Does America Have a Monopoly Problem?

Senate Judiciary Committee

Subcommittee on Antitrust, Competition Policy, and Consumer Rights

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Testimony of Robert B. Reich

Mr. Chairman and members of the Subcommittee,

My name is Robert Reich. I am Chancellor's Professor of Public Policy at the University of California at Berkeley. I served as Secretary of Labor in the Clinton administration, Director of Policy Planning for the Federal Trade Commission in the Carter Administration, and Assistant to the Solicitor General in the Ford Administration.

I am pleased to discuss with you the question whether America has a monopoly problem. My answer is it does. Let me explain.

Not long ago I visited some farmers in Missouri whose profits are disappearing. Why? Monsanto alone owns the key genetic traits to more than 90 percent of the soybeans planted by farmers in the United States, and 80 percent of the corn. Which means Monsanto can charge farmers much higher prices.

Farmers are getting squeezed from the other side, too, because the food processors they sell their produce to are also consolidating into mega companies that have so much market power they can cut the prices they pay to farmers.

This doesn't mean lower food prices to consumers. It means more profits to the monopolists.

Monopolies All Around

America used to have antitrust laws that stopped corporations from monopolizing markets, and often broke up the biggest culprits.

But antitrust has faded. The result has been hidden upward redistributions of money and power from the majority of Americans to corporate executives of and major investors in huge concentrations of economic power.

Consumers may believe they have lots of choices, but take a closer look and choices are far more constrained:

1. The four largest food companies control 82 percent of beef packing, 85 percent of soybean processing, 63 percent of pork packing, and 53 percent of chicken processing.

2. There are many brands of toothpaste, but 70 percent of all of it comes from just two companies.

3. Consumers may think they have their choice of sunglasses, but almost all sunglasses are from one company: Luxottica – which also owns nearly all the eyeglass retail outlets.

4. Practically every plastic hanger in America is now made by one company, Mainetti.

5. Cat food appears to come in many brands, but behind them are basically just two companies.

6. Consumers can get low-cost generic versions of pharmaceuticals. But drug companies in effect pay the makers of generic drugs to delay cheaper versions. Such "pay for delay" agreements are illegal in other advanced economies, but they are commonplace in America. They cost consumers an estimated $3.5 billion a year.

7. Health insurers are consolidating, too. Which is one reason health insurance premiums, copayments, and deductibles are soaring.

8. Anyone who thinks they have a lot of options for booking discount airline tickets and hotels online should think again. They have only two. Expedia merged with Orbitz, so that's one company. And then there's Priceline.

9. How about cable and Internet service? At most, consumers have a choice of just four companies; many consumers are served by just one or two.

10. Today, four airlines control 80 percent of domestic airline seat capacity. In 93 of the top 100 airports, either one or two airlines manage a majority of all seats sold.

11. What about choice of bank? The five biggest commercial banks now control nearly half of all banking assets, as well as ATM networks.

12. Three rating agencies control 95 percent of the market for rating bonds and other financial instruments: Moody's, Standard & Poor's, and Fitch.

The problem with all this consolidation is that giant firms don't have to compete very much, if at all. Which means they can – and do – raise prices higher than they'd be if they faced more competition.

But it's not just prices we should worry about.

Such consolidation can also depress wages. Workers with less choice of whom to work for have a harder time getting a raise.

When local labor markets are dominated by one major big box retailer, grocery chain, and a handful of fast-food restaurants, those firms essentially set wage rates for the area.[1] Researchers have found that wages drop when fewer employers in a geographic area list most jobs in an occupation.[2] Non-compete clauses can also hold down wages. [3]

These massive corporations also possess substantial political clout. That's one reason they're consolidating: They don't just seek economic power; they also seek political power.

Antitrust laws were supposed to stop what's been going on.

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[1] Arindrajit Dube, Alan Manning, Suresh Naidu, "Monopsony and Employer Mis-optimization Explain Why Wages Bunch at Round Numbers," NBER Working Paper No. 24991, September, 2018.

[2] Jose Azar, Ioana Marinescu, Marshall Steinbaum, "Labor Market Concentration," NBER Working Paper No. 24147, Revised February 2019.

[3] Alan Krueger and Eric :Posner, "A Proposal for Protecting Low-Income Workers from Monopsony and Collusion," Brookings Institution, February 27, 2018.

We've Forgotten History

In America's first Gilded Age, at the end of the nineteenth century, the public viewed with growing alarm the economic and political power of the huge railroad, steel, telegraph, and oil cartels – then called "trusts" – that were essentially running America. A handful of corporate chieftains who came to be known as "robber barons" presided over these trusts – collecting great wealth at the expense of workers who toiled long hours often in dangerous conditions for little pay. Corporations gouged consumers and corrupted politics.

America responded to these abuses of power with antitrust laws that allowed the government to break up the largest concentrations. Antitrust was viewed not only in narrow economic terms but also as a means of preventing giant corporations from undermining democracy. "If we will not endure a king as a political power," thundered Ohio's Senator John Sherman, the sponsor of the nation's first antitrust law in 1890, "we should not endure a king over the production, transportation and sale" of what the nation produced. (It is worth noting that when Congress enacted the Sherman Antitrust Act, no separate discipline called "economics" existed; the field was known as "political economy.")

Then in 1901 the progressive Republican reformer Teddy Roosevelt became President. By this time, the American public was demanding action. In his first message to Congress in December 1901, only two months after assuming the presidency, Roosevelt warned, "There is a widespread conviction in the minds of the American people that the great corporations known as the trusts are in certain of their features and tendencies hurtful to the general welfare." Roosevelt used the Sherman Antitrust Act to sue the Northern Securities Company, a giant railroad trust run by J. P. Morgan, the nation's most powerful businessman. The U.S. Supreme Court backed Roosevelt and ordered the company dismantled.

In 1911, John D. Rockefeller's Standard Oil Trust was broken up, too. But in its decision, the Supreme Court effectively altered the Sherman Act, saying that monopolistic restraints of trade were objectionable if they were "unreasonable" – and that determination was to be made by the courts. What was an unreasonable restraint of trade? In the presidential election of 1912, Roosevelt, running again for president but this time as a third party candidate, opined that some concentration of industries should be allowed where there were economic efficiencies due to large scale; but these firms should be regulated the public benefit. Woodrow Wilson, who ended up winning the election, and his adviser Louis Brandeis, took a different view. They didn't think regulation would work, and thought all monopolies should be broken up.

For the next sixty-five years, both views dominated. America had strong antitrust enforcement along with regulations that held big corporations in check. Most big mergers were prohibited. Even large size alone was thought to be a problem. In 1945, in the case of *United States v. Alcoa* (1945), the Supreme Court ruled that even though Alcoa hadn't pursued a monopoly, it had become one by becoming so large that it was guilty of violating the Sherman Act.

All this changed in the 1980s, after Robert Bork – with whom, incidentally, I studied antitrust law with at Yale Law School, and then worked for when he became Solicitor General under President Ford – wrote an influential book called *The Antitrust Paradox,* which argued that the sole purpose of the Sherman Act is consumer welfare. Bork believed that mergers and large size almost always create efficiencies that lower prices, and therefore should be legal. Bork's ideas were consistent with the conservative Chicago School of Economics, and found a ready audience in the Reagan White House.

Since then, even under Democratic administrations, antitrust has all but disappeared.

The Particular Problem of Big Tech

America's first Gilded Age began with a raft of innovations – railroads, steel production, oil extraction – but culminated in mammoth trusts. We're now in a second Gilded Age – ushered in by semiconductors, software and the internet – which has spawned a handful of giant hi-tech companies.

Nearly 90 percent of all internet searches now go through Google.[4] Facebook and Google dominate advertising, carrying 58 percent of all digital ads; Amazon accounts for 4.2 percent of the digital ad market.[5]

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[4] See Statcounter, http://gs.statcounter.com/search-engine-market-share/all/united-states-of-america. Google's parent company is Alphabet, but I will refer to Google in this testimony.

[5] Spencer Soper, "Amazon Inceases Ad Market Share at Expense of Google, Facebook," Bloomberg Technology, September 19, 2018.

Facebook and Google are also the first stops for many Americans seeking news (93 percent of Americans receive news online).[6] Apple dominates smartphones, with over 40 percent of the U.S. market.[7] Google's Android accounts for 55 percent of all smartphone operating systems in the U.S.; Apple's iOS, for 44 percent.[8] Amazon is now the first stop for a third of all American consumers seeking to buy *anything* – and responsible for an estimated 45 percent of all retail e-commerce in the United States.[9]

This consolidation at the heart of the American economy is contributing to five problems that go far beyond narrow concepts of consumer welfare.

First, it stifles innovation. Contrary to the conventional view of a US economy bubbling with inventive small companies, the rate at which new job-creating businesses have formed in the United States has been halved since 2004, according to the Census Bureau.[10] A major culprit: Big Tech.

Big Tech's sweeping patents and copyrights, huge and growing data collections, dominant networks and platforms, and capacities for predatory behavior -- combined with legions of lawyers ready to sue for infringement of intellectual property, or the poaching of employees -- have become formidable barriers to new entrants. The most that many startups can hope for is to be purchased by Big Tech; but in any such negotiations, Big Tech has the advantage of a monopsony.

The second problem is that such large size and gigantic capitalization translate into political power. They allow vast sums to be spent on lobbying, political campaigns, and public persuasion. To take one example, although the European Union filed fined Google a record $2.7 billion for forcing search engine users into its own shopping platforms, American antitrust authorities have not moved against the company.

[6] Darrell West, "How to Combat Fake News and Disinformation," Brookings Report, December 18, 2017.
[7] Statista, https://www.statista.com/statistics/273697/market-share-held-by-the-leading-smartphone-manufacturers-oem-in-the-us/
[8] Statista, https://www.statista.com/statistics/266572/market-share-held-by-smartphone-platforms-in-the-united-states/
[9] Statista, https://www.statista.com/statistics/788109/amazon-retail-market-share-usa/
[10] Emin Dinlersoz, "Business Formation Statistics: A New Census Bureau Product that Takes the Pulse of Early-Stage U.S. Business Activity," Census Blogs, February 8, 2018.

Why not? In 2012, the staff of the Federal Trade Commission's Bureau of Competition recommended that the Commission sue Google for conduct that "has resulted—and will result—in real harm to consumers and to innovation in the online search and advertising markets," but the commissioners chose not to pursue the case, and gave no explanation for their decision. As a former official of the commission, I can tell you it's unusual for the commissioners to decide against a staff recommendation without comment.

We can't be sure why the FTC chose not to pursue Google. After all, section 5 of the Federal Trade Commission Act of 1914 gives the Commission broad authority to prevent unfair acts or practices. One distinct possibility concerns Google's political power. It has one of the biggest lobbying powerhouses in Washington, and the firm gives generously to Democrats as well as Republicans.

A clearer example of an abuse of power was revealed last November when the *New York Times* reported that Facebook executives withheld evidence of Russian activity on their platform far longer than previously disclosed.

Even more disturbing, Facebook employed a political opposition research firm to discredit critics.[11] How long will it be before Facebook uses its own data and platform against critics? Or before potential critics are silenced even by the possibility? As the *Times's* investigation made clear, economic power cannot be separated from political power.

A third problem is the ease by which misinformation can be "weaponized" through these giant networks. Facebook attracts most of the criticism, but Google's YouTube is generating similar problems. A number of research and news reports have shown how easily YouTube users get sucked into conspiracy theories.[12] One recent study showed that after watching YouTube conspiracy videos, a significant number of people became skeptical that the earth is round.[13]

As long as Facebook and YouTube possess a virtual duopoly over information flows, the only choice for dealing with systematic misinformation flowing through these networks *appears* to be either

[11] Sheera Frenkel, Nicholas Confessore, Cecilia Kang, Matthew Rosenberg and Jack Nicas, "Delay, Deny and Deflect: how Facebook's Leaders Fought Through Crisis," New York Times, November 18, 2018.
[12] Jesselyn Cook, "5 of the Wildest Conspiracy Theories YouTube Promoted in 2018," Huffington Post, December 31, 2018.
[13] Ian Sample, "Study Blames YouTube for Rise in Number of Flat Earthers," The Guardian, February 17, 2019.

requiring that Facebook and YouTube regulate – and therefore censor -- what they consider to be misinformation, or having government do the regulating and censoring. Obviously, neither of these choices is desirable in a democracy. If government does the censoring, democracy would be directly threatened. But democracy would also be threatened if Facebook or Google did the censoring. What's to prevent them from using their power to suppress political views they disagree with?

The best alternative would be to end the information duopoly itself. Absent these networks, information (and misinformation) would have to be distributed through a large number of independent channels, without a centralized platform giving them apparent legitimacy and extraordinary reach.

Maintaining competition gets government out of the role of censorship. An analogy would be the Federal Communications Commission, which prohibits common ownership of a full-power broadcast station and daily newspaper if the station's reach encompasses the newspaper's city of publication, in order to maintain competition in communication markets.

The fourth problem is privacy. Big Tech is amassing huge amounts of data about the personal behavior of virtually everyone. The sheer quantity of data will soon become an entry barrier of its own, further entrenching the giants. Facebook's Mark Zuckerberg predicts that "Facebook will know every book, film, and song you ever consumed, and its predictive models will tell you what bar to go to when you arrive at a strange city, where the bartender will have your favorite drink waiting." Google's Eric Schmidt says, "you give us more information about you, about your friends, and ... we don't need you to type at all. We know where you are. We know where you've been. We more or less know what you're thinking about."[14]

Privacy is a cornerstone of personal freedom. As Senator Lee recognized in 2011,"the combination of behavioral and personal information enables Google to generate consumer data that is unprecedented in scale and scope. These activities raise serious privacy concerns and may be indicative of an important market that is largely unconstrained by competition. Antitrust enforcement may unlock

[14] See Shoshana Zuboff, The Rise of Surveillance Capitalism, 2019.

beneficial competition for the protection of user privacy and avert the need for additional privacy regulation."[15]

Which brings us to the fifth problem: The concentration of data, information, and power in a few giant corporations threaten to undermine civil society. As Senator Lee has said, "free enterprise and civil society operate in the natural human space — between the isolated individual and the impersonal state — where we live, and love, and flourish . . . where everyone can earn a good living and build a good life . . . where the strong and the vulnerable alike can pursue their happiness, and find it . . . together."[16]

But the Big Tech is undermining civil society. Consider, for example, the nonprofit sector, an essential part of civil society. Google is exercising its power to stifle criticisms coming from independent researchers in that sector. As reported by *The New York Times,* the New America Foundation, an influential think tank, fired researcher Barry Lynn, a sharp critic of platform monopolies like Google's. Why? Lynn had posted a congratulatory note to European officials on their Google decision, and called for American antitrust officials to follow suit. Since its founding in 1999, the New America Foundation received more than $21 million from Google (and its parent company, Alphabet) and from the family foundation of Eric Schmidt, the executive chairman of Alphabet who previously served as chairman of New America's board. According to the *Times*, Schmidt didn't like Lynn's comments and communicated his displeasure to the president of the New America Foundation. She then accused Lynn of "imperiling the institution as a whole," and fired him, along with his staff.[17]

Colleges and universities are another important cornerstone of civil society. Big Tech is threatening their independence and integrity as well. The *Wall Street Journal* reports that Google has quietly financed hundreds of professors at universities such as Harvard and Berkeley to write research papers that help Google defend itself against regulatory challenges to its market dominance -- paying them from $5,000 to $400,000 on a wish-list of topics developed by Google. Google uses the resulting research in courtrooms, regulatory hearings, and congressional hearings. Some professors have allowed Google to see the papers before they are published, enabling Google to offer "suggestions," according to emails obtained by the

[15] "Lee Calls for Antitrust Oversight Hearings on Google," Press Release, Senator Mike Lee, March 11, 2011.
[16] Senator Mike Lee, Remarks to Heritage Foundation's Anti-Poverty Forum, November 13, 2013.
[17] Kenneth Vogel, "Google Critic Ousted From Think Tank Founded by Google," New York Times, August 30, 2017.

Journal. The professors' research papers have not disclosed that Google sought them out, and do not necessarily reveal Google's backing.[18]

Big Tech is also undermining civil society by draining communities of their vibrancy and functions. Amazon draws customers away from local and retailers. Google and Facebook take advertising dollars away from local and regional media. Big Tech's social media platforms drain attention and interactions away social capital within our communities, on which voluntary civil society is built.

There is no easy answer to these five problems. They have become endemic to life in the twenty-first century. But I believe antitrust enforcement can help mitigate them. The biggest of Big Tech should be broken up, or at least be required to make their proprietary technology and data publicly available and to share their platforms with smaller competitors, and should be barred from further acquisitions. There would be little cost to the economy, since these giant firms rely on innovation rather than economies of scale – and, as noted, they're likely to be impeding innovation overall.

It's Time to Revive Antitrust

Antitrust is – or should be -- about more than welfare economics. The problems it should be addressing go far beyond helping individual consumers get the best possible deal for themselves.

Most fundamentally, antitrust is about maintaining a free market. As the late Robert Pitofsky, former chairman of the Federal Trade Commission, noted: "Antitrust is a deregulatory philosophy. If you're going to let the free market work, you'd better protect the free market."[19]

Antitrust is also about protecting and fostering civil society – robust communities in which individuals have multiple sources of information, deep connections to one another, roots in local and regional economies, abiding commitments to the institutions they share, and freedom from intimidation, whether from a giant government or giant corporations that know everything there is to know about them.

[18] Brody Mullins and Jack Nicas, "Paying Professors: Inside Google's Academic Influence Campaign," Wall Street Journal, July 14, 2017.
[19] Quoted in Sharon Walsh, "Going to Bat for the Trustbusters," Washington Post, April 13, 1995.

Freedom depends on a free enterprise economy *and* a voluntary civil society. Antitrust enforcement is the key to both.

It is time to revive antitrust.