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Introduction

A CONTEXT: POPULISM, DEMOCRACY, MARKETS, AND
COMPETITION LAW

In January 2020 wildfires were ravaging Australia, an established democracy with a robust free market economy and a very high gross domestic product (GDP) per capita. The authorities did not manage to control the situation and thousands of people had to flee their homes. The environmental damage was unprecedented. The smell of smoke was everywhere, and the sun was hardly visible. Tourists had to change their routes and ended up in places they'd never thought of visiting. The common experience connected them to the locals, and tourists and locals began exchanging views, asking themselves why these things were happening and what should be done. During one such exchange, the author of this book, a national of a Central European democracy, asked a local Australian, a well-dressed man in his fifties, what should be changed in Australia. My interlocutor answered in a way that echoed the voices I heard increasingly often in Europe. He stated that Australia 'needs to be shaken', and expressed strong doubts about whether this was possible in the Australian democratic system. He said he would prefer a strongman who would destroy the 'ivory tower' which rules Australia today. He argued eloquently that politicians in Australia are reelected because of the support they receive from big Australian businesses, which in turn influences the way in which these politicians govern the country. The result is that Australia is driven by the self-interest of the rich class and is not capable of facing the then current economic, environmental, and societal challenges. He hoped that the strongman, if left unconstrained, could change this course of events.

This conversation aptly encompasses the concerns underlying this book. Today's world faces a number of challenges, which are the subject of intense public debate. They include climate change, digitalization of the economy, the growing inequalities of wealth, migrations, and the crisis of values in modern societies.

These challenges inform, at least to some extent, the rise of populist politicians, who build their programs on the opposition between elites and the ordinary people who feel both disoriented and endangered by the aforementioned challenges. These populist politicians often argue that the concentration of political power is necessary for them to deliver on the promises they make to the ordinary people. In last ten years, populist parties, headed by charismatic and divisive leaders, have won democratic elections, formed governments, and often stayed in power for more than one term. They emerged in Europe (Greece, Hungary, Poland, and the Czech Republic) and in Asia (India). In other countries populist politicians have won presidential elections (Brazil, the United States) and reshaped the political and economic scene in their countries. In several other countries, such as Austria, France, Germany, Italy, and the UK, populist politicians and populist parties have gained strength, and although they have not attained full power, they have become important players on the political scene. Since the challenges mentioned above are not likely to disappear, populism can be seen as a phenomenon which is likely to remain present for many years to come.¹ Thus it makes sense to discuss the already-existing examples of the rule by populists (rule of populists' governments), and by doing so to build a better understanding of what the future may bring.

Populism is a phenomenon that can be studied from the point of view of the impact it has on democracy. Indeed, the number of such studies has been growing in recent years. At the same time, populism is a phenomenon which is related to the economy. There are economic reasons underlying the success of populist politicians. The study of populism through the lens of competition law fits well within the studies of populism focused on both democracy and the economy. This is because competition law is an element of a certain type of economic order: one in which the free market plays a fundamental role. Competition law is aimed at ensuring that, competition – which is a central mechanism underlying the functioning of a free market – is protected. In particular, the actions of private actors may undermine competition and in doing so harm consumers and societies at large. Competition law aims to ensure that such actions are eliminated. At the same time, ever since the first competition act was adopted in the USA in the late nineteenth century, competition laws have been considered as an important element of a democratic order.² This is because both US and European history has shown that

¹ Roger Eatwell and Matthew Goodwin, *National Populism: The Revolt against Liberal Democracy* (Penguin 2018), p 269.

² Pitofsky argues that the US Congress, when enacting antitrust laws, 'exhibited a clear concern that an economic order dominated by a few corporate giants could, during a time of domestic stress or disorder, facilitate the overthrow of democratic institutions and the installation of a totalitarian regime'. According to him, 'that concern about economic power and the desire that it be dispersed complements the general American governmental preference for a system of checks and balances and distribution of authority to prevent abusive actions by the state'. See Robert Pitofsky, 'Political Content of Antitrust' (1979) 127 *University of Pennsylvania Law Review* 1051, p 1054.

a concentration of excessive economic power is related to a concentration of excessive political power, and that both of them – seen jointly – endanger democracy.³ Thus, since competition law, by prohibiting the exclusion of rivals using anticompetitive means and by screening potentially anticompetitive mergers, imposes limits on the concentration and the use of economic power, it is conducive not only to the adequate functioning of markets but also to democracy.⁴

Such a perception has traditionally been present in both the USA and Europe, where it has been promoted in the latter instance by, among others, German ordoliberals.⁵ They considered economic freedom as a necessary element for the exercise of political rights by individuals in a democracy, and considered competition law as a rule of law for markets – one which aims to protect this economic freedom and hence promotes a free society.⁶ Therefore the preservation of a free society is considered an ultimate goal of ordoliberal competition policy.⁷ While the influence of ordoliberal thought has been limited in recent years due to a focus on the neoliberal economic efficiency paradigm,⁸ today it still inspires the study of competition law as an element of the broader political-economic system. Indeed, such reflections are on the rise. For example, Eleanor Fox argues that liberal markets ‘produce the tight and virtuous fit between safeguarding civil liberties and

³ See Frank Maier-Rigaud, ‘On the Normative Foundations of Competition Law – Efficiency, Political Freedom and the Freedom to Compete’ in Daniel Zimmer (ed), *The Goals of Competition Law* (Edward Elgar 2012), p 166. For a discussion in the USA during New Deal times, see Henry Simons, *A Positive Program for Laissez Faire: Some Proposals for a Liberal Economic Policy* (University of Chicago Press 1934), p 4.

⁴ This is not to say that the goal of competition law is to safeguard a market structure which promotes small inefficient firms at the expense of more efficient large firms. It should be noted that competition law and policy are seen as conducive to democracy also by those who consider consumer welfare and efficiency as the goals of competition law, James Langenfeld and Marsha W Blitzer, ‘Is Competition Policy the Last Thing Central and Eastern Europe Need?’ (1991) 6 *American University Journal of International Law and Policy* 347, pp 354–355.

⁵ Josef Drexler, ‘Competition Law in Media Markets and Its Contribution to Democracy: A Global Perspective’ (2015) 38 *World Competition* 367, p 368. Franz Böhm argued that ‘the establishment and the use of economic power affect the constitution of the democratic state and the constitutionally balanced relationship between the private and the public sphere’, Franz Böhm, ‘Democracy and Economic Power’ in Daniel A Crane and Herbert Hovenkamp (eds), *The Making of Competition Policy: Legal and Economic Sources* (Oxford University Press 2013), p 279.

⁶ For a comprehensive presentation of the ordoliberal school and criticism of misunderstandings of ordoliberal thought in the English-speaking world, see Peter Behrens, ‘The Ordoliberal Concept of ‘Abuse’ of a Dominant Position and Its Impact on Article 102 TFEU’ (2015) <<http://ssrn.com/abstract=2658045>> accessed January 19, 2021.

⁷ Maier-Rigaud (n 3), p 168.

⁸ Ibid. It should be noted that the ordoliberal school is sometimes associated with the protection of a market structure consisting of small firms. It has been argued, however, that such a perception is simplistic, and it does not take into account the evolution in the ordoliberal school, which provided a space for efficiency-related arguments. See Behrens (n 6).

economic liberties', and thus serve democracy.⁹ On the other hand, democracy includes 'a major negative goal likewise symbiotic with markets: it is against autocratic power and privilege and control by the few for the few'.¹⁰ Applying Fox's approach, we can argue that in a democratic country competition law serves both markets and democracy: it helps markets to play their utilitarian role of meeting people's needs, and at the same time helps markets reinforce the civil and economic rights which are inherent in free democratic societies.¹¹ In this context, it is not coincidental that the EU legal order, which was founded to integrate markets and by doing so to foster peace in Europe, has ever since its inception contained competition law in its rule book. Similarly, the transformation of the post-Soviet Central European countries in the 1990s involved not only the embracement of democracy as a political system but also the adoption of competition laws as an element of promoting a new, free market-oriented economic order.

As this book will further explore, the rise of populism, and in particular the actual rule by populist politicians, may be seen as a process that influences both liberal democracy and the free market economy. If the rule by populists also has an impact on the competition law system, its functional role for markets and democracy is affected. This is exactly what this book is about: the impact of populists' rule on competition law systems in the context of the broader political (liberal democracy) and economic (liberal markets) aspects. It explores the links between populism, competition law, democracy, and markets.

B EXISTING DEBATES AND THE TOPIC OF THE BOOK

The research presented in this book thus speaks to the broader debates which have been present in the public law and competition law literature for some time, as well as those which have been on the rise more recently.

Starting with the general topics, the book is of relevance for the debate on how to understand modern populism, particularly insofar as its actual consequences for democracy and the economy are concerned.¹² Populism is certainly a contested term, but increasing numbers of scholars have observed that populism translates into changes for both democracy and the economy. This links the topic of populism with the debates concerning the rise of illiberalism and the slide toward authoritarianism in countries which were once considered democracies, i.e. the process of so-called

⁹ Eleanor M Fox, 'The Symbiosis of Democracy and Markets' (2018) <www.oecd.org/competition/globalforum/democracy-and-competition.htm> accessed January 19, 2021, p 2.

¹⁰ Ibid.

¹¹ On the other hand, in the nondemocratic countries that have opted for liberal markets (such as communist countries which abandoned the command-control economy) competition law helps markets to play their utilitarian role of meeting people's needs and building the economic standing of these countries in the world. It does not play pro-democratic functions.

¹² See, *infra*, Chapter 2.

democratic backsliding. This book contributes to this debate by offering – in the context of the competition law system – evidence regarding the influence of the rule of populists on the democratic and economic order. In other words, while this research is primarily focused on the competition law system, it is of significant relevance to the broader debates concerning democracy and the economy. In particular, the book can be helpful in bridging the gap between political and economic studies on populism. This is necessary because political scientists and constitutionalists generally tend to focus on right-wing populism and the possible threats it poses for liberal democracy, while they show limited interest in the economic aspects of populism. Economists, on the other hand, often focus on left-wing populism due to its easily observable anti-market discourse. While I believe that distinguishing between right-wing and left-wing populism is not very useful in the contemporary world,¹³ the study offered in this book can be helpful in building an understanding that whatever the version (right wing or left wing), populism can still affect both the constitutional legal order (liberal democracy) and legal-economic order (liberal economy). The extent to which it affects these two orders is arguably related to the variables which are described in Chapter 3 rather than to the label (right wing or left wing) attached to a given populists' government.

This book also offers insights into the debate on the rule of law crisis, which is especially visible in the context of EU law. In recent years EU law scholars have attached a growing importance to the principle of the rule of law declared in Article 2 of the Treaty on European Union (TEU),¹⁴ and have closely followed the European Commission's and European Parliament's initiatives criticizing certain EU member states for their alleged violations of the basic principles of the rule of law and separation of powers.¹⁵ In the rulings of the Court of Justice of the European Union effective judicial protection (Art. 19 TEU) and the independence of a member state's judiciary have been subjected to close scrutiny.¹⁶ This book will complement this debate by discussing in detail how the threats to the rule of law posed by populists' governments affect concrete areas of EU economic law, focusing on the crucial area of competition rules.

¹³ It can be argued that populists, once in power, mix the narratives and tools they apply: some of them normally associated with right-wing parties (the importance of nation or religion, etc.), while others normally associated with left-wing parties (rich social redistribution programs, criticism of globalization, etc.).

¹⁴ The Treaty on European Union, OJ C 326, October 26, 2012, pp 13–390.

¹⁵ See, e.g., Dimitry Kochenov and Laurent Pech, 'Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality' (2015) 11 European Constitutional Law Review 512; and Laurent Pech and Kim Lane Scheppele, 'Illiberalism within: Rule of Law Backsliding in the EU' (2017) 19 Cambridge Yearbook of European Legal Studies 3.

¹⁶ See, e.g., Michał Krajewski and Michał Ziolkowski, 'Judicial Independence Decentralized: A.K.' (2020) 57 Common Market Law Review 1107.

This book is also of relevance to the debate in administrative law about the regulatory state and the crucial role played today by regulatory agencies. While administrative law scholars have opened a debate on how populism affects the administrative state, the works on this topic¹⁷ do not discuss in detail the possible ramifications for competition agencies and the courts reviewing their decisions. This book aims to fill this gap. Of particular importance is the book's analysis concerning the independence of competition agencies and the judicial review of their actions. This analysis is helpful for understanding how resilient the administrative state is in younger democracies.

This research concerns institutions which are sometimes called 'chapter IX institutions' by constitutionalists (after the South African Constitution), or 'State Institutions Supporting Constitutional Democracy'. They support democracy by playing an oversight role within the democratic state. Their role is complementary to functions usually associated with separation of powers in a democratic legal order.¹⁸ In other words, such institutions can be considered to make up part of a broadly conceived system of checks and balances within the state. Their independence from the executive and legislative branches and their constitutional status reinforce such a role. Indeed, such institutions are sometimes dubbed as the 'fourth branch of government' since they discharge some of the executive, legislative, and judicial responsibilities associated with the traditional three branches of government.¹⁹ While competition agencies are not a classic example of chapter IX institutions, they can be considered to be such. Very often they enjoy an independent status and operate within the sphere of competences which are laid out in national constitutions. One of their roles is to provide a check on state activities so as to limit anticompetitive acts of state (which covers not only anticompetitive legislative measures but also the activity of states in the private sphere, e.g. by means of state-owned enterprises or SOEs). In addition, the activities of chapter IX institutions which are focused on the protection of market competition can be conducive to democracy. While the literature on chapter IX institutions is vast, the research in this

¹⁷ See, e.g., Gillian E Metzger, 'Foreword – 1930s Redux: The Administrative State under Siege' (2017) 131 *Harvard Law Review* 1 and Barry Sullivan and Christine Kexel Chabot, 'The Science of Administrative Change' (2020) 52 *Connecticut Law Review* 1. Waller and Morse believe that after 2016 in the USA 'there is real reason to be concerned that the enforcement agencies are consciously or unconsciously beginning to tailor aspects of their decision-making to the stated, or perceived, political needs of the White House', Spencer Weber Waller and Jacob Morse, 'The Political Misuse of Antitrust: Doing the Right Thing for the Wrong Reason', *Competition Policy International* (2020) <www.competitionpolicyinternational.com/the-political-misuse-of-antitrust-doing-the-right-thing-for-the-wrong-reason/> accessed November 6, 2020.

¹⁸ Charles Fombad, 'The Diffusion of South African-Style Institutions? A Study in Comparative Constitutionalism' in Rosalind Dixon and Theunis Roux (eds), *Constitutional Triumphs, Constitutional Disappointments: A Critical Assessment of the 1996 South African Constitution's Local and International Influence* (Cambridge University Press 2018), pp 359–360.

¹⁹ *Ibid.*, p 362.

book can be helpful in understanding how they operate in a country ruled by populists. Thus the focus on competition agencies may also enrich the literature on chapter IX institutions, which is usually focused on other institutions, such as electoral commissions.

Finally, as already indicated, the book speaks to the literature concerning the relationship between democracy, markets, and competition law systems. It needs to be emphasized that most of the competition law scholarship in the last two decades has been focused on the economic aspects of competition law. Both in the USA, where the efficiency-focused paradigm in antitrust law has prevailed, and in the EU, where the so-called more economic approach in competition law has become more prominent, the focus has often been on how to make enforcement more flexible so that the actually measured anticompetitive effects and procompetitive efficiencies resulting from firms' actions are taken into account. While the relevance of these dynamics remains valid today, and are indeed issues the enforcers may struggle with when dealing with digital platforms, it seems imperative to remind ourselves about the political face of competition law and the role it plays in enhancing democracy and markets. This book engages in an extensive analysis of this aspect. In particular, the study on the condition of competition law systems in increasingly illiberal political and economic surroundings is of relevance in this regard.

Moving our attention now to competition law issues per se, it should be stressed that the topic of populism is underdeveloped in the competition law literature. In particular, no monograph has been written addressing the influence of populism on competition law and policy. It is true that populism has been the subject of debate in US antitrust law, but in a way understood differently from that which is presented in this book – i.e. in a way associated with a fear of large corporations and their vast market power and sympathy for small businesses.²⁰ In particular, populism has not been analyzed in the competition law literature in the institutional context, i.e. as a process which may affect the institutional characteristics and the practices of competition agencies and courts. Against this backdrop, this book is of importance for the debates about the institutional structure of competition agencies. It should be noted that two monographs have searched for an optimal institutional model of competition law enforcement.²¹ However, both books are based on the experience of competition law enforcement in liberal democracies based on rule of law, and they indirectly presume that this is the surrounding environment in which competition laws function. The study presented in this book provides insights into how those factors which are fundamental to building an adequate institutional structure – in

²⁰ See, *infra*, note 170 and the accompanying text.

²¹ Annetje Ottow, *Market and Competition Authorities: Good Agency Principles* (Oxford University Press 2015) and Daniel A Crane, *The Institutional Structure of Antitrust Enforcement* (Oxford University Press 2011). See also Eleanor M Fox and Michael J Trebilcock (eds), *The Design of Competition Law Institutions: Global Norms, Local Choices* (Oxford University Press 2012).

particular an agency's independence, expertise, and resources – are actually implemented in practice in populist surroundings, which may be hostile to independent, merit-based competition agencies. For example, one of the key issues concerns the actual independence of agencies as opposed to their formal independence. Such an approach is in line with the suggestions pointing out that the institutional structure of an agency, i.e. its internal organization and the context in which it functions (institutional embeddedness), condition the substantive outcome of a competition agency's actions.²² The study presented in the book also sheds light on the debate about the adequate allocation of competences to competition agencies, and in particular the question whether the mandate of competition agencies should be narrow (limited to the protection of competition) or broad (covering other areas such as consumer protection, public procurement surveillance, and unfair trading practices).²³

The research presented also speaks to the vast antitrust literature on developments of competition law regimes, which discusses, inter alia, the factors which inform the successes of some competition law regimes and the upheavals faced by others.²⁴ As regards the discussion in this book, it is also of relevance that antitrust scholars have offered insightful reflections on how to safeguard the system of antitrust law to ensure that it is democratic in its nature.²⁵ However, the existing literature does not analyze in detail how the overall state of liberal democracy and its institutions affect competition law systems. This is not to say that this relationship has never been addressed in the antitrust literature at all. In fact, it has been subjected to analysis in the context of the establishment of new competition law regimes in developing countries.²⁶ However, the existing literature does not discuss the situation of countries with more experienced and advanced competition law regimes (with at least fifteen years of experience) when faced with the appearance of populists' governments. It could logically be presumed that with the passage of time

²² David J Gerber, 'Competition Law and the Institutional Embeddedness of Economics' in Josef Drexler, Laurent Idot, and Joel Moneger (eds), *Economic Theory and Competition Law* (Edward Elgar 2009).

²³ See Michael J Trebilcock and Edward M Iacobucci, 'Designing Competition Law Institutions' (2002) 25 *World Competition* 361, pp 364–365 and Katalin J Cseres, 'Integrate or Separate – Institutional Design for the Enforcement of Competition Law and Consumer Law' (2013) 3 *Amsterdam Law School Research Paper*.

²⁴ Usually, the works of William Kovacic and Eleanor Fox serve as a point of reference. See the specific literature invoked, *infra*, in Chapter 4.

²⁵ See, in particular, Harry First and Spencer Weber Waller, 'Antitrust's Democracy Deficit' (2013) 81 *Fordham Law Review* 2543; Spencer Weber Waller, 'Antitrust and Democracy' (2019) 45 *Florida State University Law Review* 807.

²⁶ See, in particular, Umut Aydin and Tim Büthe, 'Competition Law and Policy in Developing Countries: Explaining Variations in Outcomes; Exploring Possibilities and Limits' (2016) 79 *Law and Contemporary Problems* 1, p 13.

the functioning of competition law will in most cases improve, not deteriorate.²⁷ But the appearance of populists' governments may interrupt such a continuing improvement.²⁸ It is worth exploring the competition law system from this perspective.

The discussion offered in this book aims to fill another gap in the competition law literature, which normally takes the independence of courts reviewing the decisions of competition authorities for granted²⁹ and focuses on the institutional and procedural organization of competition agencies. Since in this predominant model competition agencies are administrative authorities (rather than courts), it is necessary to provide effective judicial review of their actions by independent courts. However, the academic attention is usually limited to questions concerning the scope and the intensity of the judicial review of competition authorities' decisions. In cases of populists' rule, one has to take a broader view and also address the question of whether the national courts responsible for competition law are indeed independent.

Leaving aside the institutional aspects of the competition law system, we need to underscore the importance of antitrust literature discussing the relationship between the state and competition, including, among other issues, the application of competition laws to SOEs.³⁰ Today this is one of the key issues for competition law, particularly if we take into account the rise of Asian economies (such as China) where the state and SOEs play a vital role and where the border between the activity of firms in the private business sphere and acts of state is blurred.³¹ This issue can be

²⁷ See in this respect the United Nations Conference on Trade and Development (UNCTAD) lifecycles methodology, 'Prioritization and Resource Allocation as a Tool for Agency Effectiveness' (2013) <https://unctad.org/system/files/official-document/ciclpd20_en.pdf> pp 15–16.

²⁸ With respect to the concept of lifecycles in the competition law literature, see William E Kovacic and Marianela Lopez-Galdos, 'Lifecycles of Competition Systems: Explaining Variation in the Implementation of New Regimes' (2016) 79 *Law and Contemporary Problems* 85.

²⁹ The independence of the judiciary is sometimes discussed in the context of developing countries establishing their competition law regimes. See Aydin and Büthe (n 26) and Mel Marquis, 'Competition Law in the Philippines: Economic, Legal, and Institutional Context' (2018) 6 *Journal of Antitrust Enforcement* 79, pp 98–100.

³⁰ In most countries SOEs, when acting in the private sphere, are not exempted from antitrust rules; see Eleanor M Fox and Deborah Healey, 'When the State Harms Competition – The Role for Competition Law' (2014) 79 *Antitrust Law Journal* 769. The anticompetitive features of SOEs, such as the creation of entry barriers or predatory pricing practices, have been discussed. See David EM Sappington and J Gregory Sidak, 'Competition Law for State-Owned Enterprises' (2003) 71 *Antitrust Law Journal* 479.

³¹ See, e.g., Angela Huyue Zhang, 'The Single Entity Theory: An Antitrust Time-Bomb for Chinese State-Owned Enterprises?' (2012) 8 *Journal of Competition Law and Economics* 805, Nicolas Petit, 'Chinese State Capitalism and Western Antitrust Policy' (2016) 4 *Concurrences* 69, and Alexandr Svetlicinii, *Chinese State Owned Enterprises and EU Merger Control* (Routledge 2020).

framed within the issues of protectionism and competitive neutrality.³² For example, one of the issues – whether merger control can be used as a protectionist tool aimed at preventing acquisitions by foreign firms – has been analyzed in the literature.³³ The insights offered by this book will be helpful, however, in understanding how the centralization of power within the state, which can be considered characteristic of populists' governments,³⁴ as well as the growing role of SOEs in the economy,³⁵ change the dynamics of enforcement by competition agencies. One of the challenges is whether they continue to apply competition law with no bias (e.g. without providing more favorable treatment to SOEs) in line with a competitive neutrality principle.

The book is also of relevance vis-à-vis the debate over how competition law and competition agencies should respond to the challenges posed by digital markets, in particular the rise of digital platforms such as Amazon, Facebook, or Google. A disagreement in this respect clearly exists in the literature. While some continue to believe in the hands-off approach to firms which built their success on innovation, and thus favor limited enforcement against the dominant digital platforms, others see their market power as very problematic and call for more vigorous antitrust enforcement under a broader set of competition law goals.³⁶ This book may provide insights into this debate. At the outset, one has to bear in mind that the rise of populists' governments could have been facilitated by social network platforms such as Facebook or Twitter, which make it possible to segment society, to deliver an appropriate targeted message to potential voters, and overall to benefit from growing social polarization.³⁷ What's more, the rise of populists is arguably linked also to

³² See, in particular, Antonio Capobianco and Hans Christiansen, 'Competitive Neutrality and State-Owned Enterprises. Challenges and Policy Options' (2011) 1 OECD Corporate Governance Working Papers 1. See also Deborah Healey, 'Competitive Neutrality and the Role of Competition Authorities: A Glance at Experiences in Europe and Asia-Pacific' in Paulo Burnier Da Silveira and William E. Kovacic (eds), *Global Competition Enforcement: New Players, New Challenges* (Wolters Kluwer 2019), pp 189–190.

³³ Empirical studies have revealed that this is not necessarily true for the European Commission merger review system; see Anu Bradford, Robert J. Jackson, and Jonathon Zytnick, 'Is EU Merger Control Used for Protectionism? An Empirical Analysis' (2018) 15 *Journal of Empirical Legal Studies* 165.

³⁴ See, *infra*, Populism as a Driver of Illiberal Change in the Economy (ch. 2).

³⁵ See, *infra*, Populism as a Driver of Illiberal Change in the Economy (ch. 2).

³⁶ For the pro-enforcement views, see Lina Khan and Sandeep Vaheesan, 'Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents' (2017) 11 *Harvard Law & Policy Review* 235. See also Joseph E. Stiglitz, 'Towards a Broader View of Competition Policy' (2017) <<https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI-Broader-View-of-Competition-Policy-201703.pdf>>. For the opposite view, see Elyse Dorsey, Jan M. Rybníček, and Joshua D. Wright, 'Hipster Antitrust Meets Public Choice Economics: The Consumer Welfare Standard, Rule of Law, and Rent-Seeking' (2018) 18–20 *George Mason Law & Economics Research Paper*.

³⁷ Josef Drexler, 'Economic Efficiency versus Democracy: On the Potential Role of Competition Policy in Regulating Digital Markets in Times of Post-Truth Politics' (2016) 16 *Max Planck Institute for Innovation and Competition Research Paper Series* 1, pp 3–9.