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Abstract: This chapter explains competition law and regulation, focusing on characteristics of digital platforms and the challenges they raise. It argues that weak competition law enforcement, from the mid-1990s till the mid-2010s, permitted the growth of a few powerful online platforms. The recent reawakening of competition law enforcement and the move towards proactive (upfront) regulation in, among others, Europe and the United States, is a welcome but limited response. Two additional lines of action can help address the systemic problems of the evolving digital media landscape and the driving force of platform dominance based on data collection. One, we need specific data-related policy measures. Two, we need to nurture a viable diverse digital space, by empowering market entry based on alternative non-surveillance-based business models. In short, competition law and regulation are *a* solution, but not *the* solution, to the fundamental economic, social and political-democratic welfare concerns raised by platform society.

Keywords: competition (antitrust); regulation; digital platforms; economic, social and political democratic welfare; European Union, USA

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<a>INTRODUCTION

This chapter examines competition law and regulation focusing on the big digital platforms, the so-called Big Five (Google/Alphabet, Amazon, Facebook/Meta, Apple, and Microsoft - GAFAM), that dominate markets outside China. Having defined competition law and regulation, the chapter discusses the key features of digital platforms and the challenges they raise for competition law. It then explains the neoliberal consumer-welfare interpretation of competition law, prevalent from roughly the mid-1970s till the mid-2010s, and argues that this narrow interpretation weakened competition law enforcement and essentially permitted the growth of the Big Tech we have today. Next, the chapter examines the slow reawakening of competition law enforcement since the mid-2010s based on a selection of cases from the European Union (EU) and the USA. It assesses the problems of such enforcement action and explains how these contributed to a rethinking of competition rules and a move towards proactive (upfront) regulation. While this rethinking is welcome, the chapter argues that more action is required to effectively tackle data-related systemic problems and empower alternative non-surveillance market entry. The chapter concludes that competition law and regulation are only part of the solution to the serious concerns associated with today's platform society.

<a>WHAT IS COMPETITION LAW?

Competition law seeks to enhance consumer welfare and safeguard the competitive process in the marketplace (Ezrachi, 2021, pp. 28-29). Competition law is *a*-sectoral, meaning it applies to all areas of economic activity rather than a specific sector. Enforcement has focused on three lines of action: antitrust, merger control, and subsidy control. Antitrust prohibits activities that restrict competition and the abuse of dominance in a given market. Merger control prohibits mergers and other acquisitions which would significantly reduce

competition. Finally, subsidy control may prohibit subsidies, such as tax advantages or grants, if ruled they will distort the competitive process by giving an advantage to a firm over its competitors. This chapter covers the first two types of enforcement, antitrust and merger control.

At first sight, competition law and regulation are about economic objectives. However, competition policy is neither neutral nor strictly based on economic analysis alone. While the overall aims of competition policy are similar across jurisdictions, national competition laws may differ in the weight given to economic and noneconomic values (Mansell & Steinmueller, 2020, p. 51). For Ezrachi

> Those who claim to have the true recipe for competition enforcement (…) do little more than dress their own ideology in cloaks of superior objectivity. (…) they offer a distorted image of the complex nature of competition policy. The key to effective competition law enforcement lies (…) in an open and informed debate on the law and economics, and a vision of the society to which we aspire. (Ezrachi, 2021, p. 130)

This is an important point that highlights the scope of, and indeed need for, a broader debate on how to balance economic and a range of other social and political democratic goals. Put differently, the policy and regulatory processes involve choices (Cammaerts & Mansell, 2020).

<a>THE CHALLENGES FOR COMPETITION LAW AND REGULATION IN THE AGE OF DIGITAL PLATFROMS

The rise and exponential growth of Big Tech took place during the platformization phase of the Internet, situated roughly from 2006 till about 2020 (Flew, 2021). This is when the vast majority of online activity got to be mediated through the handful of digital platforms we have today – the Big Five or GAFAM - in most of the world outside China. The rise of

these powerful corporations is associated with key characteristics of digital platforms as well as weak competition law enforcement.

<b>Digital Platforms

For Mansell and Steinmueller (2020, pp. 21-30) digital platforms, and social media in particular, are examples of radical innovation and exhibit four characteristics. They 1) have content that appeals to users; 2) their business model covers the costs of maintaining the platform; 3) collect, manage and use data about users; and 4) provide and commercially exploit ancillary services, such as Amazon and Google's cloud services. Mansell and Steinmueller (2020, p. 22) explain that the third and fourth elements are the driving force of the dominance of GAFAM. We will examine these two elements in more detail.

At the heart of digital platforms, and social media in particular, is the generation (extraction), accumulation and commercial (for profit) exploitation of user data (e.g., Cohen, 2020; Dencik, 2022; Mosco, 2017). User data is primarily sourced in three ways: simple registration data, like name, email address etc.; combined behavioural data, like search and buying history, and posts; and lastly, derived data through the pooling of personalized information with other data such as comparisons to similar individuals (Budzinski, 2021, p. 107). Data is the engine of what has been described as platform capitalism (Srnicek, 2017) and surveillance capitalism (Zuboff, 2019). User data is a business asset that is hard to replicate. Gatekeeping emerges as the ability to have hard-to-replace data sources, control over data flows, and incentives to bias them for commercial profit (Budzinski, 2021, p. 107), like the allegations in the Google search and Amazon marketplace cases discussed below.

At the core of data-driven digital markets is user attention. Capturing and maintaining the attention of users is what drives data generation, collection, and profits. However, there is little transparency about why we encounter the content we see. Platforms use algorithmic recommenders to personalize the user experience, offering content that matches a user's

interests, but users typically have very little understanding of and control over the algorithms. Algorithmic recommenders have been criticized for their tendency to reproduce biases, intensify polarization, and promote inaccuracies, features which may drive engagement but are harmful to society and democracy (Ananny & Crawford, 2018; Helberger et al., 2018).

The fourth characteristic of digital platforms – the provision and commercial exploitation of ancillary services - links to the concept of platform ecosystem, a term that refers to very big platforms, notably the Big Five. Bourreau (2020, para. 5) explains that 'ecosystems of firms have developed around multi-sided platforms' facilitating interactions between users and various third parties, including advertisers, independent vendors, content providers, data brokers etc. Platform ecosystems then are multiproduct and multiactor: big platforms manage and participate in multiple distinct, yet highly interdependent, markets. Gawer (2021, pp. 7-8) illustrates these dependencies by examining two types of platforms. She explains that Amazon's marketplace is a transaction platform, an intermediary that, by bringing together buyers and sellers and building on network effects (the more participants, goods and services are available, the more valuable the platform is), facilitates transactions or exchanges of existing goods, services and data. She adds that Apple's Appstore is an example of an innovation platform that, unlike transaction platforms, 'serves as a technological foundation' upon which others innovate and develop new goods and services that complement the platform. Complementary innovations increase the value of the platform and network effects. For Gawer (2021), GAFAM are hybrid platforms, they are both transaction and innovation platforms. Platforms have become powerful gatekeepers. It is platforms-intermediaries, no longer publishers, that control flows of content as well as access to the various groups that depend on the platform.

Another related key feature of powerful digital platforms is that the platform provider, not an external authority, becomes the 'regulator or coordinator' of the platform ecosystem (Bourreau, 2020, para. 5). The platform provider coordinates the interactions among the

multiple diverse groups that depend on it. For instance, Apple decides which applications can be made available in its App Store and under what terms.

The four features of radical innovation that Mansell and Steinmueller (2020) identify and the properties of a platform ecosystem as just discussed point to strong network effects that, in the absence of interoperability allowing users to transfer their data and accounts to competing platforms, makes users dependent on the platform and may lead to user lock-ins (forced loyalty) (e.g., Furman et al., 2019). Thus, the features of very large platforms are mutually reinforcing. They combine to make it hard for users to switch to other platforms, even where these exist, and favour the winner takes-most scenario where the market tips, stifling rival market entry. A good example is social media platforms like Meta/Facebook, Twitter, that, similar to Alibaba and Tencent in China, are essentially closed media and communication environments.

Importantly, the concept of platform ecosystem underlines the limitations of the traditional competition law and regulation approach based on defining the relevant market and market shares in it. The challenge is precisely the fact that Big Tech does not operate in a single market and trying to delineate a market becomes meaningless in the face of the scope and scale that Big Tech commands.

<b>Weak Competition Law Enforcement

The preceding section examined some key challenges that the characteristics of digital platforms present for competition law and regulation. This section maintains that, in addition to these challenges, waning competition law enforcement in particular from roughly the mid-1990s till the mid-2010s, effectively supported the growth of Big Tech.

Market concentration is not new. Indeed, the term ‘antitrust’ derives from the efforts beginning in 1890 with the US Sherman Act to control and restrict trusts, the big monopolies

that rose during the industrialisation phase, such as Standard Oil. How can we explain the decreasing competition law enforcement in the case of Big Tech?

The first reason is that the origins of the Big Tech are located in the largely unregulated libertarian phase of the Internet, from about 1990 to 2005 (Flew, 2021, pp. ix-xi), influenced by the Californian ideology (Barbrook & Cameron, 1996) combining economic neoliberalism – a strong anti-government sentiment and a belief that the market would auto-correct - with a techno-utopian idea about the potential of the Internet to empower individuals and free minds. Moreover, there was a perception that the web was different from the physical world. In these early days 'Everything was fast and chaotic; no position was lasting' (Wu, 2018, p. 120). There was a feeling that bigness, even if acquired, could not endure in the 'new' economy.

The second reason for waning competition law enforcement is the rise of a narrow economic interpretation of antitrust action understood as required to address harm to consumer welfare. This was particularly evident in the USA (see Popiel, 2023).

In the early days of trust busting, competition law perceived market concentration as the problem. Following strong antitrust enforcement in the 1950s up until mid-1980s, there followed a period of substantially decreasing enforcement. From the 1970s onwards, the thinking about the aim of antitrust gradually and forcefully changed. The rise of the neoliberal Chicago School of economics meant that market concentration in itself was no longer a concern. On the contrary, market concentration was encouraged, seen now as a reward for a company thought to be good at its chosen market of operation. This thinking was encapsulated by Peter Thiel (2014), the founder of PayPal and Palantir, who in his 2014 talk titled 'Competition is for Losers' argued that a company *earns* a monopoly 'by solving a unique problem. [adding that] All failed companies are the same: they failed to escape competition'.

The Chicago School rejected the anti-concentration agenda and argued that the single aim of antitrust was consumer welfare, interpreted as low consumer prices. For example, according to Robert Bork's famous antitrust paradox (Bork, 1978), the prioritization of consumer welfare means that certain practices, like mergers, should be allowed, if they promote consumer welfare (low prices); the opposite (the paradox) would be for antitrust enforcement to condemn such practices and end up harming consumer welfare (through higher prices) and, in doing so, going against the main goal of antitrust law. This narrow price-harm interpretation does not even include all types of economic harm, for instance harms to competitors, let alone social and political democratic harms, discussed below. Arguably, this monolithic interpretation of antitrust supported the rise of Big Tech.

<a> COMPETITION REGULATION IN PRACTICE IN THE AGE OF PLATFORMIZATION[1]

There are numerous competition rulings that concern the media and communication sectors throughout history. Spurred by the advent of digital technologies and the shift to neoliberal ideology, from the 1970s onwards competition rules were fundamental in dismantling the traditional monopolies in both broadcasting and telephony (for the EU see Michalis, 2007).

In the field of information and communication technologies, the period from the 1950s until the mid-1980s witnessed strong antitrust enforcement on both sides of the Atlantic. Noteworthy examples from the USA include the IBM case in 1969 which lasted thirteen years, and the AT&T case in 1974 which lasted eight years. The same day in 1982 that the Reagan administration decided to break up AT&T, it decided to settle with and not break up IBM. Though protracted and expensive, these cases were hugely significant and demonstrate the impact of competition law enforcement. The divestiture of AT&T unleashed the long-distance and international services markets to competition, whilst the seven so-called

Regional Bell Operating Companies kept at that time the monopoly over local services. Wu (2018, p. 112) summarises the benefits of the IBM settlement no less as 'the birth of independent software, the dawn of personal computer, the rise of firms like Apple and Microsoft'.

In the 1990s on both sides of the Atlantic, Microsoft faced allegations that it was abusing its dominant position in the personal computer operating system market (Windows) through the bundling of other software (notably the Internet Explorer browser and the Windows Media Player) thus disadvantaging competing software. The US case was settled in 2001, after nine years. After five years of investigation, in 2004, the European Commission, the EU competition regulator, found that Microsoft had abused its dominant market position, fined it €497m (794 m USD) – the largest fine imposed by the EU at the time - and obliged it to produce a version of Windows without Windows Media Player, confirmed by the General Court (Case T-201/04). Microsoft also committed to give Windows users the option of different browsers (European Commission, 2009). Noteworthy was the requirement for Microsoft to disclose certain software program interfaces and protocols to competitors, which contributed to the development of interoperable products.

From roughly the mid-1990s up until the mid-2010s, weak competition law enforcement effectively supported the expanding dominance of Big Tech. It is in the second half of the 2010s that we see antitrust action against big platforms addressing practices that disadvantage competitors and harm consumers. Again, the cases are protracted and, interestingly, many of the concerns raised about the conduct of Big Tech are similar to those raised in earlier antitrust action, such as the Microsoft case. Issues in the age of platforms concern the bundling of software and services, lack of interoperability and access to technical information, self-referencing own products/ services, thus disadvantaging competing providers of search, applications, and e-commerce vendors. In 2019, for instance, the European Commission launched an antitrust investigation into Amazon's use of data it

gathers from third-party sellers/competitors on its marketplace to benefit its own retail business. The case was settled in late 2022. Amazon committed to stop using non-public data about sellers on its marketplace to favour its retail business; to treat all sellers equally in selecting its Buy Box offers; and to allow sellers to choose freely logistics and delivery services rather than being required to use Amazon's own (European Commission, 2022b).

The Microsoft and Amazon cases are similar to those concerning other big platforms, like Alphabet/Google, Meta/Facebook, and Apple. For instance, both sides of the Atlantic challenge the Apple App Store, the only way application developers can distribute their applications on Apple devices, and Apple's in-app payment system, the only one available where Apple takes a 30 percent commission (Geradin & Katsifis, 2021). It is worth noting that Big Tech companies have been facing competition investigations often simultaneously in various national jurisdictions and at different levels - local, national, international.

With regard to Google, the European Commission completed its first investigation into Google Shopping in 2017 finding that Google abused its dominance in search by favouring its own comparison shopping service and disadvantaging rival ones (Case T-612/17). There followed other investigations concerning anticompetitive practices related to Google Android (2018) and Google's AdSense search adverts (2019). Google has appealed all these decisions. As of February 2023, the Commission is investigating Google's online advertising practices.

Similarly, in the USA the Big Tech giants are coming under increasing scrutiny from competition authorities. Indicatively, between 2020-2022, Alphabet/ Google faced around six antitrust actions by state and federal authorities targeting its control over the search and advertising markets. Evidencing the lack of antitrust enforcement up until then, it is noteworthy that the Department of Justice (DoJ) filed its first antitrust lawsuit against Google search in 2020, twenty years after the settlement of the Microsoft case. Just over two years

later, in early 2023, the DoJ filed its second antitrust lawsuit against Google seeking to break up its online advertising business.

From the mid-1990s till the 2020s, we witness weak merger control too. Merger legislation in the EU and the USA has a threshold (typically an aggregate turnover) over which regulators are notified. Many mergers can go ahead as they fall below the legal threshold and thus do not require a regulatory assessment. Mergers and acquisitions can be horizontal or vertical. Horizontal integration refers to expansion in the same level of the value chain through, for instance, an acquisition. An easy way to expand market share and at the same time reduce a competitive threat is to buy, typically a smaller or niche, competitor (killer acquisition). The buying by Facebook of photo-sharing application Instagram in 2012 followed by acquisition of the messaging app WhatsApp in 2014 are cases of horizontal expansion. Vertical integration concerns the expansion of a firm in a separate part of the value chain, for instance Amazon buying the grocery business Whole Foods in 2017. Mergers and acquisitions have effectively allowed Big Tech to wipe out potential rivals, thereby entrenching their market dominance.

Big Tech has been allowed to grow through mergers and acquisitions. In 2021, the US Federal Trade Commission (FTC), responsible for protecting consumers and promoting competition, examined the considerable acquisition activity by the Big Five in the period 2010-2019. It reported that GAFAM alone concluded 616 transactions worth at least 1m USD, that is an average of six acquisitions per month (Federal Trade Commission [FTC] 2021, p. 36). Merger control did not stop them.

Similarly, Tommaso Valletti, ex-chief economist at the European Commission's competition department, commenting in 2018 on EU merger control observed that since 2001, Google alone had bought more than 260 companies, and only one of those transactions was assessed and approved by the European Commission, the acquisition of online advertising company Double Click (van Dorpe, 2022).

It was as late as mid-2022 that we witness an exception to this rule when, for the first time, a regulator moved to dismantle a completed Big Tech deal. In 2022, the UK Competition Appeal Tribunal (2022) upheld the ruling of the Competition and Markets Authority to block Meta's acquisition of Giphy, the biggest search engine of animated images, for a reported 315m USD. In what may be interpreted as renewed merger control enforcement, it is worth noting that as of February 2023, EU and US competition authorities are investigating Microsoft's planned acquisition of the video game company, Activision Blizzard.

We see revived interest in competition law enforcement in many parts of the world, including China, where a handful of powerful Chinese platforms dominate the domestic market, notably Alibaba, Tencent, Baidu (search engine), ByteDance (video sharing platform), and JD.com (e-commerce retailer). In 2022, the Chinese government amended its antitrust law and introduced tougher provisions to rein over its Big Tech 8which, among others, require the companies not to restrict competition and innovation by abusing data and algorithms (Tabeta, 2022). Mergers and acquisitions too will undergo stricter scrutiny under the new rules. The revised legislation followed a series of substantial fines, such as the USD 2.7bn (yuan 18.2bn) fine on Alibaba in 2021 for abusing its dominant position.

<a>LIMITATIONS OF COMPETITION LAW AND REGULATION

What can we learn from competition law enforcement? This section makes two observations.

First, it is clear that competition enforcement is a slow, uncertain, reactive and case-specific process. Antitrust cases are often settled on the basis of behavioural remedies. This means that an investigation closes, preventing a protracted legal battle, the company investigated is not being formally charged of breaking competition rules and avoids a substantial fine. Even when fines are imposed, as Marsden and Brown (2023, p. 7) observe,

these are a relatively small business cost for Big Tech, thus their power to alter the platform's behaviour is doubtful.

Besides, enforcement of remedies and actual impact are hard. For instance, in October 2022, more than 40 rival comparison shopping services wrote to the European Commission claiming that Google was not complying with the 2017 order but continuing with its anticompetitive self-referencing practices, thus disadvantaging them (Chee, 2022). This shows how difficult it is for competition investigations to have impact and genuinely change alleged anticompetitive practices. The implementation of behavioural remedies requires monitoring to check adherence, which is time-consuming and resource demanding. If the agreed commitments reached between competition authorities and big platforms in the various cases produce no or little results, then this suggests that antitrust has failed to address anticompetitive conduct and curb the market power of Big Tech.

Importantly, competition law enforcement is reactive. Competition authorities are called upon to intervene in response to an apparent problem that most likely has been taking place for some time and as such it is hard to know the full extent of harm it has caused. Competition law enforcement aims to correct and alter future behaviour. The reactive character of enforcement appears at odds with the persistence of common problems. As the preceding section made clear, many cases concerned the same problems, such as lack of interoperability, and anticompetitive self-preferencing. Addressing these ex post and on a case-by-case basis has not solved the problems.

Finally, competition law enforcement is piecemeal and unpredictable. Competition investigations aim to correct specific concerns, rather than address systemic issues that relate to the platformization of the Internet. Reims (2022) finds such enforcement problematic on the grounds, among others, that case specificity creates legal uncertainty.

A second observation is that Big Tech raises not just consumer welfare issues, but also serious social and political democratic concerns (e.g., Nicoli & Iosifidis, 2023). The Chicago

School's understanding of antitrust as intended to address only consumer price harms, that dominated thinking from roughly the 1970s till the late 2010s, restricted the flexibility of competition authorities to balance diverse economic, social and political democratic goals when enforcing the law.

There are two issues here. First, the Chicago School's interpretation of antitrust seems unable to address the economic harm to either consumers or competitors: harm to consumers understood as higher prices when the dominant business model of Big Tech is the provision of services for free makes no sense. The complexity lies in the fact that commercial for-profit platforms do not charge a price for access (though there have been limited experiments to do so for certain additional functionalities e.g., Twitter). Indeed, charging users for access to their platforms would be antithetical to the data-driven business model of social media platforms. As the saying goes, the product is not the social media platform, but us, the users. By not making access conditional upon payment, social media platforms aim to reach a large consumer base and gather as much data as possible. In addition, harms to competitors such as control of data and self-preferencing of own products for competitive advantage are behaviours not covered.

Second, the restricted interpretation of harm disregards other serious social concerns (e.g., spread of hate speech working against social cohesion, profiling and categorising users through algorithmic discrimination) and political democratic concerns (e.g., political marketing and the micro-targeting of voters, the non-transparent algorithmic selection of news that may support filter bubbles among like-minded people thus restricting public debate, spread of mis- and dis-information) that in the past could be weighed in decisions. It is not simply that consumer welfare, so narrowly interpreted, is not relevant to digital platforms, it is also the case that competition law and regulation disregard social and political democratic welfare. Indeed, for some commentators, the political democratic issues are more critical than the economic ones. The rise of social media platforms to powerful largely unchecked and

unaccountable positions threatens liberal democracies. Wu (2020), for instance, paints an alarming picture that the excessive power in the hands of a handful big technology giants has the potential to surpass the power of elected government and may destroy democracy. Similarly, in her historical overview, Robertson (2022) reminds us of the democratic origins of competition law in liberal democracies such as the USA and the EU. Given the far-reaching consequences that data-driven digital markets have for society and democracy, she argues that 'democracy can and should occupy [a place] within competition law in our digital times.' (Robertson, 2022, p. 3).

While we may find companies in the past equivalent in size to today's Big Tech, these did not affect directly so many (all?) aspects of the daily lives of citizens and consumers. The stakes are significantly higher now. With platform economy comes platform society: 'platforms have penetrated the heart of societies – affecting institutions, economic transactions, and social and cultural practices' (van Dijck et al., 2018, p. 2). Big Tech is wielding significant power over economy, society, knowledge, and democracy itself.

<a>EMERGENT GOVERNANCE

The shortcomings of competition law enforcement (slow and reactive process, persistent issues, case-by-case enforcement, ad hoc remedies, need for continuous monitoring, uncertain result) and the scale of issues in hand have led since the late 2010s to debates and a rethinking of competition law and regulation (e.g., Coyle, 2018; Just, 2018; Khan, 2017 And reports such as Furman et al., 2019 in the UK; Crémer, de Montjoye & Schweitzer, 2019 in the EU; House Judiciary Committee, 2020 in the USA). A common development is the move away from reactive toward proactive (ex-ante) regulation, a move to regulate upfront, before issues arise.

In September 2022, the EU adopted the Digital Services Package comprising the Digital Markets Act (DMA) and the Digital Services Act (DSA). The DMA (Regulation (EU)

2022/1925) aims to promote contestable and fair markets in the digital sector and is more relevant to competition regulation. The goal is to provide more certainty and increase proactive competition law enforcement in order to reduce the likelihood of problems arising in the first place or to minimise their severity. It contains provisions on interoperability as well as provisions that prohibit potentially anticompetitive behaviour by 'gatekeepers' (very large online platforms), including the prohibition of self-preference, a practice under investigation in the Amazon and Google cases mentioned above, and the prohibition of unfair agreements between app store owners and app developers (e.g., when app store owners oblige app developers to use certain payment systems in order to be listed). The obligations and prohibitions of the DMA aim to speed up enforcement.

Similarly, in 2021 the Biden administration in the USA proposed significant antitrust reforms, though Congressional impasse makes their passage doubtful, including: the American Innovation and Choice Online Act which gives power to the FTC, the DoJ and state attorneys general to challenge various anticompetitive self-preferencing practices by very big tech platforms, and puts forward interoperability requirements; the Open App Market Act that prevents app stores from, among others, obliging developers to use an in-app payment system owned or controlled by an app store; and the Competition and Transparency in Digital Advertising Act which would require Big Tech platforms to split part of their advertising business (Paul et al., 2022).

The EU digital services package and the draft bills in the USA build on existing antitrust cases and essentially adopt the remedies put forward in the various cases aiming to stop harmful behaviour upfront.

In addition to such sectoral competition law and regulation initiatives and the move towards upfront rules, there has also been a rethinking of merger control. For instance, the European Commission encourages national competition authorities to refer mergers to it, even if national merger control thresholds are not met (European Commission, 2021).

Finally, institutional changes too have taken place. These reflect the multiplicity and interconnectedness of issues and the multifaceted expertise required to regulate Big Tech as well as the transnational nature of its operations. The aim is to address the challenges in hand in a more coherent and effective way. Thus, in July 2020, the Digital Regulation Cooperation Forum (DRCF) was created in Britain, bringing together four regulatory authorities with competence in different aspects of digital markets and complementary expertise: the Competition and Markets Authority, the Office of Communications (the communications regulator), the Information Commissioner's Office (the data protection regulator), and the Financial Conduct Authority (which joined in April 2021 having previously been an observer) (Competition and Markets Authority [CMA], Information Commissioner's Office [ICO], Office of Communications [Ofcom], undated]. Another example is the Trade and Technology Council between the US and the EU, a cooperation platform launched in 2021 that covers trade and technology issues.

Evidence that competition law and regulation, even as recently rethought, is not enough to tackle the problems of the platform society, there has been an array of specific legislative and broader regulatory activity in many countries as well as internationally. For instance, the EU's DSA (Regulation (EU) 2022/2065) introduces new rules and obligations for online intermediaries to reduce harms, protect minors and users' rights online. It places new transparency and accountability obligations upon digital platforms. In late 2022, the EU adopted the strengthened Code of Practice on Disinformation (European Commission, 2022a). These are just two examples that underline the limitations of competition law and regulation to address the multifaceted challenges posed by online platforms and the need to complement them with sectoral (co-)regulatory tools.

<a>WAY FORWARD

Renewed antitrust enforcement, upfront competition measures, and the adoption of sectoral (co)regulatory measures to address the concerns associated with the platform society are all welcome, but fall short of addressing adequately the systemic problems of Big Tech. It is argued here that we need two additional lines of action: specific data-related policy measures, and a diverse digital space that includes alternative non-surveillance business models.

First, the business model of the big digital platforms relies on the mass generation, collection and for-profit exploitation of personal data. Abuses of privacy and data protection have been instrumental in supporting the market dominance of Big Tech. Given that therein lies the core of the Big Tech power, data protection and privacy demand higher prominence in policy debates. The limitations of traditional competition law to rein in the immense power of big platforms coupled with the significance and scale of the problems in hand have made ex ante rules - like privacy and data protection - more important than they were in the pre-Internet era. Some competition authorities have arguably stretched their remit beyond traditional competition concerns (Stuart, 2021). The German regulator, for instance, is using privacy regulation in a legal case against Meta/Facebook over claims it unfairly used consumers' data to favour its own services (Scott, 2022). Similarly, in late 2022, France's data protection regulator fined Apple €8m (USD 8.5m) over alleged breaches of data privacy in showing personalized advertisements on its App Store (Lomas, 2023). Ireland's data protection Commission fined Meta €390m (USD 411m) for violations in processing personal data for behavioural advertising and other personalized services in contravention of its transparency obligations under the General Data Protection Regulation.

The second suggestion relates to the role of competition law and regulation in countering the dominance of Big Tech. Although it is common to use the terms 'antitrust' and 'competition' interchangeably, they are not the same. They have different aims. Competition is about industrial organization. Unlike competition policy, for antitrust, the sheer size of a

company (market concentration and even the presence of a monopoly) is not by definition a problem. For antitrust, issues arise when a big company abuses its market power and strives to maintain its significant or monopolistic market position, as discussed. Furthermore, industrial organization and competition law and regulation become particularly vexed in mergers and acquisitions. Their approval and the concomitant greater market consolidation may well serve industrial policy aims, in particular the creation of national or regional (e.g., European) champions. In other words, industrial policy considerations and nationalist sentiments may favour and tolerate market concentration in the name of digital sovereignty (Couture & Toupin, 2019).

Setting aside such industrial policy considerations, the answer to Big Tech dominance is not simply a matter of increasing competition, however difficult this has proved. For example, two notable newcomers in recent years have been Parler, the smaller but very popular right-wing social media platform, and TikTok, a hugely successful short-form video sharing platform owned by the Chinese company ByteDance. Although on the face of it these platforms are two potential challengers to parts of the big platforms' business, and in this sense competition has increased, these two market entrants do not offer a real alternative as they rely on the same data extractive business model (Couldry & Meijas, 2019; Deibert, 2020) and they have not addressed socio-political issues such as polarization and mis-/disinformation. Real diversity in the digital space has to nurture market entry of a fundamentally different kind. Initiatives have to look beyond the current ecosystems and empower dynamic market entry that will result in a truly diverse digital space. For some, the very commodification and commercialization of the platforms and the media are not conducive to advancing cultural, social, and political democratic objectives. This position, purported by critical political economists, views systemic weaknesses in the existing for-profit media landscape and questions 'the suitability of market mechanisms for the provision of media services' in the first place (Hardy, 2014, p. 64). To this end, some argue for

noncommercial and public service media alternatives (e.g., Fuchs & Unterberger, 2021; Mosco, 2017; Muldoon, 2022; Pickard, 2017), and digital commons initiatives which emphasize inclusiveness of all stakeholders, participation and equitable access to resources (Dulong de Rosnay & Stadler, 2020).

<a>CONCLUSION

Since the mid-2010s, the question is no longer whether but how to regulate big online platforms. This chapter examined the role of competition law and regulation in effectively enabling, through inaction, the growth of Big Tech and recent efforts to redress this through renewed enforcement efforts, a move towards proactive upfront rules, a rethinking of merger control and, in some cases, new institutional structures too, like the DRCF in Britain. In parallel to these changes concerning competition law and regulation, we see new sectoral (co)regulatory initiatives, as the DSA and codes of practice in the EU. It is therefore clear that competition law and regulation are not *the* solution but *part of the* solution to the serious economic, social and political democratic problems associated with the platform society. Looking ahead, research will need to assess the implementation, enforcement and effectiveness of the emergent governance of online platforms in order to feed back into the policy process. Research must also focus on how policy and regulatory developments in the EU and the USA, and other key jurisdictions, may shape developments beyond their borders.

Beyond assessing the evolving policy and regulatory framework, we need to have a debate about the society we want to live. Discussions so far have tended to concentrate on the present, admittedly very pressing, issues that Big Tech raises. We need a much more fundamental debate about the future direction of our digital society. What kind of society do we envisage in a couple of decades from now? Fighting Big Tech dominance is not enough. We need a broader vision of where we are heading towards, and positive measures to facilitate the journey. To this end, the chapter suggested that issues around data demand

greater prominence in such a debate, especially as machine learning and other artificial intelligence tools are on the rise, as do new imaginaries of the digital society, which can include public service and digital commons initiatives. In effect, the rethinking of competition law and regulation and emergent governance of Big Tech is just the start of this journey.

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Notes

[1] The aim of this section is not to provide an exhaustive list and discussion of competition investigations. Rather it examines a few representative cases in order to highlight some points that will help the reader appreciate the importance, limitations and challenges of competition law and regulation in digital markets.