



Power in a Digitalised World: Evolving Perspectives on Competition Law, Regulation and Beyond

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EDITORIAL

ABSTRACT

In an increasingly digitalised world, it has become difficult to ignore the concentration of power in the hands of major technology corporations. However clear this statement seems, it takes on different meanings when examined through different lenses. This Special Issue explores themes related to the theoretical underpinnings of the power of big technology corporations, its boundaries in various legal domains, and potential countervailing measures. Set against the backdrop of Gerbrandy and Phoa's theory of Modern Bigness, it recognises that the power of big technology corporations is highly complex and transcends the traditional conceptions underlying current regulatory frameworks. This Special Issue brings together a selection of articles based on the interdisciplinary conference titled 'Power in a Digitalised World: Evolving Perspectives on Competition Law, Regulation and Beyond' held at Utrecht University on 4–5 April 2024, organised by members of the ERC Starting Grant project 'Modern Bigness'.

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The unprecedented concentration of power in the hands of big technology corporations is a phenomenon that is increasingly difficult to ignore.¹ Over the past decade, it became evident that EU legal frameworks were not always suitable to address the challenges and risks raised by this power. In turn, new legal frameworks have emerged, and existing ones have evolved.² This Special Issue of the Utrecht Law Review aims to examine what the power of big technology corporations means in the context of different legal domains, and how, if deemed necessary, it can be countered.

At the heart of this inquiry lies the theory of Modern Bigness.³ This theory aims to capture a multifaceted and evolving form of corporate power through the lens of EU competition law. However, legal tensions arise since the power of big technology corporations goes *beyond* market dominance as conventionally defined by high market shares, yet does stem from market power, which is a central notion in EU competition law and policy. The theory of Modern Bigness is built upon the work of Doris Fuchs,⁴ and posits that the power of big technology corporations spans across several dimensions: the instrumental dimension, which refers to shaping individual choices and behaviours through platform design and data flows; the structural dimension, which refers to the architecture of digital markets and infrastructures; and the discursive dimension, which refers to the framing of norms, values and public discourse. It seeps into economic, political, social and even personal domains, thereby challenging the assumptions and boundaries that have traditionally guided (competition) law and policy.

This Special Issue brings together a selection of articles that were based on the interdisciplinary conference held on 4–5th April 2024 at Utrecht University, organised by the members of the ERC Starting Grant project Modern Bigness, led by Prof. Anna Gerbrandy.⁵ The selected authors bring diverging analytical frameworks, disciplinary perspectives, and normative commitments, offering a rich and pluralistic dialogue around the shared theme of the power of big technology corporations. While some authors engage directly with the project's theoretical framework, others diverge from it, offering complementary or critical perspectives. Together, the papers present a multifaceted picture of corporate power and regulatory possibilities.

THEORETICAL UNDERPINNINGS OF MODERN BIGNESS

The Special Issue begins with two articles to deepen the understanding of the theoretical underpinnings of the power of big technology corporations. Building upon the theory of Modern Bigness, **Mendelsohn and Viertel** examine the role that financial power plays in understanding the power of big technology corporations. To provide a multifaceted perspective of financial power, they delve into deep pockets theory, common ownership theory and financialisation theory. Furthermore, by applying these ideas to existing theories of harm in competition law, such as predatory abuse and merger control, as well as regulatory instruments, including the Digital Markets Act and section 19a of the German Competition Act, authors argue that addressing financial power is an important step in challenging rather than just managing digital power of big technology corporations.

Moving well beyond the economic domain, the discursive dimension of power of big technology corporations is conceptualised and assessed by **Gerbrandy, Morozovaite and Phoa**. It is built on the premise that digital environments and information flows are largely mediated by big technology corporations, which do not only provide the digital infrastructures where the public discourse is taking shape, but actively influence the content, access and form of public discourse. Embedded in a normative position that open and democratic societies based on the rule of law are the preferred way of societal organisation, and that healthy functioning of markets and democracy are interdependent, the authors examine different discursive power-

¹ Damian Tambini & Martin Moore (eds), *Digital dominance: the power of Google, Amazon, Facebook, and Apple* (OUP 2018).

² Commission, *Shaping Europe's Digital Future* (Communication) COM (2020) 67 final.

³ Anna Gerbrandy & Pauline Phoa, 'The Power of Big Tech Corporations as Modern Bigness and a Vocabulary for Shaping Competition Law as Counter-Power', in Michael Bennett, Huub Brouwer and Rutger Claassen (eds) *Wealth and Power: Philosophical Perspectives* (Routledge 2023).

⁴ Doris Fuchs, *Business Power in Global Governance* (Lynne Rienner Publishers 2007).

⁵ European Research Council Starting Grant No.852005. For more information on Modern Bigness project, see: Modern Bigness (Utrecht University): <<https://www.uu.nl/en/research/modern-bigness>>.

related theories of harm in the context of EU competition law. In turn, they probe the very boundaries of EU competition law in dealing with the harmful manifestations of discursive power, and Modern Bigness broadly, in a holistic manner.

LAW AS A COUNTERPOWER TO MODERN BIGNESS

After exploring the concept of power of big technology corporations, the contribution by **Davies and Georgieva** provides a case study of Google's AdTech services. At its heart, the article interrogates the question of how digital advertising markets can become more contestable and provide more meaningful choice to consumers. To this end, the authors propose and assess a novel 'marketised monetisation' remedy, which would introduce interoperability features between Google's zero-price services and third-party ad networks. Beyond the conceptual suggestions, their topical contribution proposes concrete and practical implementation strategies to improve the current approach and remedies at the disposal of the Commission in the context of EU competition law and the Digital Markets Act.

Dependencies in digital markets are present not only between digital platforms and their users or businesses, but also workers. The gig economy redefined traditional labour arrangements and possibilities, with the law still catching up. **Van Rosmalen** highlights the tensions that arise between competition law and social protections by examining the Platform Work Package in the context of the EU's social market economy goal. The contribution provides a nuanced evaluation of the effectiveness of the introduced legal measures and shifts the conversation from market concentration to labour relations asymmetry, while also acknowledging that EU competition law should play a bigger, more pro-active role in addressing dependence concerns.

As big technology corporations rise to power cannot be separated from their data power, **Ducuing** analyses the potential of data protection law to address the structural power imbalances between digital platforms and users through the concept of data control. In doing so, the author conceptualises the under-explored notion of 'power asymmetries' and positions it in the context of data protection law, especially the General Data Protection Regulation. Ultimately, the article lays out a critical perspective on the role of data protection and, in particular, data control as a tool capable to not only safeguard individual privacy but also act as a structural corrective to the power of big technology corporations.

PROCEDURAL TOOLS AND SAFEGUARDS TO CURB MODERN BIGNESS

The final two contributions address the procedural dimensions of confronting Modern Bigness. **Peters and Kozak** examine the risk of breaching the principles of *ne bis in idem* and proportionality under Articles 50 and 52(1) of the Charter of Fundamental Rights of the European Union, where the Digital Markets Act enforcement overlaps with Article 102 TFEU enforcement. The contribution identifies possible double jeopardy scenarios and focuses on the role of the European Competition Network in allocation of cases and coordination mechanisms. Ultimately, with the digital regulation becoming increasingly multi-layered, the analysis highlights the growing need for coordination, clarity, and procedural safeguards.

Farinhas article complements Peters and Kozak's contribution, as it undertakes a comparative analysis of interim measures under Article 24 of the Digital Markets Act and Article 8 of the Regulation 1/2003. She assesses whether these procedural tools are capable of providing effective and timely responses to rapidly evolving harmful platform conduct, highlighting the challenges of acting within a legal culture shaped by caution.

Collectively, the articles in this Special Issue reflect the truism that the law is struggling to keep pace with technological innovations and market dynamics that define the realities of the 21st century corporate power. Yet, they also offer theoretical rigor and new insights to enrich conceptual, technical and institutional debate on Modern Bigness. As such, this Special Issue does not provide a singular answer to the question of what Modern Bigness is and how we can and should counter it. Instead, it provides a kaleidoscopic view, mapping a terrain of contestation and offering multiple entry points into a debate that is as urgent as it is complex. We hope that this Special Issue meaningfully contributes to an evolving legal and political

conversation, and that it encourages further engagement with the structural transformations shaping our digital present and future. The law may not hold all the answers, but it remains a crucial site where the contours of power – and resistance – are defined.

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The authors have no competing interests to declare.

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