BIG TECH ANTITRUST

Congress, the Federal Trade Commission, the Department of Justice, and state attorneys general should

- recognize the huge consumer surplus generated by major digital technology platforms' ecosystems;
- avoid antitrust enforcement or legislative efforts that sacrifice the consumer welfare standard;
- refrain from passing legislation that treats digital platforms differently from other firms and industries;
- avoid new laws that presume "self-preferencing" is inherently anti-competitive or that enforce interoperability requirements on platforms; and
- recognize that antitrust laws are inappropriate tools for dealing with noneconomic concerns, such as privacy, national security, online harms, free speech, or "democracy."

Many U.S. politicians, scholars, and lawyers believe that major tech platforms are too big and engage in anti-competitive conduct. Alphabet (Google), Meta (Facebook), Apple, and Amazon find themselves in the cross hairs, with critics calling for stricter antitrust enforcement or new legislation to break up the companies, ban certain conduct, or enforce interoperability requirements on their platforms. This sentiment has found expression at the Federal Trade Commission, in congressional legislation, and in lawsuits.

A wide number of economic complaints are leveled against the major online platforms. Google stands accused of monopolizing the digital advertising technology industry and that of user search, while self-preferencing its own products in an exclusionary manner. Meta is said to have gobbled up its social networking competition through anti-competitive acquisitions. Apple is believed to be extracting rents from app producers through a gatekeeper role on its operating system. Amazon is described as engaging in predatory pricing, unfairly harnessing third-party business data to gain a competitive edge, and self-preferencing its own products in ways harmful to competition.

In addition, there is angst about these companies' size and impact that clearly extends beyond economic concerns to worries about their privacy policies, data collection, social harms, and content moderation.

As a result, the political agenda to rein in Big Tech through antitrust laws often challenges long-standing assumptions about what those laws should be or how current laws should be interpreted or enforced. For example, some Big Tech critics use the case studies of these firms to support abandoning consumer welfare as the notional lodestar of antitrust enforcement, in favor of a more prescriptive view of how markets should be structured.

The sheer size of these companies bestows on them "psychological monopoly" status among much of the public. Yet examination of their activities shows that they compete fiercely with one another across multiple subsectors, including that of messaging apps, smart speakers, e-commerce platforms, and digital advertising. All these firms invest hugely in frontier research and development too, which is not indicative of companies confident in their entrenched monopoly status and merely trying to suppress costs. In any case, critics often seem to find it difficult to define exactly what markets any of them are supposed to be monopolizing.

Consumer Surplus

An underappreciated empirical observation is that products in large tech companies' ecosystems generate large consumer surpluses—the difference between the price a consumer pays for an item and the price they would be willing to pay.

Google Search, Gmail, Apple's Safari, Apple and Google Maps, Amazon's cataloging, and Meta's Facebook, WhatsApp, and Instagram products are free at the point of use for U.S. users and offer time savings, better product matching, or substantial online entertainment. A range of other free products and services are often bundled with pay-for products on the platforms too.

These products are valuable. Economists Erik Brynjolfsson of Stanford University and Avinash Collis of the University of Texas have estimated that the median U.S. user values search engines at $17,530 per year, would require $8,414 to lose access to email, $3,648 to go without digital maps, and $322 to go without social media.

Older studies estimate Amazon's e-commerce foray as an online bookstore lowered consumer prices by more than 10 percent, while expanding the number of titles available by 23 times a typical Barnes and Noble superstore. Some European experiment participants valued WhatsApp at $580 per month. These figures are variable and highly subjective, but the overall consumer surplus generated by these firms' products is clearly huge.

For Meta and Google, the primary paying customers are those purchasing advertising space. Yet even here, the digital revolution associated with these firms' innovation has slashed advertising costs and brought improvements in advertising quality, given the opportunities of targeting. Research by Michael Mandel of the Progressive Policy Institute suggests that every $3 spent on digital advertising now holds an equivalent impact of spending $5 on print ads.

Although this targeted advertising is sometimes seen as an iniquitous use of "our data," users seeing advertisements that relate to their interests brings obvious benefits to them. To the extent that there is any tradeoff between less individual user privacy and obtaining zero-cost products, users generally appear to be comfortable with it.

These observations do not prove that Big Tech platforms never engage in harmful, anti-competitive conduct. It is theoretically plausible that customers would have seen even better services, more innovation, and cheaper advertising if forms of genuinely exclusionary conduct or anti-competitive acts were eliminated in markets where these firms had a large dose of monopoly power.

Yet the obvious value creation we've seen suggests we need convincing evidence that breaking up these companies or restraining their conduct would substantially benefit consumers. Indeed, the obvious network effects of search, social media, and online marketplaces—the idea that the utility of a platform to a user increases with the total number of users—imply that a company having a high market share might be efficient, rather than a problem.

Skepticism of Antitrust

Existing antitrust legislation and its enforcement should not be immune from criticism. Old, murky statutes and conflicting case law mean that, over long periods of time, business practices risk becoming treated as violations, creating uncertainty for businesses.

Political power and ideological interpretation of law infuse much of antitrust's historic application. Actual cases often hinge on very contestable concepts, such as how to precisely define the scope of the relevant market for the product in question. The Brookings Institution's Cliff Winston, in a detailed review, found scant evidence that the real-world application of antitrust policies with regard to monopolization, mergers, and collusion has done much to improve consumer welfare over time.

That said, the application of antitrust laws could be so much more economically dangerous than we have seen in recent decades. Over the past 40 years, enforcement has at least been largely based on the consumer welfare standard that seeks to judge tangible harms of conduct or mergers through the prism of economic efficiency.

Before this economic focus, a "big is bad" default assumption about companies permeated case law, with firms deemed violators based on their market concentration, while preferential downstream contracting or bundling of products by firms was often just assumed to be anti-competitive, despite the possibility of benefits to consumers.

The result was a range of decisions in which the complaints of business competitors were prioritized over consumers' interests. This response left the laws open to abuse and corporate rent seeking, with subsequent empirical studies finding that lots of behavior deemed anti-competitive would have reduced prices or improved product quality. Unfortunately, the current zeitgeist appears to have forgotten these lessons of experience.

The Big Tech Reform Push

Big Tech's critics have struggled both to show that these companies monopolize actual relevant product markets and to prove that their conduct harms consumer welfare.

Adamant that these firms are dangerous to economic well-being anyway, campaigners argue that Big Tech's purported power is itself proof that the consumer welfare standard is an inadequate metric for judging their conduct, or that inherent features of these digital platforms mean that consumer harm is likely in the future if these companies are allowed to continue unchecked.

As a result of these starting points, reform proposals have included abandoning the consumer welfare standard; outlawing a range of business conduct and putting the burden of proof on defendants to defend or justify why it is necessary; creating a new federal regulator to manage competition for digital platforms; breaking up digital firms over a certain size, irrespective of the impact on consumers; and imposing merger bans for specific firms in certain markets.

Worse still, many such proposals would create a two-tier legal system whereby online digital tech companies with a certain number of users or degree of market capitalization face a different regulatory regime for business conduct or merger activity than smaller firms or those in other sectors. This approach would clearly distort competition, not enhance it.

Monopoly Fatalism

History suggests that any long-term monopoly fatalism about Big Tech companies is misguided. Throughout the 20th century, the Great Atlantic and Pacific Tea Company (A&P), Myspace, Nokia, Kodak, Apple's iTunes, Microsoft's

Internet Explorer, and more were all said to have strategic economic advantages that meant they had unassailable dominance. Yet all saw their market shares disintegrate in the face of innovative new products or technologies, despite the supposed benefits of economies of scale, lock-in, network effects, and more that they enjoyed. The clear lesson is that reining in companies on the basis of speculative projections of future harms would be extremely foolish.

In the face of the longer-term forces of creative destruction, the welfare gains from attempting to eliminate all forms of wrongdoing and their static inefficiencies are likely to be small. This, then, must be weighed against the risk that overzealous antitrust enforcement or new legislation will chill the development of products or services that would have raised consumer welfare.

The Costs of Trustbusting

All of the major ideas for legislative and enforcement change for antitrust in relation to Big Tech bring significant economic risks.

Abandoning the consumer welfare standard entirely would either amount to a regression toward use of crude market structure analysis that harmed consumers in the past, or push antitrust law toward delivering on contradictory, unclear objectives. The latter, especially, would embolden antitrust agencies and courts to apply laws more subjectively, opening up extensive opportunities for rent seeking.

Shifting the burden of proof to defendants for conduct would clearly stifle innovation by creating a guilty-until-proved-innocent standard. Given the digitization of the economy, a new federal regulator for online platforms would also result in the government's regulating more and more of the economy over time.

Breaking up companies irrespective of the network benefits or economies of scale they can harness would raise costs and deteriorate product quality. If Google were forced to dispense with YouTube, for example, consumers would likely suffer from worse search integration over time.

Meanwhile, preemptively banning mergers for Big Tech could create large downstream disincentives for innovation. A lot of focus has been put on Facebook's acquisitions of WhatsApp and Instagram as supposedly anti-competitive attempts to quash threats. This view reflects hindsight bias and counterfactual speculation. It was not obvious that these companies would have threatened Facebook's digital advertising or social network dominance, nor that these products would have improved as they did without Facebook's ownership.

More broadly, though, one payoff for tech entrepreneurs is to cash out in mergers or acquisitions by selling valuable adjacent products to enhance

the bigger tech ecosystems. Banning mergers or acquisitions for Big Tech companies could therefore disincentivize consumer welfare–enhancing innovation by other startups.

For all these reasons, legislators should avoid revising the purpose of antitrust law or creating two-tier legal systems where Big Tech is treated differently from other industries.

Self-Preferencing and Interoperability

Critics of Big Tech companies often cite discriminatory self-preferencing on their platforms as evidence of damaging anti-competitive conduct.

They deem it unjust, for example, for Google to bump up Google Maps results in its search rankings, for Amazon to use data acquired through third-party sales on its Marketplace to improve its own products, or for Apple iPhones to come preloaded with Apple apps that compete with others on the App Store.

The implicit assumption is that it is "pro-competitive" to insist that all large platforms are as open and neutral between users and businesses as possible, and that so-called vertical restraints—instances where platforms bundle, tie, or self-preference their own products within their platform or marketplace—are inherently damaging to consumers.

This concern has led to two types of ideas for legislative proposals: banning certain forms of self-preferencing conduct unless firms can prove it is core to their business or necessary for privacy or security reasons, and enforcing interoperability between different platforms in the same sector.

Such legislation is based on a false premise and would be economically damaging. The false premise is that these companies are monopolies. But Google Search clearly competes with Bing, Amazon Marketplace with eBay, Meta with TikTok and Snap, and Apple with Samsung, Google, and Microsoft. It's a mistake to believe we need every platform to have an enforced level playing field of competition for products sold when there is ongoing competitive pressure *for* the platform marketplace.

More significantly, self-preferencing is common practice throughout different industries. Supermarkets and other retailers, farmers' markets, shopping malls, and sports stadiums regularly sell their own products, marketing them favorably alongside those of third-party businesses within their venues or marketplaces. As antitrust expert Herbert Hovenkamp of the University of Pennsylvania has implied, vertical integration is the ultimate form of self-preferencing and is obviously common: "Standard does not pump Texaco gas; KFC does not sell Dairy Queen."

Nor is self-preferencing synonymous with consumer harm. For example, research has concluded that Google's entry into the camera app subsector benefited consumers by encouraging significant innovation in competitor apps on Google's Android platform.

More importantly, consumers often do not just want neutral platforms. Yes, they value an array of products available at low cost. But they also want a trustworthy interface, support services, efficient payment and review systems, accurate searches, speedy access to useful information, and, occasionally, privacy protections.

Microsoft Windows is more open and compatible with third-party software than Apple's macOS, but it is also more susceptible to viruses. Bills that ban self-preferencing or enforce openness might therefore undermine platform innovations that create different bundles of these features to suit different consumers. All digital platforms must try to strike a balance between attracting third-party business users and offering consumers low prices and a range of products in pursuit of profit.

Often, self-preferencing and other vertical restraints can even enhance competition in other sectors. First, self-preferencing—by granting the host preferential access to an existing set of users—can allow the platform host to launch into wholly new sectors and compete with incumbents. Existing captive user bases and platforms allowed Apple to launch Apple TV Plus, Amazon to launch Prime Video, and Google to launch Chrome, for example.

Second, if self-preferencing behavior can encourage participation on a platform, then in the presence of indirect network effects, business users can reach new customers and compete in new markets. For example, if Apple's free apps encourage iPhone sales, then Apple app developers benefit from access to a much bigger market.

Similar logic explains why the push for enforced interoperability between different platforms—the idea that you should be able to move your content seamlessly or that platforms should use the same hardware—is misguided.

In time, if consumers desire an ability to switch between platforms easily, companies will be incentivized to provide that functionality. But interoperability can bring tradeoffs regarding the safety and security of the businesses' products or services.

Furthermore, if enforced through legislation, interoperability can actually deter product innovation, as businesses may face weaker incentives to improve products that coexist with or are shared alongside rivals' products.

Policymakers should therefore avoid legislation that assumes self-preferencing behavior is anti-competitive or that open, neutral platforms are always desirable.

Keep Antitrust Focused on Economics

Finally, policymakers should recognize that antitrust and competition laws are bad tools for dealing with noneconomic issues, such as privacy, national security, free speech, and political influence.

Many Big Tech critics write as if it is obvious that tougher antitrust laws would improve these outcomes. The mistaken belief is that tougher antitrust enforcement would deconcentrate markets and thus foster more competition to weed out platforms with undesirable user policies.

But there is no inherent economic reason we should expect this result. Larger companies that can invest in expensive technologies might be more efficient in dealing with bad actors online. For example, one might imagine Google is better placed to keep YouTube "clean" than if the site had remained an independent company.

Content moderation and the value of privacy are also—as we have seen in the political arena—highly subjective. If given policing powers over content on large platforms, the Federal Trade Commission and Department of Justice might vigorously attack crackdowns on "free speech" one year, but then promote moderation of "hate speech" the next. By entrenching such power in those agencies, politicians and political appointees would be using antitrust laws as a threat to try to mold platforms to their political beliefs and interests, rather than to the demands of customers.

Conclusion

Big Tech companies have been under attack from a new antitrust movement that sees them as anti-competitive monopolies. In actuality, these firms all run large ecosystems of activity or platforms that have produced significant value to consumers, and they compete with one another across numerous different domains.

Critics appear to think that tech platforms are inherently different from other industries, or that their dominance justifies overhauling antitrust laws or enforcement entirely. Proposals for reform are numerous, but one common feature is for a shift away from judging these businesses' conduct according to the consumer welfare standard. Although current antitrust laws are flawed, this shift would risk undermining the competitive market process, eliminate options that consumers prefer, and quell innovation in the digital sector.

Suggested Readings

Bourne, Ryan. "Does Rising Industry Concentration Signify Monopoly Power?" Cato Institute Economic Policy Brief no. 2, February 13, 2020.

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