• Back in fashion
  ▪ Digital economy issues
  ▪ Tech firms increasingly B2C

• Next steps? 3 views
  ▪ Do more with comp law but recognise limits
  ▪ More regulatory goals in comp law
  ▪ Turn to regulation
Do more with comp law but recognise limits

- Self-preferencing (Google Shopping, 2017)
- Pre-installation (Google Android, 2018)
- Interoperability (Microsoft/LinkedIn, 2016; Broadcom/Brocade, 2017)
- Standard-essential patents (Motorola, 2014; Samsung, 2014)
- Collusion on business models (E-books, 2012 and 2013)
- Most-favoured-nation clauses (Amazon, 2017)
- Restrictions on brand bidding (Guess, 2018)
- Algorithm-enhanced RPM (Consumer electronics, 2018)
- Geoblocking/market partitioning (Pay-TV, 2019)
- Exclusivity (Qualcomm, 2018; Google AdSense, 2019)
- Interim measures (Statement of Objections in Broadcom, 26 June 2019)
More regulatory goals in competition law (1)

Consistency arguments

- Specific consistency clauses
- General consistency clause (Art. 7)
- Clause re consistency with the Charter (Art. 51)

Competition law should accommodate reg goals

- Through more comp enforcement
- Through less comp enforcement
More regulatory goals in competition law (2)

Question

- Comp law to actively promote other goals?
- Comp law to avoid conflict/inconsistencies?
More regulatory goals in competition law (2)

Question

- Comp law to actively promote other goals?
- Comp law to avoid conflict/inconsistencies?
More regulatory goals in competition law (2)

Question

- Comp law to actively promote other goals?
- Comp law to avoid conflict/inconsistencies?

But reg goals can be subsumed under comp notions

- Quality
- Efficiencies
- *Wouters* "legitimate objectives"
- Article 21 EUMR "legitimate interests"
Turn to regulation?

- Clearly definable issue
- The issue is widespread or recurrent
- The issue is usually bad or always bad
- The regulatory rule takes comp into account
- Reliable enforcement mechanism
- Without prejudice to comp enforcement
Conclusion on competition & regulation

• Mutual influence

• Minimalist view of consistency

• Competition & regulation are complements, not substitutes!
  ▪ Regulation then competition
  ▪ Competition then regulation
  ▪ Comp & reg at the same time
Backup slides
Competition v. regulation (1)

- Ex post v. ex ante
- Proscribe v. prescribe
- Single firm/group of firms v. all firms
- All sectors v. single sector
- Faster and adaptable v. rigid and slow
Competition v. regulation (2)

• Blunt v. surgical
• More/less democratic
• More/less stakeholder participation
• More/less capture
• Best institutional design?
• Which is better suited to international convergence?