

REVIEW OF MARK R. PATTERSON,
ANTITRUST LAW IN THE NEW ECONOMY
(HARVARD UNIVERSITY PRESS 2017)

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CITE AS: 3 GEO. L. TECH. REV. 220 (2018)

Mark Patterson starts his book with the simple statement, “[k]nowledge is power.”¹ He then leads the reader through a very well-reasoned argument that the new information age creates new abilities for dominant market players to distort the market to their advantage—this time the dominant players are the information providers, such as Google, Yelp, and others. Overall, Mark Patterson’s *Antitrust Law in the New Economy* provides an insightful basic analysis of the impact of the new ways that data is available in the marketplace and how this availability is impacting consumer choice. Mr. Patterson’s book also provides a basic overview of consumer protection law and antitrust law. It ties together the changes in market information dynamics and how both areas of law are impacted, concluding, perhaps correctly, that antitrust law is best equipped to handle the market abuses we are seeing in the information economy. He also touches on a number of other areas, including the bases on which buyers make purchases and the information available to consumers in the marketplace.

Mr. Patterson correctly states that markets run on information and that oftentimes buyers make decisions by relying on their knowledge of the products available, while sellers decide what to produce based on their understanding of what buyers want. The marketplace—and the information available to consumers—has changed dramatically over time.

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¹ MARK R. PATTERSON, ANTITRUST LAW IN THE NEW ECONOMY: GOOGLE, YELP, LIBOR, AND THE CONTROL OF INFORMATION 1 (2017).

Today, a significant number of consumers turn to information providers on the World Wide Web to inform them of their choices in the marketplace. Given this change in the availability of information about products and services in the marketplace as a result of the information economy, Mr. Patterson focuses on the quality and quantity of information available to consumers (as well, as for a brief moment, sellers).

Mr. Patterson makes the case—perhaps stronger than it actually is—that the information economy has provided sellers with the ability and motivation to distort the truth about their products. Mr. Patterson specifically focuses on this occurring when sellers share their information with middlemen, or “intermediaries,” which is how he views companies such as Google and Yelp. He then makes the argument that these intermediaries have their own motivation to provide information that is not fully accurate in order to provide competitive advantages to these advertisers.

I question Mr. Patterson’s premise that this ability and motivation has significantly advanced since the dawn of the new information-based economy. This is a principle that has always been part of the market economy. What I would argue, instead, is that this ability has created new opportunities that are not addressed by current regulation. This provides a basis for Mr. Patterson’s conclusion that the new economy provides new ways to gain competitive advantages in the marketplace.

To this end, Mr. Patterson focuses on a large number of ways in which data can be manipulated for competitive advantage and exploitation of consumers. This includes providing confusing information to buyers about competing products. In addition, Mr. Patterson considers novel issues like “confusopoly” and sellers’ use of consumers’ personal information in direct selling. The latter in particular is an issue that Mr. Patterson successfully build on, making the case that the new information economy provides sellers with more information about their buyers than perhaps has ever been available.

Based on this analysis, Mr. Patterson looks at consumer protection law and finds it is not well-suited to overcome the anti-competitive incentives of both sellers and intermediaries, resulting in harms to consumers. Mr. Patterson then concludes that antitrust law—which is focused on regulating and limiting the market power of powerful firms and preventing collusions between producers—is a better tool. However, Mr. Patterson, after a high-level review of the current status of antitrust law, finds it ill-equipped to address information quality—which is the crux

of the issue that Mr. Patterson identifies. Mr. Patterson's book might have done well by spending a bit more time on this issue; however, Mr. Patterson does correctly state that antitrust law can and should be adapted for the information economy. He goes on to show how courts can apply antitrust law to address today's problems.

Mr. Patterson's book does a very good job—perhaps the best I have seen—on how the information economy is shaped by dominant information providers such as Google, Facebook, and others. Further, he makes a very strong case that antitrust law must be adapted to address market abuses in the information economy. Perhaps the book would benefit from a bit more analysis in this area for those of us not as well-versed in antitrust law as the author.

Mr. Patterson also makes a strong argument about how antitrust law should be used to limit the freedom of dominant information providers to design and use their products to gain competitive advantages. Mr. Patterson is correct that this would challenge existing notions of antitrust law and would require rethinking traditional notions of antitrust law.

While commercial speech certainly is afforded less protection, I am not sure, when evaluating Mr. Patterson's analysis, that this is an easy line to draw for laws governing antitrust. This is especially true in the new economy, where the proposition of freedom of speech over the Internet has become a strong principle.

However, Mr. Patterson makes a very strong case that, where there are powerful information providers, the marketplace of ideas may not function as it should (i.e., effectively) and that government intervention may be appropriate. Mr. Patterson's conclusion that antitrust law must adapt to address the new information economy appears to be correct, and hopefully, governments around the world will begin to address this.