



September 9, 2020

To: Chairman David Cicilline  
Ranking Member Jim Jordan

Re: Submission for the Record for the Online Platform Hearing

Dear Chairman Cicilline and Ranking Member Jordan,

In regard to your hearing held on July 29, 2020, entitled “Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google,” please find attached two editorials that we would like included on the Subcommittee’s website and repository. We submit these documents as a .pdf file.

The first editorial, entitled “Will the Antitrust Hearing Make Antitrust Great Again?” points out that a majority of surveyed antitrust experts oppose substantive statutory changes to the antitrust laws. Across the ideological spectrum, most scholars, including senior enforcement officials from both Republican and Democratic administrations, continue to support the longstanding consumer welfare standard as the touchstone for antitrust analysis. The second editorial, entitled “Why Breaking Up ‘Big Tech’ Would Only Make Communist China Stronger,” cautions that efforts to rewrite or manipulate antitrust law to dismantle Big Tech could lead to the United States ceding global technological leadership to China.

Thank you for your attention to this matter and please feel free to contact us should you have any questions.

Sincerely,

Asheesh Agarwal  
Deputy General Counsel  
TechFreedom

# Townhall

SEPTEMBER 8, 2020

## Will the Antitrust Hearing Make Antitrust Great Again?

**Asheesh Agarwal**

7/31/2020 12:01:00 AM - Asheesh Agarwal

Yesterday, the House Judiciary Antitrust Subcommittee held its long-awaited hearing with the CEOs of Amazon, Apple, Facebook, and Google. After much sound and fury, does the Subcommittee's investigation signify anything for the future of antitrust law or technology regulation? Probably not.

In fact, the investigation suggests that there's little support for changing the antitrust laws.

In response to the Subcommittee's inquiries, most surveyed antitrust experts opposed substantive statutory changes. Those scholars and law enforcement veterans argued that state and federal investigators already have the tools necessary to combat any anticompetitive conduct, free from political influence. These experts also cautioned that statutory changes could create legal uncertainty, discourage investment, and significantly damage the American economy.

At the hearing, most lawmakers expressed concern about issues that are well outside of antitrust law's scope — and should remain so: privacy, free speech, cooperation with the Chinese government, political influence, etc. Democratic lawmakers cried hate speech, while Republican lawmakers alleged anti-conservative bias. These concerns, most unrelated to the consumer welfare standard, could hamper efforts to build consensus for any new antitrust legislation.

When lawmakers inquired about actual competitive issues, they raised issues already subject to antitrust investigations. For example, lawmakers pressed Facebook about its purchase and integration of Instagram, Google about self-preferencing Google products in its search results, Amazon about its use of private labels to compete with other brands, and Apple about its app store commissions. According to news reports, all of these practices are being, or have been, investigated by the FTC, DOJ, or state AGs of both parties. Before generating support for meaningful antitrust legislation, Congress should let these investigations play out.

The Subcommittee's investigation also has introduced a new variable that could shield American tech companies from a full-frontal assault: China. Even as lawmakers interrogated Google about its work in China, several prominent Democrats have cautioned that overly aggressive antitrust enforcement could benefit China at the expense of American innovation and security. Senator Mark Warner [has advised](#) that if regulators “chop off the legs of Facebook and Google, that they might be replaced by Alibaba, Baidu, Tencent—companies that are totally enmeshed with the Chinese government in their global economic plan.” Likewise, Rep. Ro Khanna [has stated](#), “Look, what we don't want is the only big tech companies to be Chinese—Alibaba, Baidu and Tencent.” And

Congress isn't alone. The Departments of Justice and Defense have echoed such concerns in [filings](#) against another technology company.

Finally, substantive antitrust proposals also may face headwinds from the Trump administration. A major report issued by President Trump's Council of Economic Advisers [declares](#), "the best available evidence shows that there is no need to hastily rewrite the Federal Government's antitrust rules." Instead, the report argues that the ongoing investigations, as well as prior resolved cases, demonstrate that the enforcement agencies "are well equipped to handle the competition challenges posed by the changing U.S. economy."

In the next few days or weeks, Chairman Cicilline likely will release a report that describes the House majority's findings and recommendations. That report may well recommend fundamental changes to the antitrust laws. Nevertheless, expert feedback, blatant partisan disagreements, national security concerns, and ongoing investigations ensure one thing is for sure-- Congress is unlikely to change the antitrust laws anytime soon.

*Asheesh Agarwal is Deputy General Counsel and Competition Counsel at TechFreedom, a technology policy think tank.*

## TECHNOLOGY

# Why Breaking Up 'Big Tech' Would Only Make Communist China Stronger

*Efforts to punish or break apart tech companies for political reasons would harm American innovation and competitiveness while surrendering ground to China.*

As the United States considers the future of its largest technology companies, the economic and security threats from the People's Republic of China should definitely factor in any related calculations. President Trump has issued an executive order banning the popular social media app TikTok, out of concerns **China** is gathering data on millions of Americans. The Department of Defense has identified China as a "**strategic competitor**" that uses "**predatory economics**."

The China challenge could affect the raging debate over whether and how to regulate Big Tech. At a recent hearing before the House Antitrust Subcommittee, many members criticized Google, Apple, Facebook, and Amazon for their size and influence. Reps. Jared Nadler (D-N.Y.) and David Cicilline (D-R.I.) expressly called for the breakup of these companies.

Unfortunately, such calls ignore both the growing threat of Chinese technological competition and the proper function of antitrust law. To rewrite or manipulate antitrust law to dismantle Big Tech could very well cede global technological leadership to China. Whatever their faults, these are American companies subject to American laws that drive America's economy at home and soft power abroad. To disarm them unilaterally would be foolish.

The **Council on Foreign Relations** warns that the United States and China are competing for global technological dominance, and right now China is **closing the gap**. During the House hearing, Mark Zuckerberg pointed out that, "If you look at where the top technology companies come from, a decade ago the vast majority were American. Today, almost half are Chinese."

The Chinese government is driving these efforts. China has **strengthened** its "state-led approach to innovation, which uses licit and illicit means to achieve its goals." For

instance, China has coerced technological transfers by restricting foreign ownership, requiring joint ventures, stealing foreign technology, and threatening foreign companies with “dire consequences” if they adhere to the Trump administration’s ban on sales of key technologies.

Moreover, China strategically purchases technology companies to grow its superiority. **Chinese venture capital investment** has targeted sensitive areas such as “early-stage advanced technologies” to advance the government’s military and economic goals. In 2017, for example, Jack Ma’s Ant Group **tried to buy** U.S. money-transfer company MoneyGram for \$1.2 billion, but the deal was scuttled by national security concerns. China’s largest tech companies, Baidu, Alibaba, and Tencent, have acquired more than one dozen other companies **worth more than \$1 billion each**, including three in 2019 alone.

Given these concerns about national security and foreign competition, the United States should not rewrite its antitrust laws or stretch them beyond all recognition to break up Big Tech. Certainly, all companies, of any size and in any industry, must comply with our antitrust laws. Big Tech is no different. The United States should not designate these companies as “national champions” or give them a pass. If Google and Facebook conspire to fix prices for advertising rates, they should be prosecuted.

Overly aggressive antitrust enforcement, however, focusing on political rather than economic goals, could imperil America’s technological superiority. If Washington breaks up Big Tech, the world’s largest technology companies would be Chinese, not American. Those Chinese companies, rather than American companies, would have the most resources to acquire innovative start-ups.

In fact, any move to dismantle American technology companies could hamstring their ability to innovate. In 2018, Amazon, Google, Apple, and Facebook **collectively invested** more than \$35 billion in research and development. If dismantled, each smaller company would have fewer resources to invest and less financial cushion to take risks. Chinese companies would supplant their American counterparts as global leaders in investment and innovation.

The Department of Justice has recognized that overly aggressive antitrust enforcement can harm America’s national security. In a recent brief **filed** in support of a domestic chip manufacturer, DOJ explained that “a significant reduction in [the company’s]

technological competitiveness ... could seriously harm U.S. national security.” Moreover, such enforcement efforts “would impair unduly” the company’s ability to invest in research and development and to supply the military and other national security actors.

These concerns span the political spectrum. **Sen. Mark Warner** (D-Va.) **warns** if regulators “chop off the legs of Facebook and Google,” those companies “might be replaced by Alibaba, Baidu, Tencent — companies that are totally enmeshed with the Chinese government in their global economic plan.”

Rep. Ro Kanna (D-Calif.) has **said**, “I don’t think competition with China means, in any way, that we give tech a pass from antitrust enforcement ... What it does mean is that we need to be nuanced and strategic in how we strongly enforce antitrust law and not reflexively call for breakups of a company just because it’s big.”

Whatever their faults and mistakes, America’s Big Tech companies **subscribe** to American principles including the rule of law and due process, and to the Constitution. They are subject to jurisdiction in U.S. courts, house their data on American servers, and must cooperate with American law enforcement when served with a lawful process.

Even as we demand that all companies comply with existing antitrust laws, we must recognize that American technology companies underpin our national security and global competitiveness. Any effort to punish or break apart the technology companies for political reasons would, in effect, dismember the golden goose of American innovation and competitiveness and feed its carcass to the People’s Republic of China.

*Asheesh Agarwal works for TechFreedom, a 501(c)(3) non-profit that advocates for free-market principles in the technology sector and is supported with funding from foundations, corporations, and individuals. Asheesh formerly served as Mike Pence’s legal policy adviser during his campaign for governor in 2012. He currently lives in Indiana.*

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