



The Daily Dish

Antitrust in the House

DOUGLAS HOLTZ-EAKIN | JUNE 22, 2021

Eakinomics: Antitrust in the House

The House of Representatives is marking up a package of five antitrust reform bills, hence the title. The poor quality of the ideas and the race to jam the bills through also makes one suspicious, hence the title. Fortunately, Jennifer Huddleston moves quickly as well; her summary and analysis of three key pieces is [here](#). Those bills are as follows.

- Platform Competition and Opportunity Act prohibits mergers unless the large company can show by “clear and convincing evidence” that the proposed acquisition would not be a violation. In short, it shifts the burden from the government to intervene in bad mergers to companies to prove that their proposed mergers are good.
- The Ending Platform Monopolies Act and American Innovation and Choice Act combined are a “[Glass-Steagall for Tech](#)” and prevent a large firm from owning or operating other businesses such as those that present a conflict of interest.
- The American Innovation and Choice Act prohibits platforms from using the data they collect to develop and price their own products, a benign practice that has long occurred in traditional retail.

In each case, the entities subject to the reforms are those with over 50 million monthly online-platform users in the United States – or merely 100,000 monthly U.S. business users – and a market capitalization of \$600 billion or more. At present, this qualification effectively targets the large tech firms, but there is nothing that limits these laws to tech in the years to come.

Huddleston provides a blow-by-blow of the flaws and deficiencies in these efforts; I will focus on three of the larger issues that they raise. The first was noted above; this is an attempt to take on the politically unpopular tech giants, but the policy is written in a way that it may spill over indiscriminately. How long is it before everything looks like an “online platform” and getting to 100,000 business users is no real challenge? Will this eventually encompass every financial services firm? Every wholesaler and delivery network? The potential for unintended consequences seems large.

Second, we already know that these are bad ideas – the Europeans tried them first in the form of the [Digital Markets Act](#) and [Digital Services Act](#). Those efforts have been roundly criticized by the American policy community as protectionist and unfairly targeting U.S. companies. It makes no sense to piggyback on these bad foreign ideas in domestic legislation at a time when continued leadership in the tech sector is critical.

Finally, these proposals represent a move away from the consumer welfare standard as the anchor for antitrust policy. All policy should be about maximizing consumer welfare. This is a country of consumers, the market system is responsive to their desires (especially for Twizzlers), and public policy should be guided by them as well. Allow mergers, acquisitions, new product development, data collection, market entry, and other activities when they raise consumer welfare and step in when they don't. It is particularly ironic that this standard is being discarded by progressives and populists attacking tech giants in the name of "the little guys." If you think about it, there is nothing more populist than the consumer welfare standard.