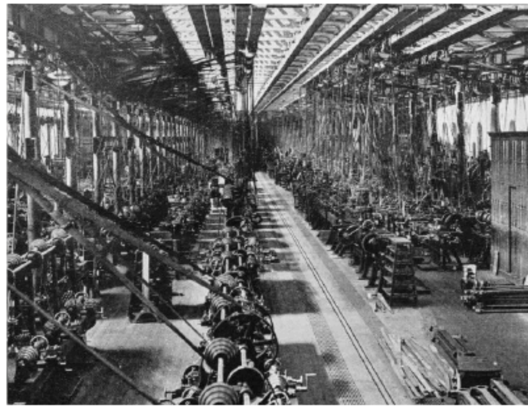

1911 1945 2024

BREAKING UP THE GIANTS OF HARM

TO PROTECT DEMOCRACY AND HAVE A RESILIENT ECONOMY, WE MUST TACKLE CORPORATE POWER. AGAIN.

Balanced Economy Project

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Abstract

Governments and economic regulators have, since the 1980s, turned a blind eye to a handful of giant companies steadily gaining chokeholds in global markets. Banking, agriculture, digital technology, publishing, music, pharmaceuticals and more are dominated by firms that have grown too big, and too powerful. Their rising power harms consumers, workers, small businesses – and democracy. This report argues that the main regulatory tools that are supposed to protect us against the dangers of extreme corporate power – antitrust or competition policy – have been substantially 'captured' by monopoly interests. As a result, forcing the break up of dominant firms has fallen out of favour. This report calls on political leaders and regulators to take the harms of big firms on democracy and society seriously, and revive dormant recourse of forced breakups. It shows *why* we must break up dominant firms, *when* to break them up (and when not to), and *how* to do it. There is new hope: breakups are quite possible, and regulators are at last waking up to this option – though not fast enough.

Report by Nicholas Shaxson and Claire Godfrey for the Balanced Economy Project.

With particular thanks to Laurel Kilgour. Additional thanks to: Ian Brown, Maria Luisa Stasi, Max von Thun, Michelle Meagher, Tommaso Valletti. All errors and omissions are ours.

Cover images, from left to right: 1911: US Supreme Court concludes Standard Oil is an abusive monopoly, and orders it broken up. 1945: The German chemicals firm IG Farben, later broken up into 9 firms under the post World War II programme of Denazification, Disarmament, Democratisation, Decentralisation, and De-cartelisation. 2024: Regulators are now investigating abusive and monopolistic behaviour by big tech firms, and seeking to break them up.

1. Introduction

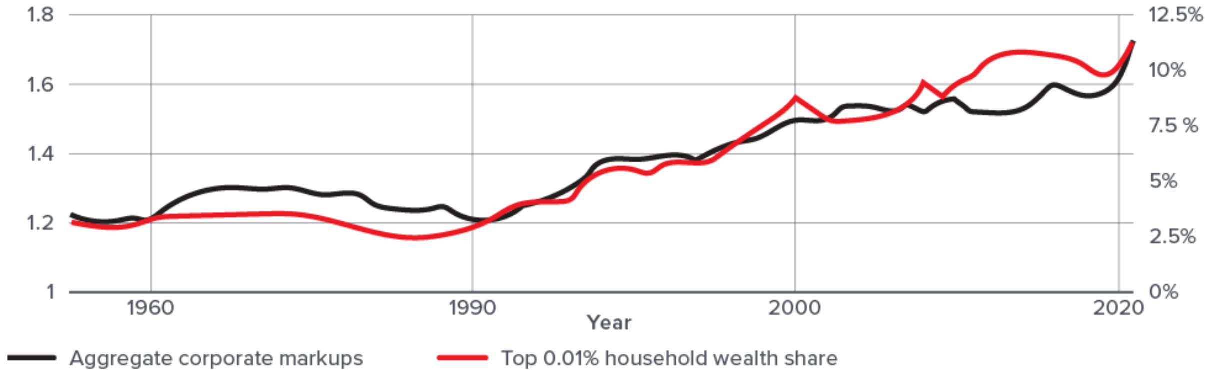
Great corporations exist, U.S. Republican President Theodore Roosevelt said, "only because they are created and safeguarded by our institutions."[1] He and his successors went on to break up monopolies, such as John D. Rockefeller's Standard Oil, giant railroad and electricity conglomerates, and the massive "money trusts" with powerful chokeholds on the US financial system and wider economy.[2]

In Europe, 40 years later, it was well understood that a dangerous fusion of concentrated economic power with political power helped fuel Hitler's and Mussolini's rise and rule, and underpinned their propaganda and war machines. The Potsdam Agreement of August 1945 treated monopolies and cartels with the seriousness they deserved, and the occupying Allies set about breaking some of them up.[3]

Now, after another 80 years, we see a world again increasingly shaped by big and dominant firms – and again our democracies are in great peril. The historical rationale for anti-monopoly is mostly forgotten.[4]

Just 10 companies – all American, including household names like Amazon, Apple and JP Morgan – now make up nearly a quarter of stock values in the MSCI All Country World Index, up from under 10 percent as recently as 2017.[5] Civil society groups revealed last January in their report Taken, not Earned how the world's wealthiest billionaires and biggest companies are substantially *all* monopolists. Seven out of ten of the world's largest firms now have a billionaire as CEO or principal shareholder, according to Oxfam.[6] The companies they helped build and control increasingly dominate our economic *and* political domains.

Their monopoly power inflicts multiple harms. For example, it helps them extract large and rising price 'markups' on things we buy, like running private tax systems that reap bumper profits for them while worsening the cost-of-living crisis for the rest. These markups are closely tied to billionaire fortunes, as the graphic shows.



Source:: Concentrated Markets, Concentrated Wealth, Roosevelt Institute, March 2024

Now, as half the world's population votes in 2024, this power in the hands of a few imperils our democracies like never before. Take Google or Facebook, and their multi-pronged threats to local news, a cornerstone of our democracies. Local media is hemmed in, on one side by 'user engagement' models dominated by big tech firms that deliberately divert eyes to 'alternative' content and clickbait, and on the other side by the giants' monopolistic ability effectively to escape with the advertising revenues from content that media organisations invest money and graft to create.[7] If we broke these two firms' strangleholds in smart ways, we could release much of their $400 billion combined annual advertising sales to benefit online publishers and small businesses, re-invigorating responsible news and democracy.[8]

Big Tech is also fast locking down artificial intelligence (AI). Without action, this will (for example) supercharge surveillance advertising business models that now pose existential dangers to democracy and society. Pro Big Tech propaganda is now normalising the idea that "competition policy must be comfortable with AI-powered businesses growing into giants of the world economy." But, if we allow their power to stay intact, it will be big tech firms and the "billionaire blockholders" behind them, rather than us citizens, that shape our digital futures.[9]

Meanwhile, our regulators have failed to hold back a tide of mergers and acquisitions (M&As) that gathered pace from the 1980s[10], reaching some 275,000 M&As in the past five years, with a deal value averaging $3.5 billion a year, equivalent to nearly three times the combined U.S. and Chinese defence budgets.[11] Believing in pro-monopoly ideologies that power does not really matter and that big is 'efficient,' our regulators have allowed corporate power to coalesce into ever bigger, more concentrated forms.

Instead of breaking power directly, regulatory energies tend to focus on trying to build guardrails and protections, to control the giants' behaviour, or tax away some of their excess profits. But by ducking vital questions around who controls them and their technology, and how much power they should be allowed to have, these guardrails and protections are like sand walls and sandcastles facing an incoming tide.[12] Focusing on rights and abuses but ignoring power, we are defeated on all three.[13]

Firms that govern enormous swathes of our economic lives have become too complex to understand, too powerful to regulate, too big to fail, and too big to care.. The rapid entry of big tech firms into financial services, and the rush by big tech firms to monopolise the fast-growing fields of AI, risk creating some of the most dangerous forms of monopoly power.[14]

Too big firms do not serve our general welfare. They run rings around us, and shape economies according to their needs. If we want to shape our economies and political systems around *our* needs, then affirmative action is needed to rescue us from their tightening control. When big is bad, it's time to break up dominant firms in the public interest. Doing so can curb inequality and protect democracy, and also potentially release immense sums from their grasp and back into other parts of our economies - into the places where we live, work, eat and play.

The good news is that the legal tools we need are already in place in many countries, even if they have mostly lain dormant. Breakups are feasible, technically and politically: in fact, good breakups can resolve problems with giant firms' behaviour neatly *and* permanently. It can be both much more effective, and far less time-intensive and bureaucratic to break up a giant firm than the alternative of trying to police a giant's behaviour on an ongoing basis.

Indeed, regulators in several countries are now, belatedly, starting to accept the mistakes of the past, and changing tack. For example, both the EU Commission and the U.S. Department of Justice (with several states) are now threatening to break up Google, separating its digital advertising arm that lies at the heart of its profit machine. Others are in their sights.

Now, in the twilight of our democracies, we must urgently accelerate this shift. This report aims to break open a more recent taboo against forced breakups, and normalise them as essential tools for protecting our economy, democracy and well-being. Smart breakups, by restoring choice and diversity, create resilient and dynamic systems where no actor has the structural power we see today: each can be meaningfully regulated (or fined) up to and including bankruptcy, without fear of systemic disaster. If your goal is

to tackle climate change[15], or hate speech,[16] then smart breakups could be a very effective policy choice available to governments and regulators.

This report intends to stimulate public debate and invite feedback. It begins with a brief history of breakups, and the emergence of a pro-monopoly ideology and other drivers of corporate consolidation. It then explains *why* breaking up some firms is necessary, then *how* it can be done. It calls for urgent debates around the links between democracy and monopoly, a root-and-branch rethink of policy tools to tackle monopoly power, consistently across government.[17]

Ultimately, governments must take a lead. But we need new policy tools, and new discourse. This includes creating the political environment for competition authorities to reboot outdated ideas and regulatory tools, and take proactive measures to break up concentrated economic power.

2. Background

Companies break themselves up all the time. An estimated one-third of M&A activity in recent years have also involved 'divestitures' – often as a condition for being allowed to merge – enabled by an industry of specialists (accountants, lawyers, tech consultants) to facilitate the processes.[18] Voluntary breakups may be common, but they tend to leave intact monopoly power (see box) – the heart of corporate profit machines. This report is about *forced* breakups to tackle monopoly power.

Box 1: What is monopoly power?

Dictionary definitions of monopoly as a single seller in a market do not capture the reality of corporate power. The definition we use here is one used by many regulators: a monopoly is shorthand for a firm with significant and enduring market power, which can act independently without needing to consider the responses of competitors, customers, workers, or even governments.[19]

Firms with monopoly power can often charge higher prices than if their customers had a choice. Yet the problems run far deeper than price, as this report shows. Once a dominant position is established, companies have arbitrary power in many realms: to externalise costs for climate mitigation, for example, or to determine conditions in supply chains. They can increasingly dictate terms to small-business suppliers, to workers, to individuals, and even to governments.[20]

Monopoly power can be identified in several ways, including, concentration ratios or market shares; excess profits and 'markup' power to raise prices above costs; barriers to entry keeping out competitors; lobbying power, or cross-holdings.

Yet regulators can be blind to "modern bigness"[21] whose impacts transcend markets, into politics, society and culture.[22]

For much of the 20th Century, forced breakups were common enough, often to protect democracy. Some examples illustrate: most are from the U.S. which has the strongest anti-monopoly tradition, going back to the Boston Tea Party in 1773.[23]

2.1.2 Standard Oil

John D. Rockefeller's Standard Oil locked up nearly all production, refining, transport and sale of oil in the United States. Ida Tarbell, an investigative journalist (pictured), exposed the monopoly and in 1911 it was dismantled into 33 separate companies, some of which became familiar names: Texaco, Chevron, Exxon, Mobil etc. The breakup was highly successful, not just by removing a major threat to U.S. democracy, but also by curbing large monopoly 'rents' extracted from consumers, businesses or governments. Unfortunately, as antitrust collapsed from the 1980s, many of the fragments were allowed to re-combine: Exxon with Mobil, Chevron with Texaco etc.

2.1.3 IG Farben

After World War Two, the Allies enforced the "Five Ds" for Germany: Demilitarisation, Denazification, Decentralisation, Democratisation, and De-Cartelisation. The chemicals firm IG Farben, a key plank in Hitler's war machine, was finally broken up in 1956, as part of broader efforts to keep German democracy healthy. The breakup was relatively straightforward and produced highly innovative firms such as Bayer, Hoechst, BASF etc. – and is also widely credited with creating a surge in beneficial innovation and productivity.[24]

2.1.4 AT&T

The telephone colossus AT&T was broken into seven "Baby Bell" companies in 1982. The daunting task of re-allocating 70 million customer accounts, 200 million customer records, 24,000 buildings, 177,000 motor vehicles and one million employees was achieved with minimum kerfuffle in just two years, and subsequently there has been "widespread agreement that the breakup resulted in greater competition in the telecom sector and a burst of technological progress."[25] Breakups all but stopped after that, pro-monopoly ideas gained sway, and telecoms re-consolidated. Recently, after the

T-Mobile/Sprint merger, the boss of T-Mobile boasted “it’s harvest time” (and harvest, they did.) US telecoms markets are now highly concentrated again – and telecoms prices are among the world’s highest.[26]

2.1.5 British Airports

The British Airports Authority (BAA), which controlled 90 percent of runway capacity in the UK, was broken up in 2009 by forcing the sale of Gatwick, Edinburgh and Stansted Airports. Subsequent evaluations found that the breakup resulted in lower costs, faster growth in passenger numbers, and better service.[27]

2.2 The Pro-Monopoly era from 1980

From the 1980s, market regulators worldwide fell under the spell of a pro-monopoly ideology called ‘Consumer Welfare,’ promoted by a few academics inspired by the conservative legal scholar Robert Bork. This doctrine, a companion to Milton Friedman's famous doctrine telling corporate bosses to focus only on "Shareholder Value,"[28] told market regulators to stop worrying about power or the public interest, and narrow their focus down to "efficiency" (measured in narrow economic models) and (quality-adjusted) prices.[29] If you only worry about low prices, you can ignore the supply-chain slave labour, tax dodging, or low wages that get you there.

Consumer Welfare argued, without convincing empirical evidence,[30] that big firms enjoy economies of scale and scope and these 'efficiencies' trickle down to consumers.[31] Forced break ups were dismissed as too extreme or too difficult, like “unscrambling eggs." Yet the anti-breakup objections are largely ideological, not practical.[32]

It is true that some firms need to be big: aircraft manufacturers need to be bigger than grocers, and some firms are "natural monopolies" – you would not build four railway networks side by side to foster competition, for example. But this doctrine and system encouraged *any* firm to grow big and get even bigger through mergers, long past any point of optimal efficiency.[33]

Like most bad but influential economic ideas over the past century, Consumer Welfare spread first in the United States, then worldwide. Europe imbibed these ideas especially

from the 1990s: by 2007, European Commissioner Neelie Kroes was enthusing about a global "merger tsunami," as "a good sign." From 2005-2023, for instance, the European Commission only blocked 14 of 6,462 notified mergers: a staggeringly low rate of 0.2 percent.[34]

An elite 'competition establishment' speaking forbidding technical language has kept the pro-monopoly system intact: civil society only rarely penetrates this bubble, leaving the system and ideology barely challenged. Meanwhile, in the public realm Big Tech firms (for instance) deliberately cloak themselves in progressive cultural mantles, becoming associated with technological progress and convenience, leading to a widespread muddying of the distinction between the technology and the monopoly business models, and to a disorientation about the nature of the harms, and the solutions.[35]

Many people today oppose breaking up Pfizer, say, or Amazon, conditioned by pervasive narratives that this might disrupt their shopping convenience, interrupt vaccine research, or create many mini-companies running amok in a harmful competitive race. They prefer doing something else instead – such as taxing them more and/or better, building trade unions or enforcing privacy rules. Yet breakups aren't an either/or proposition, and by unblocking power concentrations, they can make all these other things easier.

Dominant firms also, of course, influence and corrupt public discourse by spraying their excess monopoly profits across a swathe of think tanks, academics, lobbyists, political action committees, and all manner of apparently innocuous organisations. "I remember thinking: who are these people?," remembers Georg Riekeles, a former European Commission official who worked on reining in the big tech platforms. "The counter-mobilisation was massive."[36]

For all these reasons, and more, breakups fell out of favour.

Change is now, thankfully, starting to happen. The first enforced breakups in decades began in 2021, on both sides of the Atlantic,[37] and bigger ones are now planned. Popular sentiment is swinging sharply against these private powers,[38] but not fast enough.

3. Why we need breakups now - again

The economist Angus Deaton recently said: "Without an analysis of power, it is hard to understand inequality or much else in modern capitalism."[39] Organising and building power from below to resist the harms of corporate dominance are essential to pave the way for transformative change in democratic participation. But if we do not *also* break power from above, to end the reproduction of dominant social relations and practices, we will be like terriers yapping at the heels of giants.

Regulators currently use fines or 'behavioural remedies' to curb bad behaviour – but the bigger the firm, the harder to regulate. As a top EU official said: "I don't think I know a single enforcer that likes behavioural remedies. . . we actually hate it. It's usually ineffective."[40] Endless efforts have been made, for example, to get Meta/Facebook to clean up its toxic online content and privacy violations, but the problems persist. We must now get behind moves to break it up.[41]

Monopolies are more powerful than the sum of their parts – that is the whole point of building them – so breaking them up reduces overall power in the system, making bottom up strategies for positive change easier to achieve.[42]

Swiss army knife

It's useful to think of breakups as a tool, like a Swiss army knife, with many implements, for different purposes and situations.

Box 2: Major breakup goals include a need to:

- eliminate conflicts of interest
- unblock economic (and political/geo-political) chokepoints
- protect the state, the media and democracy
- restore choice, personal freedoms and free speech
- promote fair competition
- bring global systems under more local control
- tackle the 'too big to fail' problem
- protect and promote small businesses, broad prosperity and a balanced, diversified, economy
- promote economic resilience through diversity and choice
- disrupt an accelerating 'flywheel' of economy-wide monopolisation

Market regulators' core mandates are often to promote competition, but we argue that the top goal should be to tackle corporate dominance and 'bigness' where economic dominance transcends markets, reaching into politics and threatening democracy.[43] We also need a whole-of-government approach to monopoly power.[44]

3.1 Breakups can sever conflicts of interest, permanently

Monopolies are breeding grounds for conflicts of interest - which can be immensely profitable, while harming others.

For example, the Big Four accounting firms (Deloitte, EY, PwC and KPMG) audit nearly all of the world's biggest companies, but also sell their clients more lucrative advisory and consultancy services.[45] They have incentives to soft-pedal on their 'watchdog' role as auditors. This pleases the companies and keeps the consultancy gravy train running. Such conflicts have contributed to giant accounting failures, including the collapse of insurance giant AIG at the heart of the last global financial crisis.

Forced breakups of Big Four firms have often been suggested to eliminate the conflicts, but governments have instead opted for creating internal 'ring-fences' against conflicts: a weaker alternative to breakups.[46]

The practice of marking your own homework, or 'self-preferencing,' as regulators refer to it, is rife. For example, Amazon both hosts and arbitrates a vast online marketplace; but it also sells its own products there in competition with independent sellers. This is a clear conflict: Amazon uses its control of the marketplace to "self-preference" its products,[47] in the process destroying many rivals.

Likewise, Google has monopolised the technology by which most web publishers offer advertising space; the advertisers' main tools for buying that ad space; and the key exchange matching the advertisers with the publishers. A Google executive asked: "[I]s there a deeper issue with us owning the platform, the exchange, and a huge network? The analogy would be if Goldman or Citibank owned the NYSE [New York Stock Exchange]." The difference is, the NYSE charges pennies per trade; Google takes more like 30 percent.[48] Regulators now suggest breaking up both firms to tackle these conflicts, potentially striking at the heart of the harms.[49]

3.2 Breakups can unblock economic (and geo-political) chokepoints

Streaming services like Spotify, and the Big Three music labels UMG, Sony and Warner, sit astride chokepoints in the music industry, able to dictate not only who sells, but who gets the main share of profits (they do). In their book *Chokepoint Capitalism,* Cory Doctorow and Rebecca Giblin make a ballpark estimate that after the cheese-pairing of fees and costs negotiated between giant streaming platforms and music labels, and between labels and artists, and even at a generous royalty rate of 25 percent, a labelled artist might earn $0.0009 per stream: a creditable 22,000 streams might be enough to buy them a $20 pizza.

Similarly, harmful choke points are present in essential global markets. For example, a handful of giant pharmaceutical companies control access to life-saving medicines globally.[50] Our food supply systems increasingly resemble hourglasses, with millions of farmers and producers at the top, billions of consumers at the bottom – and a small handful of giant commodities firms astride a rapidly narrowing neck, able to milk the passing traffic.[51]

In digital technology, EU regulators recognise this chokepoint phenomenon explicitly, designating some dominant digital platforms as "gatekeepers."[52]

For example, Amazon is a “gatekeeper” for much of modern commerce, in many countries the neck of the hourglass between shoppers, who flock there because that's where all the sellers are; and the sellers, who must be on Amazon because that's where

the shoppers go. With this lock-in, Amazon can profitably degrade the shopping experience (for example, by littering search results with junk ads or sponsored content) and exploit sellers through exorbitant fees – typically 50 percent of the sale value.

Amazon's chokehold is so extreme that it now faces lawsuits – including to break it up – alleging among many other things that (contrary to a common belief that it delivers lower prices), it in reality may be doing the opposite: raising prices economy-wide, including *off* its marketplace.[53]

The ‘efficiency’ motive in big firm business models results in key functions pooling in one place. Companies may focus their supply-chain operations where labour is cheapest, tax the lowest, or environmental rules the weakest, for instance. This has led to "increasingly extreme chokepointing within most industrial systems, often to the point where a vital product or key component is manufactured in a single location – sometimes even a single factory – on the other side of the world."[54]

Monopoly choke points can stoke geo-political tensions or give leverage to hostile actors: witness the heavy concentration of semiconductor manufacturing in Taiwan, facing a Chinese threat of invasion, or Germany's dependence on Russian gas before the Ukraine invasion, which gave Russia major political leverage in Berlin.

Breakups, accompanied by appropriate trade, tax, labour and other policies, can break these chokepoints, not only to take the monopolists' boots off the necks of millions of businesses and people, but also to defuse tensions. Breakups can create more diverse, resilient, dynamic, democratic and prosperous economies.

3.3 Breakups can protect democracy and the state

The rule of law emerged to challenge the arbitrary powers of unaccountable kings and autocrats.[55] As the trust busting U.S. senator John Sherman put it: "If we would not submit to an emperor, we should not submit to an autocrat of trade."

Monopoly fears are intensely political, and tyrants feast on this. Ahead of the Second World War, U.S. President Franklin Delano Roosevelt warned: “The liberty of a democracy is not safe if the people tolerate the growth of private power to a point where it becomes stronger than their democratic state itself. That, in its essence, is fascism -- ownership of government by an individual, by a group, or by any other controlling private power.”[56] The EU’s foundational treaties had significant anti-monopoly elements, to protect against totalitarianism, for reasons outlined in this report’s introduction.[57]

Box 3: Monopoly power threatens nation states on multiple levels:

- it creates alternative economic/political power centres without democratic accountability; many nation states, especially smaller and lower-income ones, can do little to rein in dominant multinationals.
- it undermines state prerogatives by effectively privatising rules and laws inside monopolists' fiefdoms, and helping dominant firms build private tax systems via excessive price 'markups'.[58]
- it fosters corruption – and is inherently corrupt (according to standard definitions of corruption as "the abuse of entrusted power for private gain." Monopolists also have excess profits available for lobbying, while firms facing strong competition or trapped in a monopolist's orbit do not, as a rule.[59]
- it creates economic and political inequalities[60] that can threaten people's faith in the system, ripe for demagogues and tyrants to exploit.
- It gains structural power that transcends markets and democratic processes to determine the direction of technical and cultural change.[61]

Breaking up monopolies, by re-building choice, can reduce autocratic powers in the economic realm, while protecting democracy and the integrity of the rule of law.

3.4 Breakups can protect personal freedoms

Testimonies from individuals or small businesses trapped in monopolists' orbits, who use terms like 'serfdom,' 'sharecropping economy', or 'indentured servitude.' For example, as U.S. hog farmer Chris Petersen told us: "it's a 'gotcha!' thing."[62] A common theme is *fear.*

Source: Real Organic Project

U.S. farmers talk of "chickenisation," where dominant meat firms lock chicken farmers into thick and profitable webs of dependency: the farmers must get their inputs (e.g. chicks, feed, insurance, loans, veterinary, equipment) from the dominant firm at unfair prices, and must sell grown chickens back to them, also at unfair prices. To stay in business, farmers have no options but to accept the injustice. .[63]

Similarly, some food suppliers often depend so utterly on dominant supermarket chains that they would go bust if they lost their custom. This instils fear, enabling the supermarkets to impose unfair, arbitrary conditions. For example, a survey by Oxfam Germany uncovered 40 arbitrary conditions and fees that large supermarkets forced suppliers to accept, including one forcing suppliers to pay for the costs of monopolising supermarket mergers, and another forcing them to hand over their financial data so supermarkets could know just how hard they could squeeze each supplier without actually bankrupting them.[64] Uber drivers face similar pressures.

Such arbitrary power is a recipe for *discrimination,* and for *manipulation,* which also *prevents collective action.* If there is genuine choice, users can opt to go elsewhere, where no such conditions exist.

Similarly, social media firms, with major chokeholds over key aspects of modern communications technologies, have enough arbitrary power to allocate our attention according to algorithms that yield the most profit for them – which, in practice, has prioritised fake news and inflammatory content. Section 6 (Appendix) shows how breakups can address this.

Appropriate breakups, restoring choice, can definitively neutralise arbitrary power to manipulate, with benefits in both the economic and political realms.

3.5 Smart breakups can open up choice and healthy forms of competition

Most modern regulators have mandates to create competition or competitive markets, for example by banning unfair or restrictive practices. However, regulating practices is often ineffective, especially where violations are hard to detect (e.g. via 'black-box' algorithms.) Breakups can be a far more potent and permanent way to achieve these things, not least by creating new competitors and choices, where there were none.

Competition is subtle, however, and requires caution. While it can often be socially beneficial by driving prices down and wages up, competition can also be harmful, or the wrong metric or mechanism to achieve societal goals. A company can gain market share, for example, by using cheap child labour or skimping on expensive environmental safeguards to reduce costs, or a greater willingness to engage in risky and socially damaging financial engineering.[65] Markets in unregulated competition tend to morph quickly into monopolies. Breakups should always be accompanied by other measures to keep economies fair.

3.6 Breakups can bring global economic forces under local control

Breaking up global corporations can allow different parts of them to be brought under national or local democratic control, in different ways. For example, tech expert Parminder Jeet Singh agrees with US antitrust expert Tim Wu's proposal for "the creation of a salutary distance between each of the major functions or layers in the information economy." India-based Singh, advises first separating layers of big tech firms, then ensuring some parts are held by independent bodies with public interest mandates, and some localised nationally, allowing more democratic and transparent governance.[66]

3.7 Breakups can tackle "too big to fail"

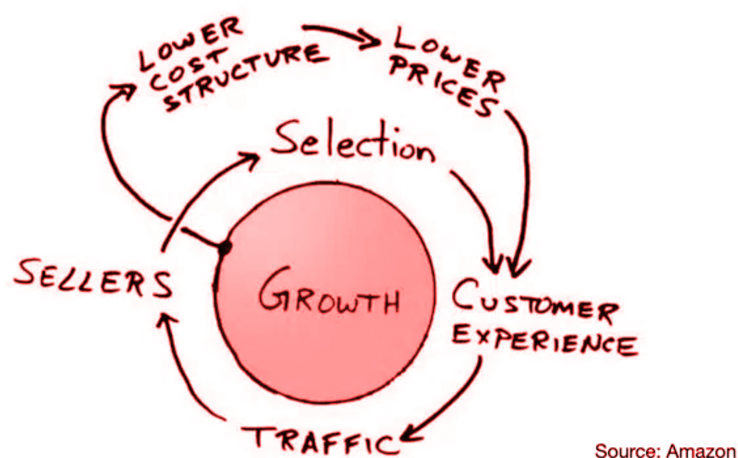
The last global financial crisis featured "too big to fail" banks that took huge speculative and profitable risks before the crisis, then when the risks crystallised into losses, governments fearing catastrophic system-wide disruption gave them enormous bailouts using taxpayer funds. Since the crisis, the problem is far from solved.[67]

Similarly, Big Tech firms now play such central roles in how we communicate and trade with each other, that they are often also deemed as "too big to fail." No government would dare shut down Facebook, Google Search or Amazon marketplace, no matter how egregious their behaviour.

Smart breakups, by restoring choice and diversity, can create resilient and dynamic systems where no actor has such structural power: each can be meaningfully regulated (or fined) up to and including bankruptcy, without fear of systemic disaster.[68]

3.8 Disrupt the accelerating flywheel of economy-wide monopolisation

Economic power begets political power, and vice versa. The two are inextricable and, without state intervention, self-reinforcing, in multiple ways.



Amazon's founder, Jeff Bezos, famously drew a flywheel on a napkin to describe his recipe for growth. Accelerate one node, and it speeds all the others. The more buyers flock to Amazon, the more sellers need to be on there, and vice versa. The more of each, the more profitable data Amazon can collect, and the more precisely it can milk businesses using its platform. This flywheel gathers momentum on its own, like a black hole that gathers ever more mass as its gravity grows.

High profits also allow high rates of acquisitions. Big Tech firms, for instance, acquired over 1,000 companies and until 2021 no regulator, anywhere, blocked an acquisition.[69]

Other common ways that dominant firms cement their dominance is to use 'predatory pricing,'[70] selling below cost to drive out weaker rivals, or 'cross-leveraging,' where dominance in one area is used to generate dependency (and profits) in another. For example, the European Commission in 2023 blocked Booking.com from buying rival

eTraveli, because, among other things, this would give Booking more power to steer those buying accommodation into purchasing flights too.[71]

Monopoly power can be contagious, as the super-profits enable them to out-compete other firms in the 'market for acquisitions.' This is currently evident in the UK's children's social care sector, which is 'tipping' towards larger firms using extractive business models, enjoying "excess profits" estimated at £22,000 per child per year.[72] Mergers also often trigger rivals to merge defensively, to avoid being trapped in the recently merged parties' economic gravity.[73]

To disrupt the flywheel, it is essential both to block key mergers and break up firms.

4. How should we break up dominant firms?

4.1 Eight General Principles

To design strategies and priorities for breakups, some basic principles are needed:

- ☐ **Establish clear goals.**

Is the aim to protect democracy and the rule of law? Are we trying to foster more (or fairer) competition? To break up chokepoints, eliminate conflicts of interest, protect democracy or promote a balanced economy? Each may require wielding the Swiss army knife differently.

- ☐ **Understand how a corporation grew so big.**[74]

Growth through socially useful innovation and internal expansion may mean that tampering would cause more harm than good. Boeing is a classic case: a manufacturer of passenger aircraft needs to be large and integrated. When Boeing divested or "offloaded" core divisions to private investment firms in pursuit of short-term financial gains, the results were negative.[75] Growth via M&A activity more likely points to monopolisation strategies, riper for breakups, often simply by reversing past mergers.

- ☐ **Consider if an integrated system needs to be held in the same corporate form.**

A national electricity or phone network must be an interconnected whole, but as long as there are rules to ensure fair and non-discriminatory access, interconnection and interoperability, ownership diversity is likely to allow the benefits of integrated systems to be realised without the monopoly powers.[76]

- ☐ **Be sure that a monopolist's particular misdeeds spring from its market power.**

You'd be unlikely to break up a car company, say, just because it instals faulty parts.

☐ **Is it a natural monopoly, such as a national railway or water system?**

Breakups need not be the final answer, though other core anti-monopoly principles, such as "common carriage" rules to ensure non-discriminatory services, may be essential. For example, the privatisation of UK and European railways, with associated 'unbundling' of different parts to try to foster competition, have been broadly seen as immensely messy and problematic. By 2024, almost 40 percent of UK railways were back in public hands after several bailouts; most British voters want them re-nationalised.[77]

☐ **Legislative changes with broad prohibitions on monopolies.**

This would mean an alternative to fighting costly and time-consuming court cases to break up particular firms. Broad prohibitions cannot only foster breakups, but also prevent the pieces re-combining after a breakup. For example, the 1933 US Glass-Steagall Act separating investment banking from commercial banking was a broad and successful prohibition, which endured for decades.

☐ **Have a solid framework to deal with the pieces.**

Without strong democratic guardrails, post-breakup breakup entities may still compete on negative factors, such as greater willingness to pollute. A deregulated market may tip back to monopoly again. For example, the telecoms firm AT&T in the U.S. was broken up in 1984 into seven "Baby Bells" (see above), but then under lax antitrust the pieces re-combined into today's AT&T, with negative effects.[78]

☐ **Identify the limits of economies of scale.**

In most sectors, economies of scale only exist for expansion of small and medium firms; most dominant firms exhausted those economies long ago and profitability rests on market power; and there is evidence that economies of scale are especially elusive for big tech.[79] Breakups would in many cases cause minor disruption for major benefits.

4.2 The Fault lines – how to break up firms in practice

Primarily, breakups in the public interest are about identifying and removing dangerous and defective parts, or by separating along natural fault lines, such as by splitting off business units, or reversing past mergers. Some approaches are as follows.

Reverse mergers

Just undo it

The simplest approach is often to reverse a merger or acquisition.

For example, the UK successfully ordered Facebook to split off its recently-acquired Giphy in 2021, with relatively little kerfuffle, in the first ever global-level breakup of a big tech firm. In 2021, AT&T spun off Warner Brothers, undoing a recent merger widely seen as a "mistake."[80] We could reduce harmful monopoly power in our food systems by (for example) breaking up dominant commodity firms like Cargill – starting with a reversal of its recent M&As.

Reversing older transactions can be harder, but monopolies routinely exaggerate these difficulties. In particular, reversing big tech acquisitions may be especially easy: principally about rewiring computer code.[81],[82]

Sever conflicts of interest

After the great financial crash of 1929, the U.S. Glass-Steagall Act broke banks' deposit-taking functions apart from the speculative investment banking activities. This was to prevent conflict between banks' need to protect customers' deposits, and their drive to engage in profitable speculation. Glass-Steagall, accompanied by tight financial

regulation, was highly successful. Its steady erosion by lobbyists and eventual full repeal in 1999 in the name of "efficiency" was a significant factor creating buccaneering and immensely powerful "too big to fail" banks and banking culture that contributed to the global financial crisis from 2007.[83]

Box 4: How to break up Amazon

Lina Khan (now Chair of US Federal Trade Commission) advocated breaking up Amazon in her classic 2017 article Amazon's Antitrust Paradox.[84] Using principles long established in banking law to prohibit a firm from entering any market where it already serves as a marketplace or platform, thus with a conflict of interest, she argued for separating Amazon’s retail arm from its marketplace, to prevent it being able sell its own products on its own marketplace, which it can tilt against its rivals.

Amazon, a global conglomerate, could be broken up along various other fault lines. For example, Amazon can use the threat of denying a seller access to its famous ‘Buy Box’ to coerce it into using Amazon expensive shipping, or cloud services, and so on. By separating these into separate independent companies, this coercive power would disappear.[85] Some have also suggested nationalising Amazon, Google and Facebook. However, in the hands of a political tyrant, this could reinforce autocratic rule – though some elements of a broken-up firm may be better in public hands or in the public commons.[86]

Break leverage points

Dominant firms often hold constellations of smaller firms captive inside powerful gravitational fields, where the dominant firm has power to skim off economic surpluses leaving the smaller firms with little or no profit.[87]

Dominant meat firms, for example, may own many of the cattle they slaughter, allowing them to ‘self-preference’ their own cattle and disadvantage independent farmers. Policing this is intrusive and messy. A neater, more powerful way to break this leverage

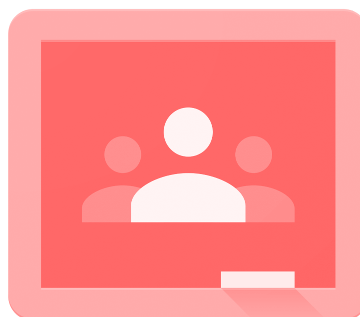
could be through a "Packer Ban" including breaking cattle slaughter operations apart from cattle operations.[88]

Break local monopolies or in market niches

Private equity firms, for instance, may buy up all companies providing a service in a local area, and then milk the ensuing monopoly. Or a firm might find a small market niche, where it can buy up all the competitors. For example, in veterinary care, roll-ups by large players have left local pet owners or skilled vet workers no choice but to deal with the dominant firm, and accept worse terms. The UK's Consumer and Markets Authority (CMA) in 2024 described how such "roll ups" can build local power even when firms don't (yet) have a large national market share. As a UK vet working for a large corporate said: "I had to make an estimate for a treatment for a broken leg, and I am cringing." [89] Breaking up local monopolies can restore choice and fairness.

Separate control layers

In big tech, firms integrate different functional layers, for example, a data layer, a cloud computing layer, a digital intelligence layer, and consumer-facing services. Control of one layer may enable cross-leveraging and 'take it or leave it' terms in others, or create high 'switching costs'. An example of this includes Google Classroom that leaves students with no choice but to to sign up to Google's Gmail to sign in.[90] A head teacher in Germany told us, "We, like many others, are so dependent on the platform right now and I'm not sure how we would even begin to move online learning somewhere else without a major cost being incurred or, a major investment being given to schools. Our school has been with Google since I arrived and each year, the roots grow deeper."[91]



Google Classroom

At the very least, big tech *ownership* of data can and should be separated from *storage* of data, which can be separated from *analysis* of data (including AI). Each separate segment can then be subjected to the appropriate regulation.[92]

Separate the defective part(s)

Often, major harms can flow from a particular business unit, which may be inflicting harms by exploiting conflicts of interest or otherwise. The prime modern example is Google's monopolisation of the online AdTech business, the main source of its annual $280 billion revenues. The U.S. Department of Justice and the European Commission (see Section 3.1) are seeking to force Google to partly or wholly disgorge its monopoly AdTech business.[93] If successful (and accompanied by other measures), this could be one of the most important and socially beneficial breakups in history.

Functional separation, unbundling: breakup-lite

There are many forms of separation that fall short of breakups. For example, accounting separation (where different business units are made to act and report separately), legal separation (the creation of new separate business entities still under the corporate parent), ring-fencing (rules to manage conflicts of interest between different units), and more.[94] These approaches can certainly be useful but also need to be treated with caution, as they are often weak versions of what is needed: the result of political expediency trumping societal need.

4.3 The legal basis for breakups

In many countries the legal basis for breaking up firms have been on the books for many years,[95] but from the 1980s were almost never used, hamstrung by doctrines that breakups are ‘too radical.’[96] The words ‘break up’ are rarely used in legal cases. Instead, we see language like ‘structural’ (e.g. ‘structural remedies’); mandatory/forced ‘divestment’, or ‘unbundling.’

This section offers a flavour of where some existing laws and mandates exist (focusing on the US, UK and Europe) and what might be improved.[97]

4.3.1 The United States

The principal regulators of market power in the U.S. are the Federal Trade Commission (FTC), and the Department of Justice's Antitrust Division. The Sherman Act of 1890 has been used to impose dramatic breakups, such as the forced separation in 1911 of Standard Oil into 33 companies.[98] The Sherman Act, while almost buried by a concerted Chicago-School effort to neutralise its enforcement, is still on the books and is now being dusted off by re-invigorated U.S. regulators to break up dominant firms.

> *"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the Several States… shall be guilty of a felony."*
>
> The Sherman Act, Section 2

US law differs from, for example, EU law because under Sherman it's enough to prove monopolisation to trigger 'structural remedies,' whereas the EU also requires misconduct. The Sherman Act was subsequently bolstered by others, such as the Clayton Act, also still on the books.

The Sherman Act has been invoked in, for example, the FTC's current efforts to break up Amazon, or the Department of Justice's efforts to break up Google.

4.3.2 The United Kingdom

The lead market regulator is the Competition and Markets Authority (CMA), alongside sectoral regulators such as Ofcom or Ofwat, regulating telecoms and water. The CMA has a broad mandate, not just to protect competition but also to support investment, innovation and growth and to protect consumers.[99] Following Brexit, the CMA has significantly expanded the scope of its work and has been one of the world's most confident regulators. Its global breakup of Facebook/Giphy in 2021 was the first time any regulator anywhere in the world had broken up a big tech firm.

The key breakups-relevant legislation in the UK are the Enterprise Act 2002, and for the biggest digital firms (big tech) the Digital Markets, Competition and Consumers Act (DMCCA, 2024).

Enterprise Act 2002

The Enterprise Act 2002 and guidelines from 2013, allow breakups. For example, the 2013 guidelines state, "A successful divestiture will address at source the lack of rivalry resulting from structural features of a market." [100]

Digital Markets, Competition and Consumers Act 2024

At the time of writing (May 2024), the CMA had published draft guidelines[101] for the DMCCA. Firms must be designated as having "Strategic Markets Status" (SMS) with "substantial and entrenched" market power and digital activity linked to the United Kingdom. The CMA can pre-emptively impose Conduct Requirements (fair dealing, etc.); as well as "pro-competition interventions (PCIs)" on an SMS firm if, after a PCI investigation, it finds an "adverse effect on competition." A PCI "may implement the same remedy options as those available to the CMA where it carries out a Market Investigation using its existing powers under the [Enterprise Act 2002]" and these include restrictions and obligations, alongside "acquisitions and divisions (e.g. a requirement to divest an aspect of the business.)"

4.3.3 The European Commission

The lead market regulator in the EU is the Directorate-General for Competition (DG COMP), which has responsibility for large and cross-border companies and transactions. Smaller and local companies are covered by national regulators such as Germany's Bundeskartellamt, or France's Autorité de la Concurrence; each has authority to break up dominant firms, but have mostly avoided breakups.

The key pieces of EU competition legislation are:

- **Article 101** of the foundational EU treaties – anti-cartel rules. Sometimes called Article 101 TFEU (Treaty on the Functioning of the European Union.)
- **Article 102** – against "abuse of a dominant position."[102]
- **Merger control**, since 1990; the EU has (see above) blocked almost no mergers.

- **State Aid** rules to stop countries subsidising “domestic champions” and distorting the EU single market.
- **Digital Markets Act (DMA)** to regulate “Big Tech.”

Articles 101 and Article 102 provide legal bases for breaking up firms in cases of infringement by dominant firms. The EU “may impose on them any behavioural or *structural* remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end. Structural remedies can only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the company concerned than the structural remedy.”[103]

The language of ‘proportionality’, effectively reduces the scope for breakups. Similarly, the DMA legislation, which states that the European Commission may impose breakups but only *as a last resort* for systematic failure to comply”(emphasis added).[104] This disassociation reflects the history of near-taboo status of forced breakups.[105]

Nevertheless, some governments are waking up to the need to control the march of monopolies. US President Biden’s 2021 Executive Order mandated a whole-of-government approach to radical action against monopolies, alongside the appointment of leading anti-monopolists to key government posts. Others are tightening up. For example, the UK’s DMCC, as stated above, or Germany’s Competition Act enabling Germany’s Bundeskartellamt, offer new legal bases for breaking up problematic firms.[106]

5. Conclusion

Half a century of a permissive pro-monopoly system has allowed a handful of big firms to dominate and control markets. As a result, they are now able to influence politics to change the rules of the game in their favour. This cannot continue. Monopoly power has disenfranchised people – workers, small businesses, musicians, voters, and so on; it has eviscerated individual choice, liberty, and opportunity, and is a grave harm to democracy. It is positive that anti-monopoly activism, and action by regulators, is starting to pick up pace in different parts of the world. New, potentially game-changing breakups, are finally on the horizon.

Yet there is a huge risk that without wide public support, there will be backsliding, breakups will not go far enough to kill the root sources of power, and monopolists will claw back their power and wealth, and threaten democracy and the public interest. To avoid this, regulators must act now and fast to deconcentrate, democratise and permanently dismantle the power fiefdoms of billionaires and dominant firms in markets. The biggest monopolies pervade the global market, while competition authorities mostly regulate within borders. Urgent global cooperation will also be essential if anti-monopoly action is to succeed to benefit us all.

The final goal should be to reclaim the ability of present and future generations to continually structure and restructure our economies by collectively compelling governments to redistribute economic power, and hold corporate power to account.

6. APPENDIX: FAQs and myths

This section explores some common arguments made against breakups.

"Don't break them up. Do something else instead."

Many oppose breaking up monopolies in favour of other approaches, such as better tax, trade or environmental policies, stronger trade unions, nationalisation, privacy rules, or interoperability. Yet breakups aren't an either-or proposition. Moreover, by removing or reducing the obstacle of corporate power, breakups can unblock the potential for change in all these areas. To build power from below, we need *also* to break it from above.

For example, there is indeed a strong role for public sector alternatives, such as in broadcasting (e.g. BBC, Deutsche Welle, Radio France Internationale,) or the efficient Swiss state-run rail system. If nationalisation is the aim, it is not only politically easier after a breakup, but it is also possible to be more strategic, in terms of which parts are best left in private hands, and which parts in public hands. Indeed, some widely supported alternative proposals, such as for Public Digital Infrastructure taking control of data away from big tech firms and into the hands of more open and accountable systems, are tantamount to breakups anyway.[107]

Alternative approaches generally tackle corporate power indirectly, in pursuit of other goals.[108] The tools that most directly and deliberately address corporate power are competition policy or antitrust, which must be re-invigorated, and reclaimed in the public interest. A core part of this must include reviving breakups.

"Breakups are too messy, slow and complicated."

Breakups aren't inherently easy or simple, but as Section 2 explains, many successful examples exist, whether forced by regulators or enacted by companies. *Not* breaking up some firms often ends up being vastly more troublesome and bureaucratic, not just for regulators having to play multi-dimensional whack-a-mole to police firms' conduct, but more importantly for society as a whole suffering the monopoly abuses.[109]

"Isn't 'more competition' just a neoliberal trick?"

Competition in private markets can be beneficial, or harmful.[110] As Section 3.5 shows, companies can compete on harmful 'externalities' such as greater willingness to use slave labour in the supply chains; while on the benefits side, competition can spur companies to pay higher wages, offer better-value products, or invest in socially

beneficial ways. In democratic terms, healthy competition can be thought of in terms of offering choice. If companies are broken up *only* to stimulate competition but without effective public-interest guardrails, outcomes may well be harmful. We argue for breaking up dominant firms in pursuit of a richer, broader set of goals than consumer prices and competition: notably to curb excessive power and protect the public interest.

"We need 'our' firms to be big enough to compete with U.S. or Chinese firms."

This "national champions" argument is often couched in the language of "competitiveness" (i.e. "our" firms must be allowed to grow big and strong enough to compete globally with Chinese or US firms.) Lobbyists argue for relaxing competition enforcement, slashing environmental regulation, gutting consumer protections or cutting tax and other "burdens" to let "our" champions grow powerful enough, often claiming "national security" justifications.

The arguments are exactly back to front: promoting a monopolised "Godzilla" economy of rent-seeking giants will – and already does – harm economic prosperity, resilience, stability, dynamism, and harm democracy, peace and citizens' (and national) security.[111]

"Could breakups tackle fake news?"

Breakups can have a big impact on this difficult problem, in several ways.

First, they can tame the power of tech giants that set a low bar for disinformation online, thus opening space for public regulation, choice and reforms. The current EU and US proposals to partially or wholly remove the AdTech stack from Google's monopolising control could not only unblock reforms, but also release tens of billions annually to online publishers and local news organisations, which are cornerstones of our democracies.

Second, predatory monopolies and cartels are *actual* conspiracies feeding people's sense of powerlessness and alienation, which demagogues easily harness with conspiracy *theories*.

Third, more surgical breakups could tame disinformation. For example, users of dominant social media platforms are currently forced into a devil's bargain where if they want to connect with friends on Facebook or watch cat videos on YouTube, for example, they must accept an unpalatable array of privacy terms, speech rules, and surveillance. Proposals include to break hosting activities (e.g. for YouTube, uploading

and displaying content etc.) from content moderation and curation “recommender” systems (deciding which content is prioritised for each user); this would allow the emergence of diversity and choice (and fair and non-discriminatory access) in the latter. It is far easier to regulate a competitive landscape than regulating a big tech giant.[112]

”Could breakups tackle climate change?

Breakups can help address climate change, in different ways. First they can dismantle concentrations of private power that block effective and economically just climate action. For example, Koch Industries and its boss Charles Koch, one of the world’s richest people, have been top funders of climate scepticism for years: their fortunes were built substantially on market power.[113] More generally, monopoly power is generically, disproportionately, corrupting, as Section 2.2 explains.

Second, breakups can also be used in more precise and targeted ways, focused on particular conflicts of interest that harm climate action, for example, conflicts that encourage certain firms providing ESG ratings or shareholder ‘proxy’ advisory services to soft-pedal on climate action in order to boost particular consulting divisions to win clients. This is potentially a fruitful avenue for further anti-monopoly work.[114]

END

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[1] US President Theodore Roosevelt, State of the Union message to Congress, 1901.

[2] The monopolies of that era used legal structures known as trusts to organise their operations; the legislation and regulations that tackled them became known as “antitrust,” but today is often called ‘competition policy.’

[3] The links between monopoly power and fascism were well understood, even before the war. “The liberty of a democracy is not safe if the people tolerate the growth of private power to a point where it becomes stronger than their democratic state itself,” U.S. President F.D. Roosevelt warned in 1938. “That, in its essence, is fascism—ownership of government by an individual, by a group, or by any other controlling private power.” See Monopoly in the 20th Century: Roosevelt Warns of Concentrated Wealth and Fascism (Excerpt), History News Network, Aug 23, 2020. The text of the 1945 Potsdam Agreement states the goal of “eliminating the present excessive concentration of economic power as exemplified in particular by cartels, syndicates, trusts and other monopolistic arrangements.” (It also stated a goal “to produce a balanced economy throughout Germany.”) The post-war settlement has been

summarised by a series of 'Ds: Denazification, Disarmament, Democratisation, Decentralisation, And De-concentration (or De-cartelisation). For an account of how the Allies broke up the chemicals giant IG Farben, see *Hell's Cartel: IG Farben and the Making of Hitler's War Machine,* Diarmuid Jeffreys, Bloomsbury, 2008

[4] A key influence on the early construction of today's European Union was German *ordoliberalism,* which was partly a reaction against the emergence of Nazism. The key elements of European law that embody anti-monopoly principles most directly are: i) Article 101 of the European Treaty for the Functioning of the EU, which is against cartels and "anti-competitive" agreements; ii) Article 102, to stop dominant players abusing those dominant positions; iii) merger control (introduced later, in 1990); and iv) State Aid rules to stop governments distorting markets by giving subsidies to local businesses and thus giving them an unfair competitive advantage.

On this historical rationale being forgotten, see Fascism and Monopoly, Daniel A. Crane, Michigan Law Review, 2019. It states: "After a period of intensive antitrust enforcement against mergers and monopolies in the 1950s, '60s, and early '70s, the antitotalitarian rationale for antitrust enforcement was lost in the tectonic shift in antitrust policy begun by the Chicago School."

[5] Global dominance of biggest stocks rises to highest in decades, Financial Times, April 8, 2024.

[6] Inequality Inc., Oxfam, Jan 15, 2024

[7] Ibid.

[8] The $400 billion figure is from Meta's and Alphabet's 10-Q first quarter reporting in 2004, extrapolating to an annual figure by multiplying by four. Given the rate at which their revenues have been rising, the full year figure may well be higher.

[9]See, for example, Accelerating the Future: Industrial Strategy in the Era of AI, Tony Blair Institute, March 26, 2024 (TBI is substantially funded by big tech firms). The report said: "competition policy must be comfortable with AI-powered businesses from across the UK growing into giants of the world economy and becoming nodes in the global generation of economic value" . On "compete fiercely" see Big Tech Rivalry Could be the Key to Competition in AI, Zach Meyers, Center for European Reform, May 30, 2024 Another big tech funded think-tank, It said Centre for European Reform, also recently stated, "Competition authorities might need to accept that today's large technology firms will play a key role in artificial intelligence. They need to focus on ensuring they compete fiercely – rather than peacefully co-exist." Big Tech Rivalry Could be the Key to Competition in AI, Zach Meyers, Center for European Reform, May 30, 2024/ See also Unpacking this moment in tech with Meredith Whittaker: podcast and transcript, MSNBC, April 30,2024.

[10] Global M&A volumes hit record high in 2021, breach $5 trillion for first time, Niket Nishant, Reuters, Dec 31, 2021.

[11] Global M&A Industry Trends: 2023 Mid-Year Update, PwC, undated, 2023; Global M&A Trends: 2024 outlook, PwC, Jan 23, 2024; and Trends in World Military Expenditures, SIPRI, April 2024.

[12] AI in the Public Interest: Confronting the Monopoly Threat, Open Markets Institute, Barry Lynn, Max von Thun, Karina Montoya, Open Markets Institute, Nov 2023.

[13] This sentence was inspired by a significant anti-monopoly article: What I Most Regret About My Decades of Legal Activism, Caroline Fredrickson, The Atlantic, Sept 18, 2023.

[14] On the fusion of big tech with finance, see More Money, More Power: Big Techs in Finance by Carolina Melches, Michael Peters, Finanzwende, Jun 2024. Finanzwende, Jun 5, 2024. On big tech monopolising AI, see Lynn, von Thun, Montoya, 2023, above.

[15] A sustainable future: how can control of monopoly power play a part? Part 1. Monopoly power: a barrier to a sustainable future by Simon Holmes Michelle Meagher

[16] Can breaking up tech monopolies tame disinformation and hate speech? The Counterbalance, May 29, 2024.

[17] See, for instance, Are Letta, Macron and Draghi Marking the End of Neoliberalism in Europe? Cristina Caffarra, ProMarket, May 7, 2024.

[18] Industry Divestiture Waves: How a Firm's Position Influences Investor Returns, Matthias F. Brauer & Margarethe F. Wiersema, 2012, Cited in Rory van Loo, 2020. See also Corporations break themselves up all the time. So why shouldn't regulators break up Big Tech? Denise Hearn, Fortune, Aug 25, 2022 https://fortune.com/2022/08/25/corporations-break-regulators-up-big-tech-ftc-sec-meta-alphabet-amazon-tech-denise-hearn

[19] For example, the U.S. Federal Trade Commission says: "Courts do not require a literal monopoly before applying rules for single firm conduct; that term is used as shorthand for a firm with significant and durable market power — that is, the long term ability to raise price or exclude competitors. That is how that term is used here: a "monopolist" is a firm with significant and durable market power." See Monopolization Defined, FTC, undated. The European Commission has defined dominance as "a position of economic strength enjoyed by an undertaking, which enables it to prevent effective competition being maintained on a relevant market, by affording it the power *to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers*." From the European Court of Justice United Brands decision, paragraph 65. (US regulator Lina Khan called this attribute "Too big to care." See Lina Khan on the daily Show: What is Monopoly?, Nicholas Shaxson, LinkedIn, April 2024.

[20] See Competition is Killing Us, Michelle Meagher, Penguin Random House, 2020, especially pg 79-83

[21] See Phoa, P., & Gerbrandy, A. (2022). The Power of Big Tech Corporations as Modern Bigness and a Vocabulary for Shaping Competition Law as Counter-Power. In M.

Bennett, H. Brouwer, & R. Claassen (Eds.), *Wealth and power: Philosophical Perspectives* (pp. 166–185).

[22] The rise of big tech has brought with it *"a combination of instrumental power, structural power, and discursive power, and manifests also in the political, social, and personal domain*…[which may need a*] recalibration of competition law."* Ibid, pp 167.

[23] For a good historical timeline of U.S. anti-monopoly action, see Anti-Monopoly Timeline, Open Markets Institute, undated. Of course, anti-monopoly traditions in other countries have long pedigrees, including the Statute of Monopolies in the UK in 1623.

[24] See Competition and Innovation: the Breakup of IG Farben, Felix Poege, Boston Univ. School of Law Research Paper No. #22-24, 2022, Aug 2022, or Jeffreys (2008)

[25] Kwoka / Valletti, *Unscrambling Eggs,* 2021.

[26] The state of mobile and broadband pricing – 1H 2024 Rewheel, May 2024.

[27] CMA report shows benefits of BAA break-up, Competition and Markets Authority, May 16, 2016.

[28] The Shareholder Value doctrine was aimed at corporate bosses: that they should ignore distractions such as the interests of workers, of local communities or the nation, of the environment, or of the broad public interest - and instead narrow their focus down to one goal: maximising returns to shareholders, under a belief that this would maximise economic 'efficiency' (and those other aspects would thus take care of themselves.) The consumer welfare doctrine was different in that it was principally aimed at market regulators, not corporate bosses, and it narrowed their scope down to 'efficiency' (measured narrowly by economists often under unrealistic assumptions) and the interests of consumers.

[29] Reality is of course more complex than this: and Bork's models in practice used a "total welfare" standard where you add producers' benefits (profits) to consumers' benefits.

[30] See, for instance, The Profound Nonsense of Consumer Welfare Antitrust, Sandeep Vaheesan, The Antitrust Bulletin, 2019; or Competition is Killing Us, Michelle Meagher, Penguin Random House, 2020.

[31] See Taken, not earned as a summary

[32] For articles in defence of breakups see also, for example:

1. John Kwoka and Tommaso Valletti, Unscrambling the eggs: breaking up consummated mergers and dominant firms, *Industrial and Corporate Change*, Volume 30, Issue 5, Oct 2021. Whereas most recent academic work on breakups is US-focused, this takes a more international view.
2. In Defense of Breakups: Administering a "Radical" Remedy, Rory Van Loo, Boston University School of Law, Nov 2020.
3. Dr. Kim M. Künstner, Break Up Amazon? Expert opinion on the appropriateness and legal facility of unbundling of the Amazon Group; LobbyControl, Nov 2023.

4. The Curse of Bigness: Antitrust in the New Gilded Age, Tim Wu, Yale Law Journal, 2018.
5. Lina M. Khan, The Separation of Platforms and Commerce, Columbia Law Review, 2019.
6. *Break 'Em Up*, Zephyr Teachout, All Points Books, 2020.

[33] Tommaso Valletti, former Chief Competition Economist at the European Commission, explained that very large firms have typically already exhausted their economies of scale. Economies of scale can make sense for small and medium sized firms, but there is no evidence that economies of scale go beyond that size. See also John Kwoka and Tommaso Valletti, Unscrambling Eggs Unscrambling the eggs: breaking up consummated mergers and dominant firms: John Kwoka and Tommaso Valletti, *Industrial and Corporate Change*, Volume 30, Issue 5, Oct 2021.

[34] On Neelie Kroes, see Too Big to Control? The politics of mega-mergers and why the EU is not stopping them, Angela Wigger and Hubert Buch-Hansen for Corporate Europe Observatory, June 2017. A curiously incoherent element of this push is that the Commission has continued to crack down aggressively on cartels, which are rightly illegal, but has tolerated almost unlimited mergers, which are in many cases like reinforced, legalised versions of cartels. UNCTAD Data shows that by 1999, close to 100 percent of inward flows of Foreign Direct Investment (FDI) into rich countries were in the form of Mergers & Acquisitions. See UNCTAD, World Investment Report 2000, Figure 1.5 p16.

On merger prohibitions, see Merger Intervention Rates in the EU, Brianna Rock, Hertie School, Jan 2024. The 0.2 percent figure represents 14 mergers blocked out of 6,462 notified, and it compares to 0.7 percent in 1991-2004. Mergers "prevented" (that is, prohibited plus discouraged through regulatory action) fell from 1.6 percent in 1991-2004 to 0.7 percent in 2005-2023.

[35] See The Monopolists' War on Cash, The Counterbalance, March 20, 2024.

[36] I saw first-hand how US tech giants seduced the EU – and undermined democracy, Georg Riekeles, The Guardian, Jun 28, 2022. Monopoly power is inherently more corrupt than the alternative. See To tackle corruption, start with monopoly power, The Counterbalance, May 17, 2023.

[37] The UK enacted the first ever successful breakup of a Big Tech firm in 2021, when it ordered Facebook to divest the recently-acquired Giphy. That was just a fragment, but it still counted as a global-level breakup. The first successful breakup in the U.S. in recent years was of a door-making company, Jen-Weld, also in 2021, in a private suit. See Judges Break Up Door-Making Conglomerate, BIG newsletter, Mar 13, 2021

[38] The United States appears to be ahead of the curve here: a survey in 2024 found that 73 percent of Democrat and 74 percent of Republican voters supported the latest U.S.

antitrust action against Apple. Ten years earlier, there would have been majorities against.

[39] Rethinking my economics, Angus Deaton, IMF, March 2024

[40] As noted in Section 2, breakups almost ceased in the 1980s. It is true that in modern merger cases, regulators often force companies to divest parts of their businesses as a condition for being allowed to merge. These are not classic breakups, however, as they always involve mergers. The quoted regulator is Olivier Guersent, Director-General at the EU's Directorate-General for Competition (DG Comp.) He added, of the generic behavioural remedy: "It's usually ineffective, it's very sensitive to asymmetries of information that always exist, and it's terribly intensive in resources to monitor." (Guersent quoted in Politico Fair Play Europe newsletter, Giovanna Faggionato, Sept 20, 2023.) The U.S. Department of Justice's Merger Remedies Manual (Sept 2020) states that "Conduct remedies typically are difficult to craft and enforce."

[41] The U.S. Federal Trade Commission in December 2020 filed a suit to break Facebook apart from Whatsapp and Instagram. In 2022 a court dismissed the case but the FTC re-filed and an appeals court in 2022 ruled in the FTC's favour.

[42] For example, Amazon workers worldwide have fought to unionise for years, with almost no success so far: breaking Amazon's immense monopoly power is a prerequisite to make progress.

[43] On 'bigness' and competition policy, see The Power of Big Tech Corporations as Modern Bigness and a Vocabulary for Shaping Competition Law as Counter-Power, Pauline Phoa, Anna Gerbrandy, 2022, In M. Bennett, H. Brouwer, & R. Claassen (Eds.), *Wealth and power: Philosophical Perspectives* (pp. 166–185).

See also Adi Ayal The market for bigness: economic power and competition agencies' duty to curtail it, 2013, *Journal of Antitrust Enforcement*, *1*(2), 221–246.

See also Connor Leydecker (2022), A Different Curse: Improving the Antitrust Debate about 'Bigness,' Dec 18, 2021, *New York University Journal of Law and Business*, 13, 845-901

[44] The Biden administration in a 2021 Executive Order mandated a whole-of-government approach to antitrust. See Executive Order on Promoting Competition in the American Economy, White House, July 9, 2021. In April 2024, a coalition of civil society organisations also called for a whole of government approach in Europe; see Rebalancing Europe: a new economic agenda for tackling monopoly power, April 2024.

[45] The very names of the firms speak to a history of mergers: Ernst & Young (EY), PricewaterhouseCoopers (PwC), and Klynveld Peat Marwick Goerdeler (KPMG.) See for example Reward for failure: The paradox of audit partners' record payouts amidst poor audit quality, Audit Reform Lab, undated, 2023. They estimated that 75% (KPMG) and 85% (Deloitte) of revenue at Big Four firms comes from non-audit services.

[46] There has been extensive discussion of fully breaking up the Big Four firms along the lines of these conflicts, but regulators have stopped short of doing so – largely for political reasons, including fear of confronting their power. Ahead of the global financial crisis of 2007-9: "the audit firms gave clean bills of health to all the Western banking giants shortly before they all descended into chaos. *Every single bank.* And they signed off on all sorts of aggressive, risky and dangerous trades too." See *The Finance Curse,* Nicholas Shaxson, Penguin Random House, 2018, p236. On AIG, see *Beancounters: the triumph of the accountants and how they broke capitalism*, Richard Brooks, Atlantic Books, 2018, p134-5. In terms of regulators considering breakups then pulling punches, see for instance, Regulator calls for law change to end Big Four dominance of UK auditing, Chris Giles, Financial Times, April 18th, 2019. They recommended an operational split (involving separate boards, management, accounts and bonus pools) between their audit and consulting businesses.

The influential Business, Energy and Industrial Strategy (BEIS) Committee under Rachel Reeves recommended going further with a full structural breakup. See Split 'Big Four' audit function from consultancy services, say MPs, UK parliament, April 2, 2019. Under UK pressure, audit firm EY went as far as to plan a full global separation of its consulting and auditing divisions but backed off in April 2019, under pressure from its US arm. See Accounting firm EY calls off 'Project Everest' to break up firm, BBC news, April 12, 2023. Similarly, Deloitte floated a breakup in 2023, but eventually opted for a re-organisation.

[47] See e.g. Amazon's European Chokehold, SOMO, Jun 14, 2023

[48] Complaint, U.S. Department of Justice + states vs. Google, Jan 2023, para 6 (which describes Google as "a single company with pervasive conflicts of interest.") and point 6 p140 "divestiture . . . structural relief). The European Commission also in June 2023 made a preliminary order for Google to divest key parts of its adtech business. See for example EU regulator orders Google to sell part of its adtech business, Alex Hern / Lisa O'carroll, The Guardian, Jun 14, 2023.

Other regulators are considering action too. For example, Germany's competition authority said "as an intermediary in the sale of third-party inventory, Google finds itself in a permanent conflict of interests as the company has its own substantial advertising inventory which is marketed through the same channels Sector Inquiry – Online Advertising, Bundeskartellamt, Aug. 2022, p 10.

Also see Investigation into suspected anti-competitive conduct by Google in ad tech, CMA (UK), May 26, 2022. As of June 2024 the investigation was ongoing.

All costs considered, publishers have seen up to 70 percent of online advertising value commandeered by intermediaries including Google: see Where did the money go? Guardian buys its own ad inventory, Hamish Nicklin, The Media Leader, Oct 4, 2016.

[49] (Department of Justice complaint, 2023,) seeking breakup. For Europe and Google, see EU regulators order Google to break up digital ad business over competition concerns, Le Monde, Jun 14, 2023.

On breaking up Amazon, see FTC Sues Amazon for Illegally Maintaining Monopoly Power, U.S. Federal Trade Commission, Sept 2023, especially pp152 and 153 ("Structural relief".)

[50] See Big Pharma case study, as part of the Taken, Not Earned series, civil society organisations, January 2024.

[51] Case Study: Monopoly Agriculture, in Taken, Not Earned report, civil society organisations, January 2024.

[52] On Pharma, at the height of India's Covid pandemic, when some 3000 people were dying per day, campaigners decried patent protections that denied India's capable domestic pharma sector from producing affordable vaccines. A few large western firms with unique patents on a Covid drug thus had arbitrary and even life-or-death "chokepoint" power to decide who gets what: and it was ultimately wealthy nations that got most access to the lifesaving vaccines. See Pharma Case Study, above, Jan 2024.

On the EU, see Commission designates six gatekeepers under the Digital Markets Act, European Commission, Sept 6, 2023.

[53] Research: Amazon's Monopoly Tollbooth in 2023, Stacy Mitchell, Institute for Local Self Reliance, Sept 2023; and Amazon's European Chokehold, SOMO, Jun 14, 2023. On Amazon raising prices on and off Amazon, see Black Friday Special: the rise of the retail monopolists, The Counterbalance, Nov 24, 2023.

[54] See Manufacturing and Liberty, Barry Lynn, Washington Monthly, Jan 8, 2023

[55] For example, the Statute of Monopolies of 1623 in the United Kingdom was a milestone in curbing kings' and queens' arbitrary power, shifting from a system of "no judicial review, oversight or consideration," in the realm of patents, to one of clear rules: a victory of elected parliament and the rule of law over the Crown.

[56] Message to Congress on the Concentration of Economic Power, Franklin D. Roosevelt April 29, 1938.

[57] A leading German school of thought known as *Ordoliberalism* was influential in shaping European treaties. Ordoliberalism, strongly coloured by the horrors of war, recognised the need for strong state intervention in markets to prevent monopolisation and associated abuses.

[58] For example, a law firm observed a particular duopoly in the finance sector, where ISS and Glass Lewis hold a 97 percent share of the market, providing voting advice to institutional investors (on climate and other matters:) "They have created an extensive set of rules that is for all intents and purposes mandatory for US public companies. They did this without any explicit grant or delegation of legislative authority."

[59] For an overview of the monopoly-corruption nexus, see To tackle corruption, start with monopoly power, The Counterbalance, May 17, 2023.
[60] For a good overview, see Inequality Inc., Oxfam, Jan 2024, making the case for the links between inequality and monopoly power.
[61] See The Power of Big Tech Corporations as Modern Bigness and a Vocabulary for Shaping Competition Law as Counter-Power, Anna Gerbrandy and Pauline Phoa
[62] Mostly, people who express these terms decline to be quoted on the record. Named examples include individuals quoted in Small businesses versus the platforms, The Counterbalance, Mar 21, 2021; Killing the Competition, Barry Lynn, Harper's, Feb 2021; or *The Finance Curse,* Atlantic Monthly Press, 2019 (US edition, p285: "They got them over a barrel, they get turned into indentured servants," said [hog farmer Chris] Petersen. "It's a gotcha thing."
[63] See Vertical Integration, undated, National Chicken Council. The landmark text on "chickenization" is *The Meat Racket,* Chris Leonard, Simon & Schuster, 2014. Chickenisation helps explain why the share of each dollar spent by U.S. grocery shoppers that went to farmers fell from a third in the 1980s to less than 13 cents today.today. In that statistic lies a big part of the reason for popular anger in rural America.
[64] See The gravitational pull of supermarket chains, The Counterbalance, May 18, 2021, citing an Oxfam study of German supermarkets: *Knebelverträge im Lebensmittelhandel,* Marita Wiggerthale, Oxfam Deutschland, Feb 9, 2021. One condition required suppliers to pay a "wedding bonus" forcing the supplier to contribute to the costs of a merger - which would obviously hurt the supplier through even less choice. On the data, see the "Open Book Demand." Uber uses similar tactics, using algorithms that decide exactly how much each driver is prepared to work. See Hubert Horan: Can Uber Ever Deliver? Part Thirty-Three: Uber Isn't Really Profitable Yet But is Getting Closer; The Antitrust Case Against Uber, Hubert Horan, Naked Capital
[65] For example, see Report: Large firms making excessive profits in children's social care; CMA ducks the challenge, Balanced Economy Project, March 2022, outlining how large children's social care was 'tipping' towards large extractive companies engaged in financial engineering, to the tune of £22,000 per child per year. Competition was found to be driving out smaller and more socially responsible actors which could not match bids from the large 'financialised' larger actors.
[66] Breaking Up Big Tech: Separation of its Data, Cloud and Intelligence Layers, Parminder Jeet Singh, Data Governance Network Working Paper 09, July 8, 2021. For an exploration of the role of transparency, see Amazon's Big Secret, Stacy Mitchell, The Atlantic, Feb 28, 2024.
[67] See for example. *The Bankers' New Clothes: what's wrong with banking and what to do about it,* Anat Admati, Martin Hellwig, Princeton University Press, 2024 (updated

edition.) Having smaller banks would have reduced the danger from any individual bank failure, making bailouts less likely. For an 'official' global list of banks considered too big to fail, see 2023 List of Global Systemically Important Banks (G-SIBs), Financial Stability, Board, Nov 27, 2023.

[68] Furthermore, whereas monopoly profits are so large (more than the sum of their parts) that fines are routinely just 'a cost of doing business', profits in a well-regulated competitive landscape are smaller, making fines and regulation far more impactful.

[69] See Non-HSR Reported Acquisitions by Select Technology Platforms, 2010–2019: An FTC Study, Federal Trade Commission, Sept 2021; see FN 48.

[70] For example, when Freddie Laker, a pioneer of low-cost airlines, set up the Skytrain service from London to New York in 1977, rival airlines colluded to offer cheap and below-cost flights: Laker could not match their deep financial resources and went bankrupt. Laker won tens of millions in damages for predatory pricing. See Case Study: Monopoly Finance, Balanced Economy Project, SOMO, Global Justice Now, LobbyControl, Jan 2024

[71] Google, Amazon, and Booking: anti-monopoly gathers pace, The Counterbalance, Oct 10, 2023. For more coercive examples, Google's Chrome Antitrust Paradox, Shaoor Munir, Davis Konrad Kollnig, Anastasia Shuba, Zubair Shafiq, Vanderbilt Journal of Entertainment & Technology Law, Vol. 27, Feb 2024. This cross-leveraging is especially common in dominant firms that are "vertically integrated" - that is, they control economic activities up and down their supply chains. The pro-monopoly doctrine and system has ensured that merger enforcement has become especially lax on vertical integration. See, for instance, Vertical Integration and the Market Power Crisis, Adil Abdela, Kristin Karlsson, Marshall Steinbaum, Roosevelt Institute, April 2019.

[72] See Children's Social Care: supplementary submission to the CMA (updated), Balanced Economy Project, August 2021

[73] See, for Example, This Monster Publishing Merger is About Amazon, Franklin Foer, The Atlantic, Nov 25, 2020. Companies sometimes believe that such mergers 'enhance competition' because it enables them to compete better against bigger firms. A better alternative to this "Godzilla competition" model of allowing firms to bulk up defensively against larger players, is to break up the larger players.

[74] See To Regulate Big Corporations, Understand How They Got That Way, Sandeep Vaheesan, Harvard Business Review, May 24, 2023

[75] Boeing and the Dark Age of American Manufacturing, Jerry Useem, The Atlantic, April 20, 2024.

[76] See, for instance, Interoperability as a tool for competition regulation, Ian Brown, Douwe Korff, Oct 1, 2020. The subsequent EU's Digital Markets Act imposes certain interoperability requirements on digital firms, so that users on one platform can exchange (for example) messages with users on other platforms.

[77] For example, see Lessons Learned from three decades of liberalisation of the European railways, European Transport Workers' Federation Policy Paper, 2021; and Can Britain ever fix its privatised railways? Philip Georgiadis and Jim Pickard, Financial Times, May 2, 2021; and What next for Britain's broken railways? Philip Georgiadis, Clara Murray and Jim Pickard , Financial Times, April 4 2024. On bureaucracy, the 2021 FT article (ibid.) said the railway had 400 “train delay attributors” whose job it is to argue with each other about assigning blame for a delay; delay attribution was adjudicated according to a 199 page document. Franchise agreements typically run to 1,000 pages. Some well-regarded rail systems (such as Japan's) are fully private; some (such as Switzerland's) are state-run; a key message from different systems is that breakups have been no panacea.
[78] For example, Investopedia states of the AT&T breakup: "The breakup of AT&T produced many immediate benefits for consumers. For many decades, AT&T did not allow users of their service to connect phones manufactured by other firms. They claimed these phones could degrade the quality of the network. AT&T also would not sell its own phones to consumers, so everyone had to rent phones from AT&T. The Baby Bells controlled the direct connections to consumers after the breakup, and they dropped these restrictions. There was soon a thriving market for selling phones to consumers. Phone prices dropped, quality increased, and renting phones faded away." See AT&T's Successful Spin-Offs, Investopedia, Dec 6, 2022.
[79] Valletti said (via email) of the research: "very big firms have already exhausted all those economies of scale. Economies of scale make a lot of sense for small and medium sized firms, but there is no evidence that economies of scale go beyond that size."
[80] On Giphy, see The UK is breaking up Facebook / Meta and (almost) nobody noticed, The Counterbalance, Jan 13, 2022. On AT&T, see AT&T to spin off WarnerMedia, basically admitting giant merger was a mistake, Jon Brodkin, ArsTechnica, May 17, 2021.
[81] For example, a former Instagram employee told the US House Judiciary Committee that reversing any technical integration Facebook has made with WhatsApp or Instagram would be straightforward. As a former Instagram employee said: "you can just copy and paste code, make a copy of the system, and give it to the new company. If you can put them together, you can pull them apart. . . It's not like building a skyscraper and then suddenly needing to knock the building down again." See Investigation of Competition in Digital Markets, "the Ciciline Report", US House Judiciary Committee Report, p126.
[82] The FTC's Facebook Suit: Questions and Answers, and FTC Sues Facebook for Illegal Monopolization, U.S. Federal Trade Commission, Dec 9, 2020.
[83] Among other things, bringing highly profitable and buccaneering M&A departments together with staid (and less profitable) deposit-taking activities inevitably saw the

risk-taking culture dominate; for an exploration of this see Fool's Gold: How Unrestrained Greed Corrupted a Dream, Shattered Global Markets and Unleashed a Catastrophe, Gillian Tett, Little Brown, 2010. The creation of "universal" banks carrying out multiple functions also contributed to the "Too Big To Fail" problem that ensured massive moral hazard and government bailouts; and oligopoly in banking created concentrated power making it easier for the finance sector as a whole to 'capture' policy-making.

[84] Amazon's Antitrust Paradox, Lina Khan, Yale Law Journal, 2017. Amazon even had a "Gazelle Project" to approach rivals, "the way a cheetah would a sickly gazelle."

[85] Künster, LobbyControl, 2023. There are different opinions as to whether to break up the marketplace itself, given its "convenience superstore" appeal. Ideas floated include: i) break up the marketplace along different business lines e.g. electronics versus books; ii) regulate it as a public utility like water or electricity, with "common carrier" rules to prevent discrimination and manipulation; iii) a 'condominium' model where marketplace administration is run by a separate party, and users can collectively replace the administrator if necessary. On the latter, See How to Break Up Amazon, Peter Carstensen, Darren Bush, The Sling, Oct 30, 2023. "Examples of such structures include the current rights to capacity on natural gas pipelines, rights to space on container ships, and administration for standard essential patents and for pooled copyrights. These examples all involve situations in which participants have a right to use some capacity or right but the administration of the system rests with a distinct party whose incentive is to maximise the value of the facility to all users."

[86] We need to nationalise Google, Facebook and Amazon. Here's why, Nick Srnicek, The Guardian, Aug 30, 2017. On the different layers and public digital infrastructure, see Parminda Jeet Singh, 2020; or Statement on Democratic Digital Infrastructure, civil society groups, June 5, 2023; or European Public Digital Infrastructure Fund White Paper, Paul Keller, Open Future, Dec 16, 2022. Also on the concept of public digital infrastructure" see for example The India Stack: opening the digital marketplace to the masses, Benjamin Parkin, John Reed and Jyotsna Singh, Financial Times, April 20 2023.

[87] See, for instance, The gravitational pull of supermarket chains, The Counterbalance, May 18, 2021.

[88] For example Austin Frerick, author of *Barons: Money, Power and Corruption in America's Food Industry*, said via email to the Balanced Economy Project that many midwestern U.S. states had these rules in place, and efforts were even made for a federal one, "but Big Meat basically got them rendered toothless by Federalist Society judges." See also Ban On Meat Packer Ownership: Too Little, Too Late, Mike Callicrate, Jun 1, 2016 advocating this but adding that further breakups would be needed, such as to break up local monopolies in slaughter operations.

[89] See How Finance Monopolises Veterinary Services, Nicholas Shaxson, LinkedIn, Mar 26 2024. The CMA said: "A company can own multiple vet practices in a local area without making that clear – for example, only 4 out of 6 of the largest groups don't change the name or branding when they take over an independently owned vet practice." See CMA identifies multiple concerns in vets market, CMA, Mar 12, 2024.
[90] E.g. Ofcom proposes to refer UK cloud market for investigation, Ofcom (UK,) April 5, 2023
[91] Via email. Name withheld.
[92] Breaking Up Big Tech: Separation of its Data, Cloud and Intelligence Layers, Parminder Jeet Singh, Data Governance Network Working Paper 09, July 8, 2021. On the AI-big tech nexus, see AI in the Public Interest: Confronting the Monopoly Threat, Open Markets Institute, Barry Lynn, Max von Thun, Karina Montoya, Open Markets Institute, Nov 2023.
[93] For a discussion of the EU's suggestion of partly breaking up Google's AdTech business, and a stronger remedy ("breaking out" the entire AdTech business away from Google,) see Google Adtech – Breakup or Break out? Todd Davies, Zlatina Georgieva, draft paper under review with the Utrecht Law Journal, undated, 2024.
[94] See Six degrees of separation: operational separation as a remedy in European telecommunications regulation,' Martin E. Cave, Communications and Strategies, Jun 2007.
[95] It's time to give Australian courts the power to break up big firms that behave badly, Allan Fels, The Conversation, April 1, 2024.
[96] Quite often, breakups have been opposed by regulators on the basis of 'proportionality', under arguments that the drastic measure of breakups is disproportionate to the problems.
[97] A good summary of different legal bases for breakups around the world is available from Künstner for LobbyControl, 2023
[98] The Sherman Act has since been reinforced by other acts such as the Clayton Act of 1914 and successive legislation. For a discussion of Sherman's relevance to breakups, see Künstner for LobbyControl (2023, Section 4.1)
[99] See Strategic steer to the Competition and Markets Authority 2023, UK Government, Nov 23, 2023.
[100] Guidelines for market investigations: Their role, procedures, assessment and remedies, Competition Commission, April 2013; see points 372 and 373 in particular.
[101] Draft: Digital markets competition regime guidance, CMA, May 24, 2024
[102] Article 102 potentially looks at both "exclusionary abuses" (which look at competitive processes and exclusion of competitors by dominant firms) and "exploitative abuses" (which are more self-explanatory). The overwhelming focus in terms of cases and supporting legislation has unfortunately been on exclusionary

abuses: a widening to put more focus on 'exploitative abuses' would open more space for breakups. See e.g. Tackling monopoly power and the climate crisis – together, The Counterbalance, Jul 18, 2022

[103] See Antitrust: Commission sends Statement of Objections to Google over abusive practices in online advertising technology, EU Commission, June 14, 2023.

[104] See Digital Markets Act: Summary, European Commission, June 2, 2023.

[105] For example, the European Parliament in January 2024 urged the European Commission to make more use of 'structural remedies' or breakups. See European Parliament resolution of 16 January 2024 on competition policy – annual report 2023, European Parliament, Jan 16, 2023. On the legal bases for breaking Google's Ad Tech business away from the company, see Google Adtech – Breakup or Break out? Todd Davies, Zlatina Georgieva, draft paper under review with the Utrecht Law Journal, undated, 2024, especially pp 12-16.

[106] Germany's Competition Act, 2023. See also, for instance, Künstner, LobbyControl 2023.

[107] See Parminder Jeet Singh, 2021.

[108] For example, the goals of taxation are sometimes described in terms of the four "Rs": Revenue, Redistribution, Re-pricing (e.g. tobacco taxes to curb smoking) and Representation (where tax plays a crucial political role stimulating accountability between rulers and citizens.) Anti-monopoly should provide a fifth "R" to tax – Regulating corporate power. This has historical pedigree: see, for example, Tax and Monopoly Focus, Balanced Economy Project, Roosevelt Institute, Tax Justice Network, Oct 2022. In this collection of essays, for example, Reuven Avi-Yonah notes that "when the United States enacted its first corporate income tax in 1909, the main purpose was to regulate corporate power, especially that of the major monopolies such as J.P. Morgan's US Steel and John D. Rockefeller's Standard Oil. The corporate tax was part of the same antitrust campaign that culminated in 1911 with the Supreme Court ordering the break-up of Standard Oil."

[109] See John Kwoka and Tommaso Valletti, Unscrambling the Eggs. As the authors state: "There have been a substantial number of successful breakups of firms, some in antitrust, more in regulated industries, and even more in the private sectors of the USA and UK as firms initiate their own restructuring. We believe that a policy of breakups can have a much greater chance at success compared to efforts to regulate such firms through rule-making conduct remedies. And we argue that breaking up such firms is facilitated by the fault lines that reveal the natural break points of these heavily merged firms."

[110] The beneficial kind of competition offers choice, and benefits workers, citizens and consumers. For example, extensive research shows that concentration in mobile phone markets leads to higher prices and poorer service. Harmful competition is common,

too. For example, companies can compete and win market share on the basis of 'externalities' such as a greater willingness to pollute, to engage in more intense invasions of privacy to boost market share in advertising, or to increase sugar content in food. In her landmark investigation of the Standard Oil monopoly, the U.S. journalist Ida Tarbell distinguished between "legitimate greatness" that produced beneficial new innovations, and "illegitimate greatness" that were based on abusing monopoly power and other externalities.

[111] For the counter-arguments against national champions, see, for example: Rebalancing Europe: a new economic agenda for tackling monopoly power; coalition of civil society organisations, April 2024, especially p9; or see The National Security Case for Breaking Up Big Tech, Ganesh Sitaraman, Columbia University Commons, 2020; or The Future of American Innovation: A Conversation With Lina Khan, Carnegie Endowment for International Peace, March 13, 2024**.** Boeing in the US and Wirecard in the EU are poster children for how a 'national champions' strategy can backfire.

[112] See Can breaking up tech monopolies tame disinformation and hate speech? The Counterbalance, May 29, 2024. Also see Taming Big Tech: a pro-competitive solution to protect free expression, Article 19, 2021, or Ensuring Pluralism in Social Media Markets: Some Suggestions, Maria Luisa Stasi, Robert Schuman Centre for Advanced Studies, European University Institute, 2020; or Unbundling Hosting and Content Curation on Social Media Platforms: Between Opportunities and Challenges, UCLA Journal of Law and Technology, March 2023.

It is a valid concern that allowing competition into this space could end up with the most unscrupulous actors winning market share. However, there are two key differences in a competitive space, as opposed to a monopolised one. First, Big Tech firms treat fines as merely a cost of doing business: by contrast, with (well regulated) competition, profits are "competed away" to a fraction of former levels, thus making fines and other regulatory action meaningful and potentially existential; second, monopoly power in this space is a chokepoint meaning that any regulatory action that is big/meaningful enough to transform incentives and actions will be immensely disruptive: big tech in this sense is "too big to fail." In a competitive landscape, by contrast, regulatory action could be made powerful to bankrupt a company but the system is resilient: others will take its place.

[113] See Monopoly Power in our energy markets will lead to climate catastrophe, Nicholas Shaxson, LinkedIn, Dec 5, 2023; and Kochland Author Christopher Leonard Talks Corporate Power, the Koch Brothers, and Their "Outsized Influence over Policy, *Open Markets Institute, Aug 22, 2019.*

[114] For example, consider ESG (Environmental, Social and Governance) ratings affecting trillions of dollars in investor capital, influencing whether it flows to sustainable activities, to greenwashing, or to fossil fuels. The market, dominated by MSCI and S&P

Dow Jones Indices with a combined 68 percent market share, suffer conflicts of interest: these companies both award ESG ratings to companies, while also trying also to curry favour with them to sell them paid advisory and consulting services. (As MSCI says: "conflicts of interest could arise from conflicts between MSCI ESG Research and its clients ." How MSCI ESG research manages conflicts of interest related to ESG ratings, MSCI, Jun 2023.) This conflict creates incentives towards lax ratings to allow greenwashing. A similar conflict exists in the "proxy advisory" industry which also influences financial flows in the climate area, where ISS and Glass Lewis, with a combined 91 percent market share, "provide both proxy voting recommendations to investment advisers and other institutional investors and consulting services to corporations." See ISS And Other Proxy Advisory Firms' Conflicts Of Interest: Analyzing The Insufficiency Of The 2020 Securities And Exchange Commission Rule Change, Dan Daskal, Columbia Business Law Review, March 26, 2021. See also Exit, Control, and Politics: Structural Power and Corporate Governance under Asset Manager Capitalism, Benjamin Braun, Politics & Society, Oct 18th, 2022. These are similar to the conflicts at the heart of Big Four accounting & audit firms; or the conflicts at the heart of financial ratings agencies such as Moody's, which contributed to a 'whitewash' approach to rating financial instruments that played a major role in the build-up of hidden risks ahead of the last global financial crisis. While breaking the duopolies in both ESG ratings and in proxy advisory is most likely a good idea, the most targeted breakup in each case – perhaps achieved through broad prohibitions – would sever the conflicts of interest: notably, separating the consulting arms from the ratings or advisory arms.

ENDS