

Opinion **US politics & policy**

Antitrust policy is ripe for a rethink

We should consider regulating Big Tech like we do the banks

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The [big](#) are getting bigger. Disney has upped its bid for 20th Century Fox, off the back of pressure from Comcast, which wants Rupert Murdoch’s crown jewels for itself. [T-Mobile and Sprint](#) are pitching the Federal Communications Commission on a merger. In the wake of the US district court decision to allow AT&T and Time Warner to merge, the floodgates will be open to a host of new deals, many of which are desperate attempts by old-line companies to avoid having their lunches eaten by the real behemoths of today’s economy — the [Silicon Valley](#) giants.

But the [Faangs](#) are under pressure, too. Regulators and politicians on both sides of the Atlantic are calling for a crackdown on their monopoly power. In the US, the Supreme Court last week ruled that online retailers can be required by states to collect sales tax, a reaction to the advantages that many virtual companies have wielded over the bricks and mortar kind. The court also announced that it would hear a case looking at whether [Apple](#) wields too much price control over apps.

Meanwhile, the new chair of the Federal Trade Commission, Joseph Simons, has pledged “vigorous” antitrust enforcement, including hearings later this year on competition and consumer protection, the first since 1995.

All of this reflects a major rethink about what constitutes monopoly power in America. The last time we had such a rethink was in 1978, when Robert Bork published *The Antitrust Paradox*. Bork held that the major goal of antitrust policy should be to promote “business efficiency”, which from the 1980s onwards came to be measured in consumer prices. It was a shift that took

the US away from antitrust policy predicated on the welfare of the “citizen”, and one that clearly served the laissez-faire politics of the Reagan administration. But that definition is increasingly irrelevant in an age in which the most powerful companies in the world offer products and services for “free” in exchange for personal data.

This has provoked calls for a return to the definition of monopoly in the 1890 Sherman Antitrust Act, which emphasises the need to ensure that the economic power of large companies does not result in the corruption of the political process.

Critics of such a rethink — including most major tech firms — say that this would result in a weaponisation of antitrust. Consumer prices, they argue, are at least a set metric, whereas broader notions of economic power would themselves be more open to political manipulation.

It is true that there are a number of Republicans — people who are typically uninterested in regulating big companies — who would be happy to break up platform tech firms like Amazon. This is not so much because they are worried about consumers or the concentration of power, but because they do not like the fact that Silicon Valley gives more money to Democrats than Republicans. On that score, it will be interesting to see whether the Department of Justice under Donald Trump will be as interested in breaking up Rupert Murdoch’s assets as they were in scuppering a deal by CNN’s parent company, Time Warner.

But it is also worth remembering that antitrust has always been political. The AT&T and Time Warner merger, which displeased many liberals, was in many ways the result of the fact that the Obama administration was captured by Big Tech. Google practically set up camp in the White House, with a revolving door that makes the longstanding Goldman Sachs/Treasury shuffle look relatively minor by comparison. That is one reason the administration missed the rise of data markets and the way they would reshape the economy. The result is likely to be a raft of mergers that may give legacy players a few more years to duke it out against Amazon or Google, but will not do much to help consumers — or citizens.

In an era of high corporate profits and declining trust in liberal democracy, I think that a return to Sherman-era principles would be a good thing. But that is a slow burn solution. In the short term, the systemic power of Big Tech makes me wonder if we should not start regulating platform technology as we regulate the largest financial institutions.

Bank regulation expert Karen Petrou recently likened the largest Silicon Valley firms to systemically important financial institutions in terms of size, market impact, interconnectedness, and “substitutability”. It would be nearly impossible, she argues, to quickly replace one company with another in the case of a service failure. Major tech platforms have, according to Ms Petrou, “become so embedded in everyday life . . . that I think they flunk the substitutability test”.

Big Tech sits in the middle of communications, media and advertising markets in the same way that big banks sit in the middle of financial markets. Just as the Federal Reserve can step in

when structurally important financial institutions are both making markets and participating in them as traders or asset owners, so the FTC or FCC might do the same with Big Tech. Whether by antitrust policies, or by agency regulation, Silicon Valley's economic and political power should be curbed, lest we fail a very costly stress test of democracy.

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