

ANTITRUST IN THE AGE OF BIG TECH

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“IT’S ABOUT POWER”- MOSHE VARDI 7/3/2023

A man's "present means, to obtain some future apparent good"
(Hobbes, Leviathan, Ch. 10).

Force

Authority (delegated, religious, traditional)

Coercion

Fear of coercion/reputational harm

Rewards (material, status, connection)

Wealth/resources

Expertise (knowledge, authority)

Information

Media/belief creation/dissemination

Social currency

Tradition

Personal or group charisma

Persuasion (including ideology, religious/moral persuasion)

Governing Power

When private, nonpublic entities take over governing roles.

Private regulation (Tyson (Merck); FB and privacy)

Domination via lobbying (\$100 million big tech/trade associations) and entanglement (revolving door) and expertise

Domination via threat (too big to fail, national champion)

Media control (FB/Google) (30%/25% in US)

Price setting and term setting (eg Amazon enters market; wages decline)

Rule of law incompatible with private governing power

Anti-monopoly goals: Freedom, equality, stability, fair prices, fair wages.

Mid-19c—Rise of general incorporation. Early corporate charters were highly limited, w general incorporation enabling coordination (and limited liability), growth of early industrial antimonopoly movement.

Late 19 early 20th —Modern antimonopoly statutory structure. Interstate Commerce Act, Sherman Act, Clayton Act, FTC Act, Campaign Finance Laws. Monopoly is central debate (4 visions) (state planning, state/government planning, decentralization, regulated competition).

1930s— New Deal solution = regulated competition for stable, open, free society. Post-war Germany: antimonopoly as anti-fascist.

1940s-1970s—Stable, aggressive enforcement.

1970s- 1980s Revolution: Goals change to efficiency/price. Consumer welfare standard.

1980-2008—left right bargain (Left—consumerism/ Right—all business activities presumptively efficient)

2008—Crash and seeds of revival of antimonopoly

2010s—Europe starts reviving competition (big tech)

2022—Biden says experiment failed, new direction. Democracy, freedom, labor, equality, plural goals.

ANTIMONOPOLY TOOLS

The set of laws designed to stop the amassing of *private* governing power

Mergers and divestiture

- Review and block mergers
- Breakups (Standard Oil, AT&T)

Behavioral constraints/Unfair business practices, eg

- Price fixing
- Predatory pricing (domestic antidumping)
- Tying (requiring use of one business line to use other)(Microsoft)

Nondiscrimination

- ICC banning railroads from different prices for different farmers
- Federal agriculture law/Robinson-Patman
- Public Utilities

Became weak when repurposed only for efficiency/low prices.

DEMOCRATIC EROSION

500,000 global mergers 2010-2020.

Mergers increasingly data-elements (Bayer-Monsanto, Amazon/Whole Foods/Dow Dupont (data merger), Google/WhatsApp)

Democratic erosion via monopolies

- Direct regulation by private governing bodies
- Control via fragility (too big to fail)
- Control via fear (big tech's ability to disappear critics, Hachette)
- Lobbying, campaign finance
- Radical media concentration (Facebook—extracts rents from journalists, and creates fear)
- Inequality (extraction)
- Rational paranoia and culture of economic fear
- Erosion of the public via extreme personalization (no public sphere).
- Nonprofit “stakeholder” capture
- Coordination without conversation (Eg Campaigns v outside spending)

AI & MONOPOLY ISSUES

- 1) Concentration and power in emergent AI
 - 1) Google, Microsoft/OpenAI/ Amazon, Meta (Open oligopoly-club of companies with market power)
 - 2) Massive upfront costs – billions/massive data needs
 - 3) Conflicts of interest and exclusive deals
 - 4) Using “expertise” to control policy
 - 5) Pleading existential threat as reason for antitrust exemptions (duty to assist, eg)
 - 6) Entrenching already unacceptable big tech power

- 2) Most extreme centralization of (a) information and (b) dissemination power in world history

- 3) AI as rule of law subversion/ untraceable evasion of existing law)
 - EG Price fixing, other forms of collusion
 - Power seeking (unlike algorithms)

- 4) AI as engine for surveillance (problematic in itself, increases power asymmetry)

EG—SMART FARMS

5) AI as mode of increasing existing corporate power (eg grain traders, machinery, distribution, banks, farmers)

30,000 grain farmers sell to ADM.

Farmers use precision ag tools for soil testing, spraying, planting and harvesting.

Manufacturers of soil testing tools gather data via satellite.

Spraying applicators track what chemicals used at what rate, and on what crop.

Planting is tracked, acreage, where and when.

Harvesters have embedded technology tracking yield and quality.

= Power realignment as between each counterparty, as between farmer and ADM, as between farmer and LLM system owner.

PROPOSALS

General: The threat is the oligarchy; the threat is not solved by the oligarchy
Reject big AI as expert “partners” in creating global governance.
Antitrust doesn’t replace public regulation/prohibitions, it makes it possible.
Private Right of Action. Liability.

Mergers and divestiture

Block mergers (data synergies creating power)

Divest conflicts of interest (ownership of search and AI=conflict)

Unfair business practices

Strengthen laws and enforcement on exclusive dealing, price fixing, tying

Shared Agent/Pricing

Deception

Nondiscrimination

- Aggressive nondiscrimination rules for pricing and or/content
(Limit AI ability to leverage power to build power and extract)

CONCLUSION

The screenshot shows a web browser window displaying a Business Insider article. The browser's address bar shows the URL: [businessinsider.com/meta-quest-vr-headsets-china-despite-mark-zuckerberg-criticisms-wsj-2023-7](https://www.businessinsider.com/meta-quest-vr-headsets-china-despite-mark-zuckerberg-criticisms-wsj-2023-7). The Business Insider logo is visible at the top of the page. The article title is "Mark Zuckerberg reportedly wants to follow in Elon Musk and Tim Cook's footsteps, and sell products in China — but his past criticisms of China could haunt him". The author is Aaron Mok, and the article was published on July 3, 2023, at 1:58 PM EDT. The main image shows Mark Zuckerberg smiling and talking to another man in a suit. There is also a small advertisement for Adobe on the right side of the article.