

11th FSR Annual Conference | From Data Spaces to Data Governance | 9 June 2022

# Regulation of Data-driven Market Power in the Digital Economy

Victoria Fast, **Daniel Schnurr**, Michael Wohlfarth  
Research Group Data Policies, University of Passau





EN English

Search

Home > Strategy > Priorities 2019-2024 > A Europe fit for the digital age > The Digital Markets Act: ensuring fair and open digital markets

## The Digital Markets Act: ensuring fair and open digital markets

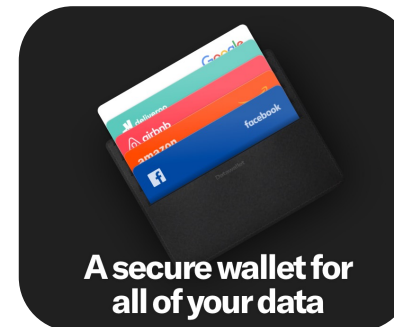
*Bundeskartellamt v. Facebook*



Like Share

Login with Facebook

*New technologies and  
data-driven business models*



**You're in control**

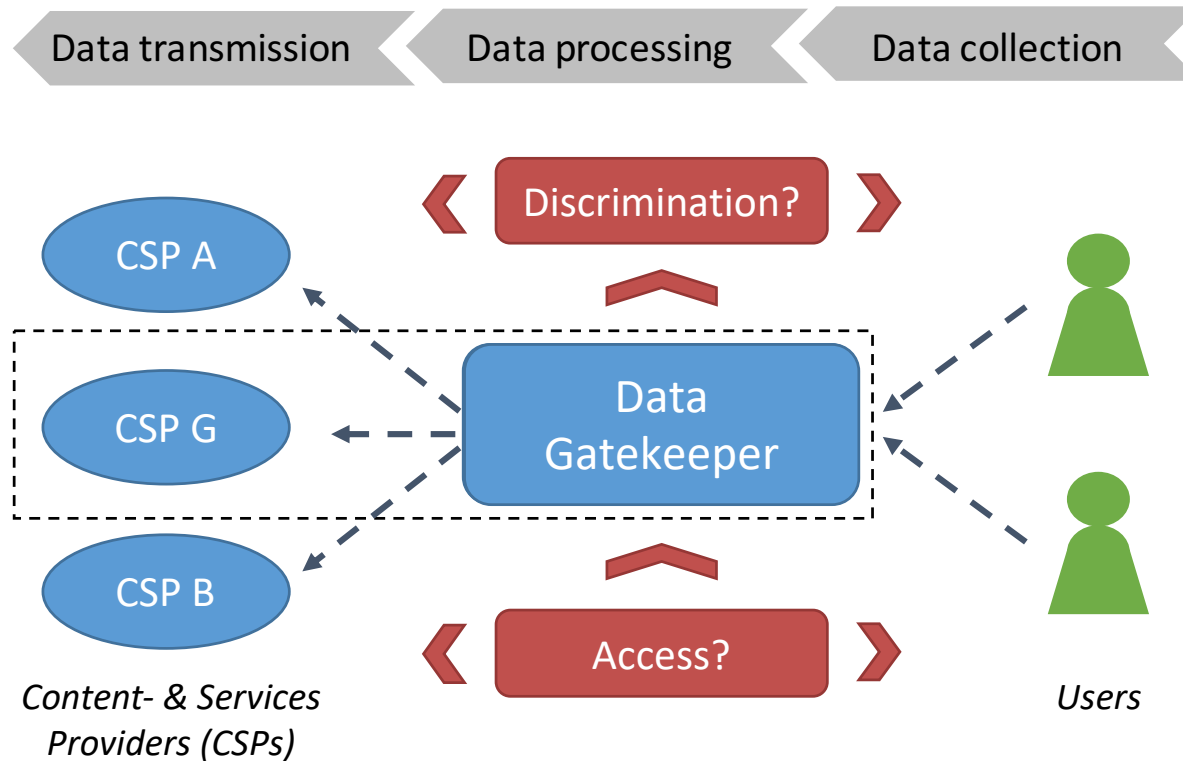


**Take your data  
with you**



**Get paid when  
you share**

# An effective policy framework for data gatekeepers?



Press release | 15 December 2020 | Brussels

**Europe fit for the Digital Age: Commission proposes new rules for digital platforms**

*Digital Markets Act*

Press release | 30 November 2021 | Brussels

**Commission welcomes political agreement to boost data sharing and support European data spaces**

*Data Governance Act*

Press release | 23 February 2022 | Brussels

**Data Act: Commission proposes measures for a fair and innovative data economy**

*Data Act*

## 1 Overview of the empirical evidence on data-driven business value

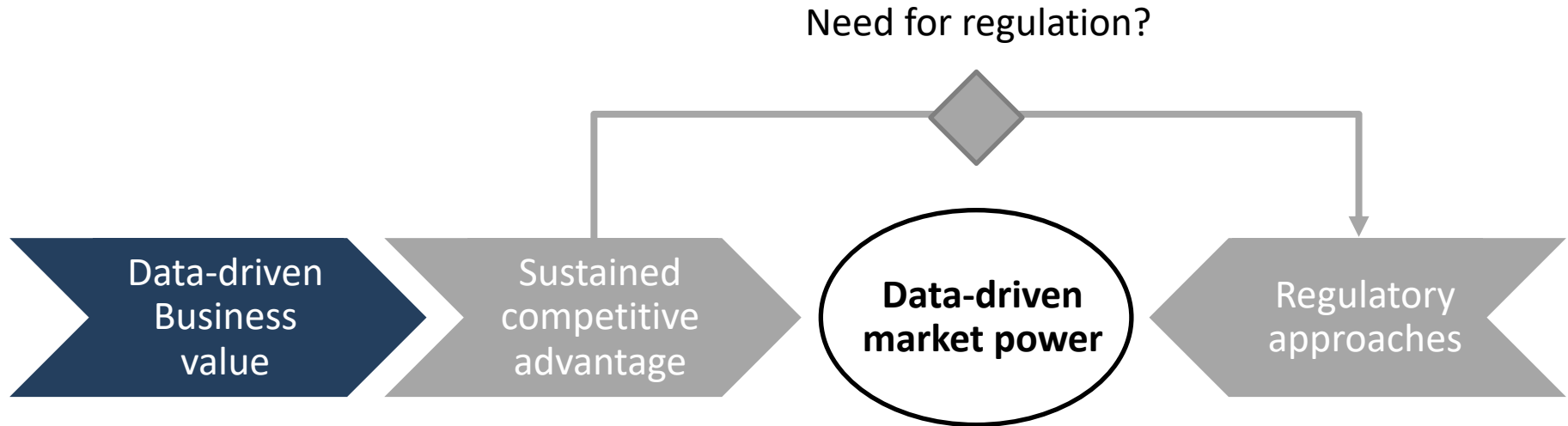
- *Which economic benefits can firms achieve from big data?*
  - » Literature review of empirical evidence on the business value creation from big data
  - » Focus on the internet economy, its predominant use cases and big user data

## 2 Facilitating factors for a competitive advantage from big data

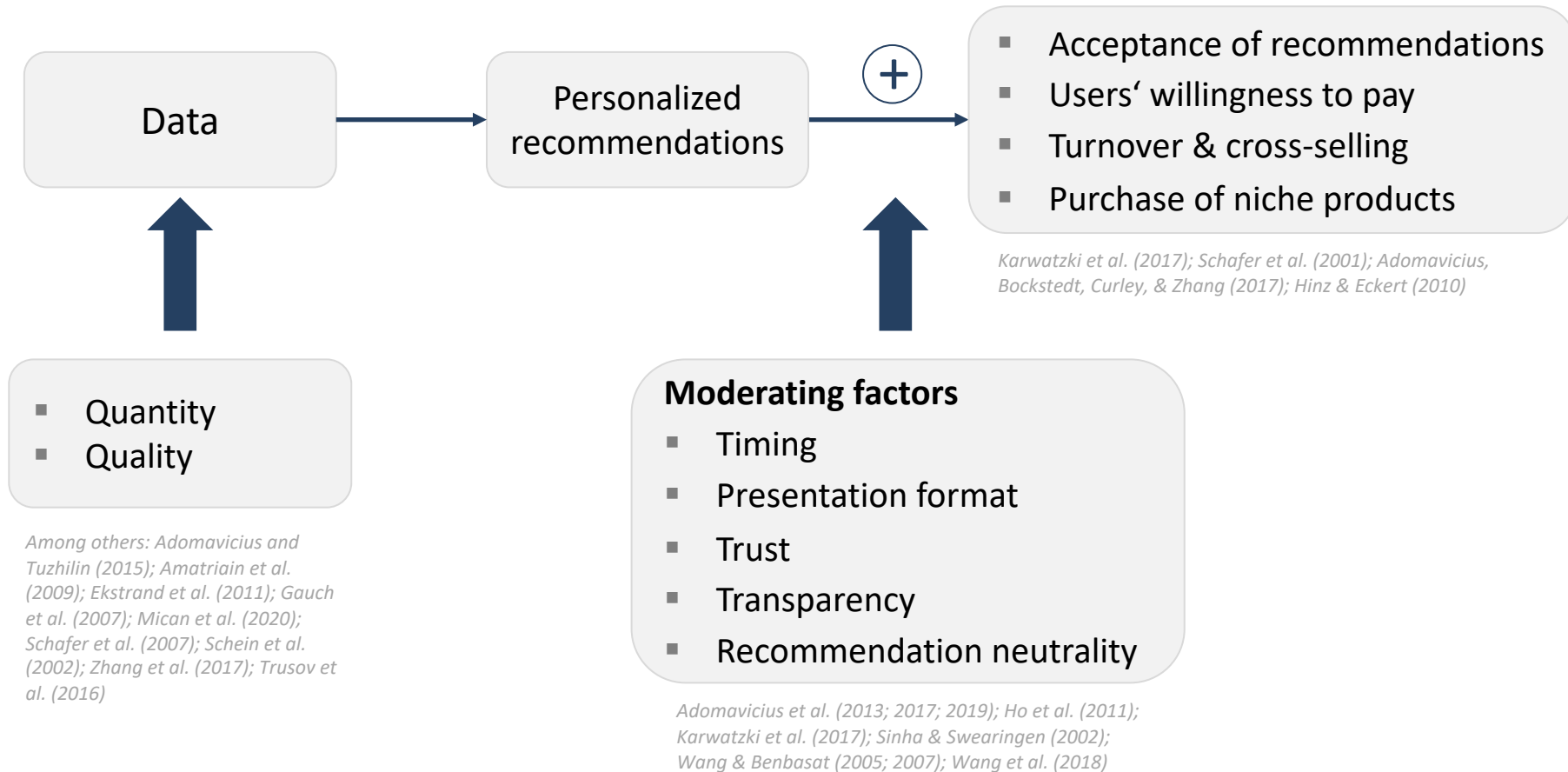
- *When does big user data lead to sustained market power?*
  - » Resource-based view of the firm (Barney, 1991): “Inimitable resources and capabilities” to achieve competitive advantages
- *Why and when should regulation of data-driven market power be considered?*
  - » Outside of scope; see Krämer & Schnurr (2021) for a data-driven theory of harm

## 3 Regulation and the role of IT to mitigate data-driven market power

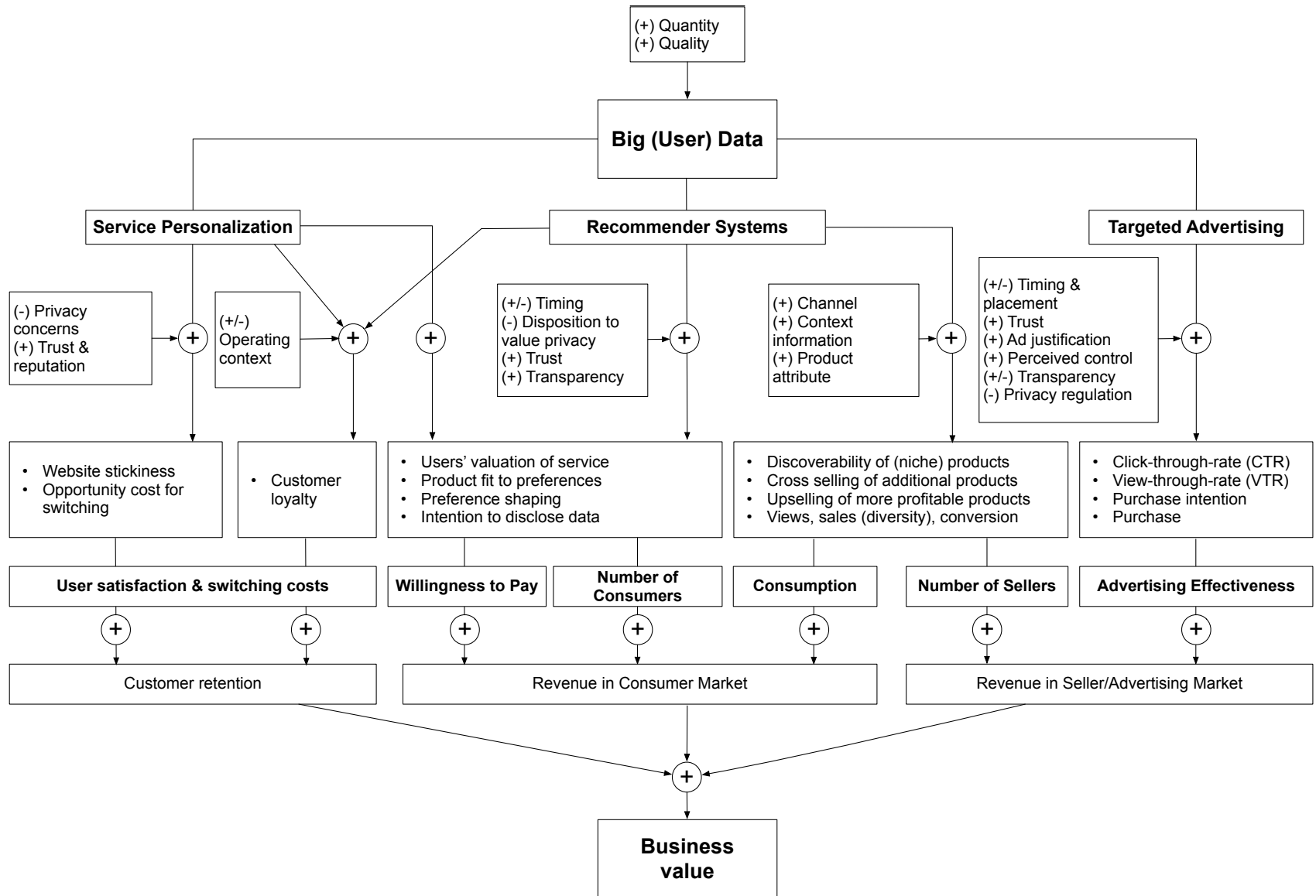
- *How to address competitive concerns about dominant data-rich incumbents?*
  - » A toolbox of regulatory approaches and rules to remedy facilitating factors and an integrated framework for future research



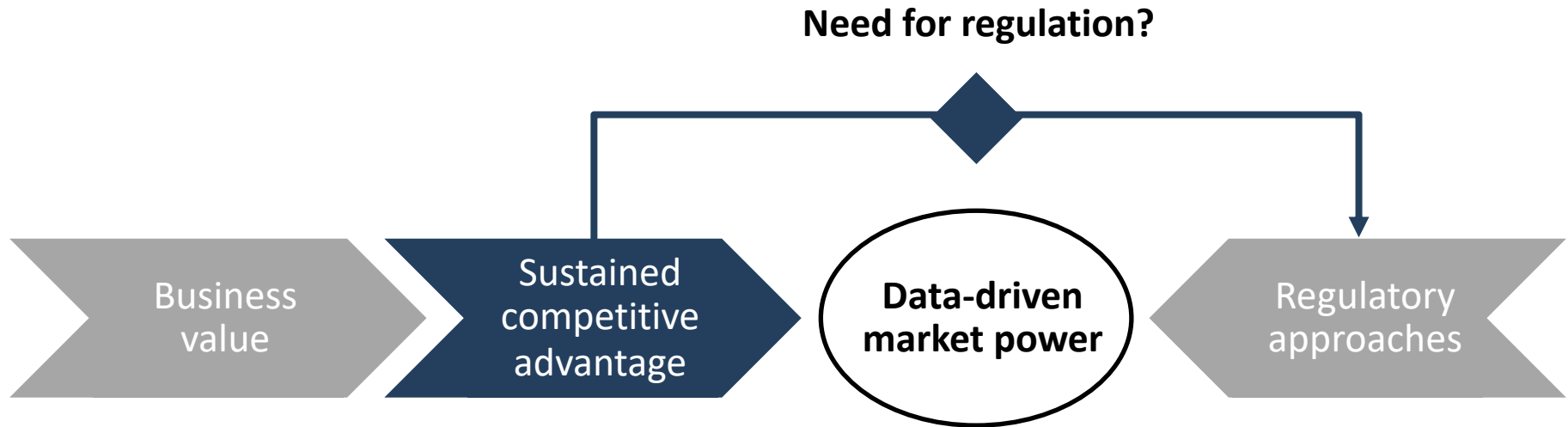
# Personalized recommendations can lead to higher sales, provided that sufficient, accurate and current data are available



# Big picture view: From big (user) data to business value



# Competitive Advantages from Big Data and the Rationale for Regulation





**Sustained competitive advantage** (Barney, 1991):

*“inimitable resources and capabilities”* (Wamba et al., 2017, p. 357)

**Set of six facilitating factors for a competitive advantage from big (user) data:**

Exclusive data  
access

Economies of scale

Data-induced  
switching costs

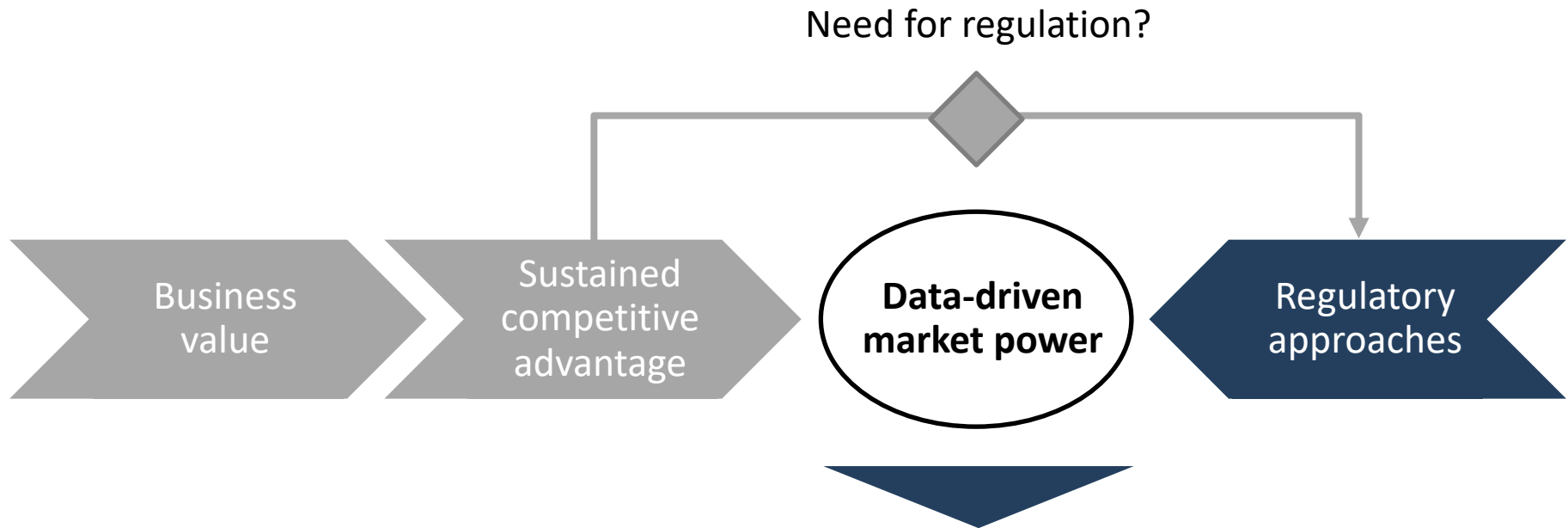
Exploitative data  
access

Digital ecosystems &  
economies of scope

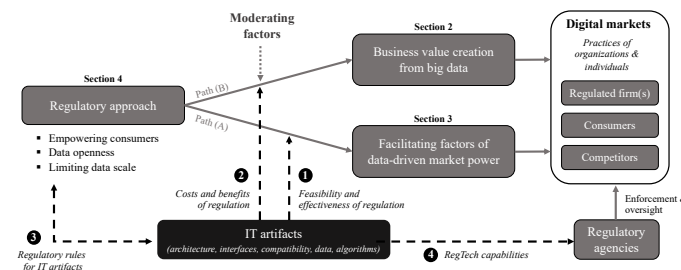
Network effects &  
platforms



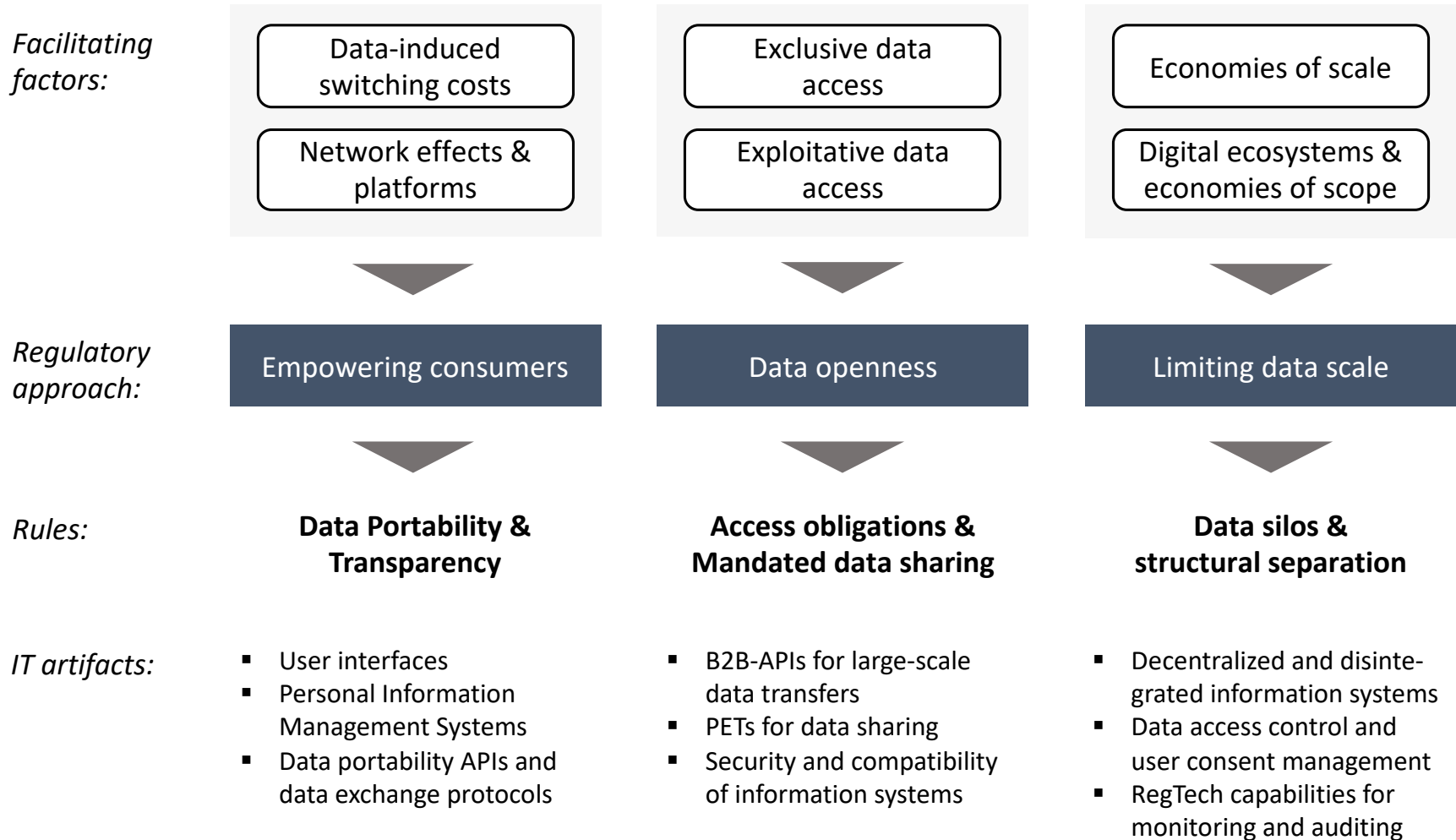
A sustained competitive advantage enables firms to establish **data-driven market power** in the long run



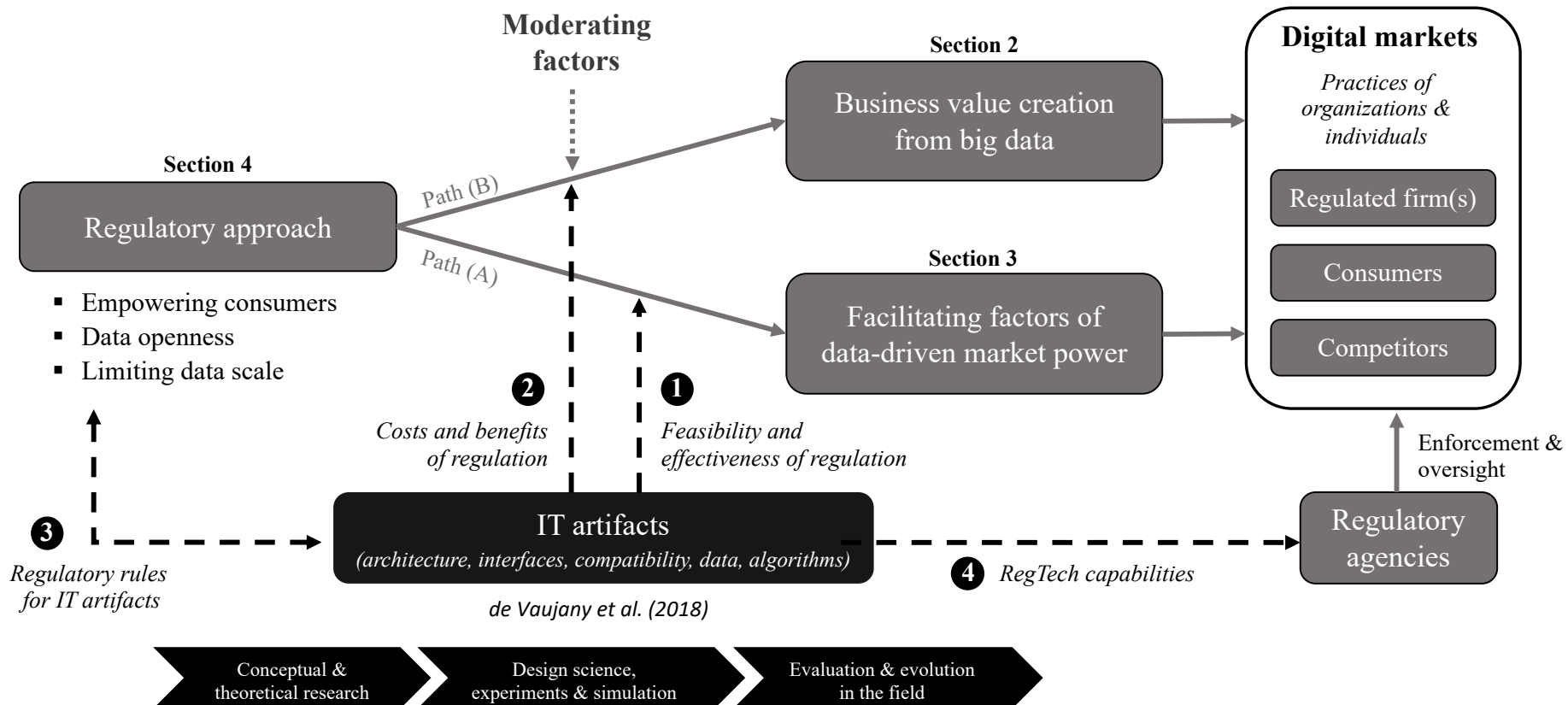
## Framework on the role of IT for the regulation of data-driven market power



# The effects of regulatory rules in digital markets are moderated by the underlying IT artifacts



# An integrated framework on the role of IT for regulation of data-driven market power



## 1 Big (user) data can promote market power of digital gatekeepers

- » Data can create a sustained competitive advantage if additional facilitating factors protect an incumbent from competitors' imitation of business value creation

## 2 Economic regulation of user data involves novel phenomenon and trade-offs

- » Consumers as the original data providers move into the focus of competition regulation
- » But: Behavioral effects and biases in individuals' privacy decisions (Acquisti et al., 2015)
- » Competitive ramifications of privacy regulation (cf. Jin & Wagman, 2021)

## 3 Information technology design needs to be considered for effective data policies

- » Technology enables new regulatory approaches and offers new tools for compliance and enforcement (*RegTech*)
- » Technology design will determine effectiveness and unintended side-effects of policies

# BACK-UP

## Digital Markets Act proposal

- Asymmetric regulation: based on a broad notion of *power* and *gatekeepers*
  - Recognizes “data-driven advantages” as a key characteristic and source of market power (Recitals 2 and 3)
- Combines different regulatory approaches to achieve “contestability” and “fairness”
- Data access remedies for “core platform services” of gatekeepers
  - *Limiting data scale*:
    - Data siloing by default: no combination of personal data between core platform services without an end user’s consent (Art. 5a)
    - Siloing of any non-public data generated by business users when competing with these users (Art. 6a)
  - *Data openness*:
    - Bulk data sharing for online search engine providers subject to anonymization (Art. 6j)
  - *Empowering consumers*: Continuous and real-time data access and data portability for end users (Art. 6h) and business users (Art. 6i), but possibly provided as anonymized and/or aggregated data (Art. 11 (2))
    - Broad scope: must also be ensured by emerging gatekeepers (Art. 15 (4))

## Data Act proposal

- Symmetric regulation focused on the “Internet of Things”
  - Universal scope: manufacturers of “connected products” and providers of “related digital services” irrespective of market position
  - Only exception for SMEs (Art. 7 (1))
- Regulatory approaches
  - *Empowering consumers (!)*: easy, immediate and free-of-charge access to data was generated by the use of products or related services, where applicable, continuously and in real-time (Art. 4 (1))
    - Fair, reasonable and non-discriminatory data access for third parties on users’ request (but cannot be used for competing products Art. 4 (4), Art 6 (2e))
    - SMEs cannot be charged beyond the actual administrative cost for access (Art. 9(2))
  - *Limiting data scale*:
    - No firm is allowed to make data available to its subsidiaries on preferential terms (Art. 8(3))
    - Gatekeepers (as designated under the DMA) are not allowed to access data made available by end users (Art. 5 (2))