



Insight

Tech Policy and the 2020 Election, Part 3: Antitrust and Big Tech

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Executive Summary

- Both President Donald Trump and Democratic presidential candidate Joe Biden have indicated that they would consider more aggressive antitrust enforcement, including potential action against large tech companies.
- Moving away from an objective consumer welfare standard to a more subjective standard would create greater uncertainty for consumers and innovators, and consumers are unlikely to benefit. Using antitrust for policy purposes such as content moderation is unlikely to achieve the policy aims and may even exacerbate existing policy concerns.

Introduction

Is Big Tech too big, and do companies such as Facebook, Apple, Google, and Amazon need to be broken up via antitrust action? Have we moved into a new age of “cyber barons”? Criticism of large tech platforms and discussions of antitrust action have come from both the left and the right recently. Many of these criticisms do not reflect the underlying principles of antitrust law, but instead reflect other policy concerns such as data privacy and content moderation. Given the criticism from both sides of the aisle, it is not surprising that both presidential candidates have suggested that they would engage in further antitrust scrutiny of large tech platforms if elected.

Liberal Criticisms Regarding Existing Standards

Democratic criticisms of current antitrust largely suggest that enforcement is not aggressive enough and does not account for practices that harm workers and stifle competitors but are not seen in economic harm to consumers. For example, the Biden-Harris [platform supports](#) modifying antitrust laws and ties the need for such modifications to “empowering workers.” More generally, criticisms from the left argue that the current approach to antitrust law does not properly account for all the harms to a market by large firms’ behavior and that a more flexible, policy-based approach should be used for more zealous antitrust enforcement.

There are two main problems with such criticisms. First, a more flexible and broad policy-based approach to antitrust would create greater uncertainty for consumers, innovators, and competitors. The [prior rule of reason approach](#) stifled beneficial mergers or changes out of an unjustified concern. This approach also tends to focus on the impact on competitors rather than on consumers’ welfare and a properly functioning market.

Second, even the supposed problems have not been shown to be truly harmful or even actually exist. Arguments about the use of data for [house brands](#) by Amazon is not that different from the behavior traditional retailers such as Target or Walmart have engaged in for decades. The idea of a “kill zone” (where big tech companies

buy out small companies before they can challenge them) appears to be largely a myth and [instead has provided](#) more options for startups and investors as well as improved products for consumers. Concerns about market [concentration](#) often miss changes in market dynamics or differences in competition at a local versus national level.

Moving away from an objective standard of antitrust might not benefit the very consumers competition law was intended to protect and risks providing a dangerous way for political motives to intrude into an already competitive market. Such politicization could increase the abuse of antitrust law such as the Trump Administration Department of Justice's [alleged use](#) of antitrust to review mergers in the cannabis industry based only on its dislike of the product.

Conservative Critiques of Antitrust

Calls to break up Big Tech have not only come from the left but also from policymakers on the right. Conservative criticisms often allege that the companies are abusing market power to silence conservative voices and argue that breaking these companies up would solve a litany of non-competition related policy concerns. The Department of Justice during the Trump Administration has been [actively pursuing potential antitrust claims](#) against the largest tech companies. The president himself has suggested more use of antitrust law against large tech companies, even [applauding European Union fines](#) against American tech companies. But as with the criticisms from the left, these proposed solutions might make the alleged problems even worse.

Breaking up “Big Tech” would not solve concerns about anti-conservative bias, content moderation, data privacy, or any of a litany of non-competition policy concerns. Such a policy motivation is not the [appropriate use of antitrust](#) and would be better addressed by more targeted policy reforms if needed. In fact, using antitrust to require a breakup might even make these problems worse. Smaller firms would have more [limited resources to devote to tasks](#) such as content moderation or data security and might find themselves engaging in more advertising or data usage without the efficiency of a large company. The result is far from a guarantee that these now separated companies would better respond to these policy concerns or be more friendly to conservatives. As former Senator Rick Santorum [recently wrote](#), “Going back to the media of 25 years ago would not go well for the President or for conservatives.... As America wrestles with so many tough issues and prepares to select its leaders in a charged partisan atmosphere, social media matters. And social media matters more to the election prospects for conservatives than it does for progressives.”

Using antitrust for more political purposes not only risks undermining those purposes; it risks unnecessary government interference in a free and competitive market. The result again could easily be that consumers lose out on potential mergers or efficiencies that would have benefited them. In some cases involving technology, the result could even be an [increase in costs](#) for once zero-cost products.

Conclusion

The current approach to antitrust is principled and objective with a focus correctly on consumers. As a result, it is a tool to allow competitive markets to continue to flourish while providing a principled mode of correction when anti-competitive behavior arises. Such a standard is adaptable to fast-moving, innovative fields as well as more traditional markets. As conversations around antitrust and Big Tech are likely to continue under either a Trump or Biden Administration, proposed changes to antitrust would likely bring with them new problems as well as fail to cure existing ones.