



Insight

Understanding the Latest “Big Tech” Antitrust Investigation News

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- The Federal Trade Commission recently requested information from the largest tech companies about their acquisition of smaller companies over the last decade, indicating that antitrust investigations continue and perhaps indicating their focus.
- Companies have a large number of reasons for acquiring smaller firms that have little to do with anticompetitive behavior, and likewise smaller companies might actively desire to be acquired.
- Consumer welfare, not assumptions that large firms are automatically harmful to competition, should be the core consideration of any antitrust action.

Introduction

On February 11, 2020, the [Federal Trade Commission \(FTC\)](#) issued a [6\(b\) order](#) to Alphabet (Google’s parent company), Amazon, Apple, Facebook, and Microsoft compelling them provide information about the acquisitions of smaller firms between 2010 and 2019. While large acquisitions and mergers, such as Facebook’s acquisition of Instagram, already have requirements for disclosures and are subject to FTC and Department of Justice review, the FTC can use this 6(b) order to gather additional information to study the kinds of transactions and their potential impact on competition.

This request for information will not in-and-of itself result in enforcement or legal action, but it does come in the midst of numerous antitrust investigations into the largest tech companies. In 2019, the [Federal Trade Commission \(FTC\)](#) and [Department of Justice \(DoJ\)](#) launched investigations into several of the largest tech companies, including Google, Apple, Facebook, and Amazon. The [House Committee on the Judiciary](#) has also been investigating questions of competition in this sector, as have 47 attorneys general involved in an antitrust [investigation of Facebook](#) and 50 attorneys general from 48 states, the District of Columbia, and Puerto Rico involved in a similar [investigation of Google](#). In addition to these investigations, politicians on both the left and right, including Senators [Elizabeth Warren \(D-MA\)](#) and [Ted Cruz \(R-TX\)](#), have called for “breaking up Big Tech.”

While this request for information does not mean antitrust enforcement actions are more immanent, it does indicate that the enforcement agencies are scrutinizing the acquisition of even small companies in the technology market. Congress, the FTC, and other agencies investigating potential antitrust concerns should evaluate mergers and other potential concentration concerns with an eye toward consumer welfare, not a predetermined policy goal about the appropriate firm size or the desire to regulate an industry more generally.

Why Small Technology Companies are Acquired

Why might the FTC be looking for information about these smaller acquisitions? Some critics have expressed concern that “Big Tech” companies are trying to squash potential competitors in their early phases rather than risk challenges to their existing platform dominance. Yet there are many reasons for such acquisitions beyond the idea that tech giants are seeking to silence potential competitors while still in the start-up phase.

In some cases, the smaller acquisitions provide companies a way to gain desired talent through “[acquiiring](#),” when a company incorporates the teams from its acquisition. In other cases, companies may be interested in [acquiring intellectual property](#) from a smaller company and integrating the technologies or using them to expand and diversify existing products. The end result can often be stronger or more diverse options for consumers well beyond the initial acquisition.

Not only are there non-anticompetitive reasons a large company may seek out these smaller acquisitions, but there are also reasons small companies might see them as an effective end goal. While some innovators and startups may seek to create an entirely new technology or product that challenges existing giants or shifts the market entirely, others create niche products or add-ons that improve on existing services that may be better realized or able to reach a wider customer base when integrated, and so they may see acquisition [as an ideal culmination of the company’s lifecycle](#). In these cases, consumers may appreciate the efficiency of having such services seamlessly integrated or of having additional options or products that would not have reached them from the smaller entity.

The Role of Antitrust Efforts and Maximizing Consumer Welfare

Amid all the calls to break up Big Tech has been a fundamental distrust of the size and power of the largest companies. As a result, some policymakers have spoken up about the importance of not pursuing antitrust enforcement against companies for political reasons or as a means to regulate the industry. For example, Representatives Doug Collins (R-GA) and Jim Sensenbrenner (R-WI), the ranking Republicans on the House Judiciary Committee and its Antitrust Subcommittee, respectively, [wrote in a letter](#) to Committee Chairman Jerry Nadler (D-NY) that they would not participate in an antitrust investigation into an industry that presumed its conclusion, namely, “America’s large tech companies are inherently bad, cannot be allowed to exist in society, and must be broken up.” Similarly, Democratic presidential hopeful and former New York City Mayor Mike Bloomberg [recently stated](#) that it is important that breaking up Big Tech companies not occur “just to be nasty” and that there needs to be “a good reason and how it would work.”

The [consumer welfare standard serves](#) as the “good reason” in antitrust enforcement as it appropriately looks at the impact on consumers and economic efficiency. So far, it is not apparent that there has been a harm to consumer welfare and many technology companies continue to innovate and are bringing real benefits to consumers. As the Mercatus Center’s [Adam Thierer and I have pointed out](#) regarding Facebook, consumers currently find benefits in many of these unpriced suites of services, and breaking apart these companies is unlikely to provide benefits that outweigh the harm to consumer welfare. Additionally, a [recent report by the Progressive Policy Institute](#) indicates that technology, communications/broadband, and ecommerce are among those engaged in the highest levels of capital investment and R&D. In such a highly dynamic and competitive field, consumers are likely to benefit quickly from the discoveries and improvements of these processes while large companies must continue to engage in such investment to compete and meet new consumer demands.

Shifting away from a policy approach that looks at consumer welfare would return the United States to an earlier era of antitrust enforcement. There are at least three key problems with a shift away from the current, more objective consumer-welfare approach. First, it would create uncertainty for companies about what is considered a violation of antitrust/competition laws. In the early days of antitrust enforcement, for example, large companies were [often uncertain](#) of how to prove their size alone was not harmful. Second, it could mean consumers lose out, as enforcement would focus on the number and impact on competitors rather than squarely on the impact to consumers. And third, it would [not solve the various policy concerns](#) expressed about technology such as data privacy or content moderation, and it risks intervening into a market for political reasons that has otherwise remained free and adaptive.

As a powerful tool, antitrust is useful, but it should be used to protect consumers from harms of anticompetitive practices. It should not be wielded under the presumption that big is bad or to achieve other policy goals such as those related to privacy or content moderation.

The Speed of Market Changes

The use of 6(b) orders likely will not be limited to antitrust questions in the technology sector. FTC Commissioners Christine S. Wilson and Rohit Chopra [suggested in a statement](#) regarding the recent 6(b) order that such studies might also be useful for similar competition and concentration questions in other industries as well as for consumer-protection issues related to data security and privacy.

Yet even when armed with more information, agencies should not rush to break up companies. It is important to remember that innovation can completely change the market and the nature of competition. Unpredictable changes such as the shift to smart phones or the public embrace of new platforms can often provide the best competition in technology. After all, about 20 years ago, we were debating whether AOL, Yahoo, and Nokia were [giants that could ever be toppled](#). History is replete with examples of innovation and low barriers to entry allowing creative entrepreneurs to provide consumers with a more desirable alternative. The conversation around Big Tech is likely to continue, but the focus should remain on what most benefits consumers.