



OPEN MARKETS OUTLOOK

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THE FIRST MONOPOLISTS FAILED SO SHOULD THEIR SUCCESSORS

We hope you are well and safe, wherever you are – and far from Covid-19. This edition was written before the word ‘coronavirus’ was on everyone’s lips. But there are implications of government support for failing companies which may not be entirely welcome to those of us who are interested in antitrust.

Whatever those implications are, we will be ready to report them and discuss them in the issues of OPEN MARKETS OUTLOOK that follow...

THE LAST TIME WE WILL MENTION COLUMBUS, CABOT OR AMAZON IN THIS ISSUE, WE HEREBY PROMISE

Columbus and Cabot, the very first of the attempted modern monopolists?

In the year 1483, or thereabouts, the pioneer navigators Christopher Columbus and John Cabot met in Italy and came up with a plan to corner the market on the new westerly route to China which they separately had decided is waiting their discovery.¹

They did this using an innovative new technique – a contract with any European monarch who was capable of giving them and enforcing their right to charge a percentage on every trading voyage using the route.

If this plan had succeeded, separately or together, it would have made them the richest people in the world history. The Columbus family’s court case against the Spanish government, making huge financial claims, was finally dismissed two centuries later. It was probably better for the global economy that they failed. It would have been a terrible drag on efficiency, effectiveness and innovation if they had won their case.

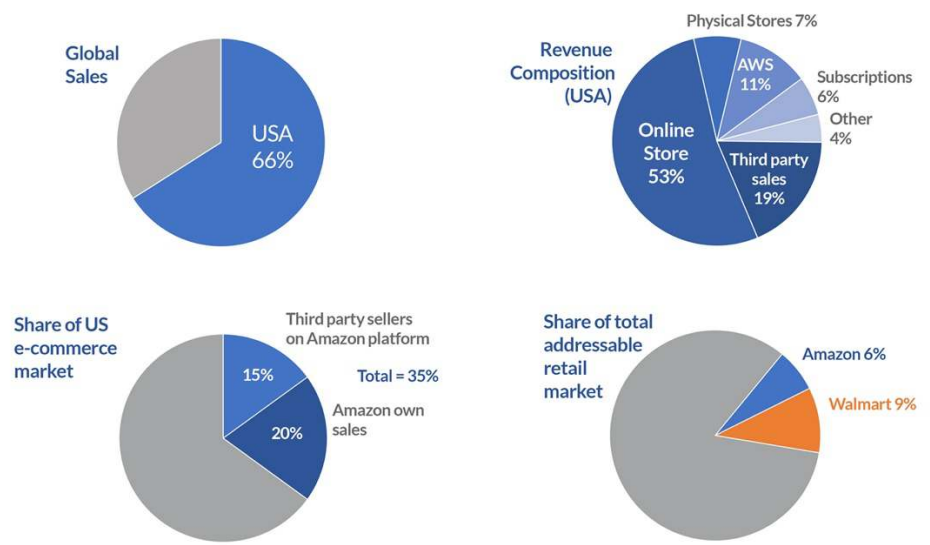
Does Amazon really fit into the same mould?

So when one of our readers suggested gently that we spend less time worrying about Amazon, we thought of Columbus and Cabot. Yet it is also true that, because of its contacts in the USA, this newsletter has given more coverage to anti-trust campaigns against Amazon than perhaps it should have done.

On the one hand, Amazon has changed business altogether. It survived the dot-com bust in 2000 by being far more efficient than anybody else the field. They remain so today. On the other hand, they clearly aspire to a Columbus-like grip was on world trade by siphoning off a percentage of every purchase.

Whether Amazon can succeed in this will depend on barriers to entry, and to achieving global success, in an online world.

AMAZON BY THE NUMBERS



Source: RADIX based on Benedict Evans analysis, December 2019 (<https://www.ben-evans.com/benedictevans/2019/12/amazons-market-share19>)

Amazon is still very far from the dominance that Columbus and Cabot tried to achieve

First of all, 66% of Amazon sales are in the USA. Its presence in other markets is smaller. In some markets (eg. The Netherlands) it is only a recent entrant still with near zero market share. In China, other online giants dominate. Its presence is therefore still far from what Columbus and Cabot tried to achieve – dominance of all world trade routes.

There are two linked arguments that blame Amazon for their monopolistic threat.

First is that this efficiency and low prices will not be able to survive any kind of hold over the market.

The second argument is not really in the classic tradition of anti-trust campaigning. It is that, because of their very different business model, their

The high streets argument is a different question altogether...

local taxes are minimal compared to their high street competitors – which is a threat to the centres of our towns and cities.

... it represents the usual failure of public policy to keep up with a rapidly changing world

This is true but is not an argument about monopoly. It is quite right that we should not confuse the two. There are more worrying monopolistic holds emerging over our lives from tech companies like Google.

And neither is it an argument exclusive to Amazon. This asymmetry is a function of a world that was rapidly moving online even before the COVID-19 lockdowns. It is the usual failure of public policy to be able to adapt quickly enough to a changing world.

The other complication is that Amazon now has only a very small proportion of the consumer retail market so it is hard for competition authorities, who are not allowed to intervene on the basis that someone might *one day* gain a monopoly position. The only place where they have become truly dominant is book sales – a small part of the market.

However, it is true that, in the US, Amazon has somewhere of the order of a 35% share of *online* purchases. As always in anti-trust debates, it boils down to how one chooses to define the market – a subject that spawns endless debates and continuous employment opportunities for economists and lawyers.

In other words, it is complicated. Which is the reason why this is the last time we will mention Amazon in this issue.

DEMOCRATS AND FEDS MAKING SILICON VALLEY NERVOUS

Checking up on the big tech companies to ferret out anti-competitive behaviour

The race for the Democrat presidential nomination in the USA is making Silicon Valley nervous, as arguments for breaking up the world's largest tech companies gain traction among the field of candidates.²

Both Bernie Sanders and his fellow progressive Elizabeth Warren (who has now dropped out of the race but remains politically influential) have called for a break-up of America's largest technology companies. Joe Biden has also been looking at aggressive measures to curtail the power of the biggest companies.

Also, last month, the US Federal Trade Commission, which enforces competition laws, said it would review every takeover by a large technology company of a smaller start-up in the past decade to see whether they had displayed anti-competitive behaviour.³

For decades, regulators had resisted taking action against companies on competition grounds unless consumers were being harmed through rising prices. But for the past few years, a small group of academics close to Elizabeth Warren has argued that large technology companies are causing damage in other ways, such as by killing off smaller competitors and eroding data privacy.

The new orders by the FTC are designed to deepen its understanding of large technology firms' acquisition activity, including how these firms report their transactions to the federal antitrust agencies, and whether large tech companies are making potentially anticompetitive acquisitions of nascent or potential competitors that fall below HSR filing thresholds and therefore do not need to be reported to the antitrust agencies.

"Competition is dying. Consolidation and concentration are on the rise in sector after sector. Concentration threatens our markets, threatens our economy, and threatens our democracy."

Senator Elizabeth Warren, 2016

OLD AND NEW APPROACHES CLASH AT THE EU

Blocking the Siemens-Alstom merger risks a backlash against the Vestager approach

The finance ministers of France, Germany, Italy and Poland have written to the EU antitrust commissioner Margrethe Vestager urging her to get on with reforming competition rules to promote Europe's corporate champions against China and the USA.⁴

It follows her decision to block the rail merger between Germany's Siemens and Alstom of France, a merger that both Paris and Berlin had believed was necessary to compete against state-sponsored companies such as China's CRRC, the world's biggest train manufacturer.



Since then Vestager has initiated a review of ways regulators define markets to allow for global competition. The letter asks her for a timeline to come up with recommendations on the market definition for EU mergers. The European Commission, the executive body of the EU, should "adopt a work

plan in the forthcoming weeks with practical proposals and rules to address these specific challenges”, they wrote.

Brussels should “evaluate and modernise” the Commission’s guidelines on ways to assess mergers in the same sector. They also want a “competition toolbox more efficient and effective in tackling potentially abusive behaviour in the single market of economic actors from outside the EU, including state-backed or subsidised companies”.

Creating 'European Champions' is in conflict with building an industrial base through competition

The move underlines how much potential conflict there might be between the traditional European policy of building up European champions and Vestager’s new methods of enforcing anti-trust at home. The UK was an important voice in favour of what she was doing, but has now Brexited from the EU.

It was actually the UK price comparison service Foundem whose complaint triggered the EU case against Google, which led to a €2.4 billion fine from Vestager.⁵ The world’s most popular internet search engine then offered to allow competitors to bid for advertising space at the top of a search page, giving them the chance to compete on equal terms.

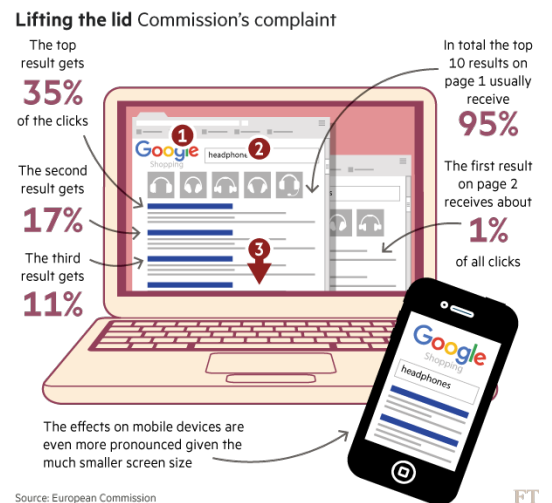


Image credit: Financial Times

Foundem believes the company is not complying with the EU ruling and wants Vestager to launch a non-compliance case.

EUROPE SETS OUT ITS STRATEGY FOR DATA

Big tech companies will have to open up their data to smaller rivals

Big tech companies will have to open up their data to smaller rivals, as other sectors such as financial services already do, says the European Commission.⁶

In a document setting out a “European strategy for data”, the commission said it would explore “the need for legislative action” to push companies towards sharing and pooling data. In areas where there has been market failure, it said access to data “should be made compulsory [...] under fair, transparent, reasonable, proportionate and/or non-discriminatory conditions”.⁷

The commission said that tech companies were able to build huge advantages by guarding their data, while banks or car companies were already required to

allow third parties to access information about customers. “The high degree of market power resulting from the ‘data advantage’ can enable large players to set the rules on the platform and unilaterally impose conditions for access and use of data,” it said.

Germany’s government also wants to clampdown on anti-competitive behaviour by digital platforms. Their draft “digital law” will strengthen the intervention powers of Germany’s competition watchdog, the Federal Cartel Office.⁸

Peter Altmaier, the economy minister, said the measures would “toughen control of abusive practices for big market-dominating digital companies”.

Other governments are also thinking of ways to limit the economic and social power of the tech giants and the potential threats they pose to competition, privacy and civil liberties. The German bill would make it easier for the cartel office to know whether companies dominate a particular market. The agency would then be able to prohibit such platforms from “self-preferencing”, or giving preferential treatment to their own products or services.

Platforms would also be banned from stopping users from transferring personal information collected by digital companies to other online services. Any platform will have engaged in “abusive” behaviour if it denies other companies access to the data it has collected on them.

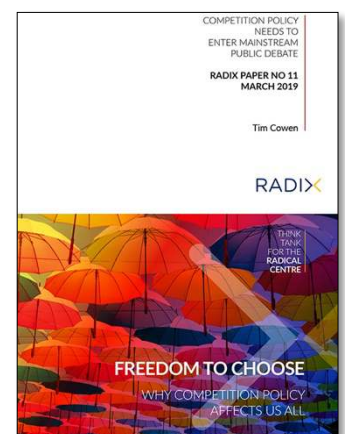
Will the EU force big tech to give us ownership rights over our own data?

“There is no other jurisdiction that has proposed such a far-reaching tool for taming the digital giants.”

Rupprecht Podszun, head of the Institute for Competition Law
Heinrich Heine University, Düsseldorf.

The EU competition commissioner Margrethe Vestager has also called for the burden of proof in antitrust cases to be put on the big tech companies themselves. Meanwhile the UK government wants a regulator to police the technology sector, after a review led by Jason Furman, chief economic adviser to former US president Barack Obama, which recommended a dedicated regulator.

The RADIX report *Freedom to Choose*, by Tim Cowen, looked at the inadequacy of using rising prices for evaluating monopoly in a world where we don't pay money for services, but we pay by surrendering our data.⁹



T-Mobile and Sprint win their case for merger in New York courtroom

SPRINT MEGA-MERGER MARKS SETBACK FOR ANTITRUST CAMPAIGNS

A New York district court judge has backed T-Mobile's merger with Sprint.

This is a setback for antitrust campaigners in the USA, and looks set to concentrate the national wireless market and to encourage corporations seeking dominance through mergers and acquisitions.

"The Obama administration said no to consolidation that would reduce the number of national wireless carriers to just three," said Sandeep Vaheesan, legal director of the Washington-based think tank Open Markets. "The Trump administration and now Judge Marrero have rejected this policy and permitted even greater concentration in wireless. Today's decision underscores the need for bright-line rules that deter harmful consolidation and channel business strategy toward product improvement and investment in new capacity."

Open Markets says that the judge's decision subverts the Clayton Act, the principal federal anti-merger statute - and that his ruling permits otherwise illegal mergers if the merging corporations can establish productive efficiencies or show that one of the corporations is a "weakened competitor".

They say the Supreme Court had rejected these defences because they are contrary to the text and purpose of the Clayton Act.

"We call on the State attorneys general to take a stand and appeal this decision to the Second Circuit.

It is critical they send a strong message to all corporations that consolidation in highly concentrated markets will not be tolerated and that the law will be upheld"

Sandeep Vaheesan

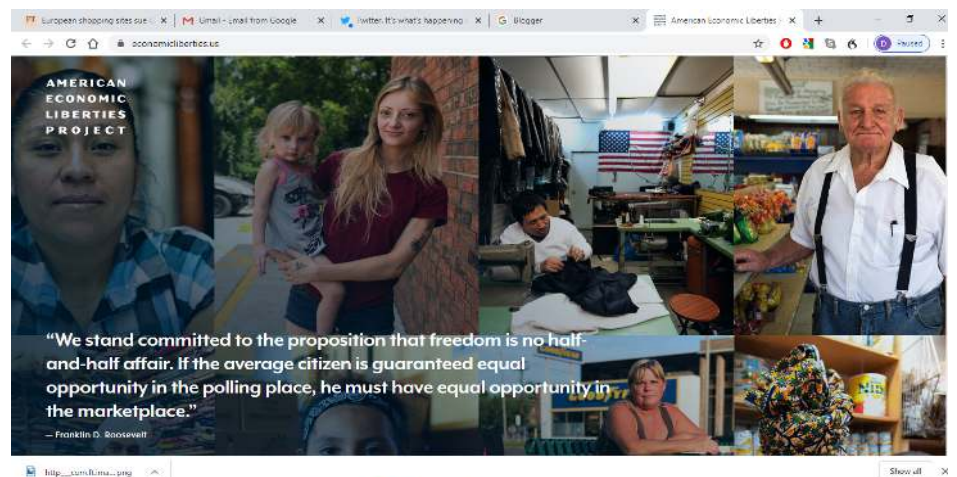
NEW CAMPAIGN LAUNCH FOR ECONOMIC LIBERTIES

A new antitrust campaign has launched in Washington building on the work of the Open Markets thinktank. The [American Economic Liberties Project](#) is led by Sarah Miller, who was previously the deputy director of the Open Markets Institute.¹⁰

“Ironically, it was a Google search for ‘monopolies in America’ that first led me to the work of Barry Lynn and the rest of the Open Markets team,” said Sarah, the subject of a recent *New York Times* feature.¹¹

“Barry taught us the history and intricacies of the dead language of anti-monopoly that has come roaring back to prominence because of the work of the Open Markets Institute. I’m so grateful for the education I received at Open Markets and for the opportunity to help advance what has unmistakably grown into a broader movement.”

(Below) The website of the American Economic Liberties Project, which positions their anti-trust campaign as the pioneering free-traders did a century and a half ago – about equal access to the market.



About Radix

Radix is a non-aligned think tank for the radical centre of contemporary public policy. Its aim is to re-imagine the way government, institutions and societies function based on open-source, participative citizenship. To kick-start the thinking that is needed for politics to embrace technology, innovation, social and cultural change.

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REFERENCES

- ¹ See David Boyle (2008), *Toward the Setting Sun*, New York.
- ² https://www.ft.com/content/acfceb66-4695-11ea-ae2-9ddbdc86190d?accessToken=zwAAAXBjyQegkdOs_OtmRpUR6tOu4p3b3IYZDQ.MEYCIQDaksiuV4GnvLDYCIgVnbo8iFzWMB5AqUxtpOzhXCUJUgIhAMD0c3Ca9RXO1mSEftRr84UJsGS_RfLm9n-QaJ--IQS5&sharetype=gif?token=6714c4df-7927-4855-821b-163d428af28e
- ³ https://www.ft.com/content/cd3b40e6-48c3-11ea-aeb3-955839e06441?accessToken=zwAAAXBYXD2IkdPNO0DmSMMR6tOus5VY0eBkQQ.MEYCIQCtVVL8SZbs4uqQfCyuTnDCggIL-Xh8Q88r1sopVMFrYwIhAKpFbZJ_TZ7GnlpiqtSN-3Kx6dd6ZmUEqO7_7F6yxt6y&sharetype=gif?token=eae8c328-a60a-4019-9e3e-c0a71addef83
- ⁴ <https://uk.reuters.com/article/uk-eu-alphabet-antitrust/eus-vestager-says-googles-antitrust-proposal-not-helping-shopping-rivals-idUKKBN1XH2OZ>
- ⁵ https://www.ft.com/content/a5c7b640-526c-11ea-8841-482eed0038b1?accessToken=zwAAAXBjvB7wkdOlx7ZAUmwR6tOIQUgu7QA4sQ.MEQCIHSPARx16Z0DuzSNogCxCz7wVvVvkhMWfpyCBQgQE1ZAiBmT7C7pfiQfTkE9Pn8K7XUkNZqc_gwfiAz4p3RmY46RA&sharetype=gif?token=9d576db8-ab25-4b2f-9281-87d4a0b7a154
- ⁶ https://ec.europa.eu/info/sites/info/files/communication-european-strategy-data-19feb2020_en.pdf
- ⁷ https://www.ft.com/content/39559796-4698-11ea-ae2-9ddbdc86190d?accessToken=zwAAAXBYDz4kc85VZeWRpgR6tOu4p3b3IYZDQ.MEUCIFI7sa0ggRMNJ1EvkiQrVxsBGDPwezJGQqqq635Wdv_AiEA_eJMINLgA4uNRfU8yrJ9jEyALsNIWnGYX5Wf57hjGKk&sharetype=gif?token=4849453f-40d7-486e-812b-8749e2adaa5b
- ⁸ https://radixuk.org/wp-content/uploads/2019/08/Freedom-to-Choose-Report-June-2019_EMAIL.pdf
- ⁹ <https://www.economicliberties.us/>
- ¹⁰ <https://www.nytimes.com/2020/02/11/technology/big-tech-antitrust.html>