



Big Digital Tech and the International Application of Competition Law

Robert G. Picard

Reuters Institute
Oxford University

Information Society Project
Yale Law School

Scale of digital activity leads some to believe it is competitive and market governance is sufficient

5.1 billion internet users

4.2 billion active social media users

1.3 billion websites worldwide

3.2 million apps available on Google
Play

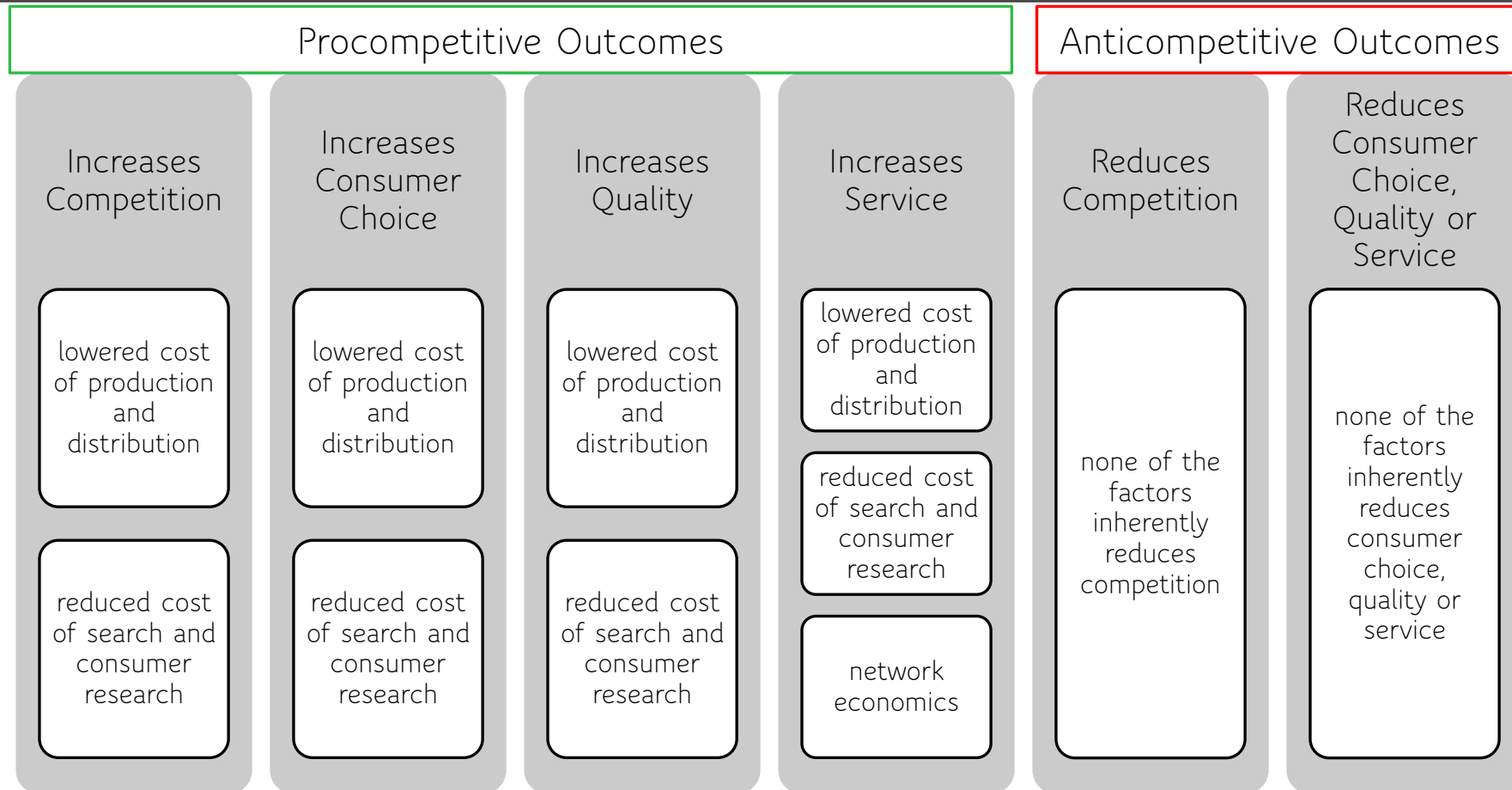
Nothing in Digital Economics Creates the Anticompetitive Situation

3 major economic factors in digital operation

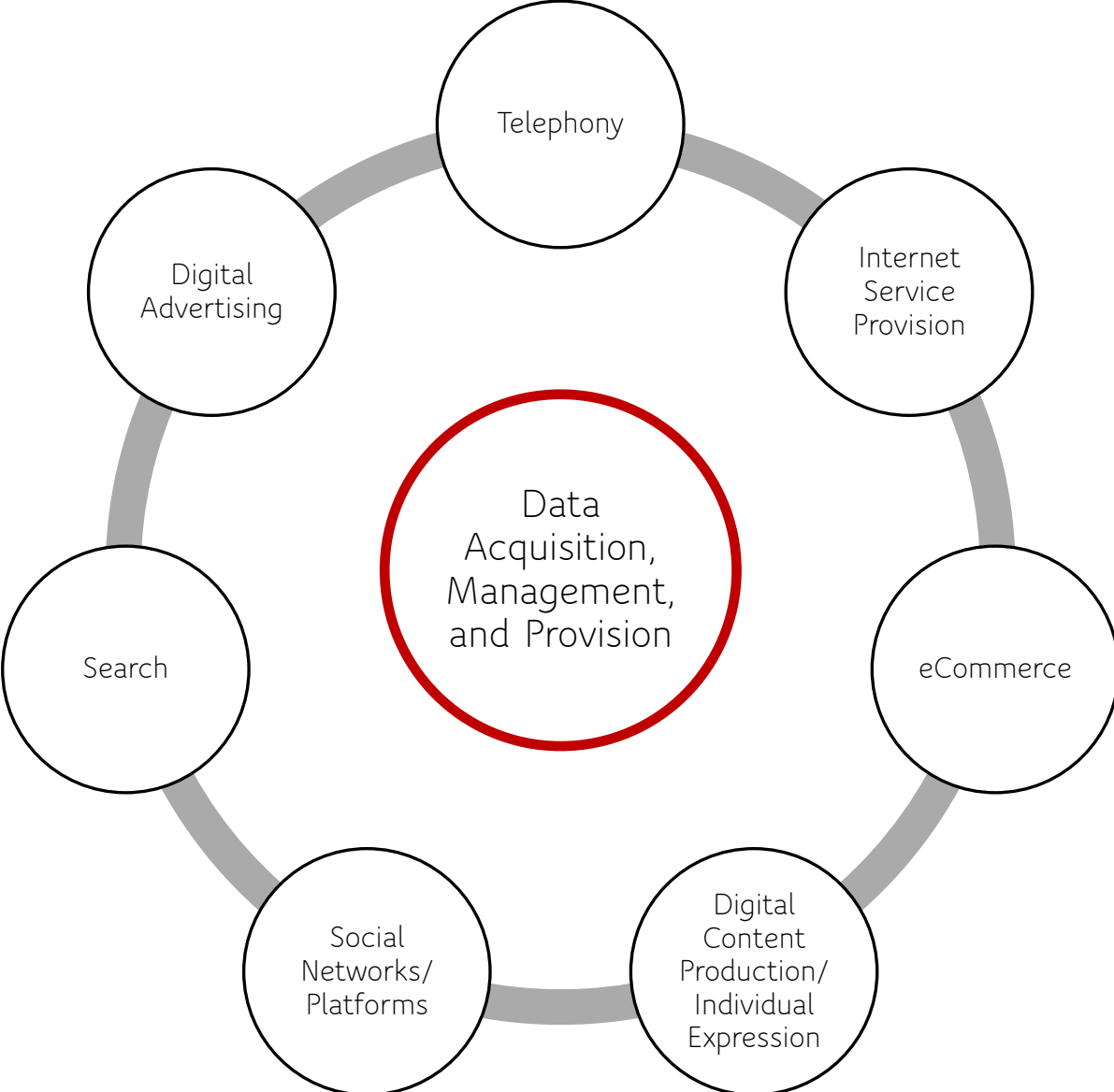
- lowered production and distribution costs
- network economics
- reduced labor in information searching and consumer research

These factors do not create natural monopolies or tendencies toward them

Effects of Primary Economic Factors on Digital Markets



Primary business segments applying digital technology



Why are tech markets gaining attention

Digital technologies, platforms, and activities have become fundamental to individual and social communications, conducting business, and economic growth globally

Markets, firm concentration, and business practices of firms in the digital sphere reduce competition and harm competitors and consumers

Major tech companies eclipse the size of other companies

Tech firm size attracts regulatory attention

MARKET CAPITALIZATION OF LARGEST DIGITAL FIRMS (October 10, 2022s)

Apple, \$2.3 trillion

Microsoft, \$1.7 trillion

Alphabet (Google), \$1.3 trillion

Amazon, \$1.2 trillion

Meta Platforms (Facebook), \$360 billion

MARKET CAPITALIZATION OF LEADING FIRMS IN OTHER INDUSTRIES (October 10, 2022)

Johnson & Johnson, \$422 billion

Exxon Mobile, \$411 billion

Walmart, \$351 billion

JP Morgan Chase, \$308 billion

Bank of America, \$246 billion

Procter & Gamble, \$295 billion

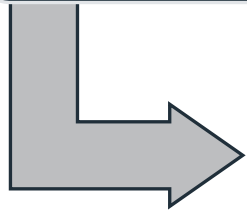
Nestle, \$293 billion

Royal Dutch Shell, \$187 billion

Approach to antitrust law is changing in US

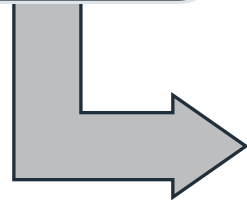
Initial Approach

- Response to cartels in oil and steel in late 19th and beginning of 20th Century
- Focused on concentration and market power
- Concerned about effects on price, consumer choice, and quality



Conservative and Neoliberal Approach

- Responding to mergers in business and retailing in 1970s and 1980s
- Influence of Chicago School (Robert Bork, Richard Posner, and Frank Easterbrook)
- Argued antitrust was harming business, that mergers and acquisitions good for consumers, that antitrust enforcement increased prices for consumers



Renewed focus on antitrust

- Response to issues involving tech at beginning of 21st Century
- Argued antitrust application no longer meeting goals; focused on increasing competition (Lisa Kahn, Tim Wu)

Eras of Digital Antitrust Actions and Concerns

1990s -
2000s

- Computer operating systems and bundled software and services
- Concerns: Exclusion or disadvantaging competing browsers, music players, and other software

2010+

- Platforms, mobile operating systems and bundled software and services
- Concerns: exclusion or disadvantaging competing eCommerce or third-party vendors, advertising, search preferences, app sales

The state strikes back

U.S. Department of Justice is investigating Facebook, Google, Amazon, and Apple and has sued Google for linkages between its search and advertising activities

U.S. Federal Trade Commission is investigating Facebook (Meta)

Attorneys General of forty-seven states action against Facebook for harm to competitors and consumers

European Union investigating anticompetitive search, advertising, and data practices involving Google and Facebook

European Union charged Amazon with antitrust violations for conflicts between its roles as marketplace and retailer

South Korea's Fair Trade Commission investigating Google for monopolistic business practices involving data

Antitrust activity is increasing globally

Japanese Fair Trade Commission issued guidelines for platform providers regarding abuse of superior bargaining position involving data

Indian authorities investigating Amazon and Walmart's Flipkart for anticompetitive effects on online shopping markets

US Federal Trade Commission established a Technology Task Force in its Bureau of Competition

Australian Competition & Consumer Commission monitoring and oversight of developments in tech industry and affects on Australian companies and consumers

European Union actions against Google that have resulted in more than \$8 billion (€6.5 billion) in fines for anticompetitive practices by Google Shopping that ultimately led to its separation from other Google businesses (and for anticompetitive exclusivity rules in Google AdSense)

European Union a fine of \$1.8 billion (€1.49 billion) on Google for abusive practices in online advertising, and for preferences in its search system and Play Store

France fined Amazon \$4.5 million (€3.7 million) for anticompetitive clauses in its contracts with third-party vendors

Potential Actions

Require interconnectivity and interoperability between platforms and social media

Halt abusive or discriminatory business practices that harm competitors and business customers

Undo mergers and acquisitions now deemed anticompetitive

Require antitrust pre-approval of any new mergers/acquisitions or movement into new digital businesses

Break up compounding monopolies across digital business segments

- Separate search from ecommerce, social media from digital advertising, all segments from data acquisition and management

