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Competition, Regulation and Development**

**MAKING COMPETITION AND REGULATORY  
REGIMES MATTER IN INCREASINGLY  
ONLINE DEVELOPING WORLD**

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# **ANTITRUST IN THE DIGITAL ERA: RETHINKING DOMINANCE AND ITS ABUSE**

**Raju Parakkal, Ph.D.**

**Associate Professor, Thomas Jefferson University  
Philadelphia, USA**

# THE DIGITAL ERA

- **Digital Technologies**
- **Digital Economy**



# THE DIGITAL ERA

- Digital Technologies
  - Digital revolution from the 1990s
  - Digital technologies: PC/Mac, the Internet, cellphones, smartphones, etc.



# THE DIGITAL ERA (contd.)

- Digital Economy
  - Also known as Internet Economy or Online Economy
  - No settled definition, but...
  - **Broadly**, it is “the incorporation of data and the Internet into production processes and products, new forms of household and government consumption, fixed-capital formation, cross-border flows, and finance” (IMF 2018: 6)



# THE DIGITAL ERA (contd.)

- Digital Economy
  - Narrowly, it is “online platforms, and activities that owe their existence to such platforms” (IMF 2018: 7)
  - Both definitions apply



# THE DIGITAL ERA (contd.)

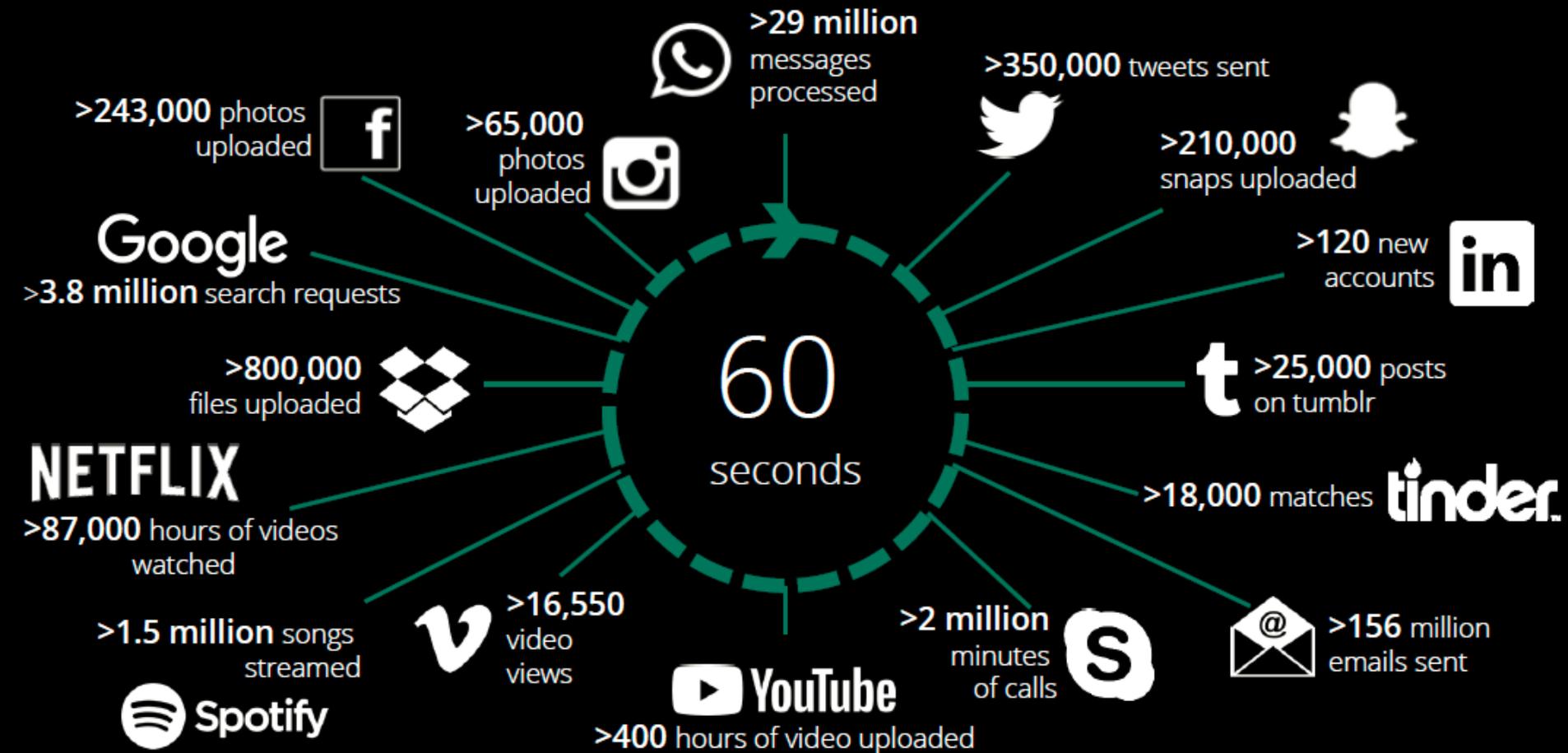
- Digital Economy

- Currently, no data on the exact size of the global digital economy (no definition → no measurement)
- However, the enormity of the digital world is perceptible and evident
- Focus on Big Tech: Exactly how big is Big Tech?



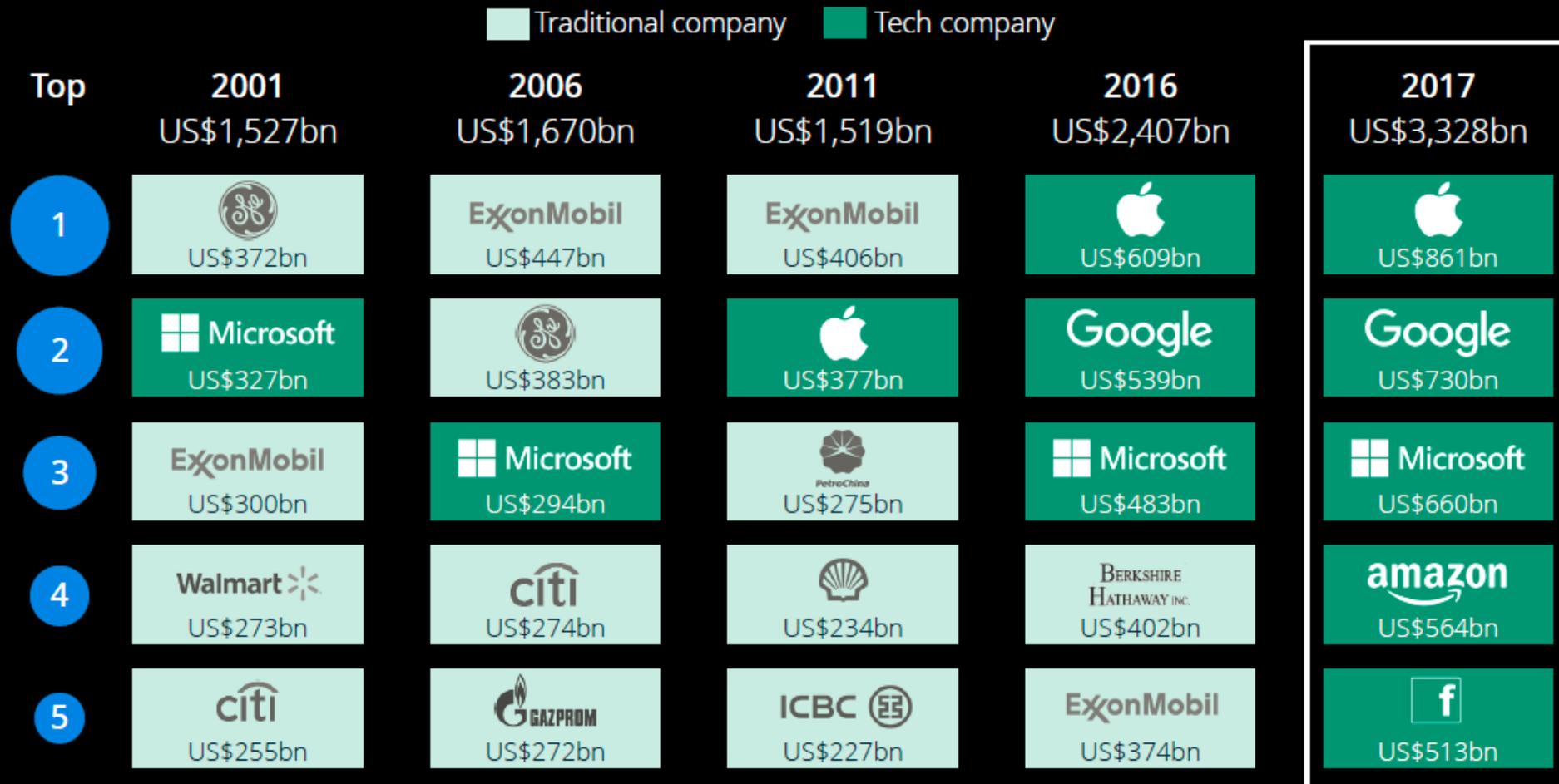
# So much happened in our digitalized world in 2017 – and we have the numbers behind it

Things that happened online in 2017 within 60 seconds



# Tech companies take over the stock markets: In 2017 the Top 5 were valued at US\$3.3 trillion

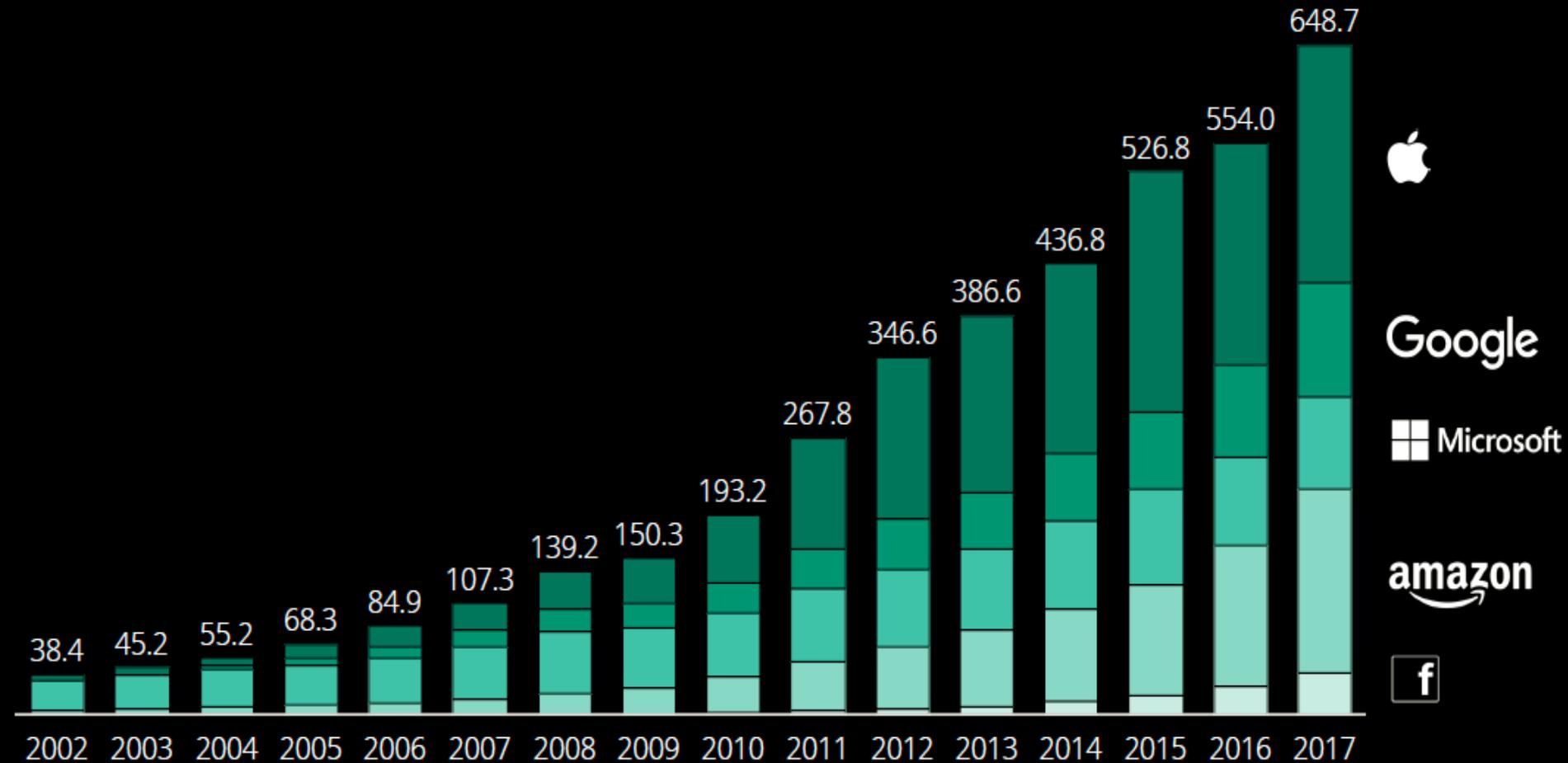
Most valuable companies by market cap in billion US\$



Valuation based on data from December 31st of the respective year  
 Source: morningstar.com, Financial Times, Statista research

# Combined revenues rose to ~US\$650bn in 2017

Global annual revenue development in billion US\$



Note: Facebook revenues included as of 2007

Source: Company Information



# What's Big Tech Doing With All This Money?

- Relevant for digital dominance and antitrust
- Investing millions of \$\$ in building vast data pools
- Buying up smaller tech competitors/start-ups
  - Facebook: Instagram (2012); WhatsApp (2014)
  - Google: YouTube (2006); Waze (2013)
  - Since its founding in 2006, Facebook has acquired 65 companies
  - Since 2010, Google has been acquiring on average one company a week (Epstein 2018)



# The Implications of Digital Dominance

- Challenges for Antitrust
  - How to respond? (if at all it can and should)
- For Political/Economic Outcomes
  - Democracy, consumer welfare/choices, labor rights, and personal privacy
- For Developing Countries
  - India

# Digital Dominance and Antitrust

## 1) Big Data

- Data is the new oil (The Economist, 2017), although not comparable
- Consumer preferences, shopping data, geospatial data
- Data Dominance (possession of vast amounts of monetizable consumer data by digital firms)
- Data dominance → market power and market dominance (high switching costs for consumers)
- Example: Staples, Inc. (WSJ, 2012) – First-degree price discrimination affecting poorer sections of society

# Digital Dominance and Antitrust

## 2) Two-Sided Markets and Network Effects

- Two-Sided Market: A market or platform that links buyers and sellers (e.g., airports, academic journals, dating clubs, Craigslist, GAFA, Uber, AirBnB, etc.)
- Network Effects/Externalities: Outcomes that materialize when users of a service or product become a network and the bigger the network the more value, or welfare, the users derive from that service or product.
- (Two-Sided Markets + Network Effects)  $\implies$  market power and market dominance



# Digital Dominance and Antitrust

- Combined Effects of Data Dominance and Network Effects
  - Massive barriers to entry, fewer competitors, and less competition
  - Increasing market concentration (fewer market players)
    - Non-Tech Evidence: “Over the last two decades, over 75 percent of U.S. industries have seen an increase in concentration, with the number of firms competing against one another in precipitous decline” – Galston and Hendrickson (2018)

# Digital Dominance and its Implications

1. Democracy
2. Consumer Choices
3. Personal Privacy
4. Labor Rights



# Digital Dominance and its Implications

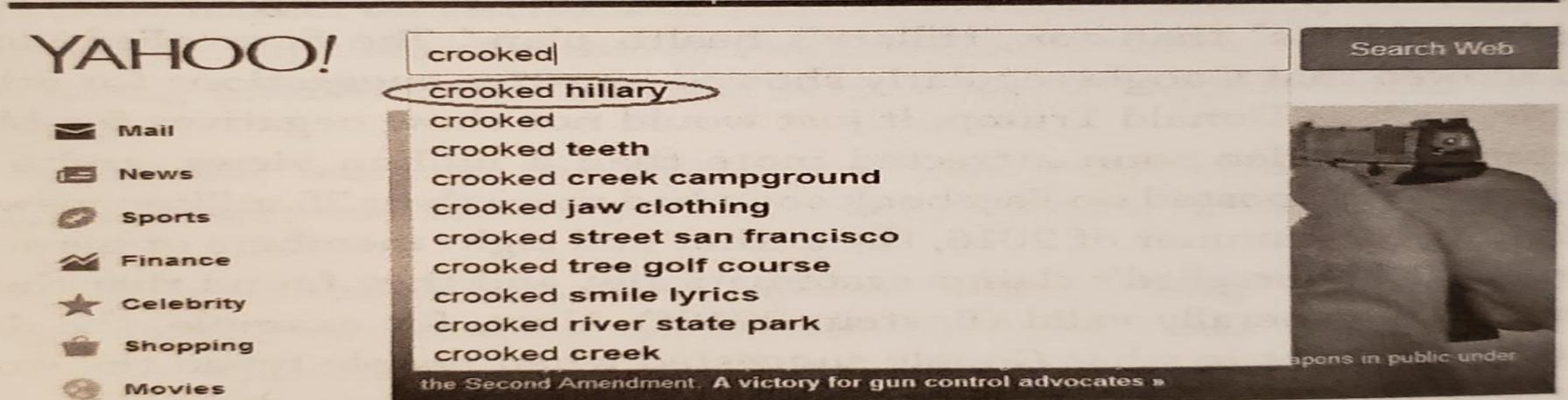
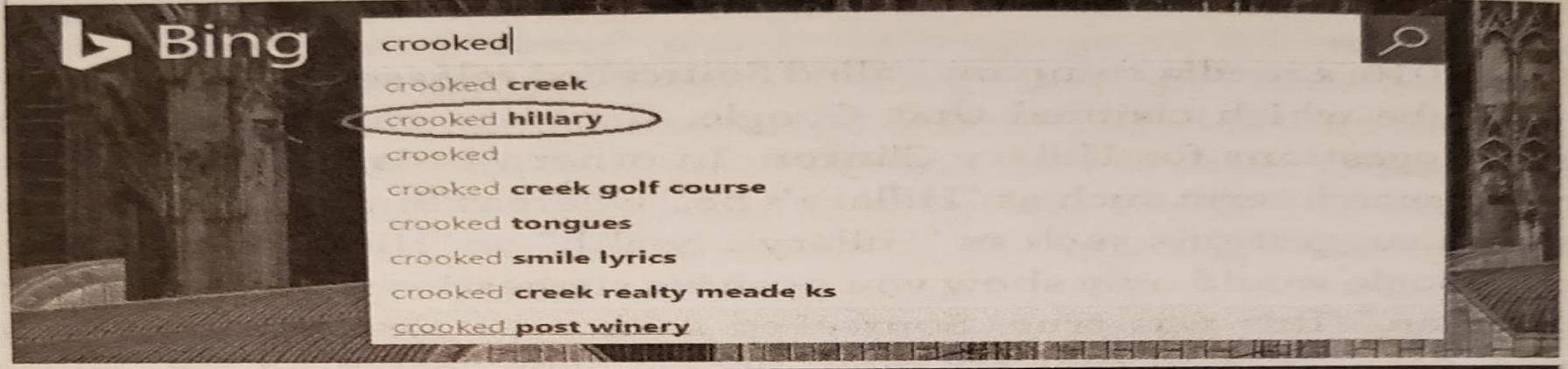
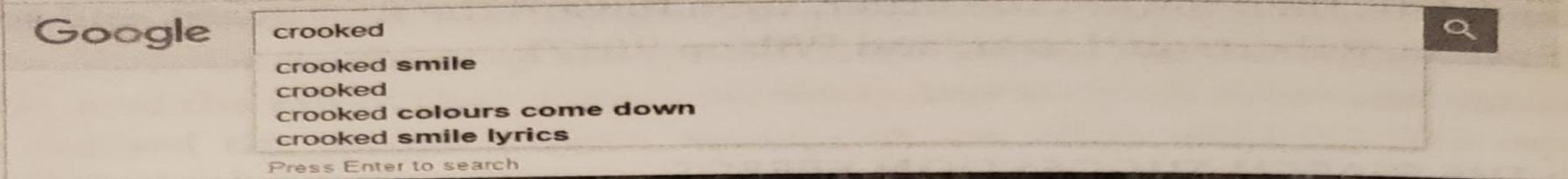
- 1. Democracy**
2. Consumer Choices
3. Personal Privacy
4. Labor Rights



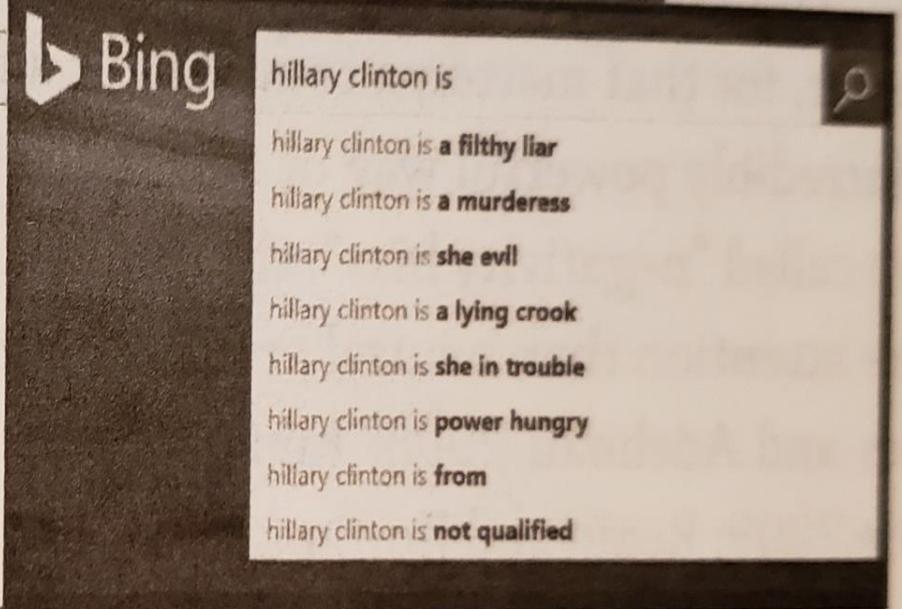
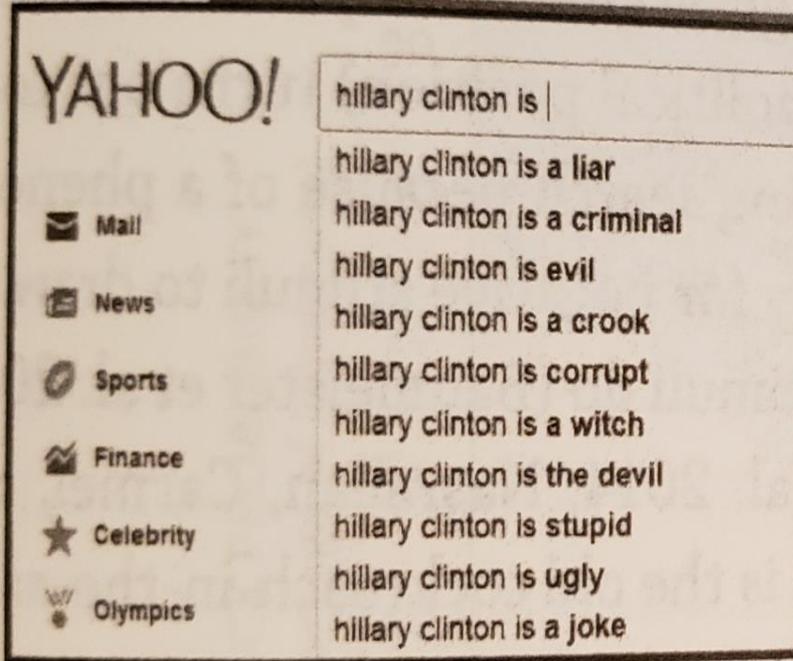
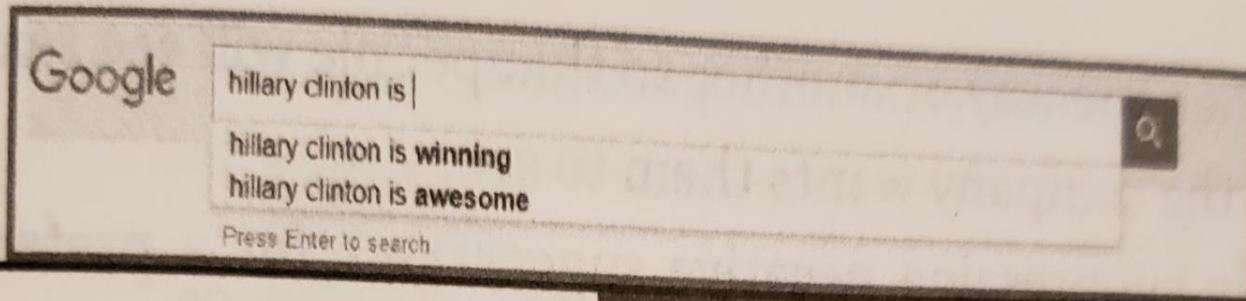


# Digital Dominance and Democracy

- Big Tech have quickly become the gatekeepers of our news media
- Big Tech can subvert the electoral process by enabling the dissemination of fake and misleading news
- Big Tech can manipulate our news searches, affecting our choice of candidates
- Big Tech's monopoly power translates to unchecked political influence



*The search term “crooked” produced dramatically different results on Google than it did on Bing and yahoo on August 8, 2016. Bing and Yahoo showed related search phrases that were popular at that time, including “crooked Hillary,” the unflattering nickname Donald Trump gave Mrs. Clinton during the 2016 U.S. presidential campaign. Google showed four innocuous terms; “crooked Hillary” was not among them. (Epstein 2018)*



*The search term “Hillary Clinton is” produced dramatically different results on Google than it did on Bing and yahoo on August 8, 2016. Bing and Yahoo each showed a number of highly negative search phrases, all of which, according to Google Trends, were popular at the time. Remarkably, Google showed only “Hillary Clinton is winning” and “Hillary Clinton is awesome,” even though neither phrase showed any degree of popularity on Google Trends. (Epstein 2018)*



impeach

**impeachment**

impeach **trump now**

impeach **kavanaugh**

impeach **definition**

**impeachment process**

impeach **45**

impeach **nadler**

impeach **pr**

Caught after 17 years      \$724 for 2 beers      Lied about dreadlocks      Hints at 2020 run      'Belly' actor



impeach

impeach **trump**

impeach **definition**

impeach **the mf**

impeach **meaning**

impeach **pelosi**

impeach **the mother f er**

impeach **trump petition**

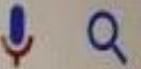
impeach **this t-shirt**

impeach **president**

impeach **trump meme**



Q impeach



Q impeach **definition** • /imˈpēCH/

call into question the integrity or validity of (a practice).

Q impeach **the mf shirt**

Q impeach **trump twitter**

Q impeach **meaning**

Q impeach **the mf**

Q impeach **pelosi**

Q impeach **barr**

Q impeach **in spanish**

Q impeach **president**

Q impeach **donald**

*Report inappropriate predictions*



# Digital Era and Antitrust in India

- India: Internet and the Digital Economy
- Internet Use in India – 500 million users (2018)
  - 40% of Indian population
- Digital Penetration – 65% (urban India); 20% (rural India)
- Main Online Marketplaces – Flipkart (owned by Walmart), Amazon, and Snapdeal
- Digital Economy
  - 2018: \$413 billion
  - 2025 (forecast): \$1 trillion



# Digital Era and Antitrust in India

- CCI vs. Big Tech
- Google (2012): CCI found Google guilty of abuse of “dominance in the market for online general web search, to strengthen its position in the market for online syndicate search services.”
- Google (2014): CCI identified Google as dominant in the relevant market for “Online Search Advertising Services in India” but opined that Google did not abuse its dominance or inflict any harm to competitors.
- Flipkart (2018): No “dominant position at this stage of evolution of (the) market”



# Digital Era and Antitrust in India

## CCI and Platform Dominance: The Prevailing Thoughts

- Consumer welfare standard based on an efficiency argument
- Reluctant to intervene in nascent markets (to avoid interference with latest innovations and organic evolution of platform markets)
- Competition is not a case of rivalry (number of firms in a relevant market is not a criterion of competition)



# Antitrust in the Digital Era: The Technical Challenges

- Understanding of “competition” in Antitrust Analysis
  - Unclear: Rivalry among a large number of firms OR perfect competition where Marginal Revenue (MR) = Marginal Cost (MC)
  - Most national competition laws do NOT define “competition”
- Definition of “Consumer Welfare”
  - Price-Based Analysis
- Identifying Markets – One-sided or Two-sided?
  - Implications for network externalities to affect antitrust analysis and judgments



# **Antitrust in the Digital Era:** **The Intellectual Challenges**

- **Intellectual Traditions**
  - Robert Bork and Chicago School of Economics
  - Vested interests
  - Legal and policy inertia

# How Can Antitrust Laws Help?

## Some Recommendations

- Include non-price elements in antitrust analysis of dominance
  - “Consumer Welfare” is not dictated only by lower prices!
- Identifying markets – one-sided or two-sided?
  - Need for commonsense market identifications
- Provide room for political values in antitrust analysis (for example, democratic outcomes)
- No need to use antitrust laws to break up Big Tech
  - Need to retain tech dynamism and scale economies/efficiencies
  - Relax elements of dominance (data monopolies and network effects)



# Final Thought from Robert Pitofsky

*“if the free-market sector of the economy is allowed to develop under antitrust rules that are blind to all but economic concerns, the likely result will be an economy so dominated by a few corporate giants that it will be impossible for the state **not** to play a more intrusive role in economic affairs” (emphasis added)*

– Pitofsky, Robert (1979), “The Political Content of Antitrust”



**THANK YOU!**