Insight

Big Is a Bad Metric for Antitrust Reform

JEFFREY WESTLING | NOVEMBER 29, 2022

Executive Summary

- Some in Congress have been pushing for antitrust legislation designed to regulate large technology companies based solely on their size, rather than competitive considerations in the marketplace.
- Regulating companies based on size in highly dynamic technology markets ignores the fact that firms succeed and fail rapidly in the marketplace, reduces the efficiencies that come with size, and potentially neglects to regulate anticompetitive behavior from smaller firms.
- Instead of focusing on size, Congress should continue its antitrust enforcement against actual anticompetitive conduct from firms with monopoly power.

Introduction

Some in Congress have been pushing for significant changes to existing antitrust law to regulate large technology platforms such as Meta, Google, Amazon, and Apple based solely on their size. Regulating based on size, however, can lead to inconsistent and inefficient application of the law: Highly dynamic online marketplaces can see rapid changes as smaller firms quickly grow and large firms take risks to maintain their market position. Regulating firms based on size would likely punish only those companies whose risky investments pay off, thus dissuading firms from taking those risks at all. As a result, Congress could eliminate efficiencies that come with integration and allow firms that don't reach the specific size thresholds to engage in anticompetitive conduct.

Congressional Antitrust Legislation

Congress is currently considering a variety of proposals to regulate online markets. Among these bills are the American Innovation and Choice Online Act (AICOA), which would prohibit large technology firms from preferencing their own products and services in downstream markets, the Open App Markets Act, which would require firms to allow third party app stores and applications on devices, and the Journalism Competition and Preservation Act, which would allow news organizations to jointly negotiate with large technology firms for access to their content. While these bills regulate different aspects of online markets, they all stem from the belief that technology firms are inherently too large for competitive pressure to restrain monopolistic behavior.

Size Alone Is a Bad Metric for Antitrust Legislation

Using the relative size of firms as a justification for regulatory intervention could lead to poor outcomes. With AICOA, for example, legislators specifically designed the bill to target Meta and other technology firms legislators deemed too large to remain unregulated. Therefore, drafters set a market cap threshold of $550 billion for platforms to be covered by the provisions of the bill. It is important to note that Meta has recently fallen well below that market cap threshold, and would therefore not be covered by the provisions of the bill if the company’s market valuation remains below the threshold.

Meta could of course recover to meet the bill’s market cap threshold, but the ever-evolving dynamics of online markets illustrate why size alone is not a reliable guarantee of monopoly power: Firms are constantly attempting to innovate and grow, meaning that the relative status of competing firms is constantly in flux. Meta’s core service, Facebook Blue, has been begun losing subscribers and advertising revenues have declined. As a result, the company has shifted its focus to AR/VR technology, a gamble that involves significant risk. By focusing on firm size alone, Congress would ignore these dynamics in the market and instead arbitrarily punish companies whose risks and innovations pay off, regardless of the competitive effects of firms’ practices. If firms believe that success will be punished, they may avoid taking such risks, reducing innovation and development of new services.

Focusing on Size Can Ignore Actual Competitive Harms and Limit Consumer Benefits

By focusing on the size of firms, Congress could also discount the competitive effects of integration. On one end of the spectrum, large firms often create efficiencies that can be passed on to consumers, such as online retailers that provide shipping, handling, and storage for sellers in the marketplace at lower costs, app store developers that ensure only trusted applications can be accessed by consumers, and large search engines that use data to provide better results and more efficient advertising. These types of efficiencies may be neglected when legislation focuses entirely on the size of the firms. Meanwhile, current antitrust law can and does address the behavior of a firm that creates efficiencies but ultimately harms competition.

Focusing on large companies can also shift focus away from smaller firms whose conduct violates antitrust laws. Having a large market cap does not necessarily indicate that a firm has monopoly power in a market, and smaller firms can use anticompetitive means to harm competition and consumers, as well. Current antitrust standards allow for both regulators and private plaintiffs to bring claims against firms of any size if they violate the law. Modifying existing legal standards to focus on size alone could leave these smaller actors relatively under-scrutinized.