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Telematics Industry
Insights by
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THE DISPATCHER

IN THIS ISSUE

The February 2022 Issue in Brief

U.S. Federal Trade Commission Want a Level Playing Field for Technology

It is said that monopolies are in the eyes of the beholder. What is a monopoly? The word comes from the Greek μόνος, mónos, 'single, alone' and πωλεῖν, pōleîn, 'to sell'). It is a market with the "absence of competition", creating a situation where a specific person or enterprise is the only supplier of a particular thing. Both the European Union competition authorities and the new team established by the present administration in the United States have decided that the companies we have come to know as the MAAMAs (Microsoft, Alphabet, Apple, Meta, and Amazon) are monopolies that have to be beaten up and broken up. They may be right, but the conditions under which these companies developed and evolved have provided major benefits to consumers with low or no price for services which are appreciated. The principal that has guided antitrust law since the 1980s in the U.S. has been consumer welfare. The new team at the FTC and in various governmental agencies want to return to the time when fair competition among many companies was the yardstick for deciding if a company was too big.

In the end, it will be the courts, in particular the Supreme Court, that will decide whether Meta will divide itself into Facebook, Instagram and WhatsApp, or Amazon will have to carve out its Web Services. The stakes are high. National security and national interest will be considered by the courts, and there is no telling where this will end.

Dispatch Central

***California DMV has woken up** – The State of California added a regulation to its motor vehicle laws that came into effect last spring. It is intended to regulate the testing of self-driving and driverless vehicles. Unfortunately for all concerned, they decided to use the term 'autonomous' to cover all possible technologies, only to find that what is autonomous to Jill is not autonomous to Jane. Ever the one to find a loophole in a haystack, Elon Musk and Tesla have cruised under the California Division of Motor Vehicle's radar—until now.*

***A little humor is in order –** There is a regular section in THE ECONOMIST written under the pseudonym of Bartleby. The name is taken from a character in a Herman Melville short story, titled Bartleby, the Scrivener: A story of Wall Street. Each week in THE ECONOMIST, Bartleby provides a respite from the hard facts of business with lighter fare. His business phrases column, what is heard and what is meant, is one of my favorites.*

***There is comfort in numbers, when the numbers are good -** I have chosen some numbers to share with you that have been reported during the past few months.*

***Volvo Cars' boss is taking early leave** – Håkan Samuelsson promised us that he would be staying on as CEO of Volvo Cars until his contract ran out at the end of December, 2022. So much for promises. It was definitely not his idea to leave earlier, the 21st of March to be exact. It was the Board, headed up by Mr. Li, which decided to bring in his replacement before someone else snatched him up. You will not be alone if you don't know who Jim Rowan is. We shall see if Mr. Rowan can do as good a job as Håkan Samuelsson did of managing up.*

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Telematics Industry Insights by Michael L. Sena
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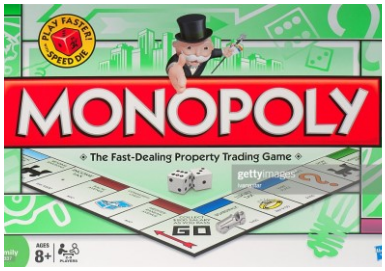
U.S. FTC Wants to Level the Tech Playing Field



*"**Monopoly** is a multi-player economics-themed board game. In the game, players roll two dice to move around the game board, buying and trading properties, and developing them with houses and hotels. Players collect rent from their opponents, with the goal being to drive them into bankruptcy."*

*This is what Hasbro says about **Monopoly**. Hasbro, Inc. is the current owner of the rights to Monopoly. It received those rights when it purchased Parker Brothers in 1991. Parker Brothers bought the rights to the game from Charles Darrow in 1935. Darrow received a patent in 1933 to his version, but there were several other versions and predecessor games dating back to the turn of the century. Parker Brothers bought the rights and patents to most of them.*

Ostensibly, it is a real estate investment game, but it teaches its players the basic rules of how to create a monopoly, the rewards of being the monopolist and the risks that will be met along the way to achieving that position. Invest your money, but keep enough cash for emergencies. Spread your investments around and learn and try to negotiate win-win deals. Play the long game. Monopolies aren't built overnight.

Data sharing not on monopoly table

DATA SHARING BY vehicle OEMs might become a more significant issue as a result of political events in the United States, but it does not appear to be a priority. President Joe Biden appointed Lina M. Khan (pictured), a thirty-two-year-old lawyer, to the position of Chair of the *FEDERAL TRADE COMMISSION (FTC)*. She was sworn in on the 15th of June 2021. Khan had made a reputation during her meteoric rise to prominence as an anti-monopolist. What was it that transformed a graduate of WILLIAMS COLLEGE and *YALE LAW SCHOOL* into a fierce trust buster? How she got to be where she is today is an important part of understanding what she plans to do with her position. Why is it that Lina Khan was anointed, and not the people who guided her from novice, proselyte, and neophyte?

We will return to this, but first, let us take a look at why monopolism has become such a contentious issue in the U.S. Second, we should understand what the position of the *FTC* has been on monopolistic practices during its 107-year history, and why I am making the claim that it could affect delivery of data from vehicles. Third, how has the U.S. approached the issue of data sharing, especially in comparison with the EU, where it has been a central part of the competition discussion? Then we will return to Ms. Khan, her motives, her strategy, and her chances for succeeding in forcing big business in general, and big tech in particular, to open up their databanks to all, big and small.

Monopolism: A recurrent theme in America

From the time someone had the power to grant privileges, the establishment of monopolies was the rule not the exception all around the world up until the end of the 19th century. Emperors and kings handed out sole rights for shipping, mining, growing certain crops, construction or for anything that needed getting done that involved a lot of people and a lot of money. Nobles and politicians were

on the receiving end of the rights in order to make sure there was a person responsible in case things didn't go well whose head would be worth chopping off. Britain was a great one for royal charters, and the BRITISH EAST INDIA COMPANY (EIC) was the ultimate monopoly. It was established in 1600 by a Royal Charter from Queen Elizabeth. It was competing with the DUTCH EAST INDIA COMPANY that had 50,000 employees at the time, specializing in the spice trade, and eventually overtook it. In the late 17th century, Charles II extended the EAST INDIA COMPANY's remit to include acquiring and administering territories, minting money, and exercising both civil and criminal jurisdiction over acquired areas. By the time the *Industrial Revolution* began in Britain in the 18th century, the EIC was the single largest player in the British global market and the British culture and economy.[1]

It could well be said that it was the EIC's fault that Britain lost its American colony. In 1773, the EIC was rife with corruption and on the verge of bankruptcy. It drove up the price of Indian tea, which it totally controlled, in order to cover its losses. One result was the Boston Tea Party, which served as a starting signal for the American Revolution. At this point, the British government began to take control of the EIC and all of its holdings, and in 1874 the BRITISH EAST INDIA COMPANY finally disappeared.

Monopolies that had been established in the colonies by the British government before the Revolutionary War to build and maintain large-scale public works mainly stayed in place following the war. When the Industrial Revolution came to the U.S., it coincided with the great westward expansion. Coal fueled both the railroads and the industrial machinery, and the railroads enabled expansion. Timber, iron ore, copper and oil were the other raw materials needed to build the nation, and vast sums of capital were needed meet the demand. Corporations pooled markets and centralized management. They created conglomerates to control every part of the production process. The railroads were in a central position, and they used this position to consolidate their control of pricing. Once they had this power, they used it to enrich their shareholders and to buy political influence. (See sidebar)

It was the railroads, not John D. Rockefeller and his STANDARD OIL COMPANY that was founded in 1870, which motivated government to come to the aid of smaller businesses and consumers. In 1876, in the case of Munn v. Illinois, the Supreme Court upheld the power of state governments to regulate private industries that "affect the common good". It was an association of farmers, the

1. http://scihi.org/british-east-india-company/

Trusts versus Monopolies

Trusts are the organization of several businesses in the same industry. By joining forces, the trust controls production and distribution of a product or service, thereby limiting competition. Monopolies are businesses that have total control over a sector of the economy, including prices. Monopolies develop from trusts and give total control of a specific industry to one group of companies. Owners and top-level executives of monopolies profit greatly, but smaller businesses and companies have no chance to make money at all. Trusts also upset the idea of capitalism, the economic theory upon which the American economy is built. In a capitalist society, all businesses have an equal opportunity to thrive based on competition. Competition cannon exist when monopolies and trusts exist.

NATIONAL GRANGE, which initiated the action because of the exorbitant prices charged by the railroads. New laws followed, but the railroads continued their monopolistic practices.

It was not until 1886 that the U.S. Supreme Court ruled that only Congress had the power to regulate commerce between the states. This ruling led to a national movement for federal regulation of interstate commerce. The *INTERSTATE COMMERCE COMMISSION* was established in 1887 to regulate railroads, to hear complaints of individuals and businesses and to ensure that the railroads maintained just and reasonable rates.[2] It was the first industrial regulatory body of its kind and was used as a model for similar federal commissions and agencies that followed.

Sherman Antitrust Act is only the beginning of the end

Rockefeller and his STANDARD OIL[3] really got the regulatory juices flowing in Washington. However, it took forty-one years from the time of the company's founding to the time of its neutering as a monopoly, during which time J.D. Rockefeller amassed enough wealth to become the wealthiest person so far in U.S. history, measured by his net worth as a percentage of the nation's GNP at the time. Oil was prized for heating and lighting (transport ran on coal and electricity), and STANDARD OIL, through the companies it had acquired and organized into a trust, had a monopoly on the oil refining market, controlling 90% of domestic refining and 85% of final sales in 1904. *STANDARD OIL TRUST* was created in 1882 to bypass state interstate commerce laws. Companies owned by STANDARD OIL in dozens of states were combined and managed by a single group of trustees. This also provided major tax advantages. Other large companies followed suit.

Dissatisfaction on the part of businesses which could not compete with the trusts and their monopolistic practices increased, although consumers benefitted with lower prices. This may have been one of the reasons for slower regulation and minimum enforcement. Nevertheless, in 1890, John Sherman, Senator from Ohio, proposed legislation which bears his name, the *Sherman Antitrust Act*, which declared illegal any business combination that sought to restrain trade or commerce. While it passed overwhelmingly in both houses, it did little due to its vague wording and the absence of a strong, independent commission to enforce it. That came thirteen years later during the Progressive Era when, on the 14th of February 1903, President Theodore Roosevelt established the *Bureau of Corporations*, an investigatory agency within the DEPARTMENT OF COMMERCE AND LABOR.[4]

2. The *INTERSTATE COMMERCE COMMISSION* (ICC) regulated the economics and services of specified carriers engaged in transportation between states from 1887 to 1995. The ICC was the first regulatory commission established in the U.S., where it oversaw common carriers. The agency was terminated at the end of 1995, with its functions either having been transferred to other bodies, including the *SURFACE TRANSPORTATION BOARD*, or in some cases rendered obsolete by deregulation.

3. Rockefeller apparently chose the "Standard Oil" name as a symbol of the reliable "standards" of quality and service that he envisioned for the nascent oil industry

4. This was during the so-called 'Progressive Era', a period between 1896 and 1916 of widespread social activism and political reform across the United States. The main objectives of the Progressive movement were addressing problems caused by industrialization, urbanization, immigration, and political corruption. Social reformers were primarily middle-class citizens who targeted political machines and their bosses. By taking down these corrupt representatives in office, a further means of direct democracy would be established. They also sought regulation of monopolies through methods such as trustbusting and corporations through antitrust laws, which were seen as a way to promote equal competition for the advantage of legitimate competitors. They also advocated for new government roles and regulations, and new agencies to carry out those roles, such as the *FOOD AND DRUG ADMINISTRATION*, established in 1906 as a result of the *Pure Food and Drugs Act*.

In 1909, the *U.S. Justice Department* sued Standard Oil under the *Sherman Antitrust Act* for sustaining a monopoly and restraining interstate commerce. On the 15th of May 1911, the U.S. Supreme Court declared the *Standard Oil Group* an "unreasonable monopoly", and ordered its breakup into 34 companies.

The FTC has a progressive history

The *Federal Trade Commission* was created President Woodrow Wilson signed the *Federal Trade Commission Act* into law on the 26th of September 1914. The *FTC* was the successor to the *Bureau of Corporations* and began operating on the 16th of March 1915. According to the *FTC*, its mission is "to protect consumers and promote competition". It seems that at various times it has emphasized one or the other, but in 1915, President Wilson was determined to go further with promoting competition over protecting consumers than Roosevelt, who believed that trusts were inevitable and should be regulated. Wilson wanted to destroy them by removing their enablers, such as protective tariffs and unfair business practices.

There were three laws that the *FTC* would use as ammunition in its work: the *Sherman Act* passed in 1890; the *FTC Act* that created the *Commission*; and the *Clayton Antitrust Act*, which was passed on the 8th of October 1914. There was a consensus in both houses of Congress that regulation of trusts was too lenient and that the newly formed *FTC* needed more powerful weapons. Henry Clayton of Alabama presented a bill that supplemented and strengthened the *Sherman Act*. It addresses specific practices that the *Sherman Act* did not clearly prohibit, such as mergers and interlocking directorates. It prohibits mergers and acquisitions where the effect may be to substantially lessen competition and tend to create a monopoly. The *Clayton Act* also authorizes private parties to sue for triple damages when they have been harmed by conduct that violates the *Sherman* or *Clayton Act* and to obtain a court order prohibiting the anticompetitive practice in the future.[5]

President Wilson knew that the battle against the trusts would be fought in the courts, including the land's highest. He had three chances to appoint justices who supported his determination to break the back of the trusts. Two of them, whom he appointed in 1916, Louis Dembitz Brandeis and John Hessin Clarke, lived up to their promises. A third, James Clark McReynolds, who was his Attorney General, turned out to be a total reactionary, openly racist and anti-Semitic who fought liberal reforms for the next twenty-

An architect's rendering of the U.S. Federal Trade Commission building in Washington, DC. Edward H. Bennett of the Chicago firm Bennett, Parsons and Frost oversaw the project and designed the final building. In 1937, President Franklin Delano Roosevelt laid the building cornerstone with the silver trowel that George Washington used to lay the cornerstone of the U.S. Capitol in 1793. In his speech, Roosevelt expressed hope that the "permanent home of the Federal Trade Commission stand for all time as a symbol of the purpose of the government to insist on a greater application of the golden rule to the conduct of corporation and business and enterprises in their relationship to the body politic." the building continues to function as the FTC's headquarters.

5. In a 1936 amendment, the Robinson-Patman Act, it also bans discriminatory prices, services, and allowances in dealings between merchants. In a 1976 amendment, the Hart-Scott-Rodino Antitrust Improvements Act, companies planning large mergers or acquisitions are required to notify the FTC of their plans in advance. https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws

six years. Brandeis, who was the first person with Jewish heritage to be appointed to the Court, was more than a match for McReynolds. He was chosen by Wilson because of what he had done and how he did it. He was sixty when he took his seat on the Court, and had a career of law behind him. One of his earliest positions was written for the *HARVARD LAW REVIEW* in 1890 titled *Right to Privacy*.[6] Legal scholar Roscoe Pound claimed that this article accomplished "nothing less than adding a chapter to our law". Through his Boston law practice, he worked on cases which fought the monopolies and defended labor laws. When he had earned "enough" money to live comfortably, he worked *pro bono* so that he could be free to address the wider issues involved. He was called the "People's Lawyer". In addition, he presented ideas for how the new *FTC* could be most effective. It is for all of these reasons that he was appointed by President Wilson to the *SUPREME COURT.*

From the time of his appointment, Louis Brandeis set the tone for how businesses should operate in the U.S. He helped to popularize the belief that government had a duty to prevent any single entity from becoming too dominant. Small is better; no big mergers; no big fish swallowing smaller ones. Anti-trust through the 1970s was *Brandeisian*, and anti-monopolism had become an extension of the concept of checks and balances.[7]

Brandeisian view of the individual, the state and business

Louis Brandeis was an empiricist, not a theorist. He believed the purpose of laws was to make things better for people, and that good laws were made by looking at all the facts and making decisions about how the laws should be formulated based on those facts. In other words, he did not say: "These are my dogmatic beliefs, and that means the law should say this." He believed that the purpose of government was to make good laws so that people who lived in a country could enjoy their rights to life, liberty and the pursuit of happiness. If Brandeis admitted to an ideological influence, it might be Thomas Jefferson. The words, "life, liberty and the pursuit of happiness" were included in the *Declaration of Independence*, which Jefferson penned, and these words were taken from John Locke, who Jefferson admitted had a strong influence on him.[8] (See sidebar on next page for John Locke)

On bigness in business, Brandeis's views are crystalized in this quote: *"We can have democracy in this country, or we can have great wealth concentrated in the hands of a few, but we can't have both."*

6. Warren, Samuel D.; Brandeis, Louis D. The Right to Privacy. Harvard Law Review, Vol. 4, No. 5. (Dec. 15, 1890), pp. 193-220

https://www.cs.cornell.edu/~shmat/courses/cs5436/warren-brandeis.pdf

7. *THE NEW YORKER, DECEMBER 6, 2021, The Enforcer. Lina Khan's battle to rein in Big Tech*.

8. Locke actually wrote "life, liberty and property", while using "pursuit of happiness" in another context in his Two Treatises on Government. Jefferson made the combination and substitution in his final version of the *Declaration of Independence*.

Unfortunately for the trust busters, their period in the sun would have to wait. The First World War and its aftermath, which included the end of the Progressive Era and twelve years of business-friendly Republican Presidents, along with an attention-grabbing focus on Prohibition, pushed the prosecution of anti-competitive practices into the background. Warren G. Harding, Wilson's successor, appointed Herbert Hoover, a millionaire mining engineer, to the position of Secretary of Commerce, and multi-millionaire Andrew Mellon, who had built his fortune in banking and aluminum, to Secretary of the Treasury. "Government is just a business," said Mellon, "and can and should be run on business principles." In the *FTC Annual Report to the Senate and House or Representatives for the fiscal year ending in 1928*, the opening sentence states that the outstanding feature of the year's activities was to investigate the publicity methods and activities of public utilities. The Report stated proudly: *"Although the regular activities (of the FTC), such as the prevention and correction of unfair competition in commerce as well as violations of the antitrust laws were carried on as usual, the investigation of electric-power and gas companies as called for in Senate Resolution No. 83 became the most comprehensive economic inquiry ever undertaken by the commission."*

The *FTC*, *Sherman* and *Clayton Acts,* and the *FTC,* outlived the Republican administrations in the twenties, fifties and the Nixon years (including a proposal by Richard Nixon in 1971 to abolish the *FTC* and have its role taken over by a federal trade practices agency with a single administrator). From the time FDR took over from Hoover in 1933 and up to the Reagan presidency beginning in 1981, *FCC* commissioners and the Supreme Court Justices were guided by the principle that consumer prices were secondary to anti-competitive practices because price reductions could be used by monopolies to starve potential competitors and gain market share, and prices could be raised when it suited the monopolist. It is important to keep this in mind because when this focus changed in 1981, business practices reverted, to a large extent, to what they were prior to 1914.

Keynesianism loses to Friedman's Monetarism

It was Keynesian economics,[9] developed during and after the Great Depression from the ideas presented by John Maynard Keynes (1883 – 1946) in his 1936 book, The General Theory of Employment, Interest and Money, which served as the standard macroeconomic model in the developed nations during the latter

John Locke's Five Principles

1. Locke believed that a government should be beholden to the people rather than vice-versa. He became the first person in history to suggest that if a people disapprove of their government, they should possess the power to change it as they see fit. This idea came to be known as the right to revolution.

2. John Locke was first to suggest that human beings have a set of inalienable rights. These rights, paraphrased in the American Constitution, are "life, liberty, and property."

3. Tabula Rasa - Though we are not born with any innate ideas, learned behaviour can be applied to our natural rights in order to obtain optimal outcomes for oneself.

4. John Locke was born a Puritan, converted to a Socinian, and grew up through the religiously ambiguous English Civil War. As a result, he firmly believed that no political authority had the right to decide the religion of their people.

5. Toleration - Locke did not dismiss the act of being strongly opposed to something; one can still disagree and take issue with something, but true toleration simply allows it to exist.

9. **Keynesian economics**, sometimes Keynesianism, named after British economist John Maynard Keynes are the various macroeconomic theories and models of how aggregate demand (total spending in the economy) strongly influences economic output and inflation.

part of the Great Depression, World War II, and the post-war economic expansion (1945–1973). Keynesian economics promotes government spending on infrastructure, unemployment benefits, and education to increase consumer demand. It argues that government spending is necessary to maintain full employment. It was the foundation of New Deal policies (as well as post-Great Recession and COVID-19 recoveries). As Alfred H. Bornemann points out in his 1976 article, *The Keynesian Paradigm and Economic Policy*, *"Keynesian macroeconomic theory and the new theory of public administration, which were both independently introduced at about the same time in the New Deal period of the 1930s, complemented each other. Keynesian theory, emphasizing government fiscal policy and deficit spending as counter depression, full-employment, and economic growth measures, became the generally accepted paradigm in economics and public finance. Public administration theory held that government agencies, motivated primarily by their own bureaucratic expansionary self-interest, would bring about an equilibrium of national interest. This provided the justification for agency initiative in stimulating and supporting the demands of interest and pressure groups whose regulation required increased agency activity. The theories and their outcome reflected the continuing decline of classical liberalism."*[10]

When the anti-competition regulation winds shifted, they blew from the Windy City and its University of Chicago School of Economics. Keynes's influence started to wane in the 1970s. The reasons were partly as a result of the stagflation[11] that was endemic in the Western economies during that decade, particularly in the U.S. and UK; partly because of criticism of Keynesian policies by Milton Friedman and other monetarists,[12] who disputed the ability of government to favorably regulate the business cycle with fiscal policy; and partly because an increasing group of policy maker began to take more seriously the warnings of thought-leaders like F.A. Hayek that excessive government planning, which was a manifestation of collectivism, was crushing individualism and would lead to totalitarian control.[12] In Hayek's case, he believed that government interventions would damage competition, not enhance it, and that the best way to ensure competition was through the market, along with well-defined and protected property rights and contracts that make sure individuals can make use of the knowledge of particular circumstances of time and place which they possess. Prices should not be constrained or manipulated, he argued, because it neglects the function of the pricing

10. https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1536-7150.1976.tb02986.x

11. Stagflation – Economic stagnation characterized by slow economic growth and relatively high unemployment, or economic stagnation, which is at the same time accompanied by rising prices (i.e. inflation). Stagflation can be alternatively defined as a period of inflation combined with a decline in the gross domestic product (GDP). (Investopedia)

12. Monetarism - Monetarism is mainly associated with the work of Milton Friedman. It argues that excessive expansion of the money supply is inherently inflationary, and that monetary authorities should focus solely on maintaining price stability

13. Hayek, F.A. The Road to Serfdom.

system. Competition should prevail, and if some companies are better at competing and innovating than others, they should not be singled out and punished for it.[14]

Bork's Consumer Welfare Standard changes the paradigm

Robert Heron Bork (1927-2012) was definitely a person who was in the right place at the right time. He attended the private prep school, Hotchkiss, and then took both an undergraduate BA degree and law degree at the University of Chicago. He interrupted his law studies to do a tour of duty as a Marine in the Korean War. He practiced law for ten years and then joined the faculty of *YALE LAW SCHOOL*. He took a two-year break from 1973 to 1975 while he served as acting U.S. Attorney General, standing in for Elliot Richardson who resigned rather than obey President Nixon's order to fire special prosecutor Archibald Cox. In his 1978 book, titled The Antitrust Paradox: A Policy at War with Itself, he argues that most antitrust laws passed by Congress and Supreme Court decisions on antitrust issues are incorrect, counterproductive, and economically inefficient. The battle line was established, and the terms of encounter were now defined.

I have not (yet) read Bork's book, but summaries of its contents are plentiful. It is broken into three parts. First, Bork traces the history of antitrust. Then he identifies key concepts in the application of antitrust regulations. Finally he discusses foundational court decisions. The main take away from his book, his key insight, is that antitrust laws are intended to protect consumers and the benefits they receive from the competitive process. This is what became known as the **Consumer Welfare Standard**. In Bork's view, competition law is meant to benefit consumers by encouraging businesses to cut prices, improve quality, and innovate. He provided a black-and-white formula for good and bad business behavior. When businesses engage in behavior that benefits consumers, it should be legal; when their behavior hurts consumers through higher prices, reduced quality, or stifled innovation, it should be illegal.

Before Bork, the FTC, backed by the courts, ruled that both agreements among competitors, called horizontal agreements, and agreements between manufacturers and their suppliers, called vertical agreements, were illegal. Bork said that only horizontal agreements can be anti-competitive. Before Bork, a manufacturer could not define geographic territories for its distributors. Until the 1960s, that was illegal.[15] Before Bork, the governmental agencies decided whether businesses were efficient. Bork thought that

14. Hayek F.A. (1979). Law, legislation and liberty. Volume 3: The Political Order of a Free People. Routledge & Kegan Paul Ltd., pp. 208 (1998).

15. Dylan Matthews, *THE WASHINGTON POST. Antitrust was defined by Robert Bork*. December 20, 2012.

markets were always efficient and did not need tinkering by government agencies. There was another message in Bork's writings, and this was that the Soviets were going to use antitrust to take over the United States. He developed this theory in a 1963 *FORTUNE* article titled *The Crisis in Antitrust*. His credentials for a post-Progressive Supreme Court justice were established.

Without Reaganism there would have been no Wintel or Google

In 1981, President Ronald Reagan appointed James C. Miller III as Chairman of the *FTC*. Miller was the first Ph.D. economist to serve as Commissioner. Under Chairman Miller's leadership, the *FTC* took on a new form. Miller cut the Commission's budget and set a new direction involving more private initiative and self-regulation by industry as well as providing more information to consumers to enable them to make their own decisions. He lessened government intervention in the marketplace and was committed to integrating economic analysis into the development of investigations, prosecutions, and justifications of remedies. Miller applied Bork's and Friedman's thinking. He believed that the system of competition combined with laws that proscribe only economically inefficient transactions "affects not only our economic well-being, but our basic liberties."

On the 1st of July 1987, President Reagan nominated Robert Bork for a seat on the Supreme Court to replace retiring Lewis F. Powell, Jr. This was to be Reagan's insurance policy for the survival of Monetarist polices after his term in office. The Senate rejected Bork 42-58. It was not his business-friendly views that caused his rejection, but his perceived willingness to wind back the clock on the civil rights rulings made during the previous three decades. Reagan then nominated Douglas H. Ginsburg (also from *CHICAGO LAW SCHOOL*), who withdrew after he admitted to smoking marijuana while a *HARVARD LAW* professor. Reagan then nominated Anthony Kennedy, who was approved. Kennedy joined Antonin Scalia, whom Reagan had appointed the previous year. Scalia was a conservative and an originalist, advocating a strict interpretation of the Constitution. Kennedy turned out to be anything but a lock step conservative. However, even without Bork on the Court, the groundwork was laid for the companies that would define America's position in the global economy in the coming four decades. MICROSOFT and INTEL were among the first out of the blocks.

MICROSOFT and INTEL didn't get big fast. INTEL was founded in 1968 and MICROSOFT came into being in 1975. It would be 25-30 years before the getting big fast at Internet speed would create the dot-

Ronald Reagan and Margaret Thatcher brought about a revolution in thinking and policy in both economics and foreign affairs. Both embraced post-Keynesian policies, Thatcher with her ascension to the post of Prime Minister of the UK in 1979, and Reagan with his assumption of the U.S. Presidency in 1981.

com bubble in the late 90s. But by that time, the regulators and the courts were solidly of a Monetarist mindset. Before they got there, they tried to break up MICROSOFT. The FTC in 1992, on the tail end of twelve years of Republican presidents, opened a case into whether MICROSOFT was abusing its dominant position on the PC operating system market. They deadlocked on the vote and in 1993 the case was closed. Janet Reno, President Bill Clinton's Attorney General, opened her own investigation the same year that resulted in a settlement in 1994 in which MICROSOFT agreed not to tie other MICROSOFT products to the sale of Windows, but still remained free to integrate additional 'features' into the OS. MICROSOFT insisted later on that Internet Explorer was a 'feature', not a 'product'.

In 1998, Reno's Department of Justice, along with twenty U.S. states and the District of Columbia, sued MICROSOFT for "illegally thwarting competition in order to protect and extend its software monopoly" according to Section 2 of the *Sherman Antitrust Act* of 1890. The DOJ also sued MICROSOFT for violating a 1994 consent decree by forcing computer makers to include its Internet browser as part of the installation of Windows. This was a make-or-break case for the government and for the tech industry. Bill Gates and MICROSOFT were less than cooperative. In June 1999, before the final judgment, a group of 240 economists wrote an Open Letter to President Clinton On Antitrust Protectionism that was printed in the *WASHINGTON POST* and *THE NEW YORK TIMES* as full-page ads. It said, in part:

"Consumers did not ask for these antitrust actions – rival business firms did. Consumers of high technology have enjoyed falling prices, expanding outputs, and a breathtaking array of new products and innovations. ... Increasingly, however, some firms have sought to handicap their rivals by turning to government for protection. Many of these cases are based on speculation about some vaguely specified consumer harm in some unspecified future, and many of the proposed interventions will weaken successful U.S. firms and impede their competitiveness abroad."

Judge Thomas Jackson issued his findings on the 5th of November 1999, which were that MICROSOFT's dominance of the (INTEL) x86-based PC operating systems market constituted a monopoly, and that MICROSOFT had taken actions to "crush threats to that monopoly, including APPLE, Java, NETSCAPE, LOTUS SOFTWARE, REALNETWORKS, Linux, and others". On the 3rd of April 2000, he issued his conclusions that MICROSOFT had committed monopolization, attempted monopolization, and was in violation of Sections 1 and 2 of the *Sherman Antitrust Act*. On the 7th of June 2000, the court ordered

a breakup of MICROSOFT as its remedy. According to that judgment, MICROSOFT would have to be broken into two separate units, one to produce the operating system, and one to produce other software components. MICROSOFT immediately appealed the decision.

At this point, the DC Circuit Court of Appeals, which would hear the appeal, tried to get the Supreme Court involved under a rule that in certain antitrust cases initiated by the federal government the Supreme Court should hear the case when it is "of general public importance in the administration of justice". The Supreme Court declined by a vote of 8-1.[16] In a win for MICROSOFT, the D.C. Circuit Court of Appeals overturned Judge Jackson's rulings against MICROSOFT, accusing him of prejudice and unethical conduct. On the 6th of September 2001, when there was a Republican Attorney General in a Republican White House, the DOJ announced that it was no longer seeking to break up MICROSOFT and would find a lesser antitrust penalty. On the 2nd of November 2001, the DOJ and MICROSOFT settled the case, which included MICROSOFT sharing its APIs with third-party companies. The DOJ did not require MICROSOFT to change its code or prevent it from tying other software with Windows in the future.

Big Tech has had two decades of free passes on government antitrust law suits following the MICROSOFT close encounter of the terminal kind. Google, APPLE, AMAZON, FACEBOOK, et al have surfed on the consumer welfare wave.[17] The Obama administration was definitely of the mindset that these companies were good for America and for its citizens, particularly because at the start of President Obama's first term, he was trying to dig the country out of a very deep financial hole excavated by the previous Republican administration. It was not just Big Tech that was coddled during the eight Democratic years; the Big Banks that helped to cause the Great Recession of 2008 were also left unharmed and allowed to become even larger.[18]

The role of personal data in the antitrust shift

During the period when the person President Biden refers to as 'the former guy' was in the position of PotUS, the ground beneath the feet of Big Tech began to move and then shake. Not for all of them, only those that had shown their political hands as favoring the Democratic Party. Jeff Bezos took the brunt of the former guy's force because of his ownership of the *WASHINGTON POST*, a newspaper that was and continues to be highly critical of President Biden's predecessor and his entire troop. However, AMAZON

16. In a victory for MICROSOFT CORP., the Supreme Court Tuesday declined to consider the government's bid to break up the software giant, choosing instead to send the case to a lower court.

In an 8-to-1 decision, the justices rejected a motion by U.S. District Judge Thomas Penfield Jackson to have the case sent directly to the High Court, bypassing the U.S. Court of Appeals. The Justice Department and the 19 states suing MICROSOFT advocated bypassing the Appeals Court, arguing it would resolve the case more quickly. At this point, seven of the nine Justices had been appointed by Republican presidents.

17. FACEBOOK has changed the name of the parent company to META. The parent company of Google was changed to Alphabet, but most people still refer to the company as Google. For purposes of clarity, I use the original names in this article.

18. *THE NEW YORKER, DECEMBER 6, 2021, The Enforcer. Lina Khan's battle to rein in Big Tech.*

managed to stay out of the government's revenge-seeking cross-hairs. This was not the case for companies that were perceived to be cozy with the Obama administration and Democrats in general, such as Alphabet/Google, or companies that used their discretionary power to turn off the accounts of the PotUS and his cronies, like FACEBOOK and INSTAGRAM.

It was the 2016 election that uncovered the power of data for what had been an unaware, or at least uncaring public and government officialdom. A story broke in 2018 in *THE NEW YORK TIMES* and the UK's *THE OBSERVER* about a company called *CAMBRIDGE ANALYTICA* and its involvement in the 2016 presidential election. It turned out that the company had provided personal data of up to 87 million FACEBOOK users who were acquired via 270,000 FACEBOOK users of an app called "This Is Your Digital Life".[19] The original users gave their permission to the app to acquire their data and to access their friends' network. The app developer breached FACEBOOK's terms of service by turning over the data to CAMBRIDGE ANALYTICA, but the damage was done. CAMBRIDGE ANALYTICA used this personal data to create psychological profiles that could potentially be used to influence voting behavior. Senator Ted Cruz and the PotUS-hopeful used this profiling in their presidential election activities. PotUS-hopeful advisor Steve Bannon was a former VP of CA, board member, and company shareholder.

19. https://en.wikipedia.org/wiki/Cambridge_Analytica

Whether these methods were effective or just a hoax (they did nothing to help Cruz), is less important than the fact that so much personal data could be appropriated without the slightest knowledge of the owners of that data. CAMBRIDGE ANALYTICA had processed all of the data in the U.S., where it was presumed by them to be legal. It would not have been legal in the U.K. or anywhere within the EU where privacy laws are much stricter.

I recall thinking at the time: What's the difference between using personal data from millions of people to promote a political candidate and using the same data to promote "another book you might like" or "another article on this topic that may interest you"? That's probably what Cruz and the PotUS-hopeful thought when they signed up for the CA service. And perhaps this is the reason the whole issue seems to have faded from front of mind. This conundrum highlights the problems that anyone faces who tries to rein in the companies that base their businesses on processing oodles of data. There are three major problems:

1. The 'freemium' business model used by the tech companies makes it impossible for regulators to claim that customers are being disadvantaged on the basis of price. You can't get much cheaper than free;

2. Customers appreciate the advantages of both largeness and vertical integration with suppliers. They are provided with maximum access to both information and other users with whom they can communicate and exchange more information; and

3. Customers have shown that they are willing to share all manner of private data in return for their access to what is available from the suppliers.

For some reason, those government officials, including those who have been *FTC* Commissioners and on the staffs of Department of Justice antitrust departments, who have continued to believe it is their duty to regulate businesses that look very much like monopolies and to punish them through the courts, have missed a very important detail. These companies have plenty of money to pay fines.[20] What they don't want to give up or share is the data they collect from their customers. That is what they live and die by. Maybe the new kids on the block, including Lina Khan, are slowly figuring this out.

Lina Khan's chances for turning back the clock to 1911

Lina Khan was selected as an *FTC* Commissioner and promoted to her position as Chair of the *FTC* at the recommendation of Senator Elizabeth Warren. Joe Biden didn't pick her name out of a hat. He owes Warren for her active support of him during the election (after she ended her own presidential bid) and for her continued support after she was passed over by him as the vice presidential candidate in favor of Kamala Harris. Khan, as *FTC* chair, was one of her payback favors. That's no secret, nor is it a criticism.

Senator Warren made her journey from an apolitical registered Republican from Oklahoma to a fire breathing anti-business Democratic crusader residing in what we called the People's Republic of Cambridge when I lived there in 1973-1984.[21] (I'm told by friends who still live there that it has not lost its shiny red star over the years.) Warren is called the Senior Senator because she took office six months prior to Senator Edward Markey in 2013.[22] They are both of the left-leaning persuasion, with Senator Markey's focus being climate, energy, and transportation, and Warren's being business and finance. But there are big differences between the two. Markey has lived in Massachusetts all his life, including his

20. In 2017, Google paid a $2.7 billion antitrust violation fine leveled by the EU, which Google paid after the EU Court of Justice denied its appeal. The fine represented 2.5% of Google's 2016 revenue.

How FTC Commissioners are selected

The Federal Trade Commission consists of five Commissioners appointed by the President, with the advice and consent of the Senate, to serve staggered seven-year terms. The President designates one of the Commissioners to serve as the Chariman. No more than three Commissioners at any one time may be from the same political party.

21. https://www.politico.com/magazine/story/2019/04/12/elizabeth-warren-profile-young-republican-2020-president-226613/

22. I am giving Ed Markey background because there are major differences between how the two Massachusetts senators came to their positions and what they are doing with their positions, both for the country and for the state they are intended to represent.

college years at Boston College. Before becoming Senator, Markey was a member of the U.S. House of Representatives from 1976, and before that he was a member of the Massachusetts House. He represents Massachusetts, not Edward Markey.

In early 2016, Senator Warren was on a short list of Democratic presidential hopeful Hillary Clinton's vice presidential running mates. (She lost out to Senator Tim Kaine.) She was looking to add to her profile, the one that helped her to be elected as an advocate of more stringent banking regulations and better protection for consumers to stay out of bankruptcy. She decided to become a Big Tech Basher, and arrived there via her belief that the owners of these companies did not pay enough—or any—taxes. She invited three well-known individuals working in the field of antitrust and consumer advocacy to dinner in her Senate office. It's not clear if she actually invited Lina Khan, the fourth guest, or if Khan came along with her former boss at *Open Markets Program*, Barry Lynn. The others were Teddy Downey, Executive Editor of Capitol Forum, which researches antitrust issues, and Jonathan Kanter, a former lawyer at the FTC (1998-2000) and a long-time critic of Big Tech. Kanter was subsequently chosen by President Biden to head the Department of Justice antitrust division.[23] Khan was then in her second year at *Yale Law School*.

One could say that Lina Khan fell into her position as a member of the ***neo-Brandeis*** movement, which includes the above three plus Tim Wu, a *Columbia Law School* professor who Biden named to the newly created position of head of competition policy at the National Economic Council, an advisory group to the President.[24] She had exhibited no particular interest in antitrust in college. Her senior thesis was on Hannah Arendt, a political philosopher. She was looking for a job in the spring of 2011 and interviewed for an open position as a researcher at the *Open Markets Program* in Washington, DC. *Open Markets* was part of the New America think tank, and was dedicated to the study of monopolies. New America's position was that Big Tech was "suppressing innovation, depressing wages, and fueling inequality". Barry Lynn, a former reporter, had founded *Open Markets* the previous year with the idea that monopolies like those created by Big Tech were a threat to democracy, and that policymakers and much of the public were blind to the threat.

Warren was apparently impressed with what she heard from all of her guests, including Khan. As it turned out, the meeting was a way of Warren prepping for a speech she gave at *Open Markets* a

23. Kanter has questioned the value of the dominant "consumer welfare standard" in antitrust policy, arguing that the purpose of antitrust enforcement "is not to decide what is maximally efficient, but to enforce the law".

24. The *New Brandeis* or *neo-Brandeis* movement is an anti-trust academic and political movement in the United States that suggests monopolies naturally concentrate power and harm the competitiveness of markets. Also called hipster antitrust, the movement advocates that United States antitrust law seek to improve business market structures that negatively affect market competition, income inequality, consumer rights, unemployment, and wage growth. The name is based on the anti-monopolist work of Louis Brandeis, an early 19th century United States Supreme Court Justice who called high economic concentration "The Curse of Bigness" and believed monopolies were inherently harmful to the welfare of workers and business innovation.

Source: https://en.wikipedia.org/wiki/New_Brandeis_movement.

few months after the dinner in which she announced that she was targeting Google, APPLE, and AMAZON specifically for their monopolistic practices. Khan went back to school and started writing a paper that would provide her with her principal credentials. The paper was titled "Amazon's Antitrust Paradox", an obvious play on Robert Bork's work, The Antitrust Paradox. Khan's was issued in January 2017 in the *YALE LAW JOURNAL*. Her main argument was that the **Consumer Welfare Standard** of gauging antitrust behavior was outdated, and she used AMAZON as a case study. She pointed out that AMAZON had stayed under the antitrust radar because the regulators' and the courts' preoccupation had been on consumer prices. As might be expected, Warren and all the supporters of the 'big is bad' interpretation of antitrust law thought the paper was the bee's knees, while the mainstream economists and neo-Brandeis detractors thought it was just a load of bunk written by a naïve youngster.

Grow up fast and make things

Well, now Lina Khan is going to have to either prove that she is more than a wet-behind-the-ears upstart who has no qualifications to run an agency with 1,100 employees and a $384 million budget who do much more than pick lice out of AMAZON's hair. Wouldn't Barry Lynn or Jonathan Kanter have been a better choice? I guess they didn't tick four important boxes for Senator Warren: Khan (a woman) was born in 1989 (young) in London, UK to Pakistani (non-White) parents, and moved with them to the U.S. (immigrant) when she was 11 years old (i.e., she's not an old White man who's ancestors came over on the Mayflower).

Khan has begun her antitrust campaign by proposing two ways to address the monopolistic practices of Amazon and its ilk:

1. Return to the old idea of antitrust law, which focused on preserving "healthy competition" rather than on the prices consumers paid; and,

2. Treat the AMAZONs like public utilities and regulate them aggressively, including requiring that THEIR COMPETITORS BE GIVEN ACCESS TO THEIR PLATFORMS ON MORE FAVORABLE TERMS.

The first suggested palliative, to use old tried and true solutions applied in 1911, indicates why Khan and her colleagues are labelled neo-Brandeisian. If the consumer welfare principle is outdated, as she claims, 'bludgeon big' is even more so. America's

most important companies are all built around the consumer welfare principle. They compete globally and are better than the biggest that China has created with plenty of state money. The U.S. has the three largest cloud computing companies (AMAZON, Google, and MICROSOFT), and with the advent of virtual 5G, they will all double in size.[25] If you start to take them down you end up with a lot of small companies that will not be able to send spaceships to Mars or deliver astronauts to the new orbiting lunar space station. It's national security we're talking about, and there are politicians on both sides of the aisles of Congress who will not want to be accused of helping China to a larger piece of the economic and global influence pie. Theirs is big enough already. So simply saying that big is bad because "We say so" will not cut the mustard.[26]

The first half of the second suggestion, to treat Big Tech companies like public utilities, is the reverse of what the Monetarists did with public utilities, which was to treat them like private businesses. The result was deregulation and privatization. This suggestion smacks a whole lot of post-WWII UK with nationalization of just about everything, from coal to gas, and from banks to vehicle manufacturing.[27,28] *New Neo Progressives* in the House and Senate are going to have to grow to super majorities in order for the U.S. to transmogrify into pre-Thatcher UK. On top of this, the courts, especially the Supreme Court, will have to allow it, and right now and for some time to come, that deck is definitely stacked against excessive governmental reach.

However, the second half of the second cure is new, that is, opening up the Google, FACEBOOK, AMAZON, and other large platforms to their competitors. If the definition of the 'platforms' also includes the data collected, this could be an effective way to allow would-be competitors to Big Tech to level the playing field. Could it work? Maybe, if business, regulators, and the courts look at it like it is a matter of Big Tech having its cake and letting others eat it too. This is definitely feasible because unlike cake, data does not disappear when you eat it.

What if the FTC managed to make things better

Lina Khan's father is a management consultant. She must have learned something from him about how to be a successful consultant—and employee. You deliver results to your boss that will make them a hero, and you convince them that what you delivered was their idea from the start. One day you be the boss and will expect the same from your underlings—and consultants. Lina

25. DISH NETWORKS, known for its satellite-TV services, will soon launch as America's fourth biggest mobile telephone provider, and it will do so with the first that runs almost entirely on a computing cloud. It will run on *AMAZON WEB SERVICES*.

26. See Loren Thompson's article in the January 11, 2022 issue of Forbes, President Biden's Tax & Antitrust philosophy Is At War With His National Security Strategy. https://www.forbes.com/sites/lorenthompson/2022/01/11/president-bidens-tax--antitrust-philosophy-is-at-war-with-his-national-security-strategy/

27. William Beveridge (1879-1963) was a social economist who in November 1942 published a report titled, 'Social Insurance and Allied Services' that would provide the blueprint for social policy in post-war Britain. Beveridge had been drawn to the idea of remedying social inequality while working for the Toynbee Hall charitable organization in East London. He saw that philanthropy was simply not sufficient in such circumstances and a coherent government plan would be the only sufficient action. By the outbreak of war, Beveridge found himself working in Whitehall where he was commissioned to lead an inquiry into social services. His vision was to battle against what he called the five giants; idleness, ignorance, disease, squalor and want. His 'cradle to the grave' social programmer that amongst other proposals called for a free national health service alienated some politicians but it struck a chord with the public and this would influence Clement Atlee's Labour Government to implement these ideas.

28. https://en.wikipedia.org/wiki/List_of_nationalizations_by_country

Khan's boss is President Joe Biden, and right now he needs all the hero points he can get.[29] His approval rating has descended by 10 percentage points since he took office one year ago (53% on January 23, 2021 down to 43% on January 13, 2022) due to high inflation, the pandemic that just won't quit, the embarrassing Afghanistan exit (UGH!), the split in his own party evidenced in his difficulty getting them all on board with his two major funding initiatives, the excruciatingly slow progress on punishing the January 6th Capitol insurgents, and the relentless attacks from unrepentant Republicans. If the FTC can manage to get a win with FACEBOOK in its the new case, a win that businesses and consumers alike see as a positive outcome, rather than simply the first cut of many that will eventually result in FACEBOOK's marginalization and ruin, and more ammunition for Biden's critics that he and his administration are playing into China's hands, it could help to turn the approval curve upward. It could also set a precedent for its approaches with the other members of Big Tech.

With a little nudging from the District Court judge who will hear the new case, which is to lay off the platform and stick to antitrust issues, such as buying up companies that could become competitors, the FTC might actually be able to accomplish something that the *EUROPEAN COMMISSION* has been attempting to do unsuccessfully for the past ten years. I have written often about the *COMMISSION*'s approach to data, particularly related to the vehicle industry, which is heavy on protecting privacy, but very light on economic justification for either businesses or consumers. It has been trying to get the vehicle manufacturers to open up their platforms to deliver data to service providers. These individual platforms, which the manufacturers use principally for supporting their own efforts to stay competitive with each other, are like single trees compared to a Google, AMAZON or MICROSOFT forests.

The real value to both businesses and consumers is using the Big Tech platforms, as I wrote in the January 2021 issue of *THE DISPATCHER*. If you use the platforms, instead of losing them, you have the possibility to gain wider access to many more sources and users of data than your own customers can deliver, and you can let the platform operators pay for their operation and distribution. Unfortunately, the *EUROPEAN COMMISSION* seems determined to centralize data processing through their ITS Directive and C-ITS solution for a central server that will obviously have to be operated by the Leviathan, as I wrote in the May issue of *THE DIS-*

29. https://projects.fivethirtyeight.com/biden-approval-rating/

PATCHER. Ms. Warren and the other *New Neoprogressives* in Congress, and the *neo-Brandeisians*, might not like this interpretation because they have stated repeatedly that they want to hurt Big Tech, bring it down several pegs, make them beg. President Biden, during his thirty-five years as a U.S. Senator and eight years as a Vice President, never showed himself to be an antitrust zealot. It appears that he has been talked into his new position by advisors who are telling him that the American public is mad as hell at big business and it is now up to him and the Democrats to do something about it. This may be a major miscalculation. Republicans do not want to destroy FACEBOOK or any of the other Big Tech companies; they just want them to stop acting like they are all supporters of the Democratic Party. The position of the Democrats leading up to the mid-term elections this year is less than strong, and if they lose their majorities it will be extremely difficult for them to follow through with their plans.

A chance to test just how hot the coals are on the feet

The judge who threw out the case against FACEBOOK/META that was brought by the former administration's FTC because it was, in his view, terribly prepared and had no obvious merit, just handed President Biden's FTC watchdog a bone.[30] On the 12th of January 2022, Judge James Boasberg, a U.S. District Judge in the District of Columbia, gave the go-ahead to a new case prepared by the new team, writing: "In stark contract with its predecessor, this complaint provides reinforcing, specific allegations that all point toward the same conclusion: FACEBOOK has maintained a dominant market share during the relevant time periods." The judge did tell the FTC that it had to drop some allegations about FACEBOOK's platform policy

FACEBOOK had asked the court to dismiss the case entirely, claiming that Lina Khan was biased against the company, as evidenced her past comments. Judge Boasberg said, basically, Khan didn't have to be impartial because her position is not one of being a judge, but one of being a prosecutor. He said: "Although Khan has undoubtedly expressed views about FACEBOOK's monopoly power, these views do not suggest the type of 'axe to grind' based on personal animosity or financial conflict of interest that has disqualified prosecutors in the past."

Some longtime FTC staffers believe Khan is underestimating the risks with aggressive cases, will just end up losing and at the same time enraging people. This is her first chance to prove them wrong.[31] We'll see how she does.

30. The FTC sued FACEBOOK in December 2021 (during the previous administration's last full month in office), alongside attorneys general from 48 states, arguing that FACEBOOK engaged in a systematic strategy to eliminate threats to its monopoly, including the 2012 and 2014 acquisitions of INSTAGRAM and WHATSAPP, respectively, which the FTC previously cleared. The court, with Judge James Boasberg presiding, ruled on Monday, the 28th of June 2021 that the FTC failed to prove its main contention and the cornerstone of the case: that FACEBOOK holds monopoly power in the U.S. personal social networking market. In the ruling, the court said: "The FTC's Complaint says almost nothing concrete on the key question of how much power Facebook actually had, and still has, in a properly defined antitrust product market," the filing reads. "It is almost as if the agency expects the Court to simply nod to the conventional wisdom that Facebook is a monopolist."

However, the court completely dismissed the parallel case from the state attorneys general, saying that the long delay between the acquisitions and the 2020 case filing was unprecedented on a state level, and that the states' argument about "FACEBOOK preventing interoperability with competing apps fails to state a claim under current antitrust law, as there is nothing unlawful about having such a policy."

31. *THE NEW YORKER, DECEMBER 6, 2021, The Enforcer. Lina Khan's battle to rein in Big Tech*.

They are not neo-Brandeisians

I have neither seen nor heard anything coming out of the new *FTC* chairperson or any of the other members of groups hand-picked by Elizabeth Warren to bring down Big Tech that indicates they are aware of the potential to find good compromises. This attitude is distinctly more New Neo-progressive than neo-Brandeisian. It is in line with the position taken by the self-declared 'democratic socialists' who voted against the infrastructure act, which passed thanks to a group of Republicans. Louis Brandeis built the reputation that led him to a seat on the country's highest court by following a principle he stated in a public address in 1903: "We want a government that will represent the laboring man, the professional man, the businessman, and the man of leisure. We want a good government, not because it is good business but because it is dishonorable to submit to a bad government."[32]

As an example of his search for win-win results, in 1891 he persuaded the Massachusetts legislature to make the liquor laws less restrictive and more reasonable so they would be enforceable. He looked for a middle course that they would remove liquor dealers' incentive to violate or to corrupt the laws. He believed that "the law has everywhere a tendency to lag behind the facts of life," so he devoted his life as a lawyer to advocate laws that met the needs of a changing community.[33]

The new trust busters have misinterpreted Louis Brandeis's personification of the highest principles of professional, ethical, and moral responsibility and taken it as a predilection not to compromise. This is plainly wrong. In his work, both before and after joining the Supreme Court, he clearly showed that he had taken Edmund Burke's words to heart, "All government—indeed every human benefit and enjoyment, every virtue and every prudent act—is founded on compromise and barter."[34] The trust busters have taken Brandeis's dissenting opinions as an inability to compromise, when, it shows his determination to "avoid rotten compromises". He also questioned his previous positions in the light of new facts and changed that position. Before 1890, he believed the market was able to regulate companies for the public welfare. Then, due to what he was witnessing, he lost faith in that system and determined that concentratred economic power could have a negative effect on a free society. What would he think today about the balance between protecting consumers and promoting competition? Here's what I think: Mr. President, you need to stop listening to Elizabeth Warren.

Louis Brandeis in 1915, just prior to being nominated by President Woodrow Wilson to the Supreme Court.

32. Brandeis, Louis. *The Opportunity in the Law*. Published first in 1914 as a chapter in a collection of his articles and speeches titled Business: A Profession.

33. https://core.ac.uk/download/pdf/71932716.pdf

34. Burke's 1775 speech criticizing the policies of King George III and his ministers shortly before the start of the Revolutionary War and a year before the writing of the American Declaration of Independence.

Regulatory oversight of driverless cars receiving a second look in California

"It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."

Louis D. Brandeis

JUSTICE BRANDEIS SAID "laboratory", not kindergarten, Governor Newsom. And you don't have to worry about the disruptive child causing problems if you discipline him. He has picked up the toys he didn't want to share with others and moved to Texas. He is their problem now and there is no need to coddle him anymore. So when I read that your State is reviewing whether TESLA's "self-driving tests" require regulatory oversight I was both baffled and dismayed.[35] Apparently, TESLA says the Regulation does not apply to its so-called *Full Self-Driving* (*FSD*) function. Where could the gap possibly be between what TESLA is doing and your Regulation? I decided to have a look. As it turns out, all of the reporting so far seems to have ignored your fine print.

35. Russ Mitchell, DMV Revisiting its approach to regulating Tesla's public self-driving test, Los Angeles Times (Jan. 11, 2022)

Your State determined to try a "novel social and economic experiment" by permitting the testing of what you have called "autonomous vehicles" so residents in the rest of the country could avoid the risk of encountering such vehicles. At least one state, Arizona, has preceded you, but we still feel you are "courageous". I have read your (24-page) section of the Regulation, *Title 13, Division 1, Chapter 1, Article 3.7 – Testing of Autonomous Vehicles,* effective the 16th of April 2021.[36] There is a second part, *Article 3.8 – Deployment*, but I will focus on *Article 3.7*. It clearly states its Purpose (see sidebar), to regulate (so-called) "autonomous vehicles" and to make it clear that such vehicles may not operate on public roads in California except as permitted by the CA Vehicle Code and the Regulation. You open with almost three pages of definitions, but the most important ones are the first two and the last one:

(a) "Autonomous mode" is the status of vehicle operation where technology that is a combination of hardware and software, remote and/or on-board, performs the dynamic driving

36. ***Title 13, Division 1, Chapter 1 Article 3.7 – Testing of Autonomous Vehicles***

§ 227.00. Purpose.

(a) The regulations in this article implement, interpret and make specific Division 16.6 (commencing with section 38750) of the Vehicle Code, originally added by Statutes of 2012, Chapter 570 (SB 1298), providing for the regulation of autonomous vehicles operated on public roads in California.

(b) A motor vehicle shall not be operated in autonomous mode on public roads in California except as permitted under Vehicle Code section 38750 and the regulations in this article.
https://www.dmv.ca.gov/portal/file/adopted-regulatory-text-pdf

task, with or without a natural person actively supervising the autonomous technology's performance of the dynamic driving task. An autonomous vehicle is operating or driving in autonomous mode when it is operated or driven with the autonomous technology engaged.

(b) "Autonomous test vehicle" is a vehicle that has been equipped with technology that is a combination of both hardware and software that, when engaged, performs the dynamic driving task, but requires a human test driver or a remote operator to continuously supervise the vehicle's performance of the dynamic driving task.

(o) "Testing" means the operation of an autonomous vehicle on public roads by employees, contractors, or designees of a manufacturer for the purpose of assessing, demonstrating, and validating the autonomous technology's capabilities.

Let's start with a quick review of what TESLA calls its *Full Self-Driving* (*FSD*) function. Here is what it says about it on its site under the title of Autopilot Full Self-Driving Capability Features:[37]

Autopilot *is a suite of driver assistance features that comes standard with the purchase of a new car or can be purchased after delivery, and brings new functionality to your TESLA that makes driving safer and less stressful. Autopilot assists your car with steering, accelerating and braking for other vehicles and pedestrians within its lane. With* ***Full Self-Driving*** *(FSD) capability, you get access to a suite of more advanced driver assistance features designed to provide more active guidance and assisted driving under your active supervision. Available packages include:*

Autopilot

- *Traffic-Aware Cruise Control: Matches the speed of your car to that of the surrounding traffic*
- *Autosteer: Assists in steering within a clearly marked lane, and uses traffic-aware cruise control*

Full Self-Driving Capability

- *Navigate on Autopilot (Beta): Actively guides your car from a highway's on-ramp to off-ramp, including suggesting lane changes, navigating interchanges, automatically engaging the turn signal and taking the correct exit*
- *Auto Lane Change: Assists in moving to an adjacent lane on the highway when Autosteer is engaged*
- *Autopark: Helps automatically parallel or perpendicular park your car, with a single touch*
- *Summon: Moves your car in and out of a tight space using the mobile app or key*

Federal Motor Vehicle Laws

In the National Traffic and Motor Vehicle Safety Act of 1966 (49 U.S.C. section 30101 et seq.; "Safety Act"), Congress directed the U.S. Department of Transportation to prescribe motor vehicle safety standards. The National Highway Traffic Safety Administration is vested with the authority to develop Federal Motor Vehicle Safety Standards (49 C.F.R. Part 501, section 501.3). Under the Safety Act, no motor vehicle can be sold for use on public roads in the United States unless the vehicle manufacturer certifies that the vehicle meets the performance requirements specified in the Federal Motor Vehicle Safety Standards adopted by the National Highway Traffic Safety Administration, or the manufacturer has received the appropriate exemption from the National Highway Safety Administration.

37. https://www.tesla.com/support/autopilot and https://www.tesla.com/support/full-self-driving-subscriptions#eligibility

- *Smart Summon: Your car will navigate more complex environments and parking spaces, maneuvering around objects as necessary to come find you in a parking lot.*
- *Traffic and Stop Sign Control (Beta): Identifies stop signs and traffic lights and automatically slows your car to a stop on approach, with your active supervision*
- *Upcoming:*
    - *Autosteer on city streets*

*The currently enabled Autopilot and Full Self-Driving features require active driver supervision and do not make the vehicle autonomous (*my underline*). Full autonomy will be dependent on achieving reliability far in excess of human drivers as demonstrated by billions of miles of experience, as well as regulatory approval, which may take longer in some jurisdictions. As Tesla's Autopilot and Full Self-Driving capabilities evolve, your car will be continuously upgraded through over-the-air software updates.*[38]

What is being reported in places like *The Los Angeles Times* is that Tesla claims the *Regulation, Article 3.7*, does not apply to its cars with Autopilot and Full Self-Driving because the FSD features do not make their cars 'autonomous'. It is therefore interesting that Tesla actually has a permit in California for Autonomous Vehicle Testing with a Driver.[39] (Three companies, Cruise LLC, Nuro, Inc. and Waymo LLC have permits for Deployment, and these three plus four more have permits for Driverless Testing.) The issue appears to be, therefore, that Tesla is not complying with the requirements of the permit it has received, not that it is operating without a permit. Perhaps the people at DMV and the people at Tesla have missed this detail, but let's move on to whether Tesla should have been given a permit in the first place and for what, testing with a driver, driverless testing or deployment.

The devil is in the definitions

What does the word 'full' mean? Well, it depends on the language. *Full* in Swedish means 'drunk'. In the language in question, English, it is an adjective which means 'complete, having all distinguishing characteristics and enjoying all authorized rights and privileges, not lacking in anything essential'. In a word, 'perfect'.[40] Tesla calls the package of software it sells for its cars that works in concert with the vehicle's systems 'Full Self-Driving'. 'Full' in this context is therefore an adjective of 'Self-Driving', so it could be written ***Perfect Self-Driving***.

What does 'Self-Driving' mean if we simply use the English definitions of the words and the phrase? 'Self' in this context, when used

38. Here is where the lack of clarity in definitions plays a major role. Tesla means with 'autonomous' that its cars are not capable of 'driverless' operation, which we have ample evidence for by the number of crashes that have occurred when Tesla drivers let their cars drive themselves. But, their cars allow 'self-driving', which the California regulation has defined as 'autonomous'.

39. https://www.dmv.ca.gov/portal/vehicle-industry-services/autonomous-vehicles/autonomous-vehicle-testing-permit-holders/

40. Merriam-Webster

in combination with another world, means 'by oneself or itself'. So far we have ***Perfect Driving by Itself***. Now to 'driving'. It is a present participle of the verb 'drive', which means in this context 'to travel by a motorized vehicle'. The full definition is therefore ***Perfect Travel by a Motorized Vehicle by Itself***.

According to TESLA, this is NOT what TESLA's Full Self-Driving is supposed to be. It is supposed to be what the California Regulation defines as "Autonomous mode". It is worth repeating that it is the misuse of the word 'autonomous' by both TESLA and the CA Regulation that is causing this disconnect between TESLA and your DMV. If the CA Regulation had used the term 'self-driving' instead of 'autonomous', and all the States as well as NHTSA had commanded TESLA to remove the word 'full', there would be a perfect match between what TESLA is attempting to do and what California is attempting to regulate.

Ignoring for a moment the videos we have all seen—including, I'm sure, you, Governor—showing a TESLA in FSD mode and the car looking like it is being driven by a driver 'under the influence', there should be absolutely no question that TESLA's FSD falls under the requirements of *Article 3.7* and should be subject to all of its requirements to the letter. In my view, these are the *Requirements* that it appears TESLA is either not meeting or about which its compliance is unclear:

§227.04 Requirements for a Manufacturer's Testing Permit

a) *The manufacturer is conducting the testing.* Not met. TESLA is not performing the tests; it has allowed its customers to do so, designating them as 'beta testers'.

b) *Test driver is an employee, contractor, or designee of the manufacturer, who has been certified by the manufacturer to the department as competent to operate the vehicle and has been authorized by the manufacturer to operate the vehicle.* Not met.

c) Information not available on whether TESLA has provided the department with $5 million proof of insurance.

§227.06 Evidence of Financial Responsibility

Information not available on whether TESLA has provided evidence on ability to respond to damages.

§227.08 Instrument of Insurance

Information not available on whether TESLA has provided evidence of instrument of insurance.

§227.10 Surety Bond

Information not available on whether TESLA has provided evidence of surety bond.

§227.12 Certificate of Self-Insurance

Information not available on whether TESLA has provided evidence of certificate of self-insurance.

§227.14 Autonomous Test Vehicles Proof of Financial Responsibility

TESLA has not shown any willingness to either accept blame for incidents involving its vehicles with Autopilot and FSD or compensation to anyone for damages.

§227.16 Identification of Autonomous Test Vehicles

a) TESLA should not allow any vehicles to be operating on public roads unless it has *"provided the department, in writing, the identification of the vehicle(s), including license plate number and state of insurance".* This would be for all vehicles sold with FSD.

b) Each document that identifies the 'autonomous vehicle for testing' needs to be *"signed by an authorized manufacturer's representative".* Information not available on whether TESLA has complied.

*§227.18 Manufacturer's Testing Permi*t

a) *A manufacturer shall not conduct testing of an autonomous vehicle on public roads in California without having applied to the department for a permit to conduct testing, the department having issued an Autonomous Vehicle Testing of Autonomous Vehicles Testing (AVT) Manufacturer's Testing Permit or a Manufacturer's Testing Permit - Driverless Vehicles to conduct testing, and the permit being currently in full force and effect.*

If this is the case, then the California DMV should be enforcing all of the requirements. Apparently, it is not.

b) The requirement clearly states that a manufacturer shall not test autonomous vehicles on public roads unless it has tested the autonomous vehicles *"under controlled conditions that simulate, as closely as practicable, each Operational Design Domain in which the manufacturer intends the vehicles to operate on public*

roads and the manufacturer has reasonably determined that it is safe to operate the vehicles in each Operational Design Domain".

The problem with this requirement is that the CA DMV is doing the same as NHTSA, asking the manufacturer to certify that it has met its requirements without having any control of the requirements or the tests, that is, self-certification. *If I say it's okay, it's okay*.

§227.26 Prohibitions on Operation on Public Roads

A manufacturer shall not permit any of its autonomous test vehicles to be operated on public roads in California:

a) *By a person other than one of its employees, contractors, or designees who has been identified to the department as authorized by the manufacturer to operate the manufacturer's autonomous vehicle.*

TESLA has designated its owners as 'beta testers', and the CA DMV apparently has allowed this, either by not taking action to stop it or by giving its tacit approval to TESLA.

§227.32 Requirements for Autonomous Vehicle Test Drivers

This requirement states that the vehicle being tested must be driven by a test driver a) in *"immediate physical control of the vehicle or is actively monitoring the vehicle's operation and is capable of taking over immediate physical control; b) is an employee, contractor or designee of the manufacturer; c) obeys all provisions of the Vehicle Code and local regulations; and d) knows the limitations of the vehicle's autonomous technology and is capable of operating the vehicle in all conditions under which the vehicle is tested on public roads."*

TESLA has completely ignored these requirements and the DMV has not stopped the company from selling its cars to owners who are violating the requirements.

§227.34 Autonomous Vehicle Test Driver Qualifications

*A manufacturer shall not allow any person to act as an autonomous vehicle test driver for testing autonomous vehicles on public roads unless <u>all of the following</u> (*my underline*) have been met:*

a) *The manufacturer has identified the autonomous vehicle test driver to the department in writing…and the autonomous vehicle driver has been issued an Autonomous Vehicle Testing (AVT) Program Test Vehicle Operator Permit*. Definitely not met.

Vienna Convention and Autonomous Driving (Proposed Amendment to Amendments to Article 1 and new Article 34bis of 1968 Convention on Road Traffic)

*The United States **is not a party or a signatory** to the 1968 Vienna Convention on Road Traffic. However, the U.S. remains a member of of the United Nations Economic Commission for Europe (UNECE) under whose auspices the Vienna Convention continues to be discussed and amended.*

One of the fundamental principles of the Vienna Convention has been the concept that a driver is always fully in control and responsible for the behavior of a vehicle in traffic. This requirement is challenged by the development of technology for collision avoidance systems and autonomous driving.[citation needed]

Since 2021, an automated driving system definition is proposed — in Article 1 of Convention on Road Traffic — as a vehicle system that uses both hardware and software to exercise dynamic control of a vehicle on a sustained basis where Dynamic control is defined as carrying out all the real-time operational and tactical functions required to move the vehicle. This includes controlling the vehicle's lateral and longitudinal motion, monitoring the road, responding to events in the road traffic, and planning and signaling for manoeuvres.

The requirement that every moving vehicle or combination of vehicles shall have a driver is deemed to be satisfied while the vehicle is using an automated driving system which complies with:

(a) domestic technical regulations, and any applicable international legal instrument, concerning wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles, and

(b) domestic legislation governing operation.

The effect of this Article is limited to the territory of the Contracting Party where the relevant domestic technical regulations and legislation governing operation apply.

— Article 34 bis, Automated driving (proposed amendment)

According to a British explanatory Memorandum on the Proposal of Amendment to Article 1 and new Article 34 bis of the 1968 Convention on Road Traffic, this amendment should enter into force 18 months following the date of its circulation, on 14 July 2022, unless it is rejected before 13 January 2022.

b) *The Manufacturer has certified to the department, for each autonomous vehicle test driver permitted by the manufacturer to operate its autonomous vehicles on public roads, that the driver meets all of the requirements listed*. Definitely not met – Private TESLA drivers would not normally meet the requirements, and professional drivers might not meet them either.

Governor Newsom, it's time to bring *The Amateur Hour* at your Division of Motor Vehicles to a close. You need to put qualified professional people in both management positions and positions in the field who are capable of determining whether requirements are being followed and taking proper action when infractions are found. At a minimum, your DMV should have revoked TESLA's *Autonomous Vehicle Testing Permit*, according to *§227.42* for all of its violations of the Regulation.

Further, you must start by writing clear and enforceable regulations. The requirements in your current *Title 13, Division 1, Chapter 1* are not clear enough, which makes them very difficult to enforce. As Princeton Professor Alain L. Kornhauser has pointed out on many occasions, reliance on the SAE J3016 *(SEP2016)* standard and its "Levels" is the cause of confusion because the standard and the Levels can be interpreted in so many different ways. Your DMV (and all the other State and Federal agencies writing regulations) must be more rigorous.

Your DMV has allowed TESLA to sell vehicles in your state that have operated illegally, with drivers able to leave the driver's seat while the vehicle has been moving or with their hands off the steering wheel and eyes off the road long enough to crash or cause crashes. I am referring to the Federal and State laws for operating motor vehicles, not your new testing Regulation. These laws are based on the *1949 Geneva Convention on Road Traffic*, to which the U.S. is a party, and the interpretation of what is a "driver". There is one paper that has been referred to by driverless car developers and their advocates to claim that what TESLA is doing is legal. The paper was written by Assistant Professor Bryant Walker Smith of the University of South Carolina School of Law. It is titled *Automated Vehicles are Probably Legal in the United States*.[41] It is a long paper and it is worth reading by anyone who is really interested in this topic. Here is the summary of what he says (page 435):

> *"Ultimately, the dual questions of who a driver is and what she must do are intertwined with each other and woven into the larger fabric of the Geneva Convention. The concept of control*

41. https://delivery.pdf.ssrn.com/delivery.php?ID=460010240211010930840860731120040090960710840810320941222125064027003112091001082087118100026102007005055068078094024112120119122066055034084122097086004017073005066072020018127004006023125126021003020070122127070109076115080074122011079001000020106113&EXT=pdf&INDEX=TRUE

informs this task—and is the focus of the section that follows… The obligations imposed by the Geneva Convention are intended to foster road safety in part by ensuring that vehicles can be controlled. Control in this sense is a relative concept. This suggests that article 8 is probably satisfied if a human is able to intervene in operation of the vehicle and possibly satisfied if that vehicle operates within the bounds of human judgment. These interpretations may not require a human to be physically present."

Details again. 'Probably legal' is his opinion, although he argues the case well. But he's not claiming that a car without someone who can take control of it, either directly or remotely, is legal. He is trying to justify self-driving or remote (human-controlled) driving. Your own legal people, Governor, have decided that TESLA has 'probably' gone too far and people have died as a result.[42]

42. California brings felony charges against Tesla driver. https://us.yahoo.com/news/felony-charges-first-involving-driver-172055711.html

Once again, to quote Louis Brandeis: *"If we desire respect for the law, we must first make the law respectable."*

Business phrases from Bartleby

WHAT YOU SAY and what you mean are often quite different. It's not so much a matter of lying as it is a matter of protecting the listener from a hard truth. "I'll be there in a minute," is much easier on the ears than "I know I'm ten minutes late already but I need at least ten minutes more". In the November 20th issue of *THE ECONOMIST*, in the *Bartleby* column, we can read what our colleagues really mean when they deliver their surface messages.

The business phrasebook: A short guide to what your colleagues really mean, by Bartleby

THE ECONOMIST - NOVEMBER 20TH 2021

Bartleby is a character in a Herman Melville short story, titled Bartleby, the Scrivener: A story of Wall Street. In THE ECONOMIST, Bartleby columnist provides a respite from the hard facts of business with lighter fare.

"I hear you"
Be quiet

"Let's discuss this offline"
Let's never speak of this again

"I'm just curious"
I'd like to know why you think that…because it makes no sense to anyone else

"It's great to have started this conversation"
We have made absolutely no progress

"I wanted to keep you in the loop"
I should have told you this weeks ago

"Do you have five minutes?"
You are in deep, deep doo-doo

"It's on the product roadmap"
It won't be done soon

"We're moving to an agile framework"
We are literally planning to go around in circles

"We are a platform business"

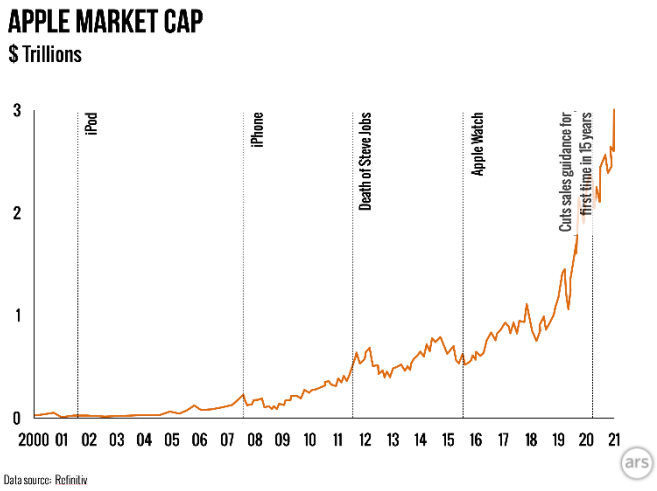
Let's pretend we're a tech firm and see what happens to our valuation.

"We are planning for the metaverse"

Ooh, look! A bandwagon!

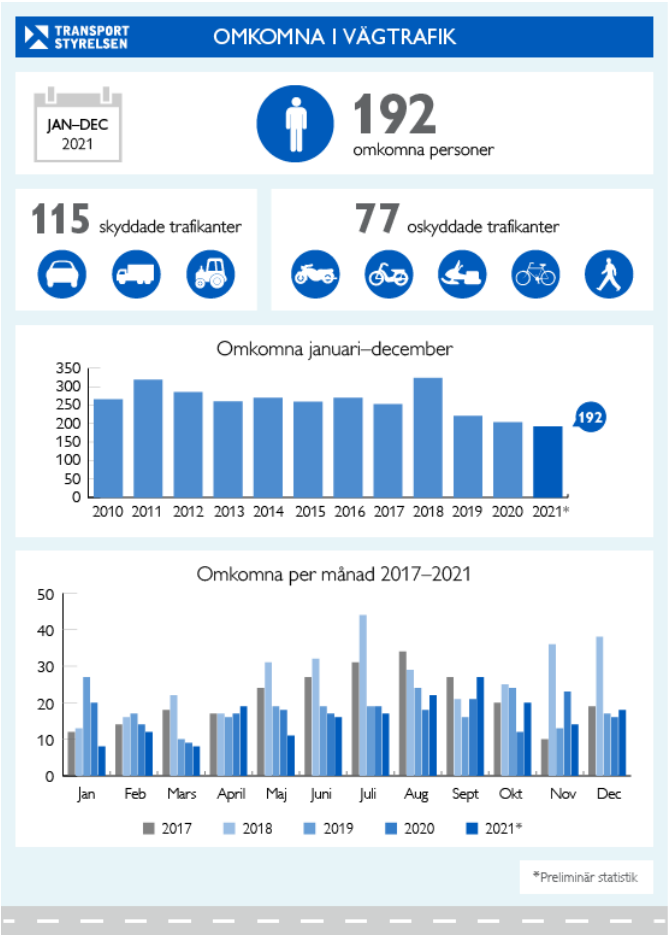
Let's look at some statistics together

STATISTICS ARE MARVELOUS, don't you think? As long as they are provided by reputable sources, they enlighten in ways that simple words often have difficulty matching, especially when they are delivered in graphic form. How do you think Tim Cook feels when he looks at the graph showing APPLE's market capitalization? He took over from Steve Jobs in 2011. Since then, the company's market cap has risen from under half a billion dollars to recently topping $3 trillion.



If I were among those who are employed by the SWEDISH TRANSPORT ADMINISTRATION (TRAFIKVERKET), I would be extremely pleased to see the graphic of road statistics for 2021 (following page). I would ask for a high resolution copy and frame it. For the first time since statistics have been kept, the number of people who have died in traffic-related accidents is under 200. The actual number was 192. After years of steady declines, in 2018 the number shot up from 252 in 2017 to 324 in 2018. It was 221 in pre-COVID 2019 and 204 in 2020.

Of the total, 115 were people who were inside the vehicles and 77 were outside, either pedestrians or on other types of vehicles, such as bicycles. The graphic is produced by the SWEDISH TRANSPORT AGENCY.



How about those guys and girls from TOYOTA! In 2021, for the first time in history, they sold more cars in the U.S. than GENERAL MOTORS. GM has worn the sales crown since 1931. In 1936, GM had a 43% market share in the U.S., CHRYSLER was in second with 25% and FORD was in third with 22%. In 2019, GM sold more cars in China than in the U.S. Toyota, always humble, says it was lucky, having stockpiled semiconductors, giving it an advantage over its competitors when demand for cars perked

up as COVID-19 released its grip on consumers. Reminds me a bit of Aesop's fable, *The Ants & the Grasshopper*.

What can we say about TESLA's numbers? It seems like yesterday that I was writing about TESLA having a higher volume of sales in a month than JAGUAR, then VOLVO, then MAZDA. In 2021, TESLA shipped 930,000 cars. VOLVO shipped 698,693, up 5.6% from 2020, but over 100,000 fewer than the goal it had set for itself when Håkan Samuelsson took over in 2012. JLR sold a total of 420,856 vehicles globally in 2021, down 1.2% from 2020, with JAGUAR down 16% to 86,270. That's SAAB country, and we know what happened to them. TESLA's stock price is off its all-time-high on the 4th of November 2021, when it was $1,229.91/share and its market capitalization blew past $1 trillion. But the stock is still close to $1,000/share and the market cap is just under $1 billion. In spite of everything I wrote and continue to write about its abuse of the lack of oversight by motor vehicle agencies, you have to hand it to the company for its impressive sales record.

Tesla 2021 – Production and Deliveries

Models	Production	Deliveries
S/X	24,390	24,964
3/Y	906,032	911,208
Total	930,422	936,172

Everyone's time comes, sooner or later

HÅKAN SAMUELSSON'S TIME as Volvo Cars' CEO is coming to an end on the 21st of March, two days after he turns 71. This was announced in a press release on the 4th of January. There was no press conference showing a smiling CEO and a satisfied-looking board chairman explaining why the timeline for Samuelsson's exit was being moved up from the end of 2022 to the first day of spring. There was a feeble excuse for why the board had decided to hire a non-Swedish replacement from outside the company when it had been Samuelsson's strong recommendation to hire a Swede from within. Experience has shown that 'foreigners' have not fared well at the helm of Volvo Cars. Fredrik Arp (2005-2008), Stephen Odell (2008-2010), and Stefan Jacoby (2010-2012) proved that point beyond any doubt. Jim Rowan, a Scot, has zero car experience. That, apparently, is his major credential.[43]

What is most troubling is that Samuelsson himself told everyone just before the IPO at the end of October last year that he was on board until the end of December 2022 when his contract would run out. This was after Volvo's board stuck a boot in their mouths saying that they were about to hire Håkan's replacement and the prospective stock buyers went ballistic. It seems that Li Shufu (He calls himself Erik Li these days) decided it was time for Håkan to go. By any measure, Håkan Samuelsson did an outstanding job, particularly managing to keep Geely at a long arm's distance. He will go down in Volvo Car's history as one of the best.

43. Facts for this article have been gleaned from an article by Karini Olander, *DAGENS INDUSTRI*. Karen Ostander (21 January 2022)

About Michael L. Sena

Michael Sena, through his writing, speaking and client work, attempts to bring clarity to an often opaque world of highly automated and connected vehicles. He has not just studied the technologies and analyzed the services. He has developed and implemented them. He has shaped visions and followed through to delivering them. What drives him—why he does what he does—is his desire to move the industry forward: to see accident statistics fall because of safety improvements related to advanced driver assistance systems; to see congestion on all roads reduced because of better traffic information and improved route selection; to see global emissions from transport eliminated because of designing the most fuel efficient vehicles.

This newsletter touches on the principal themes of the industry, highlighting what, how and why developments are occurring so that you can develop your own strategies for the future.

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