

Congress Issues Antitrust Report on Large Tech Platforms

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On Tuesday, October 6, 2020, the Democratic Majority of the House Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law released a report following their investigation into large technology platforms including Amazon, Apple, Facebook, and Google. The investigation, which launched in June 2019, included a review of over 1.3 million documents, as well as seven hearings with industry experts, academics, and the companies' CEOs which focused on the potential for the tech giants to abuse their dominant market positions.

The report begins by comparing the four platforms with monopolies last seen “in the era of oil barons and railroad tycoons,” and alleges that the companies abused their market power to eliminate competitive threats and privilege their own aligned businesses. Specifically, the report finds that Facebook has monopoly power in the social networking market which it has maintained through mergers and acquisitions of competitors and selectively enforced its platform policies to disadvantage competitive threats. Google is found to have used its monopoly over general online search and advertising to benefit its own content while maintaining its monopoly through contractual restrictions and exclusivity provisions tied to Google’s Android operating system.

The report also finds that Amazon controls 40%-50% of the market for online shopping and has monopoly power over third-party sellers who compete for consumers with Amazon’s own products. Amazon is alleged to have increased and maintained its market dominance through acquiring competitors and exploiting its position as marketplace gatekeeper. In regard to Apple, the report notes the company’s market power in the mobile operating system market and Apple’s monopoly power in the mobile application store market. The report finds that Apple has discriminated against rivals and given an advantage to its own offerings while charging developers “supra-competitive prices with the App Store.”

In addition to the reports’ findings, the Committee also provided a series of recommendations focused on (1) “Restoring Competition in the Digital Economy,” (2) “Strengthening the Antitrust Laws,” and (3) “Reviving Antitrust Enforcement.” These recommendations include:

- Legislation to reduce conflicts of interest through structural separations and line of business restrictions.
- The report notes two potential forms of structural separation: “(1) ownership separations, which require divestiture and separate ownership of each business; and (2) functional separations, which permit a single

corporate entity to engage in multiple lines of business but prescribe the particular organizational form it must take.”

- Implementation of nondiscrimination rules requiring platforms to offer equal terms for equal service.
- Data interoperability and portability requirements to lower entry barriers and switching costs.
- Creation of a legal, rebuttable presumption that all acquisitions by a dominant platform are anticompetitive.
- Prohibiting the abuse of superior bargaining power, and creating due process protections for those dependent on the platforms.
- Codifying bright-line rules including structural presumptions to shift the burden of proof to merging parties in cases involving concentrated markets.
- Amending the Clayton Act to prohibit acquisitions that may lessen competition or tend to increase market power.
- Overriding the requirement that leveraging “actually monopolize” the second market, as set forth in *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447 (1993).
- Requiring written explanations for all enforcement decisions.
- Increasing the Federal Trade Commission and the Antitrust Division budgets.
- Eliminating court-created standards for antitrust injury and standing.
- Eliminating forced arbitration provisions and limits on class actions.
- Lowering the pleading requirements set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

Key Takeaway: The Subcommittee’s antitrust report shows a clear intent to increase enforcement and oversight of large technology platforms. Although no Republicans signed onto the report, Rep. Ken Buck, a Colorado Republican, who plans to issue a response later this week, stated in a [CNBC interview](#) that “it’s clear that there will be a bipartisan effort to make reforms in the antitrust area” and that “there is clearly a bipartisan conclusion that these companies are acting anticompetitively.”^[1] Regardless of the outcome of the coming presidential election, Congress appears poised to make sweeping changes to antitrust enforcement and legislation in the United States.

^[1] Ohio Representative Jim Jordan, is also expected to release his own report addressed the platforms’ purported bias against conservative viewpoints.

3 Min Read

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