the traditional model.

From a behavioural economics perspective, mandating firms to provide more information is neither helpful nor does it reduce the tendency of consumers to act uninformed. That is, rather than being a problem of information asymmetry, it is a different problem, a "behavioural market failure" or the "failure to read contracts", whose causes are not related to firms' behaviour or the functioning of the market, but rather to consumers' cognitive limitations (Monroy, 2018).

7 IMPLICATIONS OF INFORMATION ASYMMETRY AND BOUNDED RATIONALITY IN THE DIGITAL PLATFORMS MARKET.

However, throughout this paper we have assumed that the price of a product or service is an attribute easily observable by the adherent or consumer, who only has to incur search costs in relation to its quality. In other words, the consumer does not have to incur large search costs to observe the price of a product or service.

Notwithstanding this, there are markets, such as the one we will analyse below, where the adherent must not only incur the costs of reading, analysing and comparing the terms and conditions that make up the quality of the product or service, but also the price to be paid as consideration for it is not easily observable to the consumer's eyes, since, in monetary terms, it is free and therefore imperceptible to the consumer.

That is to say that, unlike in traditional markets, in digital platforms, the consumer is not able to perceive the *price* paid for the product or service provided.

However, although the price cannot be observed by the user because it has no monetary value, this does not mean that the consideration for the service or product provided by the companies is *free*. There is a price that the consumer "*pays*", which of course, has a great economic value for the companies, on which their entire business revolves.

The objective or core business of digital platforms is the collection of consumer or user data. Data is essential for digital platforms such as Facebook, Uber, Google, just to mention a few. This information is extremely relevant for the development of these platforms, as it allows them to differentiate themselves from competitors and provide a better service.

The value creation by these companies is to connect people, with complementary needs. As the network grows, it becomes more attractive to potential users. This generates network effects², which are key to understanding the development of these platforms, since consumers will be attracted to the platform that offers the widest choice. Once a company gains a good number of consumers on both sides of the platform, it becomes much more difficult for a new competitor to emerge, acting as a barrier to entry for new competitors, thus inevitably generating market power.

Those companies that have a larger number of users will process more data and consequently provide a "better" service to users, generating in turn a competitive advantage over other competitors. In this way, companies can abuse their market power, preventing potential competitors from growing by taking advantage of their dominant position. This is made possible by the collection of consumers' personal data, which these firms carry out.

The accumulation of data by these companies, while promoting development activities and generating innovation, has put them at the centre of debate due to numerous data breaches or the violation of security policies.

Companies such as Facebook or Uber hide their data collection policy in terms and conditions of use that are long and complex to read for consumers, who end up accepting them mechanically.

A study by Visual Capitalist analyses the time it takes to read the terms and conditions of the top 21 digital platforms.³

² The network effect or network externality is used to describe situations in which one person's consumption directly influences another person's utility, whether positive or negative. Network externalities are a special type of externality in which the utility obtained by one person from a good depends on the number of individuals who consume it.

³ <https://www.visualcapitalist.com/terms-of-service-visualizing-the-length-of-internet-agreements/>

Visual Capitalist estimated that a person reads approximately 240 words per minute and based on that figure calculated how long it would take to read the terms and conditions of some of the most popular online platforms.

Reading the 15,260 words of Microsoft's terms and conditions would take just over an hour. Tik Tok and Spotify, on the other hand, would take 35:48 minutes and 31:24 minutes, respectively. YouTube, with 3,308 words, would take about 13:42 minutes and Facebook, with 4,132 words, would take 17:12 minutes. Overall, reading the terms and conditions of use of the 21 most popular apps, more than half of which we use on a daily basis, would require an average of 250 hours.

Similarly, the European Commission, in its report "Study on consumers attitudes towards Terms and Conditions (T&Cs)", counted words in the Terms and Conditions of well-known companies, and some of them are even comparable to Shakespeare's longest plays: Hamlet and Macbeth:

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