

Should we break up Big Tech and how could we do it?

This article explores recent updates regarding the potential breakup of Big Tech. It discusses potential measures that could be taken under antitrust law and encourages contemplation before swift action.

It is no secret that “Big Tech” companies, including Amazon, Alphabet, Apple, and Facebook, compose a staggeringly large part of the market and have influence over an equal, if not more generous, share of our day-to-day lives. Facebook has over 2.4 billion active users, Amazon accounts for nearly 40 percent of all e-commerce spending in America, and Google gets more than 92 percent of global search inquiries.¹ Given the enormous scale of these corporations, the calls for breaking up big tech are getting louder. Many notable figures on both sides of the political aisle, including Elizabeth Warren and Donald Trump, have made their concerns known about big tech’s massive power.²

In October 2020, after a 16-month probe, a Democratic-led House panel produced a report coming to the conclusion that Facebook and Google have monopoly power and that Apple and Amazon have “significant and durable market power”, which these companies have leveraged to stamp out competition and stifle innovation in various ways.³ This panel now urges Congress to consider forcing the tech giants to separate their dominant online platforms from other business lines, in-part by updating and enforcing antitrust law.⁴ House Republicans issued a separate statement that, although not endorsing all of the Democrats’ policy ideas, also encouraged more vigorous antitrust enforcement.⁵ In response, each company has highlighted that it disagrees with the findings, either claiming they do not have a dominant market share or that they have not been acting anti-competitively.⁶ Concurrently, the Federal Trade Commission has been gearing up to file a possible antitrust lawsuit against Facebook, and Google is expected to be the subject of an antitrust lawsuit from the Justice Department later in fall 2020.⁷

The goal of antitrust law is to keep markets open and free by encouraging aggressive competition among sellers.⁸ Its history dates back to 1890 when Congress passed the Sherman Antitrust Act in response to the growing number of monopolies who used anticompetitive and oppressive practices. Later, the Clayton Antitrust Act was passed in 1914, which outlawed monopolies and cartels, and offenders like the American Tobacco Company and Standard Oil were broken up.⁹ However, the government’s power under Antitrust law goes beyond just breaking up companies: It also can punish them via other means, like fines and restrictions, for any action “in restraint on trade”.¹⁰ Under existing law, antitrust enforcers in the DOJ and FTC have the authority to bring legal action against companies for a variety of measures like undercutting third-party merchants by using their sales data to market its own imitative private-label products (think Amazon,) or manipulating search algorithms to favor big advertisers or

¹ <http://www.bu.edu/articles/2019/break-up-big-tech/>

² *Id.*

³ <https://www.wsj.com/articles/house-panel-calls-for-congress-to-break-up-tech-giants-11602016985>

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ <https://www.wsj.com/articles/ftc-preparing-possible-antitrust-suit-against-facebook-11600211840>

⁸ <https://www.wired.com/story/tech-antitrust-break-up-andrew-yang/>

⁹ <http://www.bu.edu/articles/2019/break-up-big-tech/>

¹⁰ <https://www.wired.com/story/tech-antitrust-break-up-andrew-yang/>

punish competitors (think Google).¹¹ However, despite this great power,” many critics, like Elizabeth Warren, Amy Klobuchar, and Andrew Yang, argue that the government has not been adequately enforcing anti-trust law. This lack of enforcement has been a disaster.¹² This has helped lead to calls for increase enforcement or updates to antitrust laws.

Although many are calling for breakups, others argue it is not the answer, as that is not the only way that antitrust law can be effectively utilized. Some experts encourage a more proactive, front-end approach that tries to prevent monopolies from forming, rather than just attempting to break them up once they already have. Timothy Simcoe, a Boston University professor, urges that we take a harder look at mergers to identify which ones may turn a company into a monopoly.¹³ Others, like Tim Wu of Columbia Law, argue that the goal of antitrust law should simply be to eliminate barriers to entry for new companies.¹⁴

Overall, it appears that a break up is possible, and although it could likely have benefits, it is worth taking some time to make sure it is what is best for America and society at large. As argued by the Consumer Technology Association industry group, undercutting America’s biggest technology companies could negatively influence America’s global innovation leadership and economic power.¹⁵ However, there is evidence that new tech startups have been decreasing in number—a sign innovation may be stagnating—in part because of a lack of funding or desire given the ease in which big tech has been able to swallow up new companies.¹⁶ Although the House Report warns that America’s democracy and technology are at stake, we must think critically when moving ahead with possible antitrust law changes, as any action, or inaction could shape the American and Global economy of the 21st century.

-- *Bruce Johnson*

Bruce Johnson is a 2L from Cape Cod, Massachusetts. He has a passion for long distance biking, running, and surfing, and this love for the outdoors translates into his desire to practice Environmental Law after graduation.

¹¹ <https://www.wired.com/story/tech-antitrust-break-up-andrew-yang/>

¹² <https://www.wired.com/story/tech-antitrust-break-up-andrew-yang/>

¹³ <http://www.bu.edu/articles/2019/break-up-big-tech/>

¹⁴ <https://www.wired.com/story/tech-antitrust-break-up-andrew-yang/>

¹⁵ <https://www.wsj.com/articles/house-panel-calls-for-congress-to-break-up-tech-giants-11602016985;>

<https://www.wsj.com/articles/ftc-preparing-possible-antitrust-suit-against-facebook-11600211840>

¹⁶ <https://medium.com/@teamwarren/heres-how-we-can-break-up-big-tech-9ad9e0da324c>