Antitrust Considerations in the Provision and Deployment of AI Solutions

simmons +simmons

Munich

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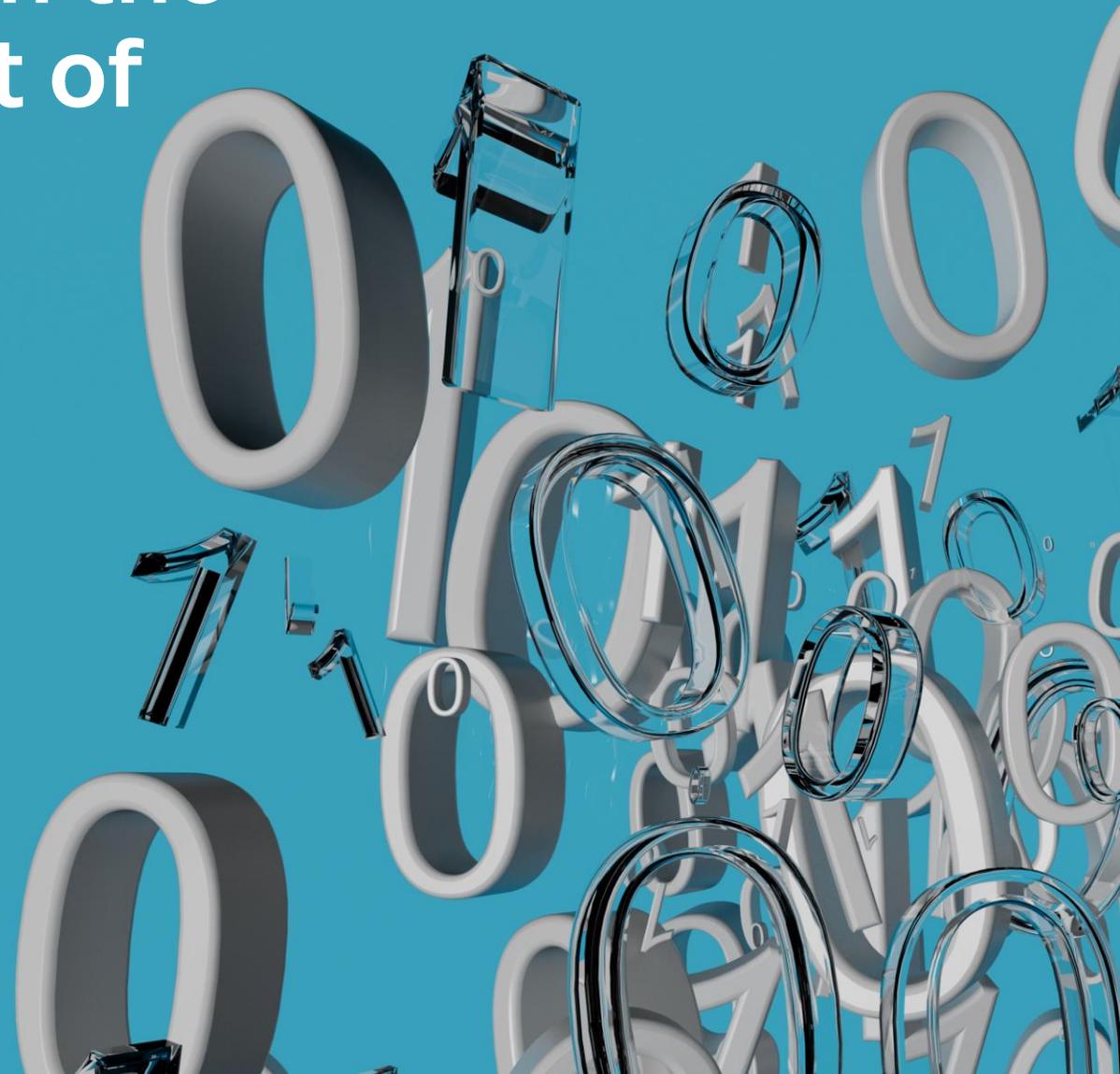
Introduction
Macroeconomic Overview

Curbing the power of big tech	Lessons learned for tackling AI	Various studies on impact of AI on antitrust	Counterpoint: USA
• **Long court proceedings**	• **Underenforcement in the past**	• **French-German Study** • **UK CMA AI Strategy**	• **AI regulation ban** • **10-year state ban**
• **Now regulation via DMA and DMCC**	• **Entrenched ecosystems**	• **Proactive analysis of possible impact**	• **States: harm to consumers**

Regulation (EU) vs. litigation (USA)

Algorithms
Dynamic Pricing

Regular analytical tools

Information exchange

Or: tacit collusion

Lufthansa/Air Berlin (Germany)

RealPage (USA)

"*The use of an algorithm for pricing will certainly not relieve a company of its responsibility*"
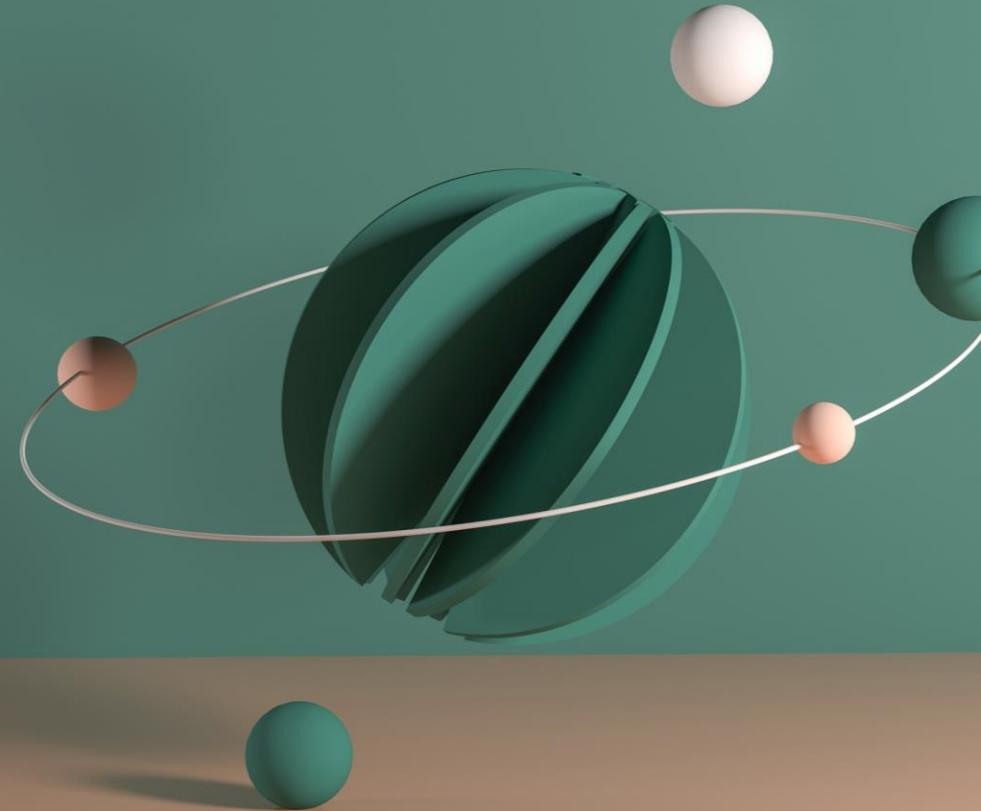
Algorithms
Dynamic Pricing

Oasis (UK)

Poster (UK)

Antitrust + consumers

Entrenchment into AI
Extend Ecosystem

- New types and forms of "acquisitions"

- "Acqui-hires"
  - ❖ Microsoft / Inflection AI

- Hiring employees and IP licence, not company

Partnerships in AI

Under antitrust scrutiny

- Partnerships
  - ❖ Microsoft / Open AI

- Less classical concepts of merger control situations

- Less predictability and legal certainty

EU merger rules criticised for not guarding against "subtle" influence in AI partnerships

Rashid Baxter
19 May 2025

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Final thoughts
Germany & EU

- DMA

- Section 19 A German ARC

UK

- Consumer class actions

Thank you!

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