



Is it time for European Hipsters?

Panel: Aims, Regulatory Environment and Economics of Competition

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Hipster antitrust...



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Illustration: competition policy international



Questions

- Should European competition law react to societal challenges?
- Does it need to change its instruments, or even its focus in order to do so?



Aims – European competition law

Fairly uncontested:

- Welfarist aims: consumer welfare, market efficiencies, consumer choice
- Market integration aims

(much) more contested

- Fairness (of process, of outcomes)?
- Other stuff: industrial policy, sustainability, democracy, individual freedom?





**The challenge of
sustainability**



**The challenge of digital
power**

The challenge of sustainability

- dairy farmers protecting blacktailed godwit
- importers strengthen workers' rights & wages



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Illustrations: just style.com; sify.com

The challenge of sustainability

In the Netherlands:

- several initiatives not allowed under competition law
- outcomes perceived as 'unfair'

Problem: balancing non-economic benefits



The challenge of sustainability

Against:

- competition law is (and should) focus on consumer welfare
- wider weighing leads to less legal certainty
- legitimacy of (national) agency decisionmaking
- we have regulation for that!

However:

- Paris agreement, SDG's, EU sustainability agenda
- What is fair and equitable here?



The challenge of digital power

mobile.nytimes.com

Is It Time to Break Up Google? - NYTimes.com



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Illustration: centre for international governance innovation; nyt



The challenge of digital power

- Filter bubbles
- Fundamental rights
- Hypernudging
- Democratic process
- Digital butlers
- Fake news
- Predatory innovation
- Access to big data and/or algorithms and/or platforms
- User-citizen vs user-consumer



The challenge of digital power

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Big Tech raises a Big Question:

- something fundamentally new?
- is power-as-such relevant for competition law?

my hypothesis:

'Modern Bigness' is something new



The challenge of digital power

Against changing concepts:

- competition law is (and should) focus on consumer welfare
- wider range leads to less certainty for companies
- legitimacy of (national) agency decisionmaking
- we have regulation for that!

However:

- history of competition law
- if Modern Bigness is new, and challenges fundamental, should competition law act?



Other challenges

- Innovation and competitiveness of EU: protect small and medium sized enterprises?
- Preventing another financial crisis?
-



Final thoughts: time for hipster EU competition law?

- (some) response of European competition law is necessary for its own legitimacy
- heterodox conception of aims of competition law is not against EU constitutional context, nor history
- European competition law cannot be panacea for all evils
- difficult balancing act of legal certainty and enforceability with response to challenges





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