The Daily Dish

Antitrust Reform Moves to the Senate

DOUGLAS HOLTZ-EAKIN | OCTOBER 20, 2021

Eakinomics: Antitrust Reform Moves to the Senate

There has been a groundswell of sentiment to reform antitrust enforcement. For decades the consumer welfare standard has been the guidepost for antitrust policy – mergers, acquisitions, and actions are presumed to be the purview of the firms involved and are subject to intervention only when they are demonstrated to harm the welfare of consumers in the market. The consumer welfare standard imposes a strict discipline on the action of regulators that focuses on the right outcome and drives the nature of the analysis.

Not everyone likes this, and there has been a desire to move toward concepts such as size ("big is bad"), concentration in industries, and others. In addition, much of the focus has been on the big tech companies. Earlier, AAF took a look at the suite of antitrust legislation originating in the House. Now the action has moved to the Senate.

On Monday, Senator Amy Klobuchar introduced The American Innovation and Choice Online Act (there is a sister bill in the House). Of note, it was co-sponsored by key Republicans including Judiciary Committee Ranking Member Charles Grassley, making antitrust reform seemingly one of the few opportunities for bipartisan legislating in the current environment.

The bill would prohibit platforms from utilizing the data they collect to develop and price their own products. Per AAF's previous analysis: "Contrary to concerns, this is typically benign behavior that often benefits consumers and has long occurred in traditional retail. For example, this proposal would limit the ability of app stores to set rules, prices, offer preinstalled apps on devices, or offer generic brands of other sellers' products. Such restrictions will likely harm consumers by restricting choice and competition, and by reducing manufacturers' ability to provide products that are ready to go right out of the box."

In short, while popular, this does not seem to be a step in the right direction. It imposes an artificial separation on the activity of platforms, and just because they are platforms. The arbitrariness would violate the consumer welfare standard, which is why retaining its discipline is so important. The result would also be two sets of rules – one for platforms and one for the rest of the economy – which is hardly a desirable state of affairs.