

# Addressing the Impact of Antitrust Laws on Market Power in the United States During the Digital Age: Progress or Illusion?

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IE International Policy Review - Policy of the Month

December 18, 2024

## Introduction

Antitrust laws in the United States have a crucial role in preventing abuses of market power — promoting competition and preventing monopolies. For this reason, it is essential to note that recent and aggressive regulatory reforms of antitrust laws have reflected the need to adapt to the rapidly changing digital economy, with the goal of ensuring consumer welfare and equitable market access. While the recent antitrust reforms in the United States mark a significant step toward curbing the dominant position in the digital market economy, they remain insufficient to address the evolving dynamics characterising new digital monopolies. This article argues that an effective antitrust strategy would require enough flexibility to best adapt to an increasingly concentrated and evolving marketplace where it is essential to safeguard consumer welfare, promote competition, and ensure equitable market access.

## Background

An in-depth analysis of their roots of antitrust laws needs to be conducted to understand their developments in the United States. Their origins trace back to the late 19th century, a period characterised by rapid industrialization that made the country the birthplace of numerous powerful monopolies. The 1890 Sherman Antitrust Act was the first federal legislation to restrain monopolistic practices. Article 2 of the Act forbids monopolies or efforts to monopolise interstate commerce; Article 1 of the Act forbids the anticompetitive agreements with the scope of restricting trade.<sup>1</sup> Moreover, the Act established the federal government's commitment to ensuring free competition and preventing market power concentration<sup>2</sup>.

Nevertheless, the Sherman Act had limitations. For this reason, the U.S. Congress introduced the Clayton Antitrust Act in 1914 to strengthen antitrust enforcement. The Act addressed missing practices in the Sherman Act, such as exclusive dealings, price discrimination, and mergers that may substantially lessen competition<sup>3</sup>. The Clayton Act included article tackling the enforcement of antitrust laws, together with specifying provisions allowing private parties to sue for treble damages, if harmed by anticompetitive conducts<sup>4</sup>. During that same year, the Federal Trade Commission (FTC) was established as a dedicated agency aiming at monitoring and enforcing antitrust laws. The FTC created an ad hoc framework that

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<sup>1</sup> Hovenkamp, H. *Federal Antitrust Policy: The Law of Competition and Its Practice*. West Academic Publishing, 2019.

<sup>2</sup> Peritz, R. J. *Competition Policy in America: History, Rhetoric, Law*. Oxford University Press, 1996.

<sup>3</sup> Areeda, P. E., & Hovenkamp, H. *Antitrust Law: An Analysis of Antitrust Principles and Their Application*. Wolters Kluwer, 2017.

<sup>4</sup> Lande, R. H. Wealth Transfers as the Original and Primary Concern of Antitrust: The Efficiency Interpretation Challenged." *Hastings Law Journal*, 34, no. 65, (1982),

[https://repository.uclawsf.edu/hastings\\_law\\_journal/vol34/iss1/2/](https://repository.uclawsf.edu/hastings_law_journal/vol34/iss1/2/)

outlaws unfair competition methods, substantially enhancing the ability of the government to promote fair competition and regulate.<sup>5</sup>

### **Purpose and Goals of Antitrust Laws**

The essential function of Antitrust Law must be discussed to comprehend the need for its implementation in the U.S. The U.S. Department of Justice (DOJ) states that antitrust laws, such as price-fixing, target monopolisation and anti-competitive agreements among competitors<sup>6</sup>. Antitrust laws seek to increase market efficiency by destroying monopolistic activities, this in turn, encourage innovation, raises the quality of products, by fostering competition among companies to offer better features and performance to attract consumers, and eventually results in cheaper customer costs<sup>7</sup>.

In addition to merely regulating the market, antitrust laws are essential for advancing economic justice and equity. Antitrust rules are crucial for maintaining consumer choice and economic dynamism by limiting excessive market power and enabling smaller businesses to compete effectively<sup>8</sup>. The significance of these rules increases as the economy changes, particularly in the digital era, where companies like Amazon, Google, and Facebook have amassed significant market power. The need for strict implementation of antitrust rules to safeguard consumer welfare is highlighted by recent studies showing that increased market concentration has resulted in lower innovation and higher consumer pricing<sup>9</sup>.

### **Recent Regulations and Affected Companies**

As the regulatory framework continuously evolves with new regulations aimed at increasing transparency, and ensuring fair labour practices, this section will discuss recent key regulations and investigations.

Firstly, the Corporate Transparency Act (CTA), effective from January 1, 2024, aims to prevent illegal activities by making it more difficult for individuals to hide ownership of entities. Any company, with some exceptions, operating in the US must report detailed information regarding their beneficial ownership – names, identification numbers, and addresses– to the Financial Crimes Enforcement Network (FinCEN).

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<sup>5</sup> Federal Trade Commission (FTC). “The FTC Act.” 2020. Retrieved from <https://www.ftc.gov/legal-library/browse/statutes/federal-trade-commission-act>.

<sup>6</sup> *Ibid.*

<sup>7</sup> Carlton, D. W., & Perloff, J. M. *Modern Industrial Organization*. Pearson, 2005.

<sup>8</sup> Klein, J. *The Role of Antitrust in the Digital Economy*. Harvard Law Review, 2022.

<sup>9</sup> Baker, Jonathan B. *The Antitrust Paradigm: Restoring a Competitive Economy*. Cambridge, MA: Harvard University Press, 2019.

The Chamber of Commerce highlights that "the CTA represents a significant step towards enhancing corporate transparency and combating financial crimes"<sup>10</sup>.

Secondly, with the recent rise of Artificial Intelligence (AI), the Federal Trade Commission (FTC) has initiated an investigation into AI collaboration and investments by major tech companies. The FTC has expressed concerns about the potential abuse of power by companies such as Amazon, OpenAI, and Microsoft aiming at suppressing innovation in the market. Such concerns can lead to new regulatory measures to prevent anti-competitive practices like tying, bundling, and exclusive agreements in this industry. These measures can be achieved through increased scrutiny and enforcement by regulatory bodies like the FTC, implementing stricter guidelines and monitoring for mergers and acquisitions, and mandating transparency in business practices. The American Bar Association notes that "the FTC's increased focus on AI collaborations signifies a broader effort to ensure competitive fairness in the rapidly evolving technology sector"<sup>11</sup>. To highlight the broader implications for antitrust enforcement in the digital age, the FTC and a coalition of state attorneys general have recently filed lawsuits against Meta Platforms, Inc. –formerly Facebook–, alleging that the company has engaged in anti-competitive practices to maintain its monopolistic position in the social networking market. Thus, violating section 2 of the Sherman Act, which prohibits attempts to monopolise. Therefore, to restore competitive conditions in the market, they are proposing structural changes, such as separating Instagram and WhatsApp from Meta<sup>12</sup>. This would help by reducing Meta's dominance in the social networking market, fostering more competition, and allowing Instagram and WhatsApp to operate independently. This could lead to increased innovation and better services for consumers as each platform would strive to attract users without Meta's overarching control.

Due to the distinctive nature of their business models, which rely on network effects, data gathering, and platform dominance to sustain market power, large digital corporations frequently evade the provisions of current antitrust laws. Because they were created before the emergence of the digital economy, traditional antitrust frameworks need to be prepared to handle these contemporary issues. For example, companies like Google and Meta exploit vast user data to manipulate markets, impede competition, and create entry barriers—tactics not anticipated by traditional antitrust laws like the Sherman and Clayton Acts. These laws focus on overt practices like price-fixing and anti-competitive mergers but are less effective

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<sup>10</sup> U.S. Chamber of Commerce. "Corporate Transparency Act: A New Era for Corporate Governance." 2023.

Retrieved from: <https://www.uschamber.com/co/start/strategy/small-business-corporate-transparency-act>

<sup>11</sup> American Bar Association. "The FTC's Approach to AI Regulation and Antitrust Concerns." *ABA Journal* (2023): [https://www.abajournal.com/#google\\_vignette](https://www.abajournal.com/#google_vignette)

<sup>12</sup> Federal Trade Commission. "FTC Alleges Facebook Resorted to Illegal Buy-or-Bury Scheme to Crush Competition After String of Failed Attempts to Innovate." 2021, <https://www.ftc.gov/news-events/news/press-releases/2021/08/ftc-alleges-facebook-resorted-illegal-buy-or-bury-scheme-crush-competition-after-string-failed>

against subtler, data-driven tactics. Recent prosecutions against Meta are often reactive, highlighting the need for updated laws that proactively address data use and platform dominance in the digital era.

Lastly, 2024 The Department of Labor's (DOL) Independent Contractor Rule, has the purpose of ensuring that workers receive appropriate benefits and protections under labour laws. This rule introduces a six-factor "economic realities" to determine if a worker qualifies as an independent contractor under the Fair Labor Standards Act (FLSA). McLane Middleton reports that "the new rule will likely have far-reaching implications for the gig economy, fundamentally altering the employment landscape for millions of workers"<sup>13</sup>. This rule significantly impacts freelance work-related companies like Uber and other companies that rely heavily on contract labour. According to the DOL, this rule aims to reduce the misclassification of workers, thereby increasing employer benefits. Although the classification of workers is the explicit focus of this FLSA rule, antitrust laws are also touched upon by its consequences. Companies that choose not to offer employee benefits may gain unfair competitive advantages due to worker misclassification, which will distort market competition. The latter occurs because fair practices are undermined, and other businesses are pressured to adopt similar cost-cutting methods because of the distortion of market competition. This ultimately conflicts with antitrust principles, whose aim is to preserve competitive fairness.

### **Policy Recommendations to Enhance Antitrust Measures**

To address the evolving landscape of monopolistic practices in the digital age, U.S. antitrust policies need to evolve to a multifaceted approach that goes further than the traditional regulatory frameworks. There is a good base already established. However, one key recommendation is to enhance the enforcement capabilities of already existing antitrust agencies, such as the FTC and DOJ. The aforementioned can be achieved by increasing their resources and budget, for instance, increasing their budget by 30-50% would create the opportunity to hire more technical experts and investigators to address the complexities of digital markets and AI-driven monopolies. The government can more effectively scrutinise and challenge the rapidly evolving sectors' anti-competitive practices by equipping these agencies with the necessary tools and expertise. However, this increase in funding must be balanced against other budgetary priorities, ensuring that it does not excessively penalize other critical agencies. Now, depending on the current administration stance towards regulatory enforcement and market competition, these policies would align or not with their priorities. Highlighting the fact that during Trump's last presidency, there was a significant tendency

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<sup>13</sup> McLane Middleton. "Department of Labor's Independent Contractor Rule: Implications for the Gig Economy." Retrieved from McLane Middleton Website, 2023. Retrieved from: <https://www.mclane.com/insights/departement-of-labor-proposes-new-rule-to-change-independent-contractor-classificationagain/>

towards deregulation and reducing the size of federal agencies, all of which might conflict with the proposed increase<sup>14</sup>.

Another crucial policy suggestion is to update antitrust laws to address the difficulties faced by platform-based companies and data monopolies specifically. To illustrate, amendments to the Sherman Antitrust Act would prohibit the use of data dominance to stifle competition. Moreover, updates to the Clayton Antitrust Act would introduce criteria for evaluating mergers involving significant data assets and expand protections against discriminatory data practices. In addition, enhancing the Federal Trade Commission Act would define the misuse of data as an unfair competitive method, empowering the FTC to act effectively against anti competitive data practices. The exploitation and management of data as a form of market power is frequently overlooked by the current standard antitrust frameworks. In order to prevent dominant corporations from using their enormous data resources to suppress competition, new laws should be developed to regulate the use, gathering, and exchange of data.

Furthermore, there are still prevalent exploitative practices in the gig economy. To tackle them, U.S. policies must redefine the criteria for workers classification and ensure that gig workers receive benefits and fair wages. The DOL's Independent Contractor Rule is a step in the right direction. Nevertheless, it requires robust enforcement and additional measures to prevent companies from misclassifying employees to evade labour laws. Policymakers should consider implementing minimum wage guarantees, benefits packages, and collective bargaining rights for gig workers. These reforms would help level the playing field, ensuring that all workers, regardless of employment status, are protected and fairly compensated.

By adopting these recommendations, the U.S. can fortify its antitrust framework, promoting a fair and competitive marketplace that keeps up with technology developments and shields customers from the adverse effects of monopolistic behaviour.

## **Conclusion**

A step in the right direction is the phrase that characterises recent antitrust measures in the U.S. However, they may not yet be entirely sufficient to counter the market power wielded by today's dominant corporations. With the rise of digital and AI-driven markets, traditional approaches to antitrust regulation often fall short, highlighting a shift in the landscape of monopolistic practices. Recent policies such as the CTA and the FTC's investigation of AI corporations? show the U.S. policymakers' willingness to adapt.

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<sup>14</sup> Hernandez, Selden. "EPA under a Second Trump Presidency: The Good, Bad, and Ugly." McGlinchey Stafford PLLC, November 6, 2024.

<https://www.mcglinchey.com/insights/epa-under-a-second-trump-presidency-the-good-bad-and-ugly/>.

Nonetheless, there is a need for a more robust enforcement mechanism to both efficiently and effectively dismantle barriers created or threatened by influential firms that have risen from the digital era.

Keeping this regulatory proactive, adaptive momentum is of the utmost importance. Having a robust antitrust framework is key for both democracy and the economic health of the nation. Thus, current policies must expand and address the new emerging anti-competitive behaviour—data monopolies and exploitative independent contractor models—which traditional antitrust laws do not adequately do.

Policies must evolve beyond simply punishing monopolistic practices to fostering an environment incentivizing competition. Without this ongoing commitment, we risk entrenching inequality and limiting consumer choice, further tilting the scales in favour of those with significant market power.

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