Congress releases blockbuster tech antitrust report

The House Judiciary Committee has released its conclusions on whether Amazon, Facebook, Apple, and Google are violating antitrust law. Its 449-page report criticizes these companies for buying competitors, preferencing their own services, and holding outsized power over smaller businesses that use their platforms. “Our investigation revealed an alarming pattern of business practices that degrade competition and stifle innovation,” said committee member Val Demings (D-FL). “Competition must reward the best idea, not the biggest corporate account. We will take steps necessary to hold rulebreakers accountable.”

The majority’s report lays out a number of concrete policy recommendations, which, taken together, would drastically change how the tech industry operates. It urges Congress to consider passing commercial nondiscrimination rules that would make large companies offer equal terms to companies selling products and services on their platforms. It recommends barring certain dominant platforms from competing in “adjacent lines of business” where they’d have a huge advantage.

“To put it simply, companies that once were scrappy, underdog startups that challenged the status quo have become the kinds of monopolies we last saw in the era of oil barons and railroad tycoons,” the report says. “By controlling access to markets, these giants can pick winners and losers throughout our economy. They not only wield tremendous power, but they also abuse it by charging exorbitant fees, imposing oppressive contract terms, and extracting valuable data from the people and businesses that rely on them.”

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Most broadly, it suggests that Congress define a new standard for antitrust violations, declaring that the laws should be “designed to protect not just consumers, but also workers, entrepreneurs, independent businesses, open markets, a fair economy, and democratic ideals.”

The report was delayed amid political disagreements in Congress. *The New York Times* reported that Republicans split with the Democratic majority over proposed solutions to monopolistic behavior and that they were upset the report didn’t discuss claims that tech companies discriminate against conservative users. Rep. Ken Buck (R-CO) circulated an alternative report that described some Democratic proposals as “non-starters for conservatives.” Although there’s bipartisan demand for reducing the power of the biggest tech companies, the committee failed to settle on a single vision of how to move forward.

Buck’s report, titled “The Third Way,” comes to some of the same conclusions. It praises the majority for proposing “additional resources and tools” for antitrust regulatory agencies, including changes to the standard for anticompetitive effects, but it breaks with the primary report on a number of issues, like the nondiscrimination rules. “I agree with about 330 pages of the majority report, that these tech companies have been acting anti-competitively,” Buck told *Axios.* “It’s very common for Republicans and Democrats to agree on a problem and offer different solutions to solve a problem.”

Platforms face a ‘core conflict of interest’
The majority recommendations could have sweeping consequences for the biggest tech companies. They would restrict which lines of business dominant companies could operate in, potentially severing many of the companies into separate entities. Non-discrimination rules would regulate platforms

like Facebook, YouTube, and Amazon more like cable companies and phone networks.

While severe, these actions would prevent tech companies from outflanking competitors on their own platforms — and more importantly, using their privileged position on those platforms to gain an unfair advantage. “By functioning as critical intermediaries that are also integrated across lines of business, the dominant platforms face a core conflict of interest,” the report reads. “The surveillance data they collect through their intermediary role, meanwhile, lets them exploit that conflict with unrivaled precision.”

Lawmakers also recommend a higher bar for acquisition by dominant tech companies, spurred on by the hundreds of acquisitions listed in the report’s appendix. To balance the playing field, the report suggests a shift in presumption for any merger submitted by a major tech company. “Under this change, any acquisition by a dominant platform would be presumed anticompetitive unless the merging parties could show that the transaction was necessary for serving the public interest,” the report reads.

A much higher bar for mergers

Underlying all of it would be more vigorous enforcement of antitrust law, enabled by targeted changes to existing statutes. In particular, the report asks Congress to restate existing antitrust laws, “clarifying that they are designed to protect not just consumers but also workers, entrepreneurs, independent businesses, open markets, a fair economy, and democratic ideals.” If endorsed by Congress, these changes would empower more aggressive anti-monopoly actions far beyond the tech industry, overturning the consumer welfare standard that has guided US antitrust law for 40 years.

“As they exist today, Apple, Amazon, Google, and Facebook each possess significant market power over large swaths of our economy. In recent years, each company has expanded and

exploited their power of the marketplace in anticompetitive ways," Judiciary Committee chair Jerrold Nadler (D-NY) and antitrust subcommittee head David Cicilline (D-RI) said in a statement. "Our investigation leaves no doubt that there is a clear and compelling need for Congress and the antitrust enforcement agencies to take action."

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