

ANTITRUST POLICY TOWARD INTERMEDIARIES: DIGITAL PLATFORMS AND “BIG TECH”



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The article considers U.S. and EU antitrust policies regarding intermediaries with digital platforms. The article examines antitrust concerns about “Big Tech.” The discussion emphasizes the need to apply advances in the Economics of Markets and Platforms in developing these antitrust policies.

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I. INTRODUCTION

The United States and the European Union are developing major antitrust policies targeting digital platforms with a focus on “Big Tech.” The U.S. Congress is considering the *American Innovation and Choice Online Act* (“AICO”) (S.2992) and the *Open App Markets Act* (S.2710).² The EU approved a provisional version of the *Digital Markets Act* (“DMA”).³ These antitrust policies are likely to have significant effects on competition and innovation in digital platforms. These antitrust policies also could have far-reaching consequences for economic growth and development.

Antitrust policies should not be aimed at companies simply because they are both “Big” and “Tech.” Antitrust enforcement in the U.S. has long emphasized anticompetitive conduct rather than market power or market share. Antitrust enforcement in the EU involves greater scrutiny of large firms but their conduct must exhibit “abuse of a dominant position.”⁴ Targeting companies based on their size and technology risks mischaracterizing both competitive strategies and anticompetitive conduct. Such antitrust policies could penalize innovation competition and yet miss monopolization and exclusionary activities.

Antitrust policies toward “Big Tech” should apply economic analysis to address innovation and competition. In this article, I argue that antitrust policy toward digital platforms and “Big Tech” can benefit from advances in the Economics of Markets and Platforms.⁵

Antitrust policy faces two main challenges. First, “Big Tech” firms are economic intermediaries that own and manage digital platforms. Economic intermediaries are central to the economy because they create and operate markets. The Economics of Markets and Platforms can help policy makers distinguish competitive strategies from anticompetitive conduct.

Second, “Big Tech” firms engage in innovative competition by introducing transaction innovations. Transaction innovations improve the efficiency of economic transactions and foster new types of markets. To address innovation competition, I observe that antitrust policy should consider advances in the Economics of Technology & Innovation.⁶

I began to study the economics of intermediaries in the early 1990s.⁷ My motivation was to better understand how markets worked. I noted that the textbook frameworks of perfect competition and imperfect competition did not offer satisfactory explanations for how markets form or how markets operate.

The perfect competition framework does not specify how an economy achieves market-clearing prices and outputs. This framework assumes that buyers and sellers take prices as given whether in a single market (partial equilibrium) or across multiple markets (general equilibrium). But, if buyers and sellers are price takers, how do markets attain an equilibrium? Market clearing then would require a force outside the market such as a hypothetical auctioneer.

The imperfect competition framework addresses price adjustment but does not offer a comprehensive description of how markets form. In the imperfect competition framework, firms with market power choose prices, with buyers continuing to take prices as given. This framework emphasized pricing decisions of producers without examining transaction costs or market formation.

In considering these issues, I observed that intermediary firms solve these problems in most markets. I found that intermediary firms contribute between a quarter to a third of the total value generated by the U.S. economy.⁸ Intermediary firms create markets by bringing buyers and sellers

2 See Eric Cortellessa, *The Strange Coalition in Congress Poised to Score a Major Win Against Big Tech*, May 31, 2022, *Time*, <https://time.com/6182329/the-strange-coalition-in-congress-poised-to-score-a-major-win-against-big-tech/>.

3 Deal on Digital Markets Act: EU Rules To Ensure Fair Competition and More Choice for Users, March 24, 2022, <https://www.europarl.europa.eu/news/en/press-room/20220315IPR25504/deal-on-digital-markets-act-ensuring-fair-competition-and-more-choice-for-users>, Accessed June 4, 2022.

4 Judgment of the Court of 13 February 1979, *Hoffmann-La Roche & Co. AG v Commission of the European Communities*, Dominant position, Case 85/76, European Court Reports 1979 -00461, at 497. (“for Article 86 to apply there must be a connexion between the dominant position and the conduct of the undertaking concerned; the conduct complained of must spring from the undertaking’s strength and must only be possible by reason of its dominant position.”)

5 Daniel F. Spulber, *The Economics of Markets and Platforms*, 2019, *Journal of Economics & Management Strategy*, 28(1), 159–172, <https://doi.org/10.1111/jems.12290>.

6 For a discussion and overview of these issues, see Daniel F. Spulber, *Antitrust and Innovation Competition*, 2022, *Journal of Antitrust Enforcement*, forthcoming, <https://academic.oup.com/antitrust/advance-article/doi/10.1093/jaenfo/jnac013/6593929>.

7 Daniel F. Spulber, 1996, *Market Microstructure and Intermediation*, *Journal of Economic Perspectives*, 10, 135-152.

8 Spulber, 1996, *id.*

together. Intermediary firms act as market makers and match makers.⁹ Intermediary firms communicate with buyers and sellers, handle the details of transactions, and help adjust market prices.¹⁰ The activities of intermediary firms help explain how markets are formed and how markets operate.¹¹

Intermediary firms also drive technological change in market transactions. Intermediary firms create transaction innovations that improve the efficiency of markets. Intermediaries introduce new types of transaction methods and improve the efficiency of transactions. Entrepreneurs embody innovations in startups and new firms.¹² What I have termed the “Business Revolution” involves innovations in transaction methods, e-commerce, and digital platforms.¹³

Firms that create and operate digital platforms, including “Big Tech,” generally are intermediaries. This suggests that antitrust policy toward “Big Tech” should preserve the benefits provided by intermediaries, while also addressing problems caused by anticompetitive conduct. Antitrust policy toward intermediaries should be designed to protect innovation competition, while deterring conduct that impedes innovation.

In this article, I consider some aspects of the Economics of Markets and Platforms that shed some light on these significant policy developments. I offer an economic definition of intermediaries and discuss some of the economic literature. I offer some observations about identifying competitive and anticompetitive conduct in the digital economy.

II. THE ECONOMICS OF MARKETS AND PLATFORMS

From the earliest merchants to mass marketers, intermediaries have played important roles in the economy. Despite their historic significance, the economic functions of intermediaries have long been misunderstood. The emergence of digital platforms and eCommerce have clarified the economic contributions of intermediaries as never before.

The Bureau of Economic Analysis (“BEA”) reports that the digital economy contributed 10.2 percent of U.S. gross domestic product (“GDP”) in 2020.¹⁴ This consisted of infrastructure, e-commerce, and priced digital services. The BEA’s definition of e-commerce includes “digitally-ordered, digitally-delivered, or platform-enabled transactions,” including business-to-business (“B2B”), business-to-consumer (“B2C”), and peer-to-peer (“P2P”).¹⁵

The U.S. Census Bureau found that for 2019, “e-commerce shipments of U.S. manufactures were \$3,887.6 billion,” and “[r]evenue from electronic sources for service industries in the United States was \$1,295.3 billion.”¹⁶ The U.S. Census Bureau also found that in 2019 e-commerce sales were \$578.5 billion for U.S. retailers and \$2,873.1 billion for merchant wholesalers.¹⁷

Formulating antitrust policy toward digital platforms and “Big Tech” requires an economic definition. Elsewhere I introduce a definition of a platform as an economic institution that has five basic elements. (a) A platform has a ‘location’ that can be geographic, virtual, or some hybrid. (b) A platform has ‘sides’ consisting of buyers, sellers, and other groups. (c) A platform has ‘intermediaries’ such as market makers, match makers, and other firms that manage transactions. (d) A platform has ‘transaction technologies’ that handle purchases and sales, contracting, communication, market making, and matching. (e) A platform has ‘coordination mechanisms’ that provide incentives to participate and handle participation decisions by members of the sides of the market.¹⁸

9 Daniel F. Spulber, 1998, *The Market Makers: How Leading Companies Create and Win Markets*, McGraw Hill.

10 Daniel F. Spulber, 1999, *Market Microstructure: Intermediaries and the Theory of the Firm*, Cambridge University Press.

11 Daniel F. Spulber, 2009, *The Theory of the Firm: Microeconomics with Endogenous Entrepreneurs, Firms, Markets, and Organizations*, Cambridge University Press.

12 Daniel F. Spulber, *The Innovative Entrepreneur*, 2014, Cambridge University Press.

13 Daniel F. Spulber, 2011, Should Business Method Inventions be Patentable?, *Journal of Legal Analysis*, 3(1), 265-340.

14 Tina Highfill & Christopher Surfield, 2022. New and Revised Statistics of the U.S. Digital Economy, 2005–2020, May, Bureau of Economic Analysis (“BEA”), <https://www.bea.gov/system/files/2022-05/New%20and%20Revised%20Statistics%20of%20the%20U.S.%20Digital%20Economy%202005-2020.pdf>, accessed June 6, 2022.

15 Kevin Barefoot, Dave Curtis, William Jolliff, Jessica R. Nicholson & Robert Omohundro, Defining and Measuring the Digital Economy Working Paper 3/15/2018, BEA, <https://www.bea.gov/sites/default/files/papers/defining-and-measuring-the-digital-economy.pdf>.

16 <https://www.census.gov/newsroom/press-releases/2021/e-estats-report-electronic-economy.html>, accessed June 6, 2022.

17 U.S. Census Bureau, *id.*

18 Spulber, 2019, *supra* note 6.

Formulating antitrust policy toward intermediaries and digital platforms also requires consistent terminology. Economic discussions of this subject have developed several threads that have a lot in common. These threads are sometimes disconnected from each other, leading to fragmented economic research and potentially inconsistent policy conclusions. To improve the clarity of policy discussions, it is helpful to treat these overlapping analyses in a unified way. The Economics of Markets and Platforms studies these closely related economic institutions. As I explain elsewhere, there are at least ten closely related terms.¹⁹

- Markets
- Platforms
- Intermediaries
- Market makers and match makers
- Market microstructure
- Organized exchanges
- Two-sided and multi-sided markets
- Two-sided and multi-sided networks
- The Sharing economy and Peer-to-Peer (P2P) markets
- Ecosystems

There are many types of intermediaries operating in the economy. Intermediaries have been around long before the rise of digital platforms and “Big Tech.” Characterizing intermediaries is of fundamental importance for economics because it helps in understanding firms, markets, and competition.

Retail intermediaries purchase from manufacturers and wholesalers and sell to households, institutions, and businesses.²⁰ Wholesale intermediaries sell or arrange transactions for merchandise.²¹ Intermediaries also include companies in Finance and Insurance that raise funds, pool risk, or provide services.²²

Intermediaries purchase and resell products and adjust prices for buyers and sellers that balance supply and demand. Intermediaries provide liquidity and immediacy, so that buyers and sellers can find trading partners or transact with the intermediary. Intermediaries match buyers and sellers who then engage in direct transactions of goods and services. Intermediaries manage transactions, keeping track of purchases, sales, and payments. Intermediaries reduce transaction costs as compared to direct exchange by monitoring the quality of goods and services. Intermediaries establish markets and provide incentives for buyers and sellers to participate in exchange.²³

III. ANTITRUST AND INTERMEDIARIES

The new antitrust policies focus on the economic functions of intermediaries. The new policies consider competition and anticompetitive conduct in digital markets. This section examines how the new antitrust policies address intermediary firms and considers some economic issues related to these policies.

A. Antitrust Policies Toward Intermediaries

The AICO Act addresses intermediaries in digital markets. The AICO Act defines an “online platform” as “a website, online or mobile application, operating system, digital assistant, or online service that enables” sharing content, transactions in products and services, and user searches.²⁴

The EU DMA states “[d]igital services in general and online platforms in particular play an increasingly important role in the economy, in particular in the internal market, by enabling businesses to reach users throughout the Union, by facilitating cross-border trade and by open-

¹⁹ Spulber, 2019, *supra* note 6.

²⁰ Bureau of Labor Statistics (BLS), <https://www.bls.gov/iag/tgs/iag44-45.htm>.

²¹ BLS, <https://www.bls.gov/iag/tgs/iag42.htm>.

²² BLS, <https://www.bls.gov/iag/tgs/iag52.htm>.

²³ Andrei Hagiu & Daniel F. Spulber, 2013, First-Party Content and Coordination in Two-Sided Markets, *Management Science*, 59(4), 933-949.

²⁴ https://www.klobuchar.senate.gov/public/_cache/files/b/9/b90b9806-cecf-4796-89fb-561e5322531c/B1F51354E81BEFF3EB96956A7A5E1D6A.sil22713.pdf, at 6, accessed June 4, 2022.

ing entirely new business opportunities to a large number of companies in the Union to the benefit of consumers in the Union.”²⁵ The EU DMA identifies “online intermediation services, online search engines, operating systems, online social networking, video sharing platform services, number-independent interpersonal communication services, cloud computing services, virtual assistants, web browsers and online advertising services, including advertising intermediation services.”²⁶

Policymakers anticipate that these new antitrust policies will make sweeping changes in the marketplace. Senator Amy Klobuchar (D-Minn.) states

American prosperity was built on a foundation of open markets and fair competition, but right now our country faces a monopoly problem, and American consumers, workers, and businesses are paying the price. As dominant digital platforms — some of the biggest companies our world has ever seen — increasingly give preference to their own products and services, we must put policies in place to ensure small businesses and entrepreneurs still have the opportunity to succeed in the digital marketplace. This bill will do just that, while also providing consumers with the benefit of greater choice online.²⁷

Senator John Kennedy (R-La.) says that:

As Big Tech has grown and evolved over the years, our laws have not changed to keep up and ensure these companies are competing fairly. These companies have continued to become a larger part of our everyday lives and the global economy, controlling what we see and how we engage on the internet. Big Tech needs to be held accountable if they behave in a discriminatory manner. Our bill will help create a more even playing field and ensure that small businesses are able to compete with these platforms.²⁸

Andreas Schwab, Member of the European Parliament, stated “The agreement ushers in a new era of tech regulation worldwide. The Digital Markets Act puts an end to the ever-increasing dominance of Big Tech companies.”²⁹ Schwab adds that “[f]rom now on, they must show that they also allow for fair competition on the internet. The new rules will help enforce that basic principle. Europe is thus ensuring more competition, more innovation, and more choice for users.”³⁰

The new antitrust policies in the U.S. appear to target specific companies. The 2020 House Report studies four companies: Amazon, Apple, Facebook, and Google.³¹ The House Report emphasizes that these companies are intermediaries that serve “as gatekeepers over a key channel of distribution.”³² According to the House Report, these companies have three things in common.

First, as gatekeepers, “[t]hey not only wield tremendous power, but they also abuse it by charging exorbitant fees, imposing oppressive contract terms, and extracting valuable data from the people and businesses that rely on them.”³³ Second, using their gatekeeper position, the companies “have surveilled other businesses to identify potential rivals, and have ultimately bought out, copied, or cut off their competitive threats.”³⁴ Third, “these firms have abused their role as intermediaries to further entrench and expand their dominance. Whether through self-preferring, predatory pricing, or exclusionary conduct, the dominant platforms have exploited their power in order to become even more dominant.”³⁵

25 Regulation (EU) 2022/... of the European Parliament and of the Council on Contestable and Fair Markets in the Digital Sector (Digital Markets Act), at 4, <https://www.consilium.europa.eu/media/56086/st08722-xx22.pdf>, Accessed June 4, 2022.

26 Regulation (EU) 2022, *id.* at 13.

27 Kennedy, Klobuchar, Grassley introduce American Innovation and Choice Online Act to rein in Big Tech, October 18, 2021, <https://www.kennedy.senate.gov/public/2021/10/kennedy-klobuchar-grassley-introduce-american-innovation-and-choice-online-act-to-rein-in-big-tech>.

28 *Id.*

29 Deal on Digital Markets Act: EU Rules To Ensure Fair Competition and More Choice for Users, March 24, 2022, <https://www.europarl.europa.eu/news/en/press-room/20220315IPR25504/deal-on-digital-markets-act-ensuring-fair-competition-and-more-choice-for-users>, accessed June 4, 2022.

30 Deal, 2022, *id.*

31 House of Representatives, Subcommittee on Antitrust, Commercial, and Administrative Law of the Committee on the Judiciary, Majority Staff Report and Recommendations, Investigation of Competition in Digital Markets, 2020 (hereafter “House Report”), https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf, accessed June 8, 2022.

32 House Report, at 6.

33 House Report, at 6.

34 House Report, at 6.

35 House Report, at 6.

Reflecting these concerns, the AICO Act addresses various forms of “unlawful conduct” by digital platforms that would “prefer the products, services, or lines of business of the covered platform operator over those of another business user on the covered platform in a manner that would materially harm competition” and “limit the ability of the products, services, or lines of business of another business user to compete on the covered platform relative to the products, services, or lines of business of the covered platform operator in a manner that would materially harm competition.” According to a CNBC report, “[t]hird-party sellers, who account for more than half of Amazon’s retail volume, have in recent years expressed frustration over the costs they pay to stay in good standing, the amount Amazon charges them for ads and Amazon’s inability to rid the marketplace of scams and bad actors.”³⁶

The new antitrust policies also address app stores. The House Report asserts that “the ability for consumers to sideload apps — installing apps without using an app store — does not discipline the dominance of Apple and Google in the mobile app store market. Apple does not permit users to sideload apps on iOS devices, and few consumers have the technical savvy to ‘jailbreak’ an iOS device to sideload apps.”³⁷

The *Open App Markets Act* “prohibits a covered company from (1) requiring developers to use an in-app payment system owned or controlled by the company as a condition of distribution or accessibility, (2) requiring that pricing or conditions of sale be equal to or more favorable on its app store than another app store, or (3) taking punitive action against a developer for using or offering different pricing terms or conditions of sale through another in-app payment system or on another app store.”³⁸

B. Economic Analysis of Antitrust Policy

The Economics of Markets and Platforms provides insights into how intermediaries compete. Antitrust analysis of competition should consider how intermediaries interact on both the buyer and seller sides of the market. Antitrust scrutiny of anticompetitive conduct also should examine intermediaries’ interactions on the buyer and seller sides of the market. Antitrust policy should evaluate competition among digital platforms as well as competition between digital platforms and hybrid and bricks-and-mortar intermediaries.

Defining the relevant market is an important step in antitrust analysis. When firms act as intermediaries, market definitions must be adjusted to reflect the firms’ interactions with both buyers and sellers.³⁹ It is often useful to think about intermediaries as suppliers of transactions. For example, the Supreme Court decision in *Ohio v. American Express* notes that transaction platforms “facilitate a single, simultaneous transaction between participants. For credit cards, the network can sell its services only if a merchant and cardholder both simultaneously choose to use the network.”⁴⁰

Because intermediaries maximize profits, their decisions regarding prices and other transactions on both sides of the market are interconnected.⁴¹ Antitrust tools such as Critical Loss Analysis (“CLA”) can be adapted to two-sided markets.⁴²

In earlier work, I characterized search as the gateway to the Internet. I introduced the concept of the “circular flow of information” to describe intermediation by search firms such as Google.⁴³ I noted that “search firms are intermediaries in the two-sided market consisting of consumers and advertisers. They induce both consumers and advertisers to reveal information through self-selection behavior.” I raised concerns

36 Annie Palmer, Amazon Sellers Reject Efforts by an Executive to Rally Their Opposition to Big Tech Antitrust Bill, June 8, 2022, <https://www.cnbc.com/2022/06/06/amazon-executive-encourages-sellers-to-oppose-antitrust-bill.html>.

37 House Report, at 97.

38 Summary: S.2710 — 117th Congress (2021-2022), <https://www.congress.gov/bill/117th-congress/senate-bill/2710>. (“A covered company may not interfere with legitimate business communications between developers and users, use non-public business information from a third-party app to compete with the app, or unreasonably prefer or rank its own apps (or those of its business partners) over other apps.”)

39 Alexei Alexandrov, George Deltas & Daniel F. Spulber, 2011, Competition and Antitrust in Two-Sided Markets, *Journal of Competition Law and Economics*, 7(4), 775-812, at 775. (“In two-sided markets, firms typically intermediate between buyers and sellers, so that market power measures must reflect firms’ interaction both with buyers and with sellers.”)

40 *Ohio v. American Express Co.*, 585 U. S. ____ (2018)

41 Alexei Alexandrov & Daniel F. Spulber, 2017, Sufficient Decisions in Multi-Sided and Multi-Product Markets, *Journal of Industrial Economics*, 65(4), 739–766.

42 Alexandrov et al., 2011, id. See also Lapo Filistrucchi, Damien Geradin, Eric Van Damme & Pauline Affeldt, 2014, Market definition in Two-Sided Markets: Theory and Practice. *Journal of Competition Law & Economics*, 10(2), 293-339.

43 Daniel F. Spulber, 2009, The Map of Commerce: Internet Search, Competition, and the Circular Flow of Information, *Journal of Competition Law and Economics*, 5(4), 633-682.

that intermediaries could exercise market power to the extent that they could control the “map of commerce.”⁴⁴ This suggested that a “dominant firm with market power in search may adversely affect consumer benefits in the design of its privacy policies.”⁴⁵ Economic efficiency requires that consumers be aware of how search firms and other intermediaries gather and use their personal information.

The new antitrust laws may have adverse effects on innovation and competition because of imprecise concepts and terminology. The American Bar Association Antitrust Law Section expressed concerns about “ambiguous terminology in the [AICO] Bill regarding fairness, preferencing, materiality, and harm to competition on covered platforms.”⁴⁶ The Section recommended that “these definitions direct attention to analysis consistent with antitrust principles: effects-based inquiries concerned with harm to the competitive process.”⁴⁷

The EU DMA identifies some critical aspects of digital markets including economies of scale, network effects, and technology lock-in.⁴⁸ It is not evident that these features of digital platforms call for antitrust intervention. Economies of scale are not confined to online services but are present in most industries. Contestability depends on low barriers to entry not economies of scale. Economies of scale are consistent with contestable markets because competition for the market and potential entry limit the market power of incumbents.⁴⁹

Network effects with intermediaries exist when buyers benefit from greater seller participation and sellers benefit from greater buyer participation. Network effects need not impede competition because they are potentially available to all the firms in the industry. Intermediary firms can benefit from network effects by providing coordination and incentives for buyers and sellers to participate in the market.⁵⁰

Technology lock-in is said to occur if markets get stuck with inferior technologies. There is, however, little if any evidence of lock-in. Rapid technological change in information and communications technology (“ICT”) and in online markets suggest that lock-in is not a problem.⁵¹ Coordination by standards organizations also helps markets choose the best technologies and develops technological specifications so that products interoperate.⁵²

It is not sufficient to simply identify intermediaries as monopolists. There must also be conduct such as monopolization, exclusion, or unfair practices. The DMA maintains that large digital platforms are gatekeepers with significant market power. The DMA recognizes, however, that there must also be limited contestability or unfair practices.⁵³

IV. CONCLUSION

The Economics of Markets and Platforms shows how intermediary firms make the economy work. Intermediary firms create markets, bring together buyers and sellers, and adjust prices to clear markets. The emergence of digital platforms has increased the economic contributions of intermediary firms. Intermediary firms improve economic efficiency through transaction innovations that lower transaction costs and make new types of transactions feasible.

44 Spulber, 2009, *id.*

45 Spulber, 2009, *id.*, at 682.

46 Comments of the American Bar Association (ABA) Antitrust Law Section Regarding the American Innovation and Choice Online Act (S. 2992) Before the 117th Congress, April 27, 2022, https://www.americanbar.org/content/dam/aba/administrative/antitrust_law/at-comments/2022/comments-aico-act.pdf, accessed June 7, 2022.

47 ABA, *id.*

48 EU DMA at 12. (“Weak contestability and unfair practices in the digital sector are more frequent and pronounced for certain digital services than for others. This is the case in particular for widespread and commonly used digital services that mostly directly intermediate between business users and end users and where features such as extreme scale economies, very strong network effects, an ability to connect many business users with many end users through the multisidedness of these services, lock-in effects, a lack of multi-homing or vertical integration are the most prevalent.”)

49 Harold Demsetz, 1968, Why Regulate Utilities?, *Journal of Law and Economics* 11.1, 55-65; William J. Baumol, John C. Panzar & Robert D. Willig, 1982, *Contestable Markets and the Theory of Industry Structure*, Harcourt; Daniel F. Spulber, 1989, *Regulation and Markets*, M.I.T. Press.

50 Daniel F. Spulber, 2008, Consumer Coordination in the Small and in the Large: Implications for Antitrust in Markets with Network Effects, *Journal of Competition Law and Economics*, 4, 207-262,

51 Daniel F. Spulber, 2008, Unlocking Technology: Antitrust and Innovation, *Journal of Competition Law and Economics*, 4(4), 915-966.

52 Daniel F. Spulber, 2019, Standard Setting Organizations and Standard Essential Patents: Voting and Markets, *The Economic Journal*, 129(619), 1477–1509.

53 EU DMA at 12. (“it is necessary to focus only on those digital services that are most broadly used by business users and end users and where concerns about weak contestability and unfair practices by gatekeepers are more apparent and pressing from an internal market perspective.”)

Antitrust policy toward intermediaries must continue to protect competition and preserve incentives for efficiency and innovation. The digital marketplace raises new antitrust issues concerning exclusion, consumer privacy, and usage of data by digital platforms. To promote consumer welfare and economic efficiency, antitrust policy should deter anticompetitive conduct without diminishing the many economic contributions of intermediaries.



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