

Antitrust Dystopia and Antitrust Nostalgia

September 9, 2021

[Geoffrey A. Manne](#) and [Dirk Auer](#)

The dystopian novel is a powerful literary genre. It has given us such masterpieces as *Nineteen Eighty-Four*, *Brave New World*, and *Fahrenheit 451*. Though these novels often shed light on the risks of contemporary society and the zeitgeist of the era in which they were written, they also almost always systematically overshoot the mark (intentionally or not) and severely *underestimate* the radical improvements that stem from the technologies (or other causes) that they fear.

But dystopias are not just a literary phenomenon; they are also a powerful force in policy circles. This is epitomized by influential publications such as The Club of Rome's 1972 report [The Limits of Growth](#), whose dire predictions of Malthusian catastrophe have largely failed to materialize.

In an [article](#) recently published in the *George Mason Law Review*, we argue that contemporary antitrust scholarship and commentary is similarly afflicted by dystopian thinking. In that respect, today's antitrust pessimists have set their sights predominantly on the digital economy—"Big Tech" and "Big Data"—in the process of alleging a vast array of potential harms.

Scholars have notably argued that the data created and employed by the digital economy produces network effects that inevitably lead to tipping and to more concentrated markets (e.g., [here](#) and [here](#)). In other words, firms will allegedly accumulate insurmountable data advantages and thus thwart competitors for extended periods of time.

Some have gone so far as to argue that this threatens the very fabric of western democracy. For instance, parallels between the novel *Nineteen Eighty-Four* and the power of large digital platforms were plain to see when Epic Games launched an antitrust suit against Apple and its App Store in August 2020. The gaming company released a short [video clip](#) parodying Apple's famous "1984" ad (which, upon its release, was itself widely seen as a critique of the tech incumbents of the time). Similarly, a [piece](#) in the *New Statesman*—titled "Slouching Towards Dystopia: The Rise of Surveillance Capitalism and the Death of Privacy"—concluded that:

Our lives and behaviour have been turned into profit for the Big Tech giants—and we meekly click 'Accept.' How did we sleepwalk into a world without privacy?

In our article, we argue that these fears are symptomatic of two different but complementary phenomena, which we refer to as “Antitrust Dystopia” and “Antitrust Nostalgia.”

Antitrust Dystopia is the pessimistic tendency among competition scholars and enforcers to assert that novel business conduct will cause technological advances to have unprecedented, anticompetitive consequences. This is almost always grounded in the belief that “this time is different”—that, despite the benign or positive consequences of previous, similar technological advances, *this time* those advances will have dire, adverse consequences absent enforcement to stave off abuse.

Antitrust Nostalgia is the biased assumption—often built into antitrust doctrine itself—that change is bad. Antitrust Nostalgia holds that, because a business practice has seemingly benefited competition before, changing it will harm competition going forward. Thus, antitrust enforcement is often skeptical of, and triggered by, various deviations from status quo conduct and relationships (i.e., “nonstandard” business arrangements) when change is, to a first approximation, the hallmark of competition itself.

Our article argues that these two worldviews are premised on particularly questionable assumptions about the way competition unfolds, in this case, in data-intensive markets.

The Case of Big Data Competition

The notion that digital markets are inherently more problematic than their brick-and-mortar counterparts—if there even is a meaningful distinction—is advanced routinely by policymakers, journalists, and other observers. The fear is that, left to their own devices, today’s dominant digital platforms will become all-powerful, protected by an impregnable “data barrier to entry.” Against this alarmist backdrop, nostalgic antitrust scholars have argued for aggressive antitrust intervention against the nonstandard business models and contractual arrangements that characterize these markets.

But as our paper demonstrates, a proper assessment of the attributes of data-intensive digital markets does not support either the dire claims or the proposed interventions.

1. Data is information

One of the most salient features of the data created and consumed by online firms is that, jargon aside, it is just information. As with other types of [information](#), it thus tends to have at least some traits usually associated with public goods (i.e., goods that are non-rivalrous in consumption and not readily excludable). As the National Bureau of Economic Research’s Catherine Tucker [argues](#), data “has near-zero marginal cost of production and distribution even over long distances,” making it very difficult to exclude others from accessing it. Meanwhile, multiple economic agents can simultaneously use the same data, making it non-rivalrous in consumption.

As we explain in our paper, these features make the nature of modern data almost

irreconcilable with the alleged hoarding and dominance that critics routinely associate with the tech industry.

2. Data is not scarce; expertise is

Another important feature of data is that it is ubiquitous. The predominant challenge for firms is not so much in obtaining data but, rather, in drawing useful insights from it. This has two important implications for antitrust policy.

First, although data does not have the self-reinforcing characteristics of network effects, there is a sense that acquiring a certain amount of data and expertise is necessary to compete in data-heavy industries. It is (or should be) equally apparent, however, that this “learning by doing” advantage rapidly reaches a point of diminishing returns.

This is supported by significant empirical evidence. As our [survey](#) of the empirical literature shows, data generally entails diminishing marginal returns:

Table 1: Survey of Empirical Papers
That Analyze the Marginal Benefits of Data

Author	Year	Method	Source of data	Effect of "More Data"
de Fortuny, Martens, & Provost	2013	Multivariate event model	Data drawn from nine different predictive modeling applications, from book reviews to banking transactions	Increasing with diminishing returns "One should note, however, that the curves do seem to show some diminishing returns to scale." ²³⁶ "The marginal increase in generalization accuracy decreases with more data for several reasons." ²³⁷
Chiou & Tucker	2017	Difference-in-differences	Data from Experian Hitwise (outgoing traffic from Google, Yahoo! and Bing search engines)	Flat Longer periods of data storage (6 to 18 months; and 3 to 13 months) "do not confer advantages in search quality." ²³⁸
Schaefer, Sapi & Lorincz	2018	Local polynomial regression	Yahoo! search logs (i.e., users' click behavior)	Increasing with diminishing returns "[Q]uality of search results improve with more data on previous searches" (cookie length); with decreasing returns. Personalized data is the most valuable. ²³⁹
Bajari, Chernozhukov, Hortaçsu & Suzuki	2019	Linear regression	Amazon's retail forecasting system	Flat, or increasing with diminishing returns Cookie length is robustly helpful in improving forecast quality. The effect of increasing number of products in the same category is robustly flat (with a few exceptions). When the estimated effects are not flat, "they exhibit diminishing returns to scale, with the exception of T effects in the model without time controls." ²⁴⁰
Neumann, Tucker & Whitfield	2019	Field experiment	Nielsen ad ratings data	Sometimes negative from a cost/benefit point of view "In comparison with random audience selection, the use of black box data profiles, on average, increased identification of a user with a desired single attribute by 0%–77%. Audience identification can be improved, on average, by 123% when combined with optimization software. However, given the high extra costs of targeting solutions and the relative inaccuracy, we find that third-party audiences are often economically unattractive." ²⁴¹
Claussen, Peukert & Sen	2019	Randomized experiment	Website of large German news outlet	Increasing with diminishing returns "Additional data helps algorithmic performance with rapidly decreasing returns." ²⁴²

Second, it is firms' capabilities, rather than the data they own, that lead to success in the marketplace. Critics who argue that firms such as Amazon, Google, and Facebook are successful because of their superior access to data might, in fact, have the causality in reverse. Arguably, it is because these firms have come up with successful industry-defining paradigms that they have amassed so much data, and not the other way around.

This dynamic can be seen at play in the early days of the search-engine market. In 2013, *The Atlantic* ran a [piece](#) titled "What the Web Looked Like Before Google." By comparing the websites of Google and its rivals in 1998 (when Google Search was launched), the article shows how the current champion of search marked a radical departure from the status quo.

Even if it stumbled upon it by chance, Google immediately identified a winning formula for the search-engine market. It ditched the complicated classification schemes favored by its rivals and opted, instead, for a clean page with a single search box. This ensured that users could access the information they desired in the shortest possible amount of time—thanks, in part, to Google's PageRank algorithm.

It is hardly surprising that Google's rivals struggled to keep up with this shift in the search-engine industry. The theory of dynamic capabilities tells us that firms that have achieved success by indexing the web will struggle when the market rapidly moves toward a new paradigm (in this case, Google's single search box and ten blue links). During the time it took these rivals to identify their weaknesses and repurpose their assets, Google kept on making successful decisions: notably, the introduction of Gmail, its acquisitions of YouTube and Android, and the introduction of Google Maps, among others.

Seen from this evolutionary perspective, Google thrived because its capabilities were perfect for the market at that time, while rivals were ill-adapted.

3. *Data as a byproduct of, and path to, platform monetization*

Policymakers should also bear in mind that platforms often must go to great lengths in order to create data about their users—data that these same users often do not know about themselves. Under this framing, data is a byproduct of firms' activity, rather than an input necessary for rivals to launch a business.

This is especially clear when one looks at the formative years of numerous online platforms. Most of the time, these businesses were started by entrepreneurs who did not own much data but, instead, had a brilliant idea for a service that consumers would value. Even if data ultimately played a role in the monetization of these platforms, it does not appear that it was necessary for their creation.

Data often becomes significant only at a relatively late stage in these businesses' development. A quick glance at the digital economy is particularly revealing in this regard. Google and Facebook, in particular, both launched their platforms under the assumption that building a successful product would eventually lead to significant revenues.

It took five years from its launch for Facebook to [start making a profit](#). Even at that point, when the platform had 300 million users, it still was not entirely clear whether it would generate most of its income from app sales or online advertisements. It was [another three years](#) before Facebook started to cement its position as one of the world's leading providers of online ads. During this eight-year timespan, Facebook prioritized user growth over the monetization of its platform. The company appears to have concluded (correctly, it turns out) that once its platform attracted enough users, it would surely find a way to make itself highly profitable.

This might explain how Facebook managed to build a highly successful platform [despite a large data disadvantage](#) when compared to rivals like MySpace. And Facebook is no outlier. The list of companies that prevailed despite starting with little to no data (and initially lacking a data-dependent monetization strategy) is lengthy. Other examples include TikTok, Airbnb, Amazon, Twitter, PayPal, Snapchat, and Uber.

Those who complain about the unassailable competitive advantages enjoyed by companies with troves of data have it exactly backward. Companies need to innovate to attract consumer data or else consumers will switch to competitors, including both new entrants and established incumbents. As a result, the desire to make use of more and better data *drives* competitive innovation, with manifestly impressive results. The continued explosion of new products, services, and apps is evidence that data is not a bottleneck to competition, but a spur to drive it.

We've Been Here Before: The Microsoft Antitrust Saga

Dystopian and nostalgic discussions concerning the power of successful technology firms are nothing new. Throughout recent history, there have been repeated calls for antitrust authorities to reign in these large companies. These calls for regulation have often led to increased antitrust scrutiny of some form. The Microsoft antitrust cases—which ran from the 1990s to the early 2010s on both sides of the Atlantic—offer a good illustration of the misguided “Antitrust Dystopia.”

In the mid-1990s, Microsoft was one of the most successful *and* vilified companies in America. After it obtained a commanding position in the desktop operating system market, the company sought to establish a foothold in the burgeoning markets that were developing around the Windows platform (many of which were driven by the [emergence of the Internet](#)). These included the Internet browser and media-player markets.

The business tactics employed by Microsoft to execute this transition quickly drew the ire of the press and rival firms, ultimately landing Microsoft in hot water with antitrust authorities on both sides of the Atlantic.

However, as we show in our article, though there were numerous calls for authorities to adopt a precautionary principle-type approach to dealing with Microsoft—and antitrust enforcers were more than receptive to these calls—critics' worst fears never came to be.

This positive outcome is unlikely to be the result of the antitrust cases that were brought against Microsoft. In other words, the markets in which Microsoft operated seem to have self-corrected (or were misapprehended as competitively constrained) and, today, are generally seen as being unproblematic.

This is not to say that antitrust interventions against Microsoft were necessarily misguided. Instead, our critical point is that commentators and antitrust decisionmakers routinely overlooked or misinterpreted the existing and nonstandard market dynamics that ultimately prevented the worst anticompetitive outcomes from materializing. This is supported by several key factors.

First, the remedies that were imposed against Microsoft by antitrust authorities on both sides of the Atlantic were ultimately quite weak. It is thus unlikely that these remedies, by themselves, prevented Microsoft from dominating its competitors in adjacent markets.

Note that, if this assertion is wrong, and antitrust enforcement did indeed prevent Microsoft from dominating online markets, then there is arguably no need to reform the antitrust laws on either side of the Atlantic, nor even to adopt a particularly aggressive enforcement position. The remedies that were imposed on Microsoft were relatively localized. Accordingly, if antitrust enforcement did indeed prevent Microsoft from dominating other online markets, then it is antitrust enforcement's deterrent effect that is to thank, and not the remedies actually imposed.

Second, Microsoft lost its bottleneck position. One of the biggest changes that took place in the digital space was the emergence of alternative platforms through which consumers could access the Internet. Indeed, as recently as January 2009, roughly 94% of all Internet traffic came from Windows-based computers. Just over a decade later, this number has [fallen](#) to about 31%. Android, iOS, and OS X have shares of roughly 41%, 16%, and 7%, respectively. Consumers can thus access the web via numerous platforms. The emergence of these alternatives reduced the extent to which Microsoft could use its bottleneck position to force its services on consumers in online markets.

Third, it is possible that Microsoft's own behavior ultimately sowed the seeds of its relative demise. In particular, the alleged barriers to entry (rooted in nostalgic market definitions and skeptical analysis of "ununderstandable" conduct) that were essential to establishing the antitrust case against the company may have been *pathways* to entry as much as barriers.

Consider this error in the *Microsoft* court's analysis of entry barriers: the court pointed out that new entrants faced a barrier that Microsoft didn't face, in that Microsoft didn't have to contend with a powerful incumbent impeding its entry by tying up application developers.

But while this may be true, Microsoft did face the *absence* of any developers at all, and had to essentially create (or encourage the creation of) businesses that didn't previously exist. Microsoft thus created a huge positive externality for new entrants: existing knowledge and

organizations devoted to software development, industry knowledge, reputation, awareness, and incentives for schools to offer courses. It could well be that new entrants, in fact, faced *lower* barriers with respect to app developers than did Microsoft when it entered.

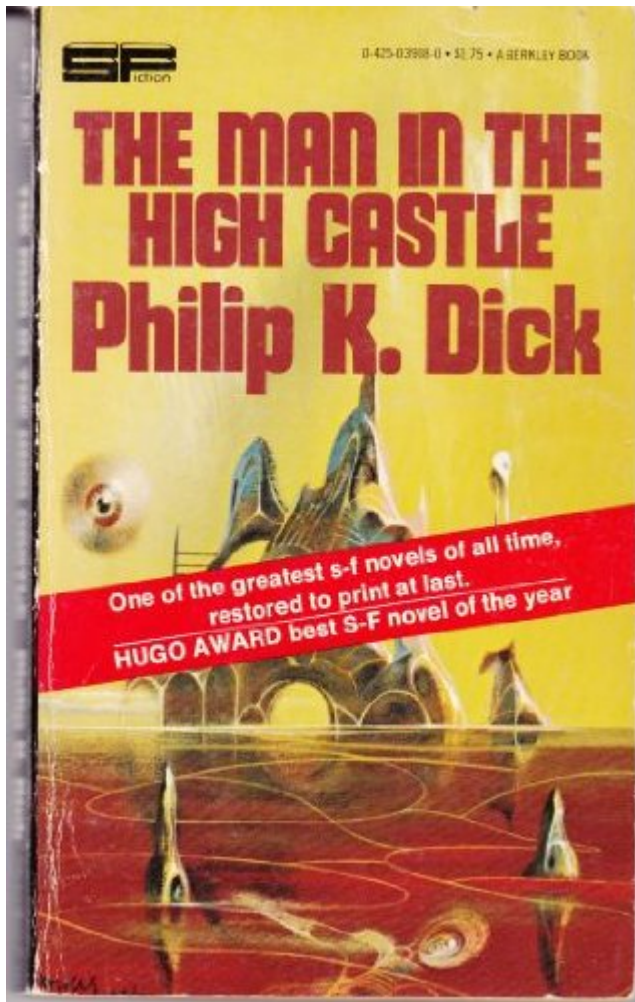
In short, new entrants may face even more welcoming environments *because of* incumbents. This enabled Microsoft's rivals to thrive.

Conclusion

Dystopian antitrust prophecies are generally doomed to fail, just like those belonging to the literary world. The reason is simple. While it is easy to identify what makes dominant firms successful in the present (i.e., what enables them to hold off competitors in the short term), it is almost impossible to conceive of the myriad ways in which the market could adapt. Indeed, it is today's supra-competitive profits that spur the efforts of competitors.

Surmising that the economy will come to be dominated by a small number of successful firms is thus the same as believing that all market participants can be outsmarted by a few successful ones. This might occur in *some* cases or for *some* period of time, but as our article argues, it is bound to happen far less often than pessimists fear.

In short, dystopian scholars have not successfully made the case for precautionary antitrust. Indeed, the economic features of data make it highly unlikely that today's tech giants could *anticompetitively* maintain their advantage for an indefinite amount of time, much less leverage this advantage in adjacent markets.



With this in mind, there is one dystopian novel that offers a fitting metaphor to end this Article. [The Man in the High Castle](#) tells the story of an alternate present, where Axis forces triumphed over the Allies during the second World War. This turns the dystopia genre on its head: rather than argue that the world is inevitably sliding towards a dark future, *The Man in the High Castle* posits that the present could be far worse than it is.

In other words, we should not take any of the luxuries we currently enjoy for granted. In the world of antitrust, critics routinely overlook that the emergence of today's tech industry might have occurred *thanks to*, and not *in spite of*, existing antitrust doctrine. Changes to existing antitrust law should thus be dictated by a rigorous assessment of the various costs and benefits they would entail, rather than a litany of hypothetical concerns. The most recent wave of calls for antitrust reform have so far failed to clear this low bar.

[View Article](#)