



BIG TECH AND THE ANTITRUST LAWS

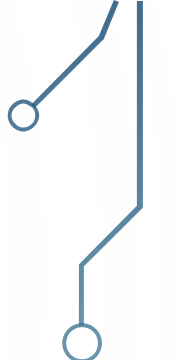

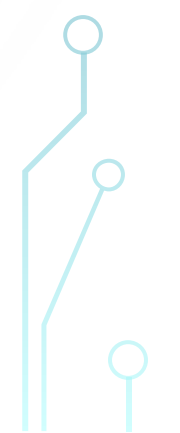
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*All opinions are our own, and do not necessarily reflect the views or opinions of
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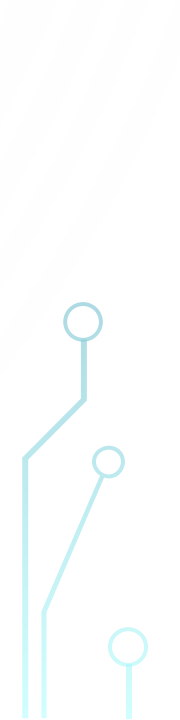


WHAT ARE THE ANTITRUST LAWS?

- Aggressive competition among sellers gives consumers—both individuals and businesses—the benefits of lower prices, better products and services, more choices, and greater innovation.
 - The antitrust laws promote and protect competition by preventing anticompetitive mergers and business practices.
 - The Antitrust Division of the Attorney General's Office enforces federal and state antitrust laws
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OVERVIEW OF KEY ANTITRUST LAWS

- Agreements that unreasonably restrain trade, including:
 - Price fixing and market or customer allocation
 - Concerted refusals to deal (group boycotts)
 - Tying arrangements (I'll sell you this only if you agree to buy this as well)
 - Monopolization (using your market power to engage in predatory or exclusionary conduct)
 - Anticompetitive mergers (*i.e.* Coke buying Pepsi)
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AGREEMENTS THAT RESTRAIN TRADE

- Section 1 of the Sherman Act

“Every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce...is declared to be illegal.”

- Consumer Protection Act, RCW 19.86.030

“Every contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is hereby declared unlawful.”

- Prohibits price fixing, bid rigging, market divisions, etc.

MONOPOLIZATION

- Section 2 of the Sherman Act

[U]nlawful for any person to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations"

- Consumer Protection Act, RCW 19.86.040

"It shall be unlawful for any person to monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of trade or commerce."

- Prohibits conduct that unreasonably excludes competition
- Note: It is not illegal to be a monopoly; what *is* illegal is acquiring monopoly power through competitively unreasonable conduct.

ANTICOMPETITIVE MERGERS

- Section 7 of the Clayton Act

prohibits mergers and acquisitions where the effect "**may be substantially to lessen competition**, or to tend to create a monopoly." A

- Consumer Protection Act, RCW 19.86.060

It shall be unlawful for any corporation to acquire, directly or indirectly, the whole or any part of the stock or assets of another corporation where the effect of such acquisition **may be to substantially lessen competition** or tend to create a monopoly in any line of commerce.

- Prohibits mergers or acquisitions of firms that compete head to head or constrain one another's conduct

PENALTIES AND RELIEF


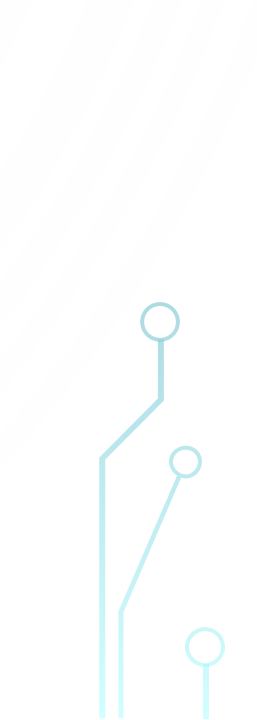
- Federal Law
 - Corporations: Fines of up to \$100 million
 - Individuals: \$1,000,000 and/or 10 years incarceration
 - Treble damages
- State Law
 - Consumer Protection Act
 - Monetary recovery for state agencies and consumers
 - Civil penalties: \$180,000 for individuals, \$900,000 for corporations
 - Injunctive relief
 - Criminal Law
 - Gross misdemeanor for certain bidding violations

WHO ENFORCES THE ANTITRUST LAWS?

- Department of Justice Antitrust Division
 - Criminal and Civil Cases
- The Federal Trade Commission
 - Civil and administrative cases
- State attorneys general
 - Criminal and (mostly) Civil
- Private parties
 - Individual or class Actions



DIFFERENCE BETWEEN FEDERAL AND STATE LAWS

- Violations under state law generally track federal, with some exceptions.
 - Sometimes you can't file a lawsuit under federal law, but you can under state law.
 - Remedies available
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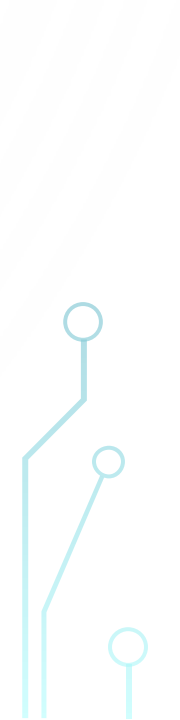
ANTITRUST INVESTIGATIONS IN BIG TECH

- House Judiciary Antitrust Subcommittee Investigation in 2019:
 - 1) Facebook
 - 2) Google
 - 3) Amazon
 - 4) Apple
- Lasted 16 months, 1.3 million documents, interviews with numerous witnesses, testimony from the CEO of each of the companies resulted in 450 page report.




ANTITRUST INVESTIGATIONS IN BIG TECH

Findings and Conclusions:

- All four corporations evolved from being scrappy startups to monopolies with substantial market power.
 - Gatekeepers of commerce and communications in the digital age.
 - Abuse their power by charging high fees, imposing oppressive contract terms and extracting valuable data from people and businesses that rely on them.
 - Result is less innovation, fewer choices for consumers and decreased privacy protections.
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FACEBOOK

- Monopoly power in the social networking market through its family of products: 
- Controls 3 of the top 7 apps used in US and ~ 2.47B daily average users, more people spend time on FB apps than other social media platforms.
- No viable alternatives to FB; high switch costs for users.
- *State of New York, et al v. Facebook (2020)* – State led challenge against FB monopoly



Google

- Nearly **90%** of online searches in the U.S. conducted through Google.
- Majority of revenues comes from advertisement on the internet.
- Monopoly over general online search and search advertising markets.
- Maintain monopoly through anticompetitive conduct:
 - Contracts that make Google the default search provider on mobile and desktop devices
 - Agreements that prohibit pre-installation of competing search services


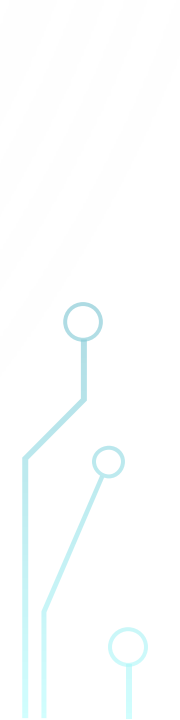


Current Lawsuits:

- *State of Colorado et al v. Google, LLC (2020)*
- *United States v. Google, LLC (2020)*



CONSUMER REPORT SURVEY ON ONLINE PLATFORMS


- **81%** Very concerned or somewhat concerned about the amount of data platforms hold and acquire about them.
 - **58%** Not confident they are getting objective and unbiased search results when using online platform to shop or look up information.
 - **46%** Have difficulty distinguishing between a paid ad and an objective search result.
 - **79%** Think that mergers and acquisitions made by large platforms are unfair because they undermine competition and limit consumer choice.
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IS ANTITRUST ENOUGH?

- The antitrust laws have primarily developed through court decisions and the adversarial process; through this process, at least in theory, we can reach the “right” decisions
- The jury is perhaps still out on Big Tech
- Pros and cons to amending statutes
- Review, self-assess, report out
 - Hearings (Congressional and enforcer led)
 - Workshops
 - Studies, scholarly commentary,



IS ANTITRUST ENOUGH?

- The antitrust laws can be a potent tool for harms they're intended to address, but a blunt object for harms they're not
 - Other areas of law may be more on point
 - Consumer Protection Laws that prohibit unfair or deceptive practices or practices
 - Environmental laws
 - Civil rights laws
 - New legislation
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RESOURCES

- Antitrust law guides

- [WA AGO Guide to the Antitrust Laws](#)
- [FTC's Guide to the Antitrust Laws](#)
- [Antitrust Laws and You](#)

- Enforcement

- [Federal Trade Commission Bureau of Competition](#)
- [Department of Justice Antitrust Division](#)
- [National Association of Attorneys General Antitrust Task Force](#)

- Statutes

- [The Washington State Consumer Protection Act](#) (RCW 19.86)
- [The Sherman Antitrust Act](#) (15 U.S.C. §§ 1-7)