


# Big Tech, Concentration of Power, and New Approaches to Antitrust

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ECONOMICS  
AND BUSINESS



# Big Tech – Big Data – Democracy



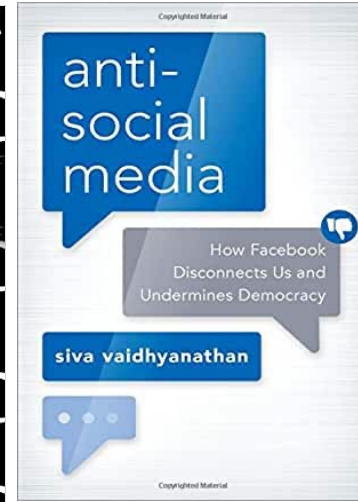
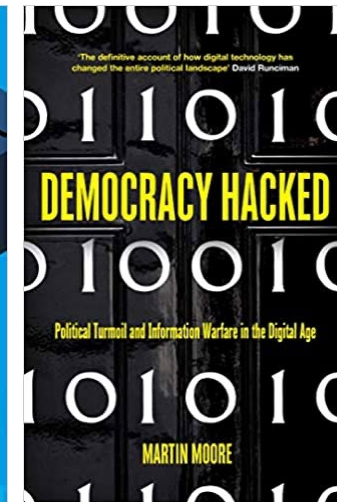
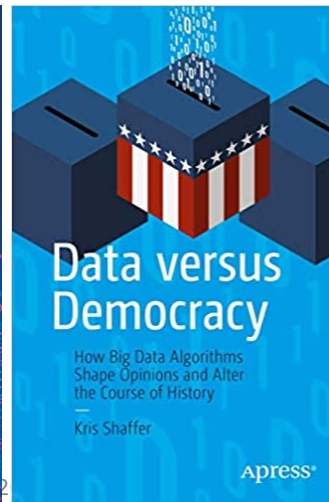
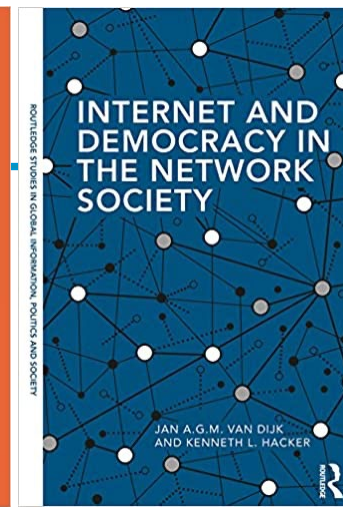
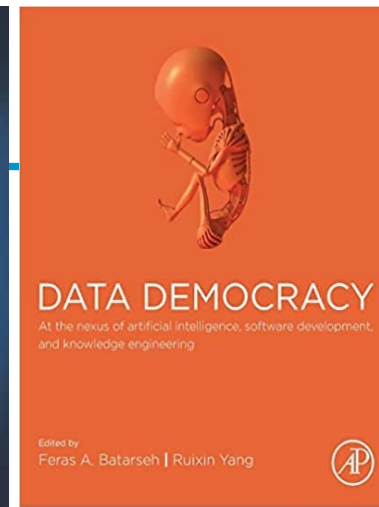
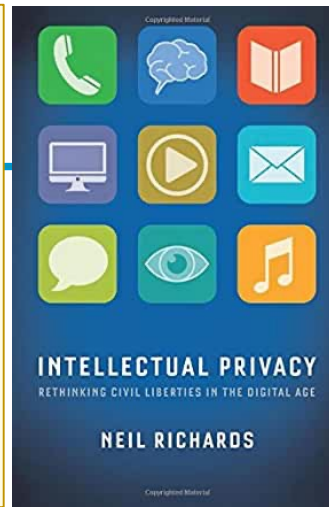
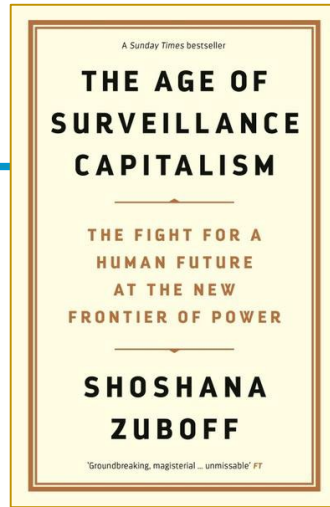
- Rise of big data, big analytics, AI → shift in competition dynamics
- Yesterday's concern vs today's concern
  - No direct threat to monetary prices, innovation
  - Instead: attack on 'open, liberal and democratic society' (Karl Popper 1945)
    - Values such as free elections, free press, free speech, economic freedom
    - "Democracy-related harm"



Democracy



Data



# A Short Look at Political Microtargeting



- The mechanisms of online behavioural/targeted advertising
- Political microtargeting




Democracy




Data

# Issues at Stake



 **Donald J. Trump** ✓  
@realDonaldTrump

There is NO WAY (ZERO!) that Mail-In Ballots will be anything less than substantially fraudulent. Mail boxes will be robbed, ballots will be forged & even illegally printed out & fraudulently signed. The Governor of California is sending Ballots to millions of people, anyone.....

 Get the facts about mail-in ballots


2:17 PM · May 26, 2020 · Twitter for iPhone

## The Guardian

### Zoom admits cutting off activists' accounts in obedience to China

Meetings on Tiananmen Square massacre and Hong Kong crisis were taken down because of government complaint

**Helen Davidson and Lily Kuo**  
Fri 12 Jun 2020 10:20 BST



Hong Kong pro-democracy activist Lee Cheuk-Yan gives the 'less' hand sign. Zoom has admitted it disrupted activists' meetings with the Chinese government. Photograph: Kin Cheung/AP

Zoom has admitted it suspended the accounts of human rights activists at Chinese government and suggested it will block any further meetings that are illegal.

## The Guardian

### Hong Kong protests: Apple pulls tracking app after China criticism


Creators of HKmap.Live accused Apple of 'political decision to suppress freedom' in Hong Kong



The HKmap.Live app has been withdrawn by Apple from its App Store, drawing criticism in Hong Kong. Photograph: Tyrone Siu/Reuters

**Erin Hale in Hong Kong**  
Thu 10 Oct 2019 08:10 BST

Apple has pulled an app that tracked the movements of Hong Kong police through crowdsourced data, after it became the latest company to be put under pressure by China this week.



### Data-driven campaigns

By knowing your electorate better, we achieve greater influence while lowering overall costs.

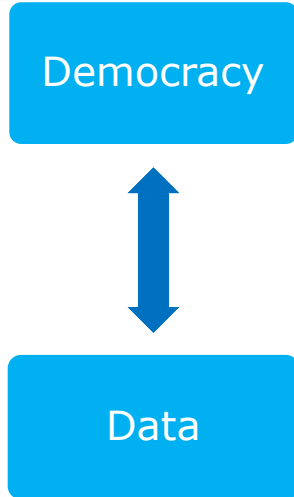
Source: <https://cambridgeanalytica.org> (visited 11 July 2018; no longer live)

Source: <https://www.theguardian.com/world/2019/oct/10/hong-kong-protests-apple-pulls-tracking-app-after-china-criticism> (last visited 27 May 2020)

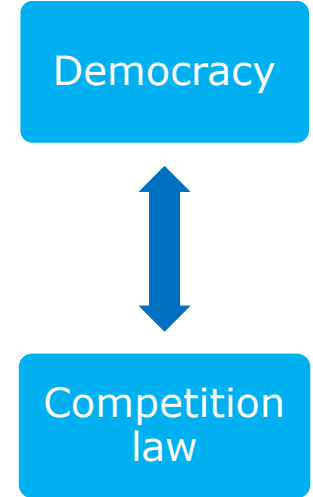
Democracy

Data





- This is a *problem*.
  - Seamless transition from economic prowess to political power
  - Not a new issue, but:
    - Potential magnitude *is* new
    - Personal user data and digital platforms and their ecosystems as a game-changer
  
- Is this a *competition law problem*?



# What is Competition or Antitrust Law?

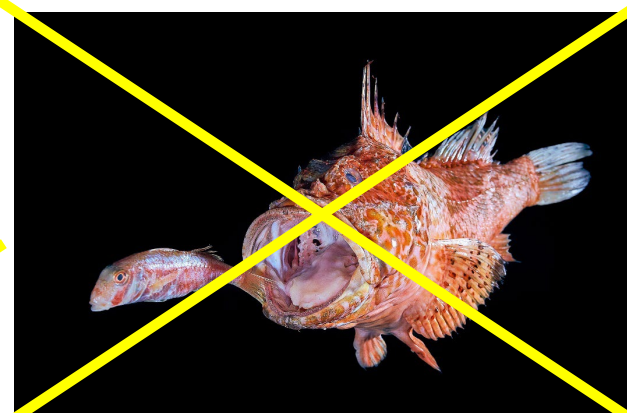
- **Competition law** → more competitive markets



Abuse of dominance /  
monopolization

Competition law

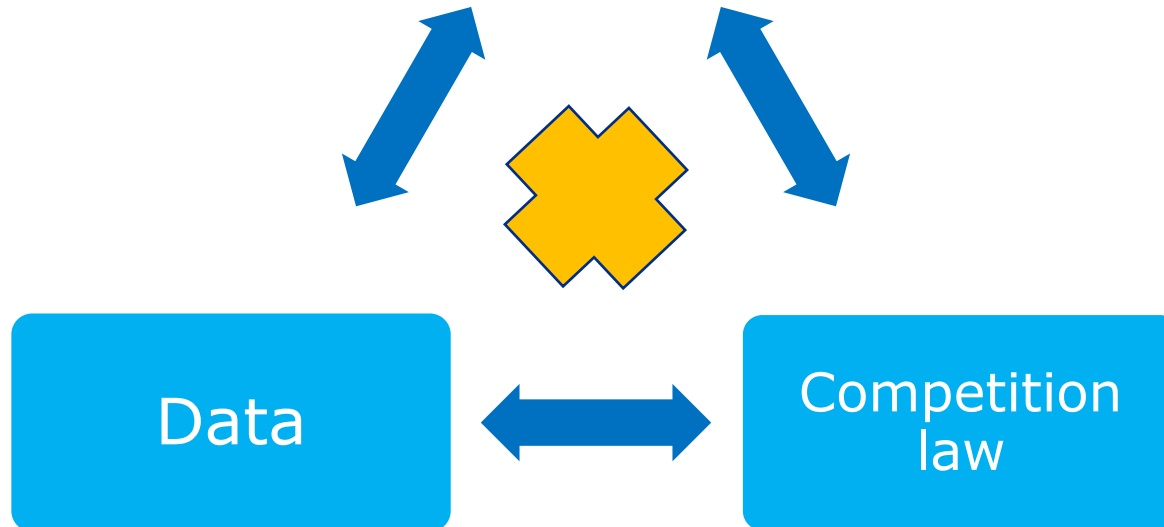
Anti-competitive  
agreements



Merger control

Pictures: pixabay.com

Democracy





# The Democratic Origins of US Antitrust



Democracy

Competition law



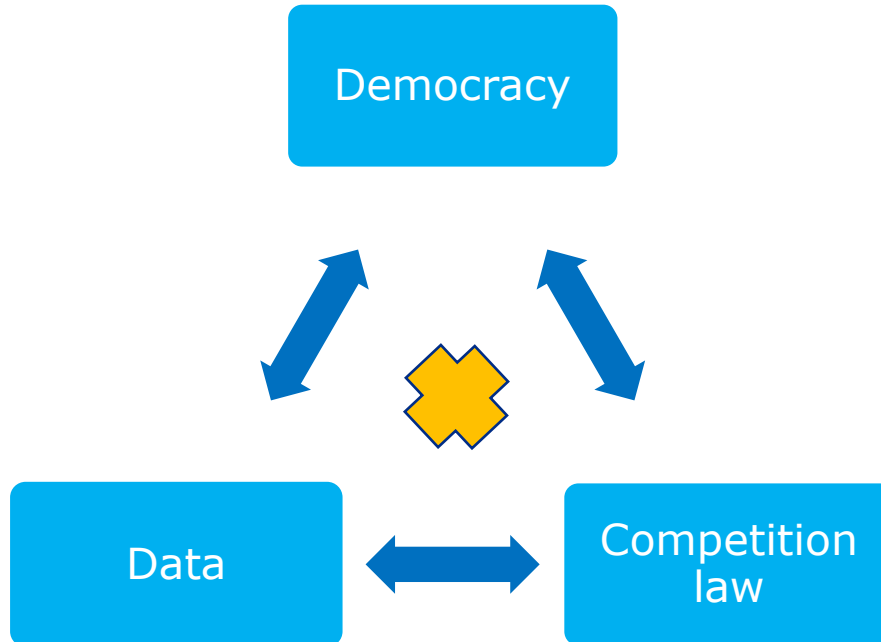
- Ordoliberalism: 'democracy as the normative underpinning of competition law' (Deutscher and Makris 2016)
- Articles 2 and 3 TEU: democracy as EU's foundation (incl internal market – Protocol No 27 to TFEU)
- Article 11(2) EU Charter: protecting media freedom and pluralism
- CJEU emphasises the competitive structure of the market

Democracy



Competition law





- (1) What is **democracy's place** within competition law in our digital times?
- (2) Is **democracy-related harm** a necessary extension of existing theories of competitive harm in data-driven digital markets?
- (3) How could democracy-related harm be incorporated into the **analytical framework** of competition law?

# (1) Digital Reports on Competition Law: Demo-what?



**Unlocking digital competition**  
Report of the Digital Competition Expert Panel

March 2019

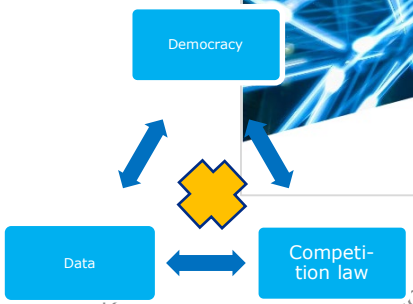
**Competition policy for the digital era**

A report by  
Jacques Crémer  
Yves-Alexandre de Montjoye  
Heike Schweitzer

**CHICAGO BOOTH** **Stigler Center**  
for the Study of the Economy and the State

**Stigler Committee on Digital Platforms**

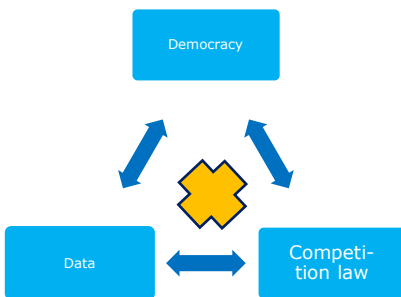
**Final Report**



## (2) Democracy-Related Harm



- Microtargeting of voters
- Restriction of available information (filter bubbles)
- Selection of news items by digital assistants
- Prevention of freedom of assembly based on geolocation data
- Ranking of content based on expected advertising revenue rather than on informational content
- Algorithm-based censorship
- Undermining of civic rights through facial recognition
- Pro-democracy apps barred from platforms
- Censorship of political content / fact-checking
- Spreading mis- / disinformation (fake news)
- Facilitation of filter bubbles and microtargeting through mergers and data concentration
- ...



# (3) Democracy in Competition Law

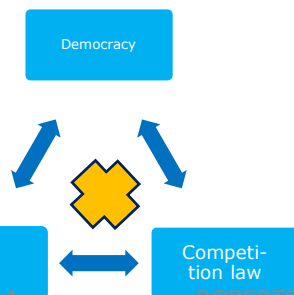


## Procedural aspects

- Procedural rights, fundamental rights
- Rule of law
- Judicial review
- Independent competition authorities

## Substantive aspects

- Dispersing economic power as a democratic act  
*or*
- Democracy-based theories of harm as a competition law infringement

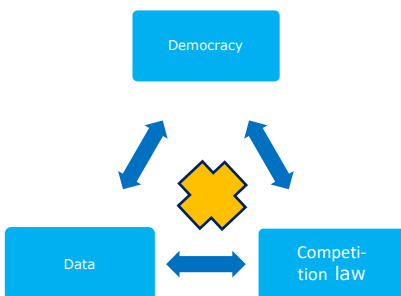


# (3) Democracy in Competition Law



## Substantive aspects

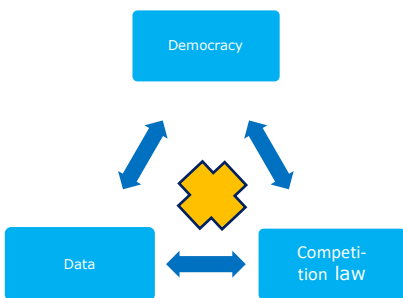
- Agreements → between platforms (eg, social media, online search) and content providers
- Companies with market power → behaviour caught out under democracy-related harm
  - Self-preferencing (see *Google Shopping*)
  - Biased algorithms
  - Fake news
- Mergers → scrutiny with eye on democratic values
  - Eg, Art 21(4) EUMR: one-stop shop, but media plurality as a legitimate interest that allows MS to deviate from the EUMR
  - Eg, media mergers in Austrian merger control (§§ 8, 13 KartG)
  - Extend to social media?



# (A-)Political Antitrust



- There is no apolitical, 'pure' competition law system (Ezrachi and Stucke 2018; Witt 2019)
- This is *not* a new question – but data-driven practices give it a new dimension (Gerbrandy 2019)
- Democracy-related harm has the potential to be included in analytical framework of competition law, but: respect the limits





# Mapping future research on democracy-related harm for antitrust purposes



1. **Foundations** → historical and comparative perspective (US, EU, ...)
  - Political roots of competition law
  - Democratic and other political considerations in antitrust analysis
  - Implications of historical roots for today's application of competition law
2. **Exploring new territory** → adding digital markets to the mix
  - Digital platforms, digital ecosystems, data-driven markets → implications for (updated) democratic considerations in antitrust?
  - How we can define democracy-related harm from a competition law point of view in our digital era?
3. **Applying new insights** → updating antitrust analysis
  - Is competition law a good starting point? Cooperation with which other areas of the law is possible/necessary?
  - How can these insights be applied in antitrust enforcement? Are there any institutions well-placed to enforce antitrust that incorporates democratic considerations? Is this even possible?
  - What possible remedies does competition law have – or which types of remedies should be developed – in order to counter such democracy-related harm in data-driven markets?




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Article

## Antitrust, Big Tech, and Democracy: A Research Agenda

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### Abstract

In the twenty-first century, voter choice and the broader political debate are within the reach of those that can access and channel the vast streams of user data that are generated online. How digital platforms utilize personal user data to influence the outcome of democratic processes has become a central issue that liberal democracies must confront. The paper explores whether competition law has a role to play when it comes to addressing this intersection of Big Tech, data, and democracy. It first sets out the democratic roots of competition or antitrust law in the United States and the European Union. From these, the paper deduces that competition law cannot remain inactive when it comes to maintaining a democratic society in the face of the abilities of Big Tech to influence democratic processes and outcomes. The paper then goes a step further and asks what role competition law could play in this regard. Should democratic values simply be reflected in the procedural set-up of antitrust law, or is there a role for democratic values in check suffice provisions as well? And if so, does antitrust law's focus on keeping market power in check suffice to fulfill its role in a democratic society, or does this role require the law to specifically target antidemocratic market behavior as anticompetitive harm? In navigating these questions, the paper contributes to the ongoing debate on political antitrust and sets out an ambitious research agenda on how to carry this discussion forward.

### Keywords

antitrust