



OPEN MARKETS OUTLOOK

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Are we heading towards Chinese style corporate control, ask US anti-trust campaigners?



OVERVIEW

- This newsletter is being published at a time of rising concern about monopolies, oligopolies and over-concentration of market power - with political concern rising in the European Commission and in Washington.
- We believe that this worry is likely to be repeated in the UK in the run-up to Brexit, as UK politicians begin to focus on the concentration of power represented by the tech giants.
- We want to inform people who, for various different reasons, are interested or nervous about the new Open Markets agenda, following the rising influence of organisations like the new Open Markets Institute in the USA. We do so with in sympathy with the anti-trust campaigners, but from the point of view of business.
- We are committed to free and open markets because we believe that this is the best environment for business to thrive and to innovate, and that over-concentration of market power is as big a threat to business as too much government regulation.
- We plan to keep our readers informed on a regular basis about the news and reports emerging on this agenda and, by doing so, to build up a picture of an important emerging trend.

TOWARDS A CHINESE-STYLE OBEDIENCE RATING?

“A licence to do pretty much what they want with American citizens...”?

There has been some dismay among anti-trust activists in the USA at the Supreme Court decision in the [Ohio v. American Express](#) case. The court was divided with one justice (Stephen Breyer) reading out his own dissent from the bench, which is an unusual move. Barry Lynn of the Open Markets Institute wrote in the [Financial Times](#) that the decision “provides platform monopolists like Amazon and Google with a license to do pretty much whatever they want to America’s citizens, in our capacity as producers of goods, ideas, and work”.

Matt Stoller, writing in [Buzzfeed](#), claimed that the decision would allow US tech companies to build the kind of data employed for the Chinese ‘social credit score’, which allows obedient citizens to buy property or travel.

He also linked it with two others: the rejection of the US government’s attempt to block the controversial takeover by AT&T of Time Warner and the FCC decision to end regulations that prevent internet providers from discriminating between different forms of data flowing through their networks.

Does the direction of Big Tech lead to a Chinese-style ‘social credit score’?

“The result is an unprecedented ability by a few private corporations to manipulate how news and information flows from citizen to citizen in America, hence to manipulate us,” writes Stoller.

The American Express case allows the company to prevent merchants avoiding their higher fees by educating their customers about why they lead to higher prices. They come at a time when Uber has revealed that they are experimenting with a new app that judges people’s ‘willingness to pay’ and charges them accordingly, rather than equally according to how far they want to go.

Federal judges appear to have been influenced by the realization that companies like AT&T need to gear up to compete with other corporate behemoths like Google.

UK THINK TANK THREATENS GOOGLE

Internet giants such as Facebook and Google must end anti-competitive practices or face sanctions including being broken up, says the UK think tank ResPublica. It warns that the practice of buying up potential competitors is one of many problems in the technology sector that is harming innovation, creating a market controlled by a few large firms and is leading to higher consumer prices.

Its new report [Technopoly](#) and what to do about it: *Reform, Redress and Regulation*, written with support from former *Observer* editor Will Hutton's Big Innovation Centre, calls for a radical overhaul of current regulation, which it says is unfit for purpose, incentivises bad behaviour and has failed to address ethical questions around Big Data and its use.

"The weakened capacity of insurgents to be the lode-bearers of the new..."

"Digitalisation and the new world of Big Data are already conferring vast benefits," says the report. "Not such good news are the new threats that digitisation poses to competition and the weakened capacity of insurgents to be lode-bearers of the new. Investment in patents, copyrights and computerised systems has become a new form of intellectual capitalism. The company that gains first mover advantage (with the creation of the fastest growing network of digital users) is the company on the way to establishing a monopoly position, which can be further entrenched – as monopolies have always been – by buttressing that position through making its services as distinctive and non-reproducible as possible. If unconstrained by competitive alternatives, there is a danger that these companies can eliminate all potential competition through acquisition strategies."

What the Technopoly report says:

- Consumer choice and innovation should be the new norm, not just consumer welfare
- Competition law needs to stop privileging big business and focus on the benefits of small businesses and market structure
- Regulators should strip the wrongdoer of their profits for their wrongdoing
- Social media is media, and should be regulated in the same way as traditional media
- Current UK inaction on merger controls is unsustainable

Can some algorithms be anti-competitive in their actions?

FRANCO-GERMAN PROJECT LAUNCHED ON ALGORITHMS

The French Autorité de la concurrence and the German Bundeskartellamt have launched a [joint project](#) on algorithms and their implications on competition.

Algorithms are becoming more important and at the same time progressively sophisticated. Prominent applications include real-time functionalities within digital services, for instance for matching and ranking purposes, as well as dynamic price setting. The increasing use of algorithms by companies is an issue of considerable debate about their effects on the competitive functioning of markets and to a wider extent on society.

The new project will analyze the challenges raised by algorithms and at identifying conceptual approaches to meet them. At the end of the project, the authorities are going to publish a joint working paper.

Isabelle de Silva, President of the Autorité de la concurrence, and Andreas Mundt, President of the Bundeskartellamt said: “Algorithms carry adverse effects on competition. In the context of strategic interactions, they might facilitate collusion and assist in the implementation of cartels. Furthermore, there might be interdependencies between algorithms and the market power of the companies that make use of them. This can lead to additional barriers to market entry.”

REGULATE BIG TECH LIKE BANKS?

Financial Times columnist Rana Foroohar has [proposed](#) a new version of the famous Sherman Antitrust Act from the 1890s, based on banking regulation today, which would control big tech on the grounds of being 'too big to fail', and aware that the services provided by Google and others to ordinary life would cause a serious social and economic breakdown if they were to close.

Are Google and Amazon now too big to fail?

She also warned that the size of Big Tech companies was forcing their smaller competitors to consolidate too, as they are via the AT&T merger with Time Warner, Disney's bid for 21st Century Fox and T-Mobile's proposed merger with Sprint. She also blamed the Obama administration for failing to understand what was happening:

“It is also worth remembering that antitrust has always been political,” she wrote. “The AT&T and Time Warner merger, which displeased many liberals, was in many ways the result of the fact that the Obama administration was captured by Big Tech. Google practically set up camp in the White House, with a revolving door that makes the longstanding Goldman Sachs/Treasury shuffle look relatively minor by comparison.

“The history of antitrust law enforcement shows that successful antitrust prosecutions have often strengthened and brought vitality to extremely large companies and businesses...”

Robert Kennedy

“That is one reason the administration missed the rise of data markets and the way they would reshape the economy. The result is likely to be a raft of mergers that may give legacy players a few more years to duke it out against Amazon or Google, but will not do much to help consumers – or citizens.”

About Radix

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