ANTITRUST

Big Tech's Digital Robber Barons

Are these firms really harming us, or are they just successful?

BY JONATHAN KLICK

The reputed behemoths of Big Tech are gaining enemies by the second. While millions of customers happily use Amazon, Google, Facebook, and the rest of this digital Legion of Doom every day, many in the government want to save us from the dastardly predators. These companies lure you in with their same-day shipping of Clint Eastwood posters, one-click discovery of who played the dean in *Animal House*, and easy ways to share the results of your "What *Gilligan's Island* Character Are You?" quiz with your fake internet friends (middle school classmates you haven't seen in decades, your second cousin's neighbor's ex-wife, Vin Diesel, etc.), and—before you know it—Big Tech's got you in its rapacious grasp. By the time you can google Russell Johnson's Bacon number, you find yourself submitting to the monopolies' power, with nothing left to do but say, "Thank you, sir, may I have another?"

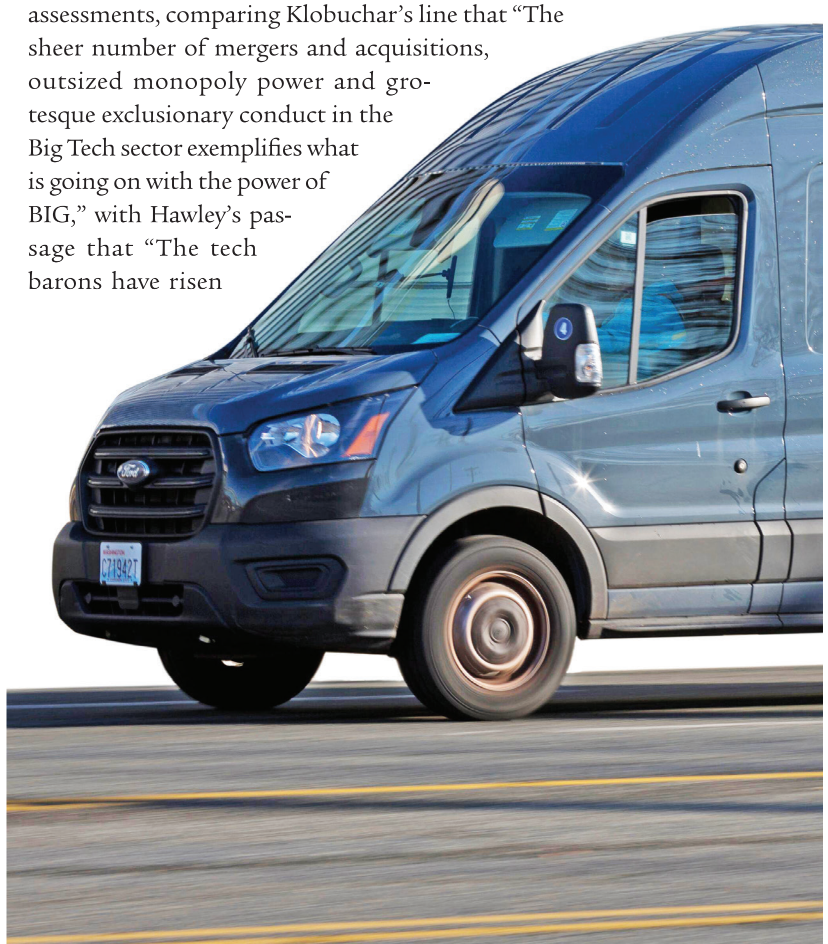
In 2019, presidential hopeful Elizabeth Warren vowed, "My administration will make big, structural changes to the tech sector to promote more competition—including breaking up Amazon, Facebook, and Google." In roughly the same period, Donald Trump hinted that his administration would take a cue from Europe's regulators in pushing back against Big Tech:

> Every week you see them going after Facebook and Apple and all of these companies that are, you know, great companies, but something is going on. But I will say the European Union is suing them all the time. We are going to be looking at them differently.

He continued:

> But we should be doing what they're doing. They think there is a monopoly. But I am not sure if they think that. They just figure this is easy money, we'll sue Apple for $7 billion and we'll make a settlement or we'll win the case. So, I think it is a bad situation. But, obviously, there is something going on in terms of monopoly.

This bipartisan antipathy didn't fade with the 2020 election. In 2021, U.S. Sens. Amy Klobuchar and Josh Hawley each published books making the case for a Big Tech smackdown Teddy Roosevelt–style. A May 2021 *New York Times* column by Shira Ovide marveled at how similar the two senators ostensibly from different ends of the U.S. political spectrum sounded in their assessments, comparing Klobuchar's line that "The sheer number of mergers and acquisitions, outsized monopoly power and grotesque exclusionary conduct in the Big Tech sector exemplifies what is going on with the power of BIG," with Hawley's passage that "The tech barons have risen



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to power on the back of an ideology that blesses bigness—and concentrated power—in the economy and government."

These rhetorical punches may end up landing in the Biden administration, which has appointed Columbia Law School professor Lina Khan to head the Federal Trade Commission. Khan rose to prominence calling for a complete re-orientation of U.S. antitrust policy in a more activist direction, with Amazon as the poster child for the failure of the standard regulatory approach. In a 2017 *Yale Law Journal* article entitled "Amazon's Antitrust Paradox," Khan wrote:

> Given Amazon's growing share of e-commerce as a whole, and the vast number of independent sellers and producers that now depend on it, applying some form of public utility regulation could make sense. Nondiscrimination principles seem especially apt, given that conflicts of interest are a primary hazard of Amazon's vertical power. One approach would apply public utility regulations to all of Amazon's businesses that serve other businesses. Another would require breaking up parts of Amazon and applying nondiscrimination principles separately; so, for example, to Amazon Marketplace and Amazon Web Services as distinct entities.

In addition to the standard consumer harms of increasing prices and restricted output that antitrust law has focused on forever, Khan and others worry that Big Tech has amassed outsized political and social influence. These firms also supposedly bear the blame for a host of other ills attributed to their market power, including worsening economic inequality, reduced innovation, and even harms to their workers. If it's bad, you can probably blame Amazon, Google, or Facebook for it, if not all three. Rockefeller himself might be shocked and more than a little envious—if the critics' claims are accurate.

JUGGERNAUT . . . OR NOT

The handwringing over Big Tech is a little puzzling. Google and Facebook don't charge customers for their services, and a large share of Amazon's consumers indicate that good prices (including shipping costs) are among the main reasons they shop on the site. These facts are at odds with the conventional wisdom that monopolists charge higher prices. Further, given the supposed dominance of these firms in their markets, why don't they charge high prices?

That market dominance is perhaps not as clear-cut as critics assert. It is true that Amazon represented more than a third of all retail e-commerce sales by 2019. If e-commerce is indeed its own market, this market share might justifiably raise concern. However, if e-commerce is just part of the overall retail market, Amazon's share is much less worrisome. At most, e-commerce is a mere 11% of overall retail sales, according to the U.S. Census Bureau's Retail Indicators Branch. That implies that Amazon's market share is on the order of 5% or less. What's more, Amazon's first-party sales (as opposed to the sales made by third parties on the Amazon platform where Amazon does not determine the price charged) are just 2% of overall retail sales. As a point of comparison, in 2019 Walmart's sales represented about 6% of total retail sales in the United States. Interestingly, Amazon's "dominance" in the e-commerce platform market induced Walmart to start fulfilling orders for third-party vendors in 2020.

An internet-only market? / Perhaps e-commerce is its own market, separate from other retail sales. That is, despite the overall tiny share of retail sales taking place electronically, maybe individuals generally are either online or in-person shoppers with little overlap between the groups. In that case, Amazon's large share of the e-commerce market would have the potential to harm the digital-only shoppers.

A 2016 Pew report, however, indicated that two-thirds of online shoppers prefer buying from physical stores, though most make their ultimate decision based on where they find a better price. Such survey results suggest that e-commerce is not a separate market and online and in-person sellers compete. This could explain why Amazon does not appear to price like a monopolist: it isn't one. Additionally, even in the online space, the Chinese giant Alibaba has the technical and financial wherewithal to compete with Amazon in the third-party-seller platform market, to say nothing of the competitive pressure this places on Amazon's first-party sales (which itself is in addition to the competition Amazon's first-party sales face from its third-party sales and other U.S. e-commerce firms).

When it comes to Google and Facebook, there can be some arguments about the actual scale of their market shares in the internet search and social media markets, respectively. But though

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Google has held steady at around 90% of the search engine market for more than a decade, people engage in all sorts of internet searches without using a traditional search engine. Every time someone uses the Open Table app to search for a new Polish–Ethiopian fusion restaurant, Amazon to search for the world's best shower curtain rings, or Wikipedia to answer a nagging question about who is Pakistan's tallest cricket player, these interfaces are performing internet searches and are competing with Google in the search market. Likewise, whenever people engage in a Reddit argument about whether Shaquille O'Neal was in a genie movie called *Shazaam*, post pictures of their recently purchased hoagie on Yelp, or share their favorite '80s hair band tracks on Spotify, these social hubs are competing with Facebook. In any event, these services are free to users, so it is not clear what consumer harm from market power means in this context.

Google and Facebook do charge money for advertising on their sites. Thus, market power could affect this side of the market. However, we need to consider whether advertisements on search engines or in social media platforms represent their own advertising markets distinct from all the other extant marketing channels. If the answer is no, it probably doesn't matter that Google has 90% of the search engine market because that represents a tiny fraction of our daily ad exposure. If we're worried that somehow Google and Facebook can use their supposedly captive audiences to unfairly or deceptively push particular retail products (as in the blockbuster European Union Google Shopping cases that resulted in billions of euros in fines), maybe we should consider how this can be if Amazon is supposed to be so dominant in e-commerce.

ZOOM, ZOOM, ZOOM

Ever since the Microsoft antitrust cases of the 1990s, critics of Big Tech have worried that firms with a dominant position in one market (say, operating systems) will use that leverage to capture a separate market (e.g., web browsers and their anticipated advertising riches). However, these scary stories very rarely play out with the predicted dire consequences.

The recent pandemic gives us a nice illustration of this. When COVID suddenly shut down schools, offices, and pretty much everything else, there was a sudden need for teleconferencing programs so that teachers could teach and people who like meetings could continue to meet. Google, the monster it is, should have been able to use its dominance to force the Google Hangouts app (or Google Meet, or Google Chat, or whatever they're calling it these days) on everyone. Heck, it's available right there in Gmail, just waiting for somebody to click on it. And yet, few did. The biggest of the current Big Tech bogeymen basically blew an enormous opportunity that was supposedly there for the taking.

The previous tech bogeyman, Microsoft, likewise wasn't able to capture this teleconferencing market either. No matter how many times Microsoft Teams pops up randomly on people's laptops, hardly anyone clicks on it, except to shut it down. Instead, a company nobody had ever heard of, Zoom, came out of nowhere and grabbed about 40% of the teleconferencing market, followed by the absurdly named GoToWebinar with about 20%. Amazon's Chime and Facebook's Messenger never even entered anyone's thoughts when it came to pandemic teleconferencing. So much for the leveraging idea.

It is easy to think of other, similar stories. How did Google Play Music work out? Google Reader? Google+? Sure, Gmail has been successful, and YouTube, which Google bought, has a lot of users, but the leverage story combined with Google's supposed monopoly in search predicted a smooth path to domination rather than the firm picking up the normal wins and losses that any company experiences. The same can be said for Facebook (Facebook Deals, Facebook Messenger) and Amazon (Fire Phone, Amazon Wallet, Amazon WebPay). It's almost as if these companies need to come up with good new products and services that people want if they're going to match their original successes when branching out to new markets.

IS BIG BAD?

With all the caveats made above about needing to do much more to determine whether e-commerce is its own market, and what is the right way to look at the markets Google and Facebook are in, there is no doubt these and a number of other tech companies are big. Historically, in U.S. antitrust law (and currently in many other countries' competition regulation), bigness was taken to be bad in and of itself. For the most part, the United States moved away from that approach, instead attempting to directly assess whether particular business practices and transactions harmed consumers or not—the so-called consumer welfare standard. Even a large firm that is exposed to market entry will be disciplined from raising prices, for example. A firm disciplined in this way is not generally going to abuse consumers for fear that a new entrant will eat its lunch.

Many of the Big Tech critics have suggested that U.S. regulators revert to the older practices, targeting bigness as presumptively harmful to consumers. This push is motivated by a host of reasons. Some are handled fairly easily within the standard economic framework. For example, some critics suggest that the consumer welfare standard focuses on price effects but ignores effects having to do with product quality (including elements like privacy protection) or variety. Further, in the case of search engines and social media, consumers are not charged prices anyway, so perhaps the standard approach—which focuses on whether a practice or transaction raises price—is inapt.

Contrary to those claims, however, the standard approach does fine by focusing on output in the market. If a practice or transaction leads producers to degrade quality or to not provide the kinds of services customers want (like privacy protection), consumers will buy or use those products less, indicating a harm to consumers. If, instead, consumers maintain or increase their purchases or use of the firm's products and services, it suggests consumers have not been harmed.

Some of the other calls for regulation focus on aspects that have not been traditional elements of antitrust analysis. The effect that large firms have on political processes might be worrisome and is potentially worth some consideration, but it seems unlikely that antitrust law and competition regulators or even judges are the right arbiters in that discussion, which involves mostly non-economic (and, for the most part, non-legal) normative issues.

Interest in expanding antitrust to address economic inequality might seem more amenable to economic analysis and decision making, although it would be a pretty serious change in antitrust law. What's more, the underlying presumptions are controversial even before addressing any of the normative or administrative difficulties that would need to be resolved. The push to use antitrust to handle inequality as Big Tech firms grow is largely motivated by the claim that inequality has worsened during the period of the digital economy. However, when economists look at consumption inequality (the type of inequality that is likely most related to antitrust policy, which will affect prices and output directly, which feed into individual consumption), many studies find it has not been increasing during the years of Big Tech growth or, at a minimum, it has not grown as much as inequality in income.

DON'T JUST DO SOMETHING, STAND THERE

Given the growing bipartisan agreement that antitrust policy ought to do more to push back against the dominant firms in Big Tech, it is useful to consider the premises behind this movement. While there is a presumption that firms like Amazon, Google, and Facebook wield substantial market power, closer inspection makes things less clear.

If Amazon only competes against other existing online retailers, maybe there should be concern. However, if Amazon competes against Walmart or worries that rising prices will draw Alibaba further into the U.S. market, Amazon no longer seems so scary. Likewise, if Google only competes against Bing, Yahoo!, and DuckDuckGo, maybe action is needed. But if, instead, Google is really an advertising platform, then the relevant market is much broader than a handful of search engines and expanded antitrust regulation is unfounded.

Similar caution should apply to ramping up regulation of Facebook and the other Big Tech entities. It might be nice to figure out if and how these firms are harming us before the government starts smacking them around just because they're big and successful. R

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