



CENTRE FOR
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Competition and Equality – A republican account

Should Wealth and Income Inequality Be a
Competition Law Concern?
University of Amsterdam
20-21 May, 2021

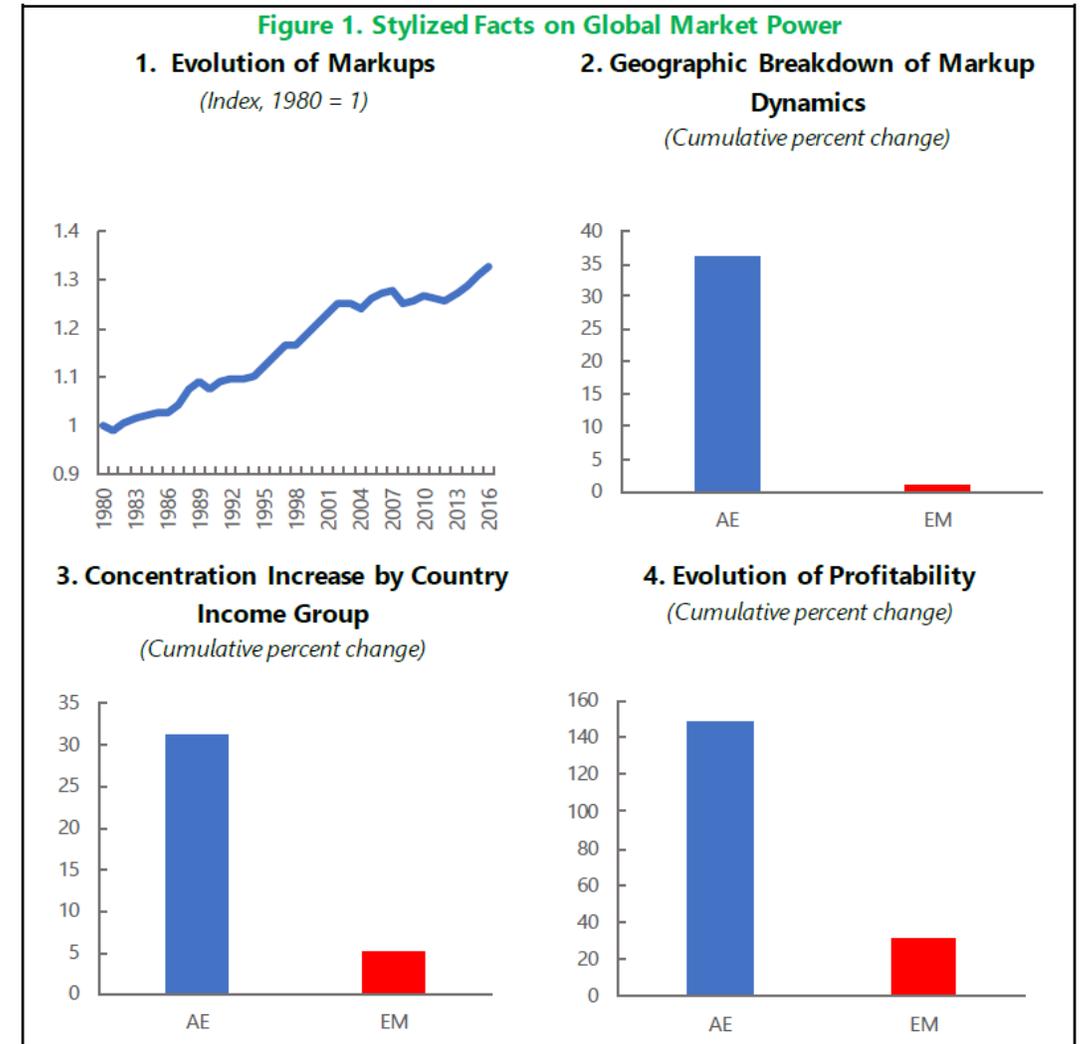
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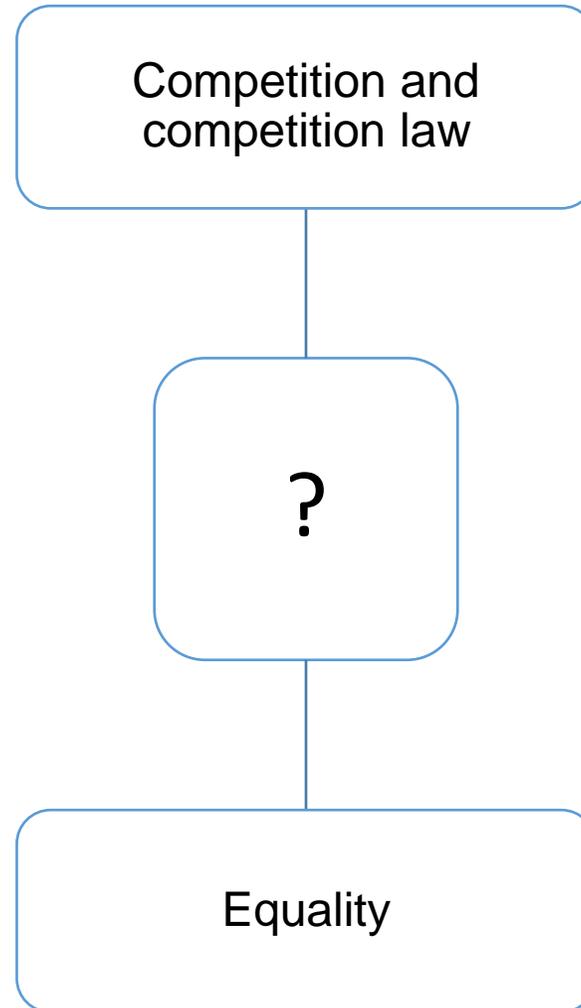
<http://competitionpolicy.ac.uk/>

Motivation of the paper

- Growing levels of industry concentration and markups (de Loecker et al. 2020; IMF 2021)
- Decline in labour share and growing inequality
- Assumptions
 - Rise in concentration and markups are a sign of waning competition at least in part, driven by a decline in competition law enforcement (eg. Furman et al 2015; Philippon 2019)
 - Increases in concentration and corporate power are drivers of growing inequality
- But methodological issues and disagreement over good v bad concentration (Werden and Froeb 2018; Shapiro 2018; Autor et al. 2020)



Overarching question: What is the relationship between competitive markets and equality? And what can competition law do to enhance equality (of opportunity/wealth/income?)





The contributions of the paper

- Intellectual history and trajectory of the conceptual relationship between competition and equality dating back to the early 17th and 18th liberal thought about competitive markets
- Equality of opportunity and wealth as central concerns of ‘republican antitrust’ in the US and in Europe
- Displacement of the ‘republican antitrust’ approach and its concern about equality by the ‘laissez-faire’ antitrust approach coined by the Chicago School
- Three avenues to reintegrate equality concerns into competition analysis

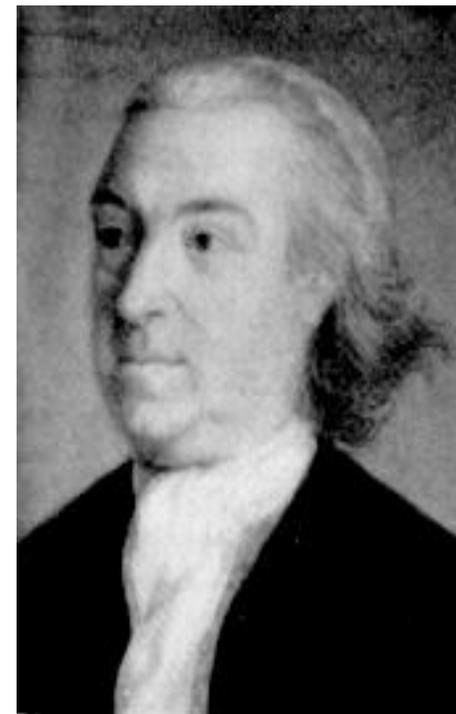
1. Intellectual history and trajectory of the conceptual relationship between competition and equality



The English Levellers movement (ca. 1640-1660)



Charles-Louis de Secondat, Baron de La Brède de Montesquieu (1689-1755)



Sir James Steuart (1707-1780)

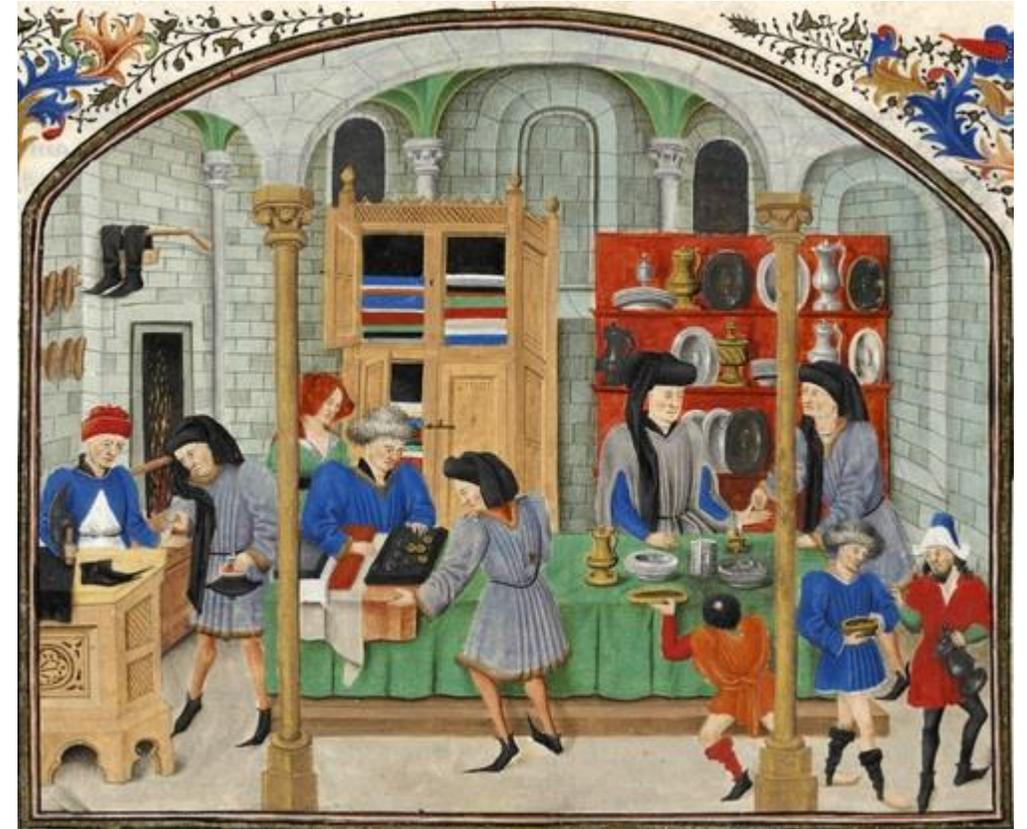


Adam Smith (1723-1790)

Emergence of competitive markets as driver of greater equality and liberty



Feudal economic and social order



(Competitive) market economy and society

Emergence of competitive markets as driver of greater equality and liberty

Feudal economic and social order

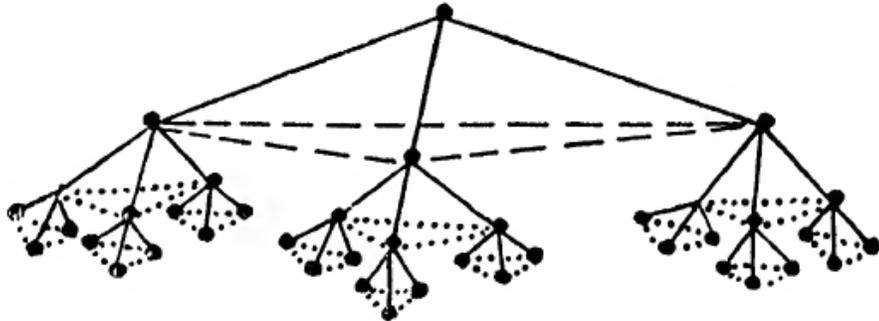


FIG. 1.

Competitive market order

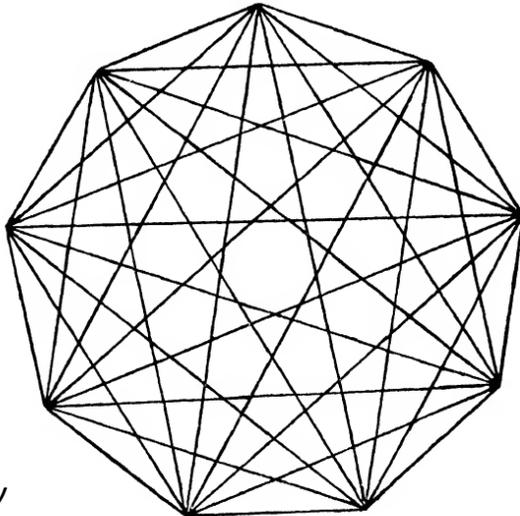


FIG. 2.

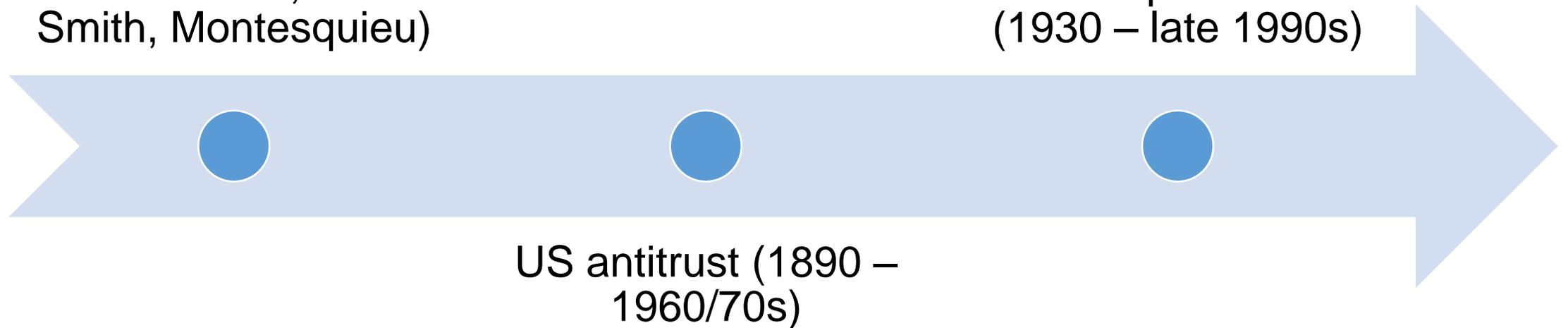
- Levelling of relationships of economic subordination and dependence
- Dispersal of concentrated economic power
- Competition conducive towards a egalitarian, republican notion of economic liberty:
 - absence of domination (not only interference);
 - status of 'self-employed, independent, masterless men'
- Greater equality of opportunity and wealth linked with republican notion of economic liberty as 'equal liberty'
- Competitive markets as a harbinger of a republican society and government of free and equals



2. Equality of opportunity and wealth as central concerns of 'republican antitrust' in the US and in Europe

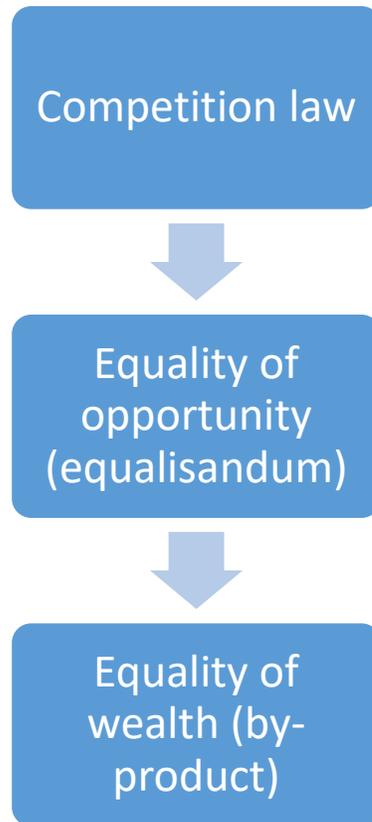
Early proponents of competitive markets
(English Levellers, John Steuart, Adam Smith, Montesquieu)

Ordoliberalism and EU competition law
(1930 – late 1990s)



2. Equality of opportunity and wealth as central concerns of 'republican antitrust' in the US and in Europe

Types of equality



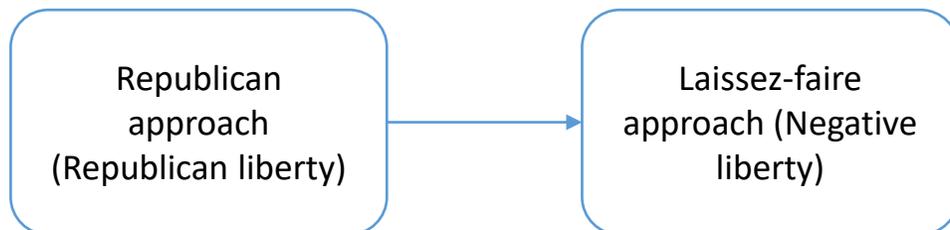
Relationship between equality of opportunity and distributive effects for consumers (wealth equality)

	Positive distributive effects for consumers	Adverse Distributive effects for consumers
Equality of opportunity	Republican antitrust	
Inequality of opportunity		Republican antitrust

3. Displacement of the ‘republican antitrust’ approach and its concern about equality by ‘laissez-faire’ antitrust

Chicago School ‘revolution’

- Consumer welfare standard and error-cost framework as tools to operationalise a new notion of negative entrepreneurial liberty as non-interference
- Negative concept of economic liberty: agnostic about power imbalances, inequality of wealth



Relationship between equality of opportunity and distributive effects for consumers (wealth equality)

	Positive distributive effects for consumers	Adverse Distributive effects for consumers
Equality of opportunity	Republican antitrust	Chicago School
Inequality of opportunity	Chicago School	Republican antitrust

Three avenues to reintegrate equality concerns into competition analysis



- Proposal 1: Finetune evidentiary standards by accounting for (averted) adverse distributive effects as type 2 error costs (accuracy benefits)
- Proposal 2: Reconsider the as-efficient competitor test
- Proposition 3: Reconsider the Chicagoan analysis of contractual hierarchy: vertical online restraints

Takeaways



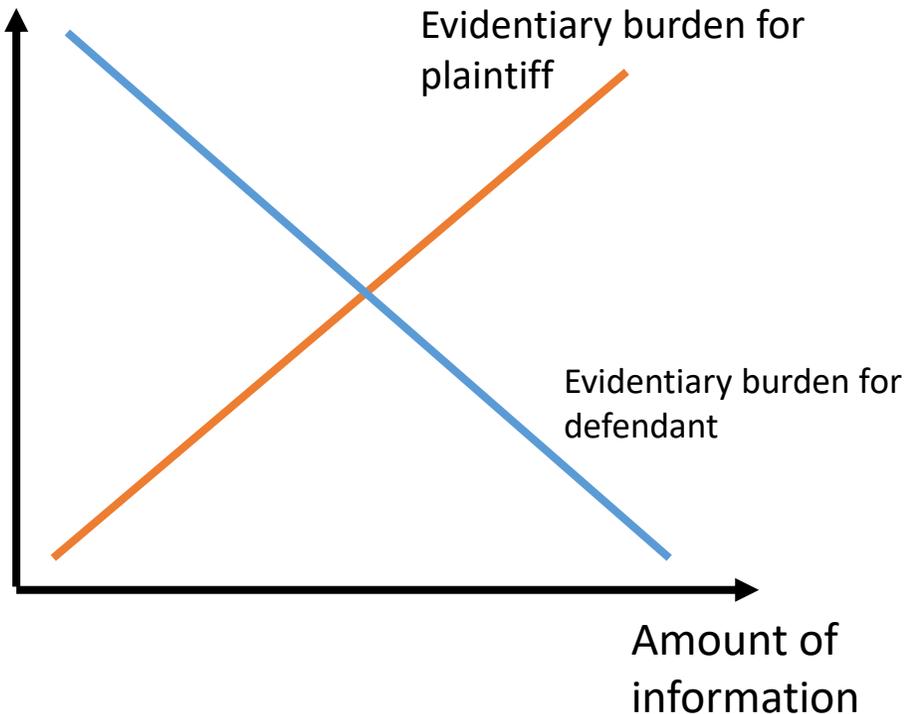
- Symbiotic relationship between competition and equality as a central tenet of liberal republican thought about competitive markets since the 17th and 18th century
- Preservation of equality of opportunity at the centre of republican antitrust; equality of wealth as a by-product
- Decline of equality considerations is an ideological choice and the consequence of the shift from the republican antitrust approach to the laissez-faire antitrust approach
- This choice is not irreversible: Three avenues to reintegrate equality concerns into competition analysis
- Caveat: better understanding of distributive impact of concentration and business conduct necessary



For Discussion

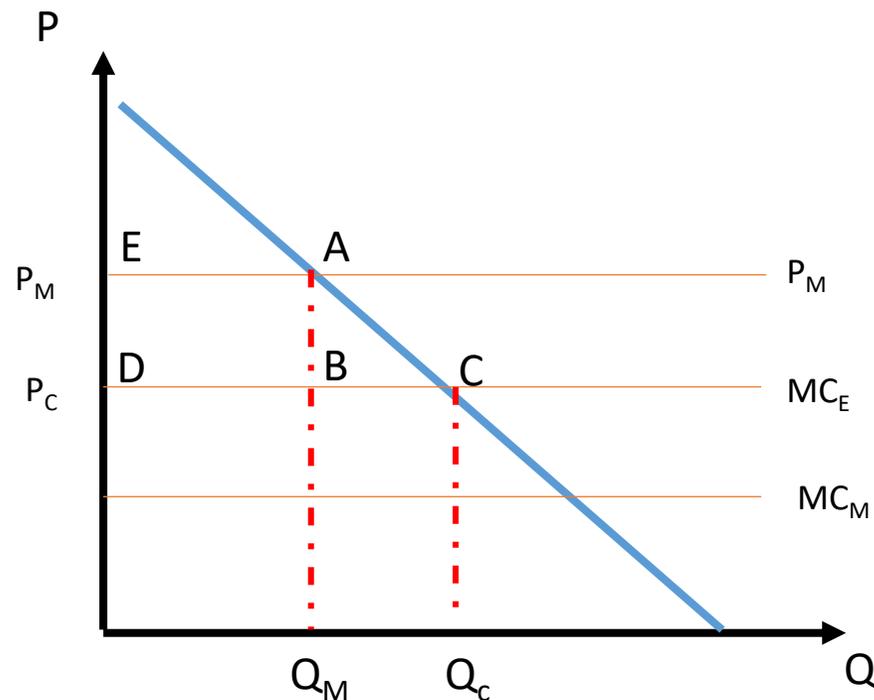
Proposal 1: Account for (averted) adverse distributive effects as type 2 error costs (accuracy benefits)

Discounted cost
of type 1 errors



- Fine-tuning of evidentiary burden for plaintiff/defendant depending on distributive incidence of conduct or market characteristics (sliding-scale approach)
- Type-2 error markets (high entry barriers; hold-up; high switching costs; non-discretionary household expenses; vulnerable consumers)
 - Low intervention threshold (amount of information)
 - High evidentiary burden for defendant
- Type-1 error markets (high fixed costs; IP rights; non-tangible goods/services; high probability of self-correction)
 - High intervention threshold (amount of information)
 - Low evidentiary burden for defendant
- Asda/Sainsbury:
 - Groceries and road fuel as non-discretionary expenses
 - Price effects disproportionately affect low-income households
 - Modest price increases (IPR) of 1.5% (2.75% with the inclusion of substantiated efficiencies of 1.25% = 500 mio GBP) sufficient for SLC
 - No standard efficiency credit

Proposal 2: Reconsider the as-efficient competitor test



- As-efficient competitor test as a tool to operationalise negative liberty and as a relevant criterion of merit to decide who should benefit from equality of opportunity
- Under-inclusiveness of incremental price cost test wrt. the foreclosure of efficient competitors:
 - Strategic predation theory, fixed costs recovery; leverage of product range or range of demand (multiproduct and loyalty rebate)
 - Total v partial foreclosure
 - Incumbency advantages above-cost predation and limit pricing
- Under-inclusiveness of incremental price cost wrt. to wealth transfers from consumers to incumbent
 - High entry barriers/entry deterrence: even less efficient competitor may prevent dominant incumbent from charging monopoly prices
 - Distributional incidence: Deadweight loss ABC + Consumer welfare loss ABDE
- Non-cost based tests to achieve synergies between equality of opportunity and consumer interests

Proposition 3: Reconsider the Chicagoan analysis of contractual hierarchy: vertical online restraints

Adverse distributive incidence on consumers

- Search frictions, switching and information costs
- Additional pre-/post-sale services can be price separately
- Consumer heterogeneity and infra-marginal consumers
 - do not value additional service
 - are less affluent than marginal consumer
 - are vulnerable consumers

Adverse impact on equality of opportunity of independent retailers

- Between small and large retailers: small retailers deprived of more cost-effective sales channel, visibility, findability (Ezrachi 2017; *Guess* case)
- Between small retailers and brand owner (if dual distribution system): reverse free riding (*Asics* case)