

Introduction

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Harnessing the tension between ‘equity’ and ‘efficiency’ and achieving the optimal equilibrium between these policy objectives has long been one of the major questions bedeviling economics and, more generally, political philosophy in liberal democracies but also beyond. The opposition between the demands of equity and those of efficiency may seem elusive at first. Yet, the equity-versus-efficiency trade-off debate has played a defining role in the transformation of the dominant paradigm governing competition law enforcement at least since the late 1970s,¹ due to the growing influence of economics and economists in competition law and policy discourse² and the internationalization of antitrust. Since then, competition law has mainly focused on economic efficiency and on a narrow view of ‘consumer welfare’, not only in the competition law systems of developed countries but also in the new systems of competition law adopted by emergent and developing countries in the great leap forward of the 1990s and 2000s, a period during which more than one hundred jurisdictions around the world adopted competition law regimes. Although issues of equity and distributive justice are particularly important in emergent and developing jurisdictions, at least at a symbolic level, in practice there has been an attempt to find ways to integrate these concerns in the mainstream competition law framework, rather than to develop an alternative register of understanding. The narrative of the need for greater global convergence in competition law and the associated technocratic vision of the area could not accommodate fairness or equity concerns, due to the alleged risk of introducing some degree of unacceptable local divergence. Hence, competition law was portrayed as a ‘neutral’ economic policy tool, devoid of any consideration for social policy concerns.

However, this has not always been the case. At the time of the 1929 Wall Street crash, nation states’ economies were relatively open following a wave of globalization spanning the second half of the nineteenth and the beginning of the twentieth

¹ A. M. Okun, *Equality and Efficiency – The Big Tradeoff* (Brookings Institution, 1975, republished 2015).

² I. Lianos, *La Transformation du droit de la concurrence par le recours à l’analyse économique* (Bruylant/Sakkoulas, 2007); R. T. Atkinson and D. B. Audretsch, *Economic Doctrines and Approaches to Antitrust* (ITIF, January 2011).

centuries. Yet the vast unemployment and economic inequality witnessed during the Great Depression led to a surge of protectionist regulation, as the rudimentary national welfare systems of the time were not able to cope with the extent of the problem.³ Keynesians understood that the resulting political tensions could render particularly difficult the maintenance of the liberal order and argued for ‘embedded liberalism’.⁴ For them, public policy including antitrust law in the US (as there was no equivalent tool in Europe at the time, at least not so effective) had to deal with the social question by guaranteeing that competition would be fair, that small and medium undertakings would be protected. Fairness-driven competition law statutes, such as the Robinson Patman Act,⁵ were adopted. At the same time, once the temptation of corporatism was abandoned,⁶ antitrust was enforced vigorously to protect market access and the process of competition.⁷ Hence, at least until the early 1970s, antitrust was conceived of as a form of social regulation aimed at ensuring that small and medium-sized undertakings have access to the market without being smashed by the corporate behemoths, while workers could be protected from ‘exploitation’ through the institution of countervailing powers, such as the unions.⁸ Market access and the protection of the competitive process were essential in order to ensure that markets could be considered as fair and providing equal opportunities to all. The need to ensure systemic resilience in the face of the revisionist forces of fascism and communism constituted the political backbone of the expansion of antitrust law during this period.

³ Note that protectionism was primarily seen as a means to protect domestic industry and jobs. In the US, the Smoot–Hawley Tariff Act (1930), which instigated this round of protectionism, pre-dates the establishment of the US federal welfare system by five years (Social Security Act 1935).

⁴ See J. G. Ruggie, ‘International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order’ (1982) 36(2) *International Organization* 379, 393–8 (coining the expression ‘embedded liberalism’ to describe the emergence of a post-Second World War consensus on the combination of ‘internal social policy’ with the ‘external’ trade and financial liberalisation as conditions for domestic stability); S. Pitruzzello, ‘Trade Liberalization, Economic Performance, and Social Protection: Nineteenth Century British Laissez-Faire and Post-World-War II US – Embedded Liberalism’, in J. Ruggie (ed.), *Embedding Global Markets – An Enduring Challenge* (Ashgate, 2008), 73, at 76–7 (describing the Keynesian criticisms to the belief that competitive and self-regulating markets will ‘endogenously converge’ towards optimal economic and welfare equilibria without state intervention, which formed the intellectual foundation of the post-Second World War consensus).

⁵ 15 USC § 13.

⁶ See e.g. the National Industrial Recovery Act, which created the National Recovery Administration, allowing industries to create a set of industrial ‘codes of fair competition’ setting industries’ prices and wages, establishing production quotas, and imposing restrictions on entry.

⁷ It was not until 1937, during the second Roosevelt administration, that the country saw a revival of antitrust enforcement (C. Varney, Assistant Attorney General, Antitrust Division, US Department of Justice, ‘Vigorous Antitrust Enforcement in this Challenging Era’, remarks prepared for the Center for American Progress, 11 May 2009, available at www.justice.gov/atr/speech/vigorous-antitrust-enforcement-challenging-era).

⁸ Which benefited from a regime of antitrust exemption, established by s. 6 of the Clayton Act in 1914, and developed further with the Norris–LaGuardia Act (1932).

In Europe, the purpose of enacting EC, and later EU, competition law in the 1950s was different, precisely because of the absence of a community of solidarity among the peoples of the Member States: its aim was to assist the formation of a common or single internal market.⁹ As a corollary, any social policy dimension was left to the policy discretion of Member States,¹⁰ and while some of them made the choice of developing their domestic model of competition law focusing on some form of social regulation of their specific brand of capitalism,¹¹ others relied for a significant period of time on price regulation and regulation through public ownership of significant parts of their economy.¹² Hence, in contrast to the US model, the EU model of competition was initially conceived as a tool of economic rather than social policy.¹³

At that time, economic integration was to be achieved by means of the gradual erosion of barriers to trade and the expansion of foreign direct investments, although this crucially did not include the free movement of private capital. The aim was to open markets for international trade, while clearly separating the economic field subject to global or regional economic integration rules, and the social field, which was perceived as belonging to the remit of the domestic politics of redistribution. Indeed, neither the text of the GATT, nor that of the European Coal and Steel Community or the EEC treaties included any social dimension, as each of them pursued the sole aim of reversing the ‘disintegration’ of the world economy that spawned from the national protectionist legislation of the previous two decades.¹⁴

⁹ For a recent restatement, see e.g. E. M. Fox and D. Gerard, *EU Competition Law – Cases, Texts and Context* (Elgar, 2017), pp. xii–xiii and 1–32.

¹⁰ This may be explained by the strategy of neo-functionalism followed by the EC (EU), as the Member States ascribed authority to supranational institutions for activities based in areas of agreement between them, every function left to generate others gradually. This did not initially cover social regulation.

¹¹ On the development and the influence of German ordoliberalism, a specific form of neoliberalism, on German competition law, see H. Rieter and M. Schmolz, ‘The Ideas of German Ordoliberalism 1938–1945: Pointing the Way to a New Economic Order’ (1993) 1(1) *European Journal of the History of Economic Thought* 87; D. Gerber, ‘Constitutionalizing the Economy: German Neo-Liberalism, Competition Law, and the “New” Europe’ (1994) 42(1) *American Journal of Comparative Law* 25; A. Nicholls, *Freedom with Responsibility: The Social Market Economy in Germany 1918–1963* (Clarendon Press, 1994). Although some groups in ordoliberal thought were quite close to neoclassical economics, other groups were inspired by the principle of ‘social market economy’ (V. Vanberg, ‘The Freiburg School: Walter Eucken and Ordoliberalism’ (Freiburg Discussion Papers on Constitutional Economics 04/11, 2004), available at www.econstor.eu/handle/10.419/4343).

¹² This would be the example of all other Member States founding the EU. The relatively little role of competition law as a tool of social regulation may also be explained by the European social model which relies on the constitution of a powerful social welfare state.

¹³ This may also explain why the EU model of competition law did not initially include merger control, as economic concentration was not considered a problem, to the extent that it could lead to economies of scale and the emergence of European industrial champions, this being added at a later stage, and was certainly not conceived of at the time of the adoption of the EUMR as a social policy tool.

¹⁴ Starting with the Smoot–Hawley Tariff Act 1930, 19 USC, ch. 4, in the US.

Competition (or antitrust) law, in the early post-Second World War period, were therefore thought of as being animated by different principles to trade law. In the US, ‘populist’ antitrust was, to a certain extent, a tool of social regulation designed to ensure that smaller firms had a fair chance of participating in the economic expansion generated by trade liberalization in spite of the rise of economic concentration with the development of multinationals. In contrast, as the EU was not endowed with any redistributive purpose or mechanisms, at least during the first decades of its existence, competition law was perceived as a tool to promote the competitive process, not only for microeconomic efficiency reasons but also for broader macroeconomic aims: the constitution of a European single market.

The Chicago cultural revolution of the 1970s and 1980s changed beyond recognition the US model of antitrust by transforming it from a tool of social regulation, dealing with the social question, to an instrument aiming to promote economic efficiency, making heavy use of the toolkit of neoclassical economics in interpreting the law.¹⁵ The current neoliberal model of competition law that emerged from this ‘economics-based model’ of competition law focuses on consumer welfare/surplus, that is, the ability of consumers to benefit from lower prices and higher output. The issue of the allocation of that surplus between different groups of consumers, for instance the most vulnerable ones, or more generally defining a standard for a fair allocation of this surplus, is in principle ignored because it raises complex questions of distributive justice, which neoclassical economics assumes away.

Focusing on the allocation of the surplus would have transformed competition law (antitrust) to a form of social policy, something to which the adepts of the Chicago revolution were categorically opposed. Social policy concerns about redistribution and inequality are thought of in the discipline of neoclassical economics to be normative questions involving difficult value judgements that each nation state and their elected officials have to decide. It was also thought that social policy (compensating the losers) would be better achieved by tools other than competition law, such as taxation or the welfare state. The distinction between positive and normative was nevertheless

¹⁵ See e.g. Y. Brozen, ‘Competition, Efficiency and Antitrust’ (1969) 3 *J. World Trade L.* 65; R. H. Bork, *The Antitrust Paradox: A Policy at War with Itself* (Basic Books, 1978); R. A. Posner, ‘The Chicago School of Antitrust Analysis’ (1979) 127 *University of Pennsylvania Law Review* 924. On the Chicago antitrust ‘revolution’, see among the many publications, H. Hovenkamp, ‘Antitrust Policy after Chicago’ (1985) 84(2) *Michigan Law Review* 213. According to this paradigm, antitrust law presumably animated by various concerns, such as justice and social stability, had to be interpreted with only economic efficiency as being the only value of interest: W. Davies, ‘Economics and the “nonsense” of law: the case of the Chicago antitrust revolution’ (2010) 39(1) *Economy and Society* 64. There are various ideological factors that may explain the Chicago revolution, but, in our opinion, a significant one was the prevalent view among political personnel at the time in the US, in particular after the 1973 oil crisis, that the US economy was in decline, in comparison to the more economically efficient Japanese and German economies. Promoting economic equality and social cohesion and stability therefore lost ground in favour of economic efficiency as the primary goal of competition (antitrust) law, the Chicago antitrust revisionists relying on the consensus among economists at the time that there was a trade-off between inequality and growth.

conveniently forgotten by the practical emphasis of Chicago economists on the sole aim of economic efficiency in all areas of social policy, including taxation. There was also no mechanism, at the international level, to deal with the social consequences of the global expansion of markets and economic concentration. Each state was left on its own to deal with the social dimension of the global economic concentration.

The idea that antitrust was moving towards a ‘new equilibrium’ became an important feature of the global competition law discussion throughout the 1980s,¹⁶ 1990s and early 2000s, as competition law also was also expanding geographically. Although not as influential as in the US, this model has also gained acceptance in Europe, where the case law of the EU courts and the decisional practice of the European Commission have been moving steadily towards a ‘more economic approach’.¹⁷

This consensus was occasionally broken by disagreements between the US and the EU over a ‘wide’ or a ‘narrow’ approach in defining economic efficiency, consumer welfare and the protection of the competitive process,¹⁸ as well as discussions over the need to provide developing countries with the necessary policy space for choosing a different model to the competition law mainstream allowing them in particular to focus on poverty alleviation and more generally to reflect local conditions of imperfect markets and imperfect institutions.¹⁹

In recent years, the consensus seems to have shifted again as economic inequality is now thought to be related to the rise of economic concentration and market power.²⁰ Various ‘official’ voices, even in the developed world, are now arguing in favour of reconsidering fairness and equality concerns as part of the core underpinnings of competition law and policy.²¹ Moreover, beyond the realm of antitrust,

¹⁶ E. M. Fox, ‘Modernization of Antitrust: A New Equilibrium’ (1981) 66 *Cornell L. Rev.* 1140.

¹⁷ See e.g. J. Bourgeois and D. Waelbroeck, *Ten Years of Effects-based Approach in EU Competition Law: State of Play and Perspectives* (GCLC Annual Conference Series) (Bruylant, 2013), 302.

¹⁸ E. M. Fox, ‘We Protect Competition, You Protect Competitors’ (2003) 26(2) *World Competition* 149.

¹⁹ E. M. Fox, ‘Antitrust, Economic Development and Poverty: The Other Path’ (2007) 13 *Southwestern Journal of Law and Trade in the Americas* 211.

²⁰ See, J. Stiglitz, ‘America Has a Monopoly Problem – and It’s Huge’, *The Nation* (23 October 2017); D. Wessel, ‘Is Lack of Competition Strangling the U.S. Economy?’, *Harvard Business Review* (March–April 2018). Other authors have also assessed the negative effects of the reduction of competition and the higher levels of concentration on the reduction of business dynamism, the decline of both the capital and labour shares, the high profitability for some firms only, this leading to interfirm inequality, the deterioration of the job ladder and of the labour market situation overall (S. Barkai, *Declining Labor and Capital Shares* (London Business School, 2017), available at www.london.edu/faculty-and-research/academic-research/d/declining-labor-and-capital-shares#.W7DAkxFz4g); R. Decker, J. Haltiwanger, R. S. Jarmin, J. Miranda, ‘Where Has All the Skewness Gone? The Decline in High-Growth (Young) Firms in the U.S. (NBER Working Paper series, Working Paper 21776, December 2015); J. Furman and P. Orszag, ‘A Firm-Level Perspective on the Role of Rents in the Rise in Inequality’ (Washington, DC: Council of Economic Advisers, 2015, noting that due to market concentration, firms are earning outsized profits, particularly in health care and finance).

²¹ M. Vestager, EU Competition Commissioner, *Competition for a Fairer Society* (speech at 2016 Global Antitrust Enforcement Symposium, Georgetown, 20 September 2016, https://ec.europa.eu/commission/commissioners/2014-2019/vestager/announcements/competition-fairer-society_en); R. Hesse, US Acting Assistant Attorney General, ‘And Never the Twain Shall Meet? Connecting Popular and Professional

issues of inequality and its interaction with efficiency have become of central concern to policy and decision-makers across various public policy spheres. Yet, despite their central role in the grammar of competition law on the global plane, few scholars have explored the intellectual foundations of the interactions between ‘equity’ and ‘efficiency’ in the context of competition/antitrust law. There seems indeed to be significant resistance towards integrating equity and fairness concerns in competition law and conceptualizing this area of law from a social contract perspective.

This book aims precisely to fill this gap. It builds on a symposium co-organized by the Global Competition Law Centre at the College of Europe and the Centre for Law, Economics and Society at University College London, which took place in Brussels in June 2016 with a view to acknowledging and engaging with Professor Eleanor Fox’s contribution to the field of competition policy. During her already long and illustrious academic career, Eleanor Fox has authored a body of work directly engaging with the conceptualization of the relationship between ‘efficiency’ and ‘equity’, drawing lessons for US antitrust law, EU competition law and the competition law systems of emergent and developing countries. Furthermore, Fox has written on and influenced various transformations in competition policy since the 1980s, in the US and worldwide. Her scholarship is characterized by a willingness to uncover the diversity of approaches underlying antitrust enforcement, to deny the superiority of any single paradigm and to bridge differences in order to foster understanding. In a world where antitrust enforcement has become truly global, antitrust standards have turned into a prevalent form of business regulation and antitrust enforcement has to cope with fast-paced innovation, Professor Fox’s scholarship appears distinctively compelling indeed. This said, the present volume is not conceived as a *Festschrift* but as a standalone contribution to one of the most important challenges of modern competition law: the intersection of efficiency and equity. In effect, this book aims to provide critical insights into one of the most difficult and important questions of modern competition law by means of a compilation of original articles drafted by some of today’s leading global competition law experts engaging with the psyche of competition law and the balance, or Faustian pact,²² achieved between ‘efficiency’ and ‘equity’.

The book is structured in three parts. Part I, entitled ‘Framing the Tension between Equity and Efficiency as a Global Challenge for Competition Policy: the Vision of a Pioneer’, introduces the work of Professor Eleanor Fox insofar as it has

‘Visions for Antitrust Enforcement’ (speech at 2016 Global Antitrust Enforcement Symposium, Georgetown, 20 September 2016, www.justice.gov/opa/speech/acting-assistant-attorney-general-renata-hesse-antitrust-division-delivers-opening). For discussion, see D. Gerard, ‘Fairness in EU Competition Policy: Significance and Implications’ (2018) 9 *J. Eur. Comp. Law & Practice* 211.

²² F. M. Rowe, ‘The Decline of Antitrust and the Delusions of Models: The Faustian Pact of Law and Economics’ (1983–4) 72 *Geo. L. J.* 1511.

inspired the development of a body of literature on the interaction between competition law and equity concerns. Judge Diane Wood focuses on Eleanor Fox's role as a pioneering woman, 'known not just for her contributions to competition law but also for her role as mentor and role-model to generations of women who followed her' and on Professor Fox's 'relentlessly individual and clear vision of antitrust', which as she notes is 'a vision sharpened by the fact that she saw through assumptions others were making'. Philip Marsden and Spencer Weber Waller then focus on Professor Fox's work on the emergence of international competition law, to which her contribution has been remarkable, and the 'cosmopolitan' perspective she has instilled in this new field.

Part II, 'Reconciling Equity and Efficiency: the Challenge of Making Markets Work for People', presents inequality, poverty, discrimination and development as alternative (or complementary) narratives for competition law. This part engages with three important challenges to which modern competition law is confronted.

The first challenge, which forms the first section of Part II, is the need to develop solid theoretical foundations ensuring that competition law is anchored in the social contract that cements societies together, in other words, to ensure that competition law and markets work for people.

Ioannis Lianos's chapter examines the difficulties of the mainstream paradigm of competition law in integrating equality concerns, and sketches a theoretical framework for a more synergetic relation between efficiency and equity, without however giving in to the sirens of populism. Lianos claims that if one is to take equality concerns seriously, it becomes essential to provide a solid theoretical framework that would engage with the arguments put forward by those defending the status quo. Taking a social contract perspective, and noting the hybrid nature of competition law, which is a tool of economic order, but also a form of social regulation, Lianos explores how the mainstream paradigm of competition law focusing on consumer welfare addresses distributive justice issues only in an indirect and incidental way. He then turns to the institutional argument often opposed by the proponents of the status quo, that other institutions, such as taxation, may be more effective than competition law at dealing with inequalities, finding that this argument does not stand up to serious scrutiny. Lianos also critically engages with the argument that there is a trade-off between equality and efficiency. The final section of his chapter revisits the thorny question of what is to be equalized. Drawing on the idea of 'complex equality', he presents the contours of a fairness-driven competition law, solidly anchored to the social contract.

Michal Gal's contribution further explores the social contract perspective in competition law. Gal argues that competition law constitutes an important part of the social contract standing at the core of market economies, which conceptualizes the relationship between the state and its citizens, as well as among citizens, and legitimizes state action. Her chapter seeks to unveil the assumptions underlying the role of competition laws as part of that social contract. She then explores whether

these assumptions further the goals of the social contract, namely total and individual welfare. In light of recent challenges to the welfare effects of market economies, Gal seeks specifically to determine whether equality and inclusive growth objectives should play a more pronounced role in the competition laws of developed jurisdictions, and if so, by what means.

The discussion then moves to focus on emergent and developing economies, which have for a long time struggled with the integration of equity concerns in their competition laws, and which have a wealth of experience on the specific adjustments to be made so as to make the competition law tool equity compatible.

Abel Mateus's chapter explores the impact of oligarchies on competition and development, by studying the contrasting cases of Egypt and Turkey. Efficient and competitive markets are crucial for the process of investment and technological upgrading that is the backbone of development. This process is short-circuited in developing countries because exploitative institutions and norms reserve non-tradables to public enterprises or politically connected firms, closing entry, and/or protect sectors of tradables by non-tariff barriers and other exclusionary practices. The consequence is that most of the population is squeezed to the informal sector and bound to struggle side by side with those firms. These themes are central to the events in Arab countries that shook the world and triggered ongoing armed conflicts. From there, Mateus's chapter discusses the factors that led to crony capitalism and pathways for gradual reform.

The following chapter by Pradeep Mehta develops further the argument that competition reforms are for the benefit of ordinary people. Various barriers – economic, political and social – which have blocked access to resources and opportunities for a huge portion of the population have been major contributors to continuing global poverty. Removing those barriers and connecting the masses to mainstream entrepreneurship needs to be the central economic policy goal of nation states in pursuit of 'inclusive development' or 'inclusive growth'. A robust competition policy tends to fulfil these goals, as this chapter argues and explains. CUTS, a major international NGO representing consumer interests, has been successfully advocating the need for competition law and policy in many developing and emerging countries, and has also been involved closely in designing some of these regimes, including in India. The chapter draws lessons from CUTS's wealth of experience on competition policy diffusion and highlights the importance of promoting competition policy reforms for the benefit of ordinary people in the developing world and the role that consumer and citizen-oriented NGOs may play in this regard.

Mor Bakhroum's contribution aims to provide an overview of the interface between competition law and development, focusing on telecommunications, a sector of crucial importance for growth and development. His chapter discusses how to make competition law 'development-friendly', and adapt to the context, needs and aspirations of developing jurisdictions. With a focus on sub-Saharan

Africa, Bakhoun explores how building competitive telecommunication markets in sub-Saharan Africa can contribute to development.

Simon Roberts's contribution focuses on East and Southern Africa. It discusses the transfer of US and EU models of competition law in these jurisdictions, and the way they have attempted to domesticate them. Roberts notes that '[t]he challenge is to craft a market-oriented approach to economic development which takes into account the real characteristics of these economies' and that high levels of inequality forms part of the economic context in these jurisdictions. Roberts argues for the need to articulate an agenda which incorporates competition and inclusive growth, in particular when competition law institutions are young, have weak capacity and need to garner support. His chapter draws on a range of research undertaken in recent years in East and Southern Africa to consider the nature and extent of competition in practice, and the role, if any, played by competition law and policy. It includes a number of case studies from commodities, such as cement and fertilizers, to competition enforcement in innovative markets for services in telecommunications and finance ('mobile money'). The chapter offers important reflections on the role of barriers to entry and on the need to preserve market access, identifying the main elements of a forward-looking agenda for competition law in developing countries.

The second challenge which confronts modern competition law is to curtail economic power, particularly taking into account the various ways economic power may be leveraged in political or cultural power, eventually affecting the democratic process.

In that regard, Alan Fels's contribution seeks to provide a legal and political account of a major controversy over proposed legislative change in the Australian abuse of dominance law, to illustrate how efficiency and equity considerations have influenced the shaping of the law. The chapter refers to some important legislative changes that have been triggered as a by-product of the inability of governments to resolve directly controversies regarding the abuse of dominance law. It then turns to an economic and legal analysis of the proposed law before returning to the political side to describe the political pressures that different parties applied to support or oppose the change and of the path that was followed on the way to a political outcome. This is a fascinating case study on the interaction of politics with competition law, of great interest for all jurisdictions.

Ariel Ezrachi and Maurice Stucke provide insights into the future struggles of antitrust against power by focusing on the role of antitrust enforcement against market power in the digital age. The rise of digital personal assistants has already changed the way we shop, interact and surf the web. Technological developments and artificial intelligence are likely to further accelerate this trend. Indeed, all of the leading online platforms are currently investing in this technology. Apple's Siri, Amazon's Alexa, Facebook's M and Google Assistant can quickly provide us with information, if we so desire, and anticipate and fulfil certain needs and requests.

Ezrachi and Stucke ask whether these digital assistants might also reduce our welfare by limiting competition and transfer consumers' wealth to providers, the perceived efficiency delivered through technology actually reducing welfare and fostering inequality. And, if this is the case, how can competition law safeguard the welfare of consumers while enabling these technological developments?

Josef Drexel's contribution delves into the broader implications of the mono focus of competition law on economic efficiency, and subsequently of ignoring the effects of digital platforms on the democratic process, in particular in times of 'post-truth' politics. Drexel argues that the efficiency approach, as advocated by the Chicago School in particular, only provides a very narrow approach to competition law analysis that relies on consumer preferences. This approach remains especially insufficient for the regulation of firms that provide citizens with politically relevant news and information. In times of digitization, citizens increasingly rely on news disseminated by Internet intermediaries such as Facebook, Twitter or Google for making political decisions. Such firms design their business models and algorithms for selecting the news according to a purely economic aim. Yet recent research indicates that dissemination of news through social platforms, in particular, has a negative impact on the democratic process by favouring the dissemination of false factual statements, fake news and unverifiable conspiracy theories within closed communities. This ultimately leads to radicalization and division within society along political and ideological lines. Experience based on the Brexit referendum in the UK and the more recent presidential elections in the US highlights the ability of populist political movements to abuse the business rationale of Internet intermediaries and the functioning of their algorithms in order to win popular votes with their 'post-truth politics'. The chapter relies on competition law principles to discuss future approaches to regulating the market for political ideas at the interface of competition law and media law in the new digital age. Based on constitutional considerations, the chapter rests on the assumption that media markets should not only provide news that responds best to the psychological predispositions and subjective beliefs of the individual citizen, but also provide correct information and diversity of opinion as a basis for making informed democratic decisions.

The third challenge relates to the complexity of opening competition law to concerns broader than economic efficiency, in view of the emphasis on innovation by developed and developing countries' competition law regimes. The two chapters in this section offer different perspectives on this issue.

David Lewis's contribution challenges orthodoxy and argues for a competition policy that addresses poverty and equality, particularly in developing countries. Lewis considers that progressive redistributive effects of competition law policies may rest on their contribution to promoting ease of access to markets, i.e. ensuring that the opportunity to participate in economic activity is not denied to the 'little guy'. However, his chapter explores another neglected dimension of the potential interfaces between two policy fields that are both