



OPEN MARKETS OUTLOOK

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Captain Marvel goes flying with Peter Pan and Mary Poppins?

Will Disney go the way of Big Tech?



WHAT IF DISNEY BROUGHT ALL THEIR PURCHASES TOGETHER IN ONE BIG EXTRAVAGANZA?

A small earthquake is taking place among those who - like my children do - follow the issues around Marvel Films on social media (that means Iron Man, Spiderman, Captain America, Captain Marvel, and all points in between).

What worries the fans is that Disney now owns the rights to both Marvel and the Star Wars universe, which might - horror! - tempt them into bringing them together in one big extravaganza. Disney has form on this, as anyone who has been following their irritating run of nostalgic superhero films will know (think *Guardians of the Galaxy*).

Disney is a company that both suffers under the yoke of monopoly from Google, but which - in its own rather smaller world - has managed to become at least a middle-sized monster, seeking whom it will devour. Including Marvel and Lucasfilms,

And although we know that Disney executives will be cheering on the law makers as they begin to break up the great American data behemoths, their own regulation will probably follow on from that event.

Which means that, if Iron Man is to meet Skywalker or C3PO - difficult to imagine how but not impossible - they will need to get on with it.

My own advice to Disney is that they also own the rights to Mary Poppins,

who might be prepared to fly alongside Captain Marvel. Not to mention Winnie-the-Pooh and Peter Pan (who can also fly). If they are really clever, they might be able to undermine the memories of the fans of all five genres at once.

AUSSIE RULES FACEBOOK ROW – IT ISN'T OVER YET!

Don't be fooled by the fact that peace has apparently broken out in Oz...

Traffic to the Australian news websites fell by 20 per cent after Facebook blocked Australian news outlets from posting their stories to its platform.¹ They also blocked regular users in that country from sharing news from any media outlet anywhere in the world.

This move was in response to a new law that requires big platforms to pay for every news article carried on their networks, something that both Facebook and Google objected to.

To critics of the company, including some members of the Australian government, the move was another sign Facebook has too much power and needs to be regulated.²

Australia's pressure on Google and Facebook, and the resulting settlement with other countries trying to repeat Australia's measures. Canada has said it is interested in pursuing legislation similar to that proposed by Australia, and legislators in the European Union seem excited about the code and its ability to squeeze the platforms.³

EU TO BRING ANTI-TRUST CHARGES AGAINST APPLE

Spotify and Epic set to take on Apple in the EU

The EU is set to bring anti-trust charges against Apple for the first time, putting more pressure on it to change the way it runs its App Store.⁴ They will act on a complaint brought two years ago by the music streaming site Spotify, which said Apple was taking a 30 per cent cut of its subscription fees for featuring it in the App Store and denying it the right to tell its users that other ways of upgrading were available.

Spotify also complained that Apple Music was able to undercut it on price because it did not have to pay the same 30 per cent fee. More recently, Epic Games, the maker of Fortnite, had its game thrown off Apple's App Store after it started directing players to its own payment system.

Epic has also filed a competition complaint against Apple in the EU. Apple's suite of digital services – which include music and video, cloud storage, games and a growing range of other add-ons – is now Apple's second-largest source of revenue after the iPhone, bringing in \$15.8bn in sales in the three months to December.

**‘Complaints that Apple is using its market position to set terms which are unfair or may restrict competition and choice ... warrant careful scrutiny.’
CMA**

...AND IN THE UK TOO!

The UK’s Competition and Markets Authority (CMA) has also announced an anti-trust inquiry into whether Apple abuses its dominance on the App Store by imposing unfair terms on developers.⁵

“Complaints that Apple is using its market position to set terms which are unfair or may restrict competition and choice – potentially causing customers to lose out when buying and using apps – warrant careful scrutiny,” said CMA chief executive Andrea Coscelli.

Regulators believe that Apple’s practices may prevent people from accessing greater choice and lower prices. Apple has tried to head off regulatory pressure and appease its developers by announcing in November that it would halve the charges it places on in-app purchases for smaller developers.

FATE OF DEMOCRACY AT STAKE, SAYS WU

‘The road to fascism and dictatorship is paved with failures of economic policy to serve the needs of the general public.’ Wu

Tim Wu, a Columbia law professor who just became one of US president Joe Biden’s top antitrust advisors, thinks it’s time to crack down on the Big Tech.⁶ He believes that the fate of democracy is at stake.

“The road to fascism and dictatorship is paved with failures of economic policy to serve the needs of the general public,” Wu wrote in *The Curse of Bigness*, a book released in 2018 laying out his anti-trust argument.

Rather than focus on consumer welfare and low prices as decades of monopoly theory has insisted, Wu argues that regulators should think more broadly about creating an economy that allows small shops and democratic government to thrive.

Wu’s philosophy is part of an ascendent school of anti-trust theory originating in the writings of former Supreme Court justice Louis Brandeis, who saw anti-monopoly protections as a crucial check on the power of private industry during the early 20th-century.

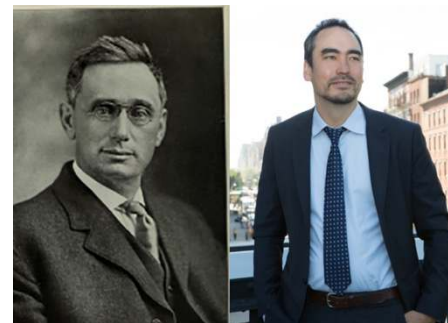
“The broad tenor of antitrust enforcement should be animated by a concern that too much concentrated economic power will translate into too much political power,” Wu writes, “and thereby threaten the constitutional structure.”

Wu wants to break up Big Tech firms like Facebook, creating stricter merger review rules, and unleashing enforcement agencies to launch a slew of investigations and lawsuits that will dissuade dominant companies from

“When these laws were written, the monopolists were men named Rockefeller and Carnegie. Today the men are named Zuckerberg, Cook, Pichai and Bezos...”

bullying competitors. Taken together, his prescriptions amount to nothing less than a fundamental overhaul of contemporary American anti-trust doctrine.

Wu is part of a broader movement rethinking the US approach to anti-trust enforcement. The group – sometimes referred to as the Columbia School, transformationalists, or the rather unwieldy “Neo-Brandeisians” – also includes Lina Khan, another Columbia law professor who earned much academic and media attention for her paper on *Amazon’s Antitrust Paradox*.⁷



Bradeis and Wu

THREE WAYS FORWARD?

In his book *The Curse of Bigness*, Wu lays out three major prescriptions for reforming antitrust enforcement, which he will soon be in a position to advocate for from his seat on the US National Economic Council (NEC).

1. **Overhauling merger review.** Wu critiques the current application of the consumer welfare standard, which tends to hinge on highly technical economic models that attempt to determine how consumer prices may change as the result of a merger.
2. **More big cases.** Wu argues the Justice Department and the FTC should be encouraged to launch more hulking, multi-year lawsuits, like the 2000s Microsoft case and the investigation that ended in AT&T’s breakup in 1984.
3. **A new form of investigation.** Wu thinks the USA should follow the UK’s example of using market investigations, which allow regulators to look at an entire sector that appears to be harming consumers through its concentration.

BIDEN TRIES TO STOP SUPPLY SHORTAGES

Joe Biden has signed an executive order to shield the USA from supply shortages of critical imported components and build a resilient domestic supply chain.⁸

The order begins a year-long investigation into critical but vulnerable sectors like semiconductors, high-capacity batteries, pharmaceuticals, and critical metals.

Supply chain risk – we can all suffer from it...

At the same time, a bipartisan group of senators revived a bill that would direct the administration to create an interagency task force to track and respond to Chinese government efforts to control what US corporations say and do.⁹

The Washington-based Open Markets Institute was the first to warn of both of these risks, beginning with the article "Unmade in America" in *Harper's* in July 2002.¹⁰ In the years since, the Open Markets team has devoted a large portion of their time to understanding the nature and magnitude of the threats posed by such supply chain bottlenecks.

ACTION IN THE USA AND UK AT LAST

All in the same week – chicken, internet and taxis all see the start of monopoly action.

Pilgrim's Pride, a poultry producer owned by Brazilian meatpacking giant JBS, will have to pay a \$107.9 million fine after pleading guilty to price-fixing. Pilgrim's pride conspired to fix poultry prices between 2012 to 2019. The company's price-fixing scheme is estimated to have had an effect on \$361 million of broiler chicken products.¹¹

Telecommunications providers have had their request denied to delay California's planned enforcement of net neutrality laws. The US District Court for the Eastern District of California denied an injunction that would have stopped the law, passed in 2018, from going into effect. The law prevents internet service providers from paid prioritization, zero-rating of content, and requires speed and data transparency.¹²

In a unanimous decision, the UK Supreme Court has dismissed an appeal from Uber that argued its drivers were independent contractors not entitled to basic employment rights, such as pensions, minimum wage, and other rights. The court ruled that Uber drivers were workers because of the company's control in setting the terms of their work.

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