

# *Institutional Foundations for Effective Regulation of Digital Platforms*

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# This Morning's Agenda

- Why Is Platform Regulation Difficult?
- How to Build Effective Institutions?
- Emphasis: Policy Implementation
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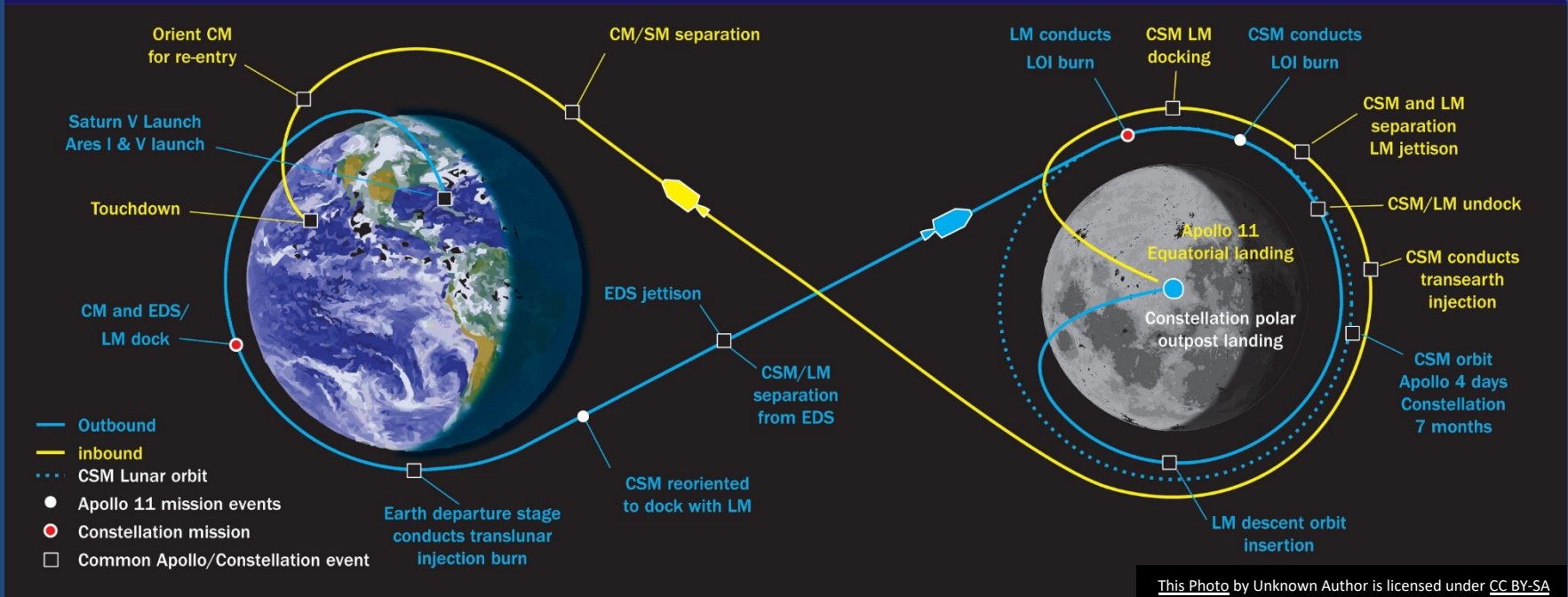
# Graham Allison, ESSENCE OF DECISION (1971)

- “If analysts and operators are to increase their ability to achieve desired policy outcomes, ... we shall have to find ways of thinking harder about the problem of ‘implementation,’ that is, the path between the preferred solution and actual performance of the government.”

# Policy Moonshots

- The Physics of Going from the Earth to the Moon and Back : Relatively Clear

## SIGNIFICANT EVENTS OF THE APOLLO 11 AND PROPOSED CONSTELLATION MISSION



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# Policy Implementation

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- The Engineering of Sending Humans from Earth to the Moon and Back Safely: Very Difficult and Uncertain in 1961



# My Perspective

- Academic
  - Gaps between policy aspirations and delivery
- Practitioner
- Legislative Committee Aide
- Public Official
  - US Federal Trade Commission
  - UK Competition and Markets Authority
  - “Learning a lot”

# Richard Neustadt & Ernest May, THINKING IN TIME (1987)

- “In managerial terms, prudence seems to turn, above all else, on canny judgments about feasibility – about the doability . . . of contemplated courses of action.”
- Three Core Questions:
  - “Will it work?”
  - “Will it stick?”
  - “Will it help more than it hurts?”

# Policy Challenges

Why Is Platform Regulation  
Difficult?



# Difficulties

- Extraordinary Technological Dynamism
- Urgency for Swift Deployment
- Uncertainty for Firms and Regulators
- Regulatory Lags
- Substantive Complexity
- Regulatory Multiplicity
- Trust Deficits
- Imperfect Policymaking Incentives

# Extraordinary Technological Dynamism

- FTC Innovation Hearings in Mid-1990s
- In 2000, Did Your Parents Invest In
  - Nokia, MySpace, Yahoo, or
  - Apple, Google, Amazon
- How to Analyze Markets?
  - FTC Meta Case and Tik-Tok

# Microsoft/Activision and “Ecosystems”

- Which Capabilities Are Important, and What Remedies Are Effective?
- EC: Clearance with Conditions
- UK CMA: Prohibition
- US FTC: Prohibition
- Note: All Examined Same Gaming Issues
  - Foreclosure
  - Cloud computing

# Urgency for Swift Deployment

- Anxiety About New Entry or Expansion from the Fringe
  - Origin stories: Amazon, Apple, Google, Meta, Microsoft
- My Sheryl Sandberg Conversation at the FTC
  - Act and then respond to problems
  - Inadequate ex ante safeguards
- The AI Arms Race: ChatGPT

# Uncertainty and the Firm

- The Sorcerer's Apprentice: Unintended Consequences of Rapid Deployment
  - Ocean Liners in the early 20<sup>th</sup> Century
  - Civilian nuclear power in the 1950s
- Too Large to Manage?
- Inattentive to Dangerous Size Effects and Negative Externalities?

# Unanticipated Consequences



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# Uncertainty and the Regulator

- Knowledge Problem
  - What is happening?
  - Significance?
- Solution Problem
  - What works?
  - Policy experimentation: e.g., CMA Google Privacy Sandbox

# Example: Origins of the Digital Era

- 1956 Settlement: US v. AT&T (licensing)
- Apollo Space Program: 1960s
- Investments in Higher Education
  - E.g., California



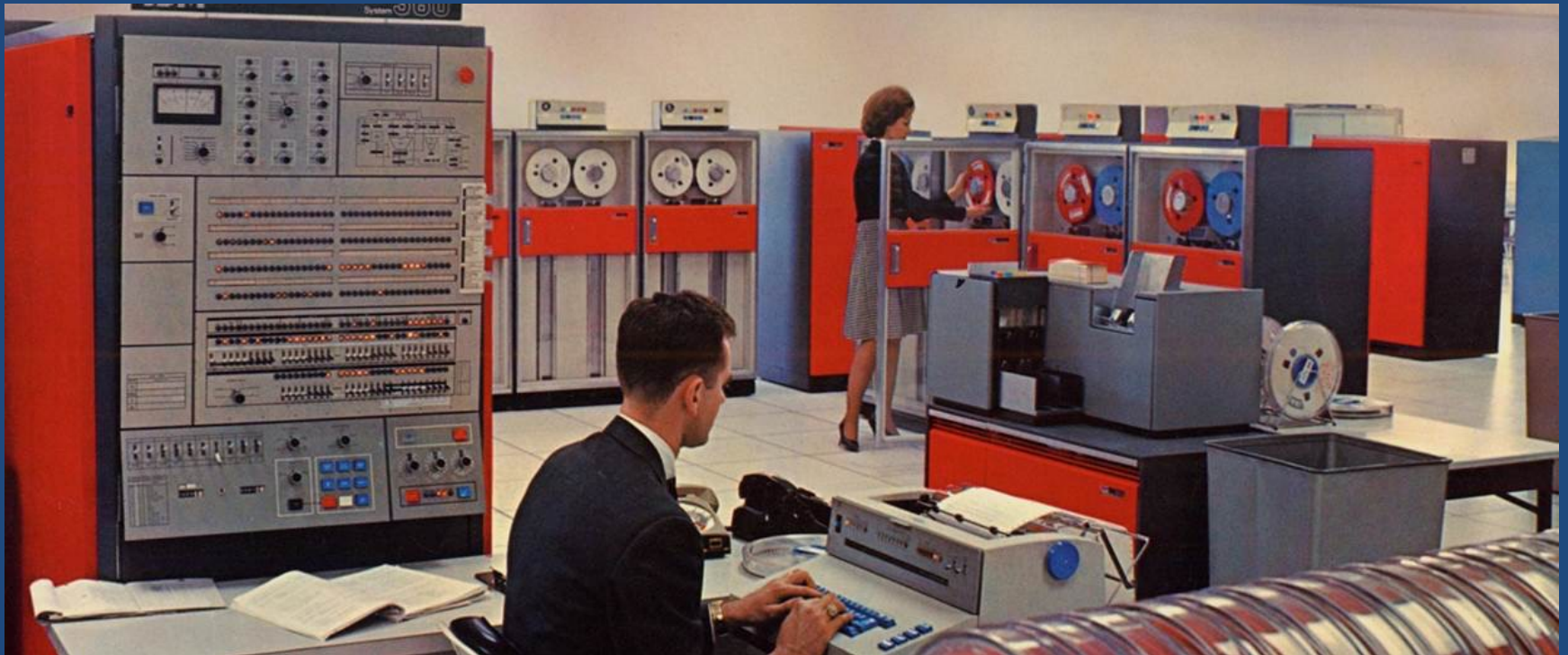
# Telephone: 1950s



# Camera (and Film) 1980s



# Mainframe Computer: 1960s





# Today



# Regulatory Lags

- Formula 1 Metaphor
- Stickiness in the Face of Dynamism
- Resistance from Incumbents

# Stimulus for the Global Trade Revolution



# Malcolm McLean



# Substantive Policy Multiplicity: Numerous Policy Intersections

- Competition
- Privacy
- Intellectual Property
- Consumer Protection
- Cybercrime
- National Security
- Elections
- To Name Just a Few



# International Policy Rivalry

- European Union
  - GDPR
  - Digital Markets Act
  - Digital Services Act
  - Digital Governance Act
  - Consider: Will the US Congress adopt law to keep the US in the game?
    - See also state legislation (California)

# Trust Deficits: Sam Bankman-Fried and FTX: “F\_\_\_ the Regulators”



# Trust Deficits: Elon Musk and Twitter: “Ignore the Federal Trade Commission”



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# House Antitrust Subcommittee Hearings: July 2020

- CEOs: Bezos, Cook, Pinchai, Zuckerberg
  - From rock stars to pariahs
- Hostile Panel: Ds and Rs
  - Well-Prepared Members
  - Pretty Good Coordination
  - Good Use of Documents

# Chairman David Cicilline





# “Why are you stealing”?



# Formative Era: Commercial Context in Late 19<sup>th</sup> and Early 20<sup>th</sup> Centuries

- Economic Upheaval
- Revolutionary Developments
  - Transportation
  - Communications
  - Energy

# Weak Policymaking Incentives

- “What Is the Basis for the Grade in This Course?”
- Consume or Invest
- Illustration: Historical Awareness



# Transportation



# Transportation

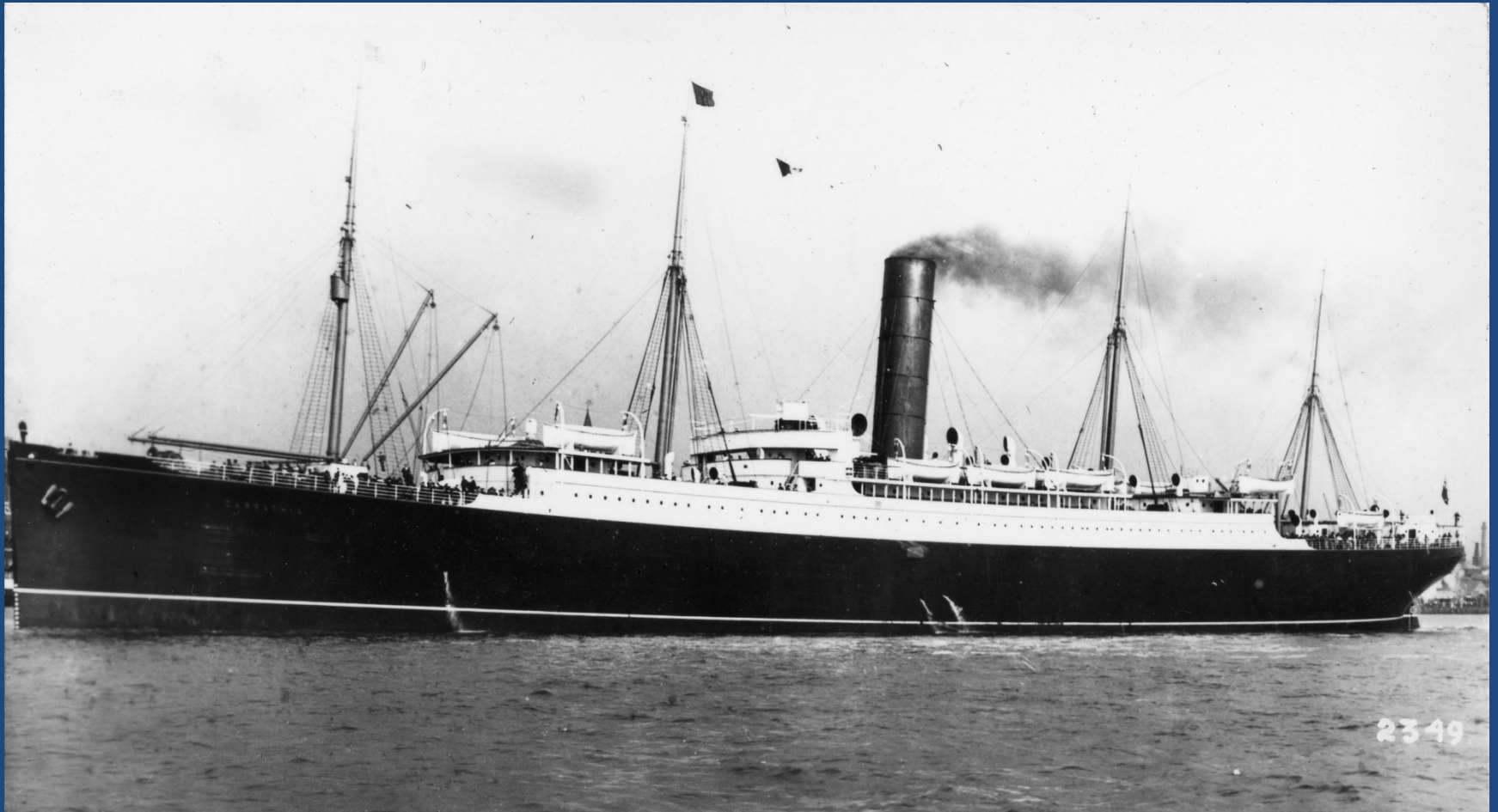




# Transportation



# Transportation



# Communications

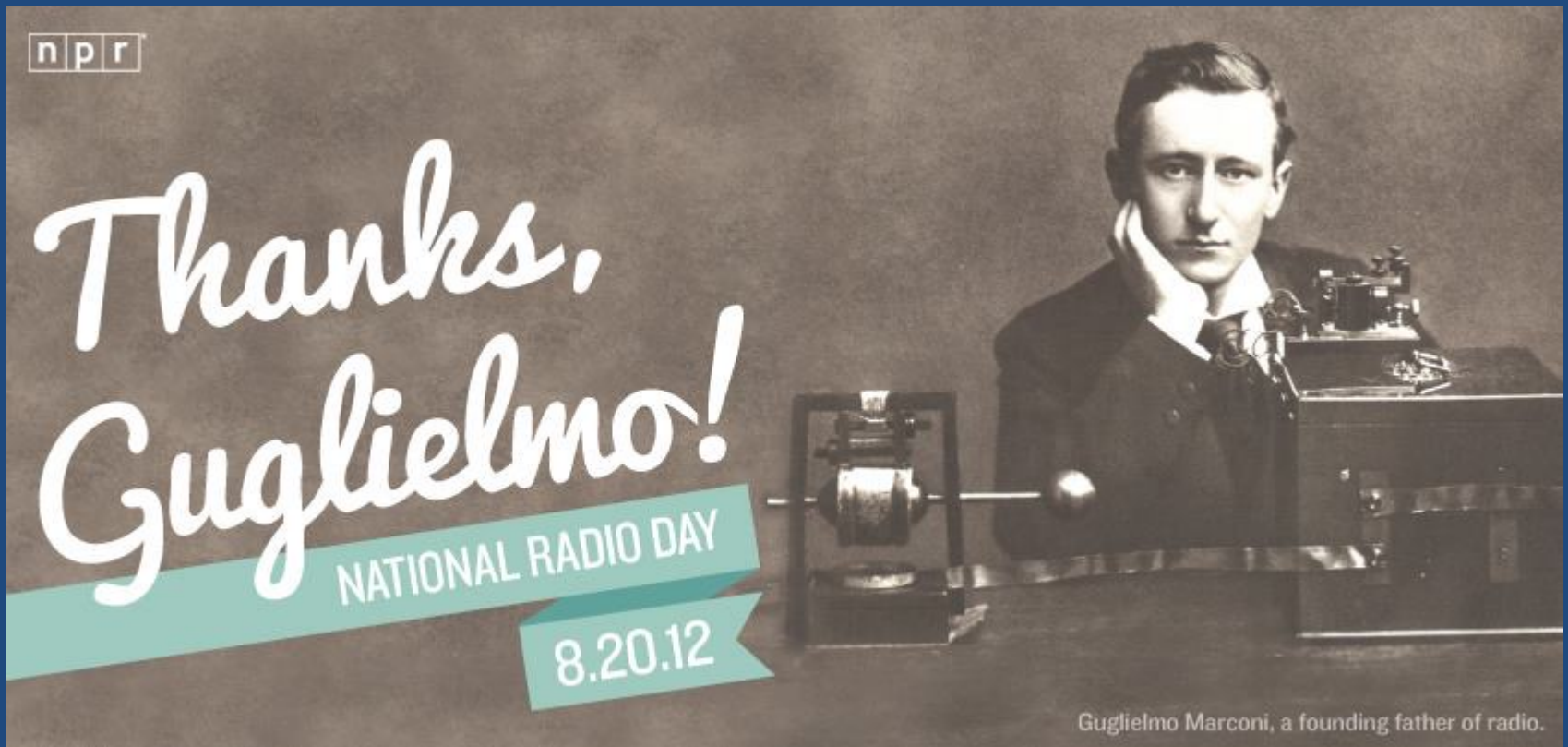




# Communications



# Communications



# Communications and Entertainment: Moving Pictures

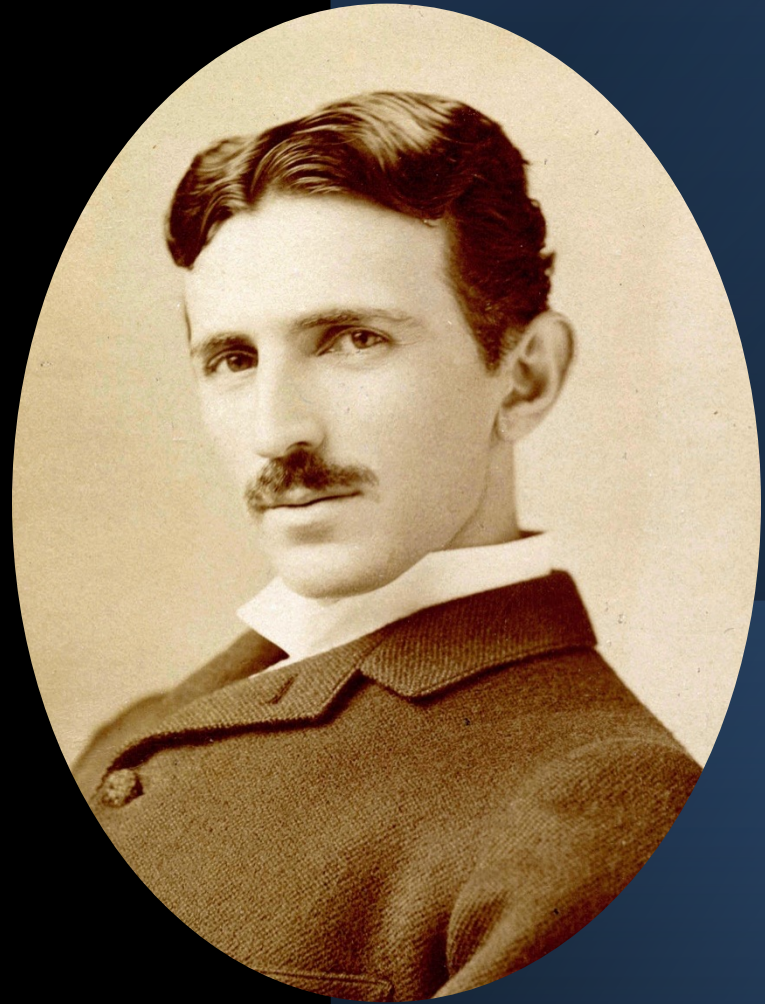




# Communications: Talking Pictures



# Energy: Nikola Tesla



## Consequences

- Unification of Previously Discrete, Insular Geographic Markets
- Emergence of Multi-Facility Manufacturing Enterprises and Retailing Organizations
- Increases in Optimal Scale of Production
- Displacement: Smaller Enterprises, Local Businesses

# Policy Response

- Sectoral Regulators
- Omnibus Competition Regulator: FTC
  - Expert board
  - Research capability
  - Adaptable mandate
  - But frustrating implementation
- Member State Intervention

Desiderata

Institutional Foundations

# Key Design Issues

- Governance: Board or Single Administrator?
- Functions: Integrate by Ownership or Contract?
- Accountability: Flexible Mandate or Clear Specification of Authority?
- Policy Tools?
- Role of Judicial Oversight



# Necessary Knowledge Foundations

- Doctrine: Policy Bases, Direction of Travel
- Agency Programs: content/causes
- Institutional Capability
- Impact of Past Policy Initiatives
- Horizon Scanning
- Political and Historical Awareness
- For Leadership: Consume or Invest?

# Elements

- Leadership
- Staff Expertise
- Policy R&D
- Experimentation
- Cooperation and Policy Integration
  - Among agencies
  - Among jurisdictions



# Who Should Lead?

- Board or Single Administrator?
- Chair/CEO
  - Substantive knowledge?
  - Political science?
  - Management experience?
  - Short or Long-term vision: What is the basis for the grade in this course?

# The Enabling Environment

Academia  
and Think  
Tanks

Elected  
Officials

The Bar

Other  
Regulators

Competition  
Agency

Courts

Business  
Associations

Media

Citizens  
Groups

# Resources and Compensation

- Total Personnel
- Right Skills
  - *Compare* CMA DaTA team
- Compensation
  - *Compare* CFPB
  - What happens if nothing changes? Severe constraint on capacity to run difficult matters

# Assignment of Roles

- One Function or Many?
- Complementarities in Theory and Practice
- Integration by Contract
  - Common working groups
  - Common governance: e.g., Australia/NZ

# Policy Tools

- Cases
- Rules
- Reports
- Guidance
- Advocacy
- Experimentation
- Evaluation



Policy Integration: President Biden's Executive Order:  
July 9, 2021

# Present and Future Prospects

## Next Steps



# Future Directions

- Deeper Policy Integration: At Home & Abroad
- Collaboration with Academic Hubs
- Continuous, Contemporaneous Evaluation