

Restructuring the Balance of Power in Digital Markets

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Amazon, Apple, Facebook, and Google increasingly serve as gatekeepers for digital commerce and communications. Growing evidence suggests that these firms have used their market power in a host of abusive ways, squashing competition and extending dominance across markets. In October, the U.S. House Judiciary Committee's Subcommittee on Administrative, Commercial, and Administrative Law published a report detailing how these dominant platforms have exercised and maintained their power, concluding that these business practices have harmed entrepreneurship and innovation, eroded user privacy, weakened independent journalism and the free press, and undermined economic and political liberties.¹ These findings reinforce a growing public recognition that the unchecked and outsized power of dominant digital platforms threaten democratic values and practice.

Addressing these harms will require rebalancing power in the digital economy, including through legislative reforms. However, the executive branch and federal agencies have an existing set of antimonopoly tools that they should harness. Ways to do so include:

Aggressive Antitrust Investigations and Enforcement Actions

Significant evidence suggests that the dominant digital platforms have established, maintained, and extended their market power through coercive and predatory business practices. The Department of Justice's Antitrust Division and the Federal Trade Commission (FTC) should bring antitrust lawsuits against dominant

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¹ MAJORITY STAFF OF H.R. COMM. ON THE JUDICIARY, SUBCOMM. ON ANTITRUST, COMM. AND ADMIN. LAW, 116TH CONG., REP. ON INVESTIGATION OF COMPETITION IN DIGITAL MARKETS (2020).

platforms for any anticompetitive conduct. Key will be pursuing structural remedies that redress the underlying incentive and ability to engage in these practices in the first place.

Vigorous Merger Enforcement that Closely Polices Anticompetitive Transactions by the Dominant Platforms

Several of these firms established or maintained their leading positions through buying up actual or emerging competitors or locking up technologies through acquisitions. Although Apple, Amazon, Facebook, and Google collectively made over 500 acquisitions, the antitrust agencies did not prevent a single transaction and investigated only a handful. Given that analysts are predicting a merger boom and the dominant platforms are sitting on significant piles of cash, antitrust enforcers must be vigilant and diligently block anticompetitive acquisitions, including those involving nascent competitors or firms in adjacent markets. The agencies should also rewrite the merger guidelines to better reflect empirical realities in digital markets, such as entry barriers created by network effects and concentrated control over data.

Utilize the FTC’s Rulemaking Powers

The FTC should promulgate rules identifying business practices that constitute “unfair methods of competition,” with an eye to policing structural conflicts of interest, exclusive dealing and other exclusionary practices, and coercive contracts. The FTC should also use its expansive authorities to regularly collect business data and continuously monitor digital markets. Although Congress delegated to the FTC both competition rulemaking and broad information gathering powers, the Commission has neglected to fully use these key tools.

Penalize Serial Lawbreaking with Structural Remedies Rather than with Monetary Fines

Although Facebook and Google have repeatedly violated laws and legal orders, federal agencies have primarily responded with monetary penalties that the dominant platforms can treat as a cost of business. Enforcers should draw on a broader set of remedies, including dismissal of senior management and board directors, reforms to executive pay, individual liability for top executives, and winding down of business lines.²

Prohibit Dominant Digital Platforms from Entering Banking and Financial Services

Permitting Apple, Amazon, Facebook, and Google to expand into banking, finance, and payments would vastly expand their surveillance capabilities, increase their economic power, and potentially threaten the safety and soundness of our financial system. The

² Memorandum from Commissioner Rohit Chopra, Federal Trade Commission, to Commission Staff and Commissioners (May 14, 2018).

Treasury Department, Office of Comptroller Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and Federal Reserve should adhere to the longstanding separation of banking and commerce and prevent dominant digital platforms from entering banking and finance.

Harness Antimonopoly Levers Beyond Antitrust Law

Use antimonopoly levers across federal agencies—including tax policy, federal procurement, trade policy, and small business policy—to promote new business entry and independent business and to prevent further concentration of power among the dominant digital platforms.