

Bigness as Power

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Classical forms of market power

- **Monopoly** (horizontal market power; natural monopolies “essential facilities”)
- **Vertical integration**
- **Conglomerate market power** - often less obvious and less prone to regulation (diversifies, multi-industry; active in related markets; “portfolio-power”)

Harms of corporate power

- Diversity
- Democracy // Notions of federalism
- Fairness
- Killing off of small and local business
- Control of people's environments (their choices, their ways of interacting, the information they receive, options they have, “church on Sunday dilemma” / “Buchpreisbindung”)
- Equality and wealth distribution (Piketty&Saez)
- Externalities and risks (*there are no true externalities because there no longer is an outside to put them*)

Antitrust - regulating market power

- **Prohibition of collusion** (price fixing)
- **Prohibition of abuse of dominance** / monopolization
- **Merger control**: *Significant Impediment to Effective Competition (EU) // Significant Lessening of Competition (USA)* (softer, more flexible and more economic criterion than avoiding dominance)

Why conglomerates?

1950-1970 (conglomerate merger mania: the rise of companies like General Electric, General Motors, Procter & Gamble, 75% of Fortune 500 companies)

- Loophole in Antitrust (Celler-Kefauver Act of 1950)
- Portfolio Power: Risk diversification and leverage
- Deep Pockets / Employment / Management
(consulting firms developed strategies that radically reduced what top management had to know about business units)
- Tax advantage / Political Power
- Policy & Politics: seen as efficient by the **Chicago School**
(counterfactuals to theories of harm - *leverage, predatory pricing, reciprocity*)

Rise of the Chi' School

- Early Supreme Court rulings clearly reflect the ideas promoted by the **Harvard School**. *Brown Shoe Co. v. United States* reads: „But we cannot fail to recognize congress' desire to promote competition through the protection of viable, small, locally owned businesses. Congress appreciated that occasional higher costs and prices might result from the maintenance of fragmented industries and markets. It resolved these competing considerations in favor of decentralization.”
- This changed in the 1970's when the **Chicago School** became dominant and quite influential in all antitrust discussion. „A powerful storm swept through antitrust law during the 1970s. Precedent after precedent was limited or overturned. Now the skies have cleared and the landscape has changed. In every direction, the new world of antitrust looks remarkably like the south side of Chicago.“
- Followed by the Reagan Administration of the 1980's, which advocated ideas such as that: „there is nothing written in the sky that says that the world would not be a perfectly satisfactory place if there were only 100 companies. “

Conglomerates disappeared

1980 - late 2008

- New Antitrust rules (1914 Clayton Act; 1961 Brown Shoe; Procter & Gamble - all mergers treated equally -
- Economic mistrust
- No evidence that this type of corporation structure was feasible in the long run

Re-emergence of Conglomerates

- Digital Conglomerates: GAFMA
- Why?
- Efficiencies and Theories of Harm?
- Does the same analysis still apply
- How and why to reign them in (Antitrust, regulation, industrial warfare or data protection)

Why?

- **Because they can:** Power and human drives
- **Extreme (almost illogical) *fear of disruption*** (Schumpeterian Economics)
- Leverage; Portfolio; Deep Pockets
- Network Effects and **DATA**
the constant struggle to gain, expand and retain such access to current and potential customers is a hallmark of competition in this data- driven digital era
- Innovation; Extreme employment competition
- Economies of Scope and Scale
- Compete for **attention** and ***against non-consumption*** (multi-sided markets)

Is their power dangerous/ illegitimate?

- Are they just giving consumers what they want, what they think they want or what they are told/ programmed to want?
UNBRIDLED CAPITALISM DOESNT NECESSARILY PRODUCE WHAT PEOPLE NEED, IT PRODUCES WHAT THEY THINK THEY NEED AND WHAT THEY ARE WILLING TO PAY FOR - AKLERHOF AND SHILLER
- Coerced raids on *privacy, fears and data*?
- **Bigness** and **political power** a problem as such
- Changing **society** and what it mean to be human in a **non-democratic** way?
- FA v Hayek “*Pretence of Knowledge*”

Antitrust perspective

- *Shapiro*: „Those calling for more monopolization cases must describe the specific conduct that concerns them and explain how that conduct disrupts the competitive process and harms customers. Simply saying that Amazon has grown like a weed, charges very low prices, and has driven many smaller retailers out of business is not sufficient.“
- Need to show harms to (actual or potential) competition

Theories of harm

- Creation of Foreclosure Effect or Entrenchment of Market Power and Market Barriers by:
 - Cross-subsidization
 - Predation
 - Leverage
- Cases: *Google Shopping; Facebook_WhatsApp; Microsoft_LinkedIn; Microsoft tying*

Difficulty with Antitrust

- Complexity and absurdity of market definitions
- Proof and evidence for theories of harm
- Problems in particular proving likelihood of innovation (Schumpeter & 5 Nobel Winners)
- No clear Antitrust policy: no return to Chicago or Harvard School; vague notions borrowed from Behavioural Economics; lack of a normative imperative
- 102: non-flexible understanding of dominance as power in just one market...

Alternatives

- Regulate
- Nationalize // State funded alternative
- Data Protection // Data as regulated essential facilities
- Nuanced understanding of Human Behaviour
- Ethics
- More public interest research in public-private partnerships (NASA&Musk; Cambridge)