

“This is a very dangerous situation”: Big Tech’s day on the Hill



Enlarge / Amazon CEO Jeff Bezos testifies (remotely) before the House Judiciary Subcommittee on Antitrust, Commercial and Administrative Law hearing on “Online Platforms and Market Power” in the Rayburn House Office Building on Capitol Hill in Washington, DC on July 29, 2020.

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A bevy of tech’s biggest titans—Alphabet CEO Sundar Pichai, Amazon CEO Jeff Bezos, Apple CEO Tim Cook, and Facebook CEO Mark Zuckerberg—all took to their remote offices Wednesday to

dial into a hotly anticipated Congressional hearing, the latest part of an in-depth investigation into their firms' behavior that began more than a year ago.

The almost six-hour hearing was nominally convened to talk about antitrust enforcement, and it had two core questions at its heart. First: do the biggest, globe-spanning US tech companies have too much power in the market? And second: did they come by the power they do have honestly, or did they somehow cheat to get it?

House Antitrust Subcommittee Chairman Rep. David Cicilline (D-R.I.) focused his opening remarks on how bipartisan the investigation process has been to date before sketching out his belief that all four companies present have behaved anticompetitively, become monopolies, and caused harm both to consumers and the entire democratic project writ large.

"When everyday Americans learn how much of their data is being mined, they can't run away fast enough," Cicilline said. "But in many cases, there is no escape from the surveillance, because there is no alternative. People are stuck with bad options.

"As gatekeepers of the digital economy, these platforms enjoy the power to determine winners and losers, to shake down small businesses and enrich themselves while choking off competitors," said Cicilline. "Their ability to dictate terms, call the shots, upend entire sectors, and inspire fear represents the powers of a private government. Our founders would not bow before a king, nor should we bow before the emperors of the online economy."

"Being big is not inherently bad," Ranking Member Jim Sensenbrenner (R-Wis.) added in his opening remarks, but the platforms can still have deleterious effects on the marketplace. "My colleagues and I have a great interest in what your companies do with [their] accumulated power.

“Conservatives are consumers, too, and they need the protection of the antitrust laws,” Sensenbrenner said, hinting at the argument most of his Republican colleagues would later make. “The power to influence debate carries with it remarkable responsibilities, so let the facts be our guide here. Your companies are large; that’s not a problem. Your companies are successful; that’s not a problem, either. But I want to leave here with a more complete picture of how your companies use their size, success, and power and what it means to the American consumer.”

All four CEOs in their opening statements (Apple, Amazon, Facebook, Google) strived to position themselves as plucky American success stories, job creators, drivers of economic success, and necessary alternatives to China, but they also argued their companies face intense competition on all sides.

Both the lawmakers and the witnesses stayed roughly on topic to begin with. But once the question-time portion of the festivities began, suddenly everyone had a pet issue to dig into. Democrats by and large tended to focus on issues related to competition, while Republicans zeroed in on alleged bias, leading the proceeding to feel almost like two overlapping hearings struggling to occupy the same moment in space-time.

On gatekeeping

Last year, as the antitrust investigation ramped up, the subcommittee requested decades’ worth of internal documents from all four companies. Damning passages from those documents took center stage as the lawmakers challenged the CEOs about competition—and the lawmakers brought receipts.

During questioning, members of the committee zeroed in on the ways the four companies have been accused of stifling other businesses in the space. “Over 85 percent of all online searches go through Google,” Cicilline said to Pichai, as soon as questioning started. “Numerous businesses told us that

Google steals their content and privileges its own sites in ways that profit Google but crush everyone else... Did Google ever use its surveillance over Web traffic to identify competitive threats?"

Pichai tried to dodge the question, responding, "Just like other businesses, we try to understand trends from data, which we can see, and we use it to improve our products for users."

Later, House Judiciary Committee Chairman Jerrold Nadler (D-N.Y.) returned to press the issue harder, to which Pichai again hedged, "Just like other businesses, we try to understand trends from, you know, data, which we can see, and we use it to improve our products for users."

"What's to stop Apple?"

Apple, too, faced accusations that it could leverage its data against potential competition.

Rep. Hank Johnson (D-Ga.) took Cook to task over the walled garden of the App Store and challenged Apple's ability to play gatekeeper and gather app distribution data even though its own first-party apps compete against third-party App Store offerings.

"With over 100 million iPhone users in the United States alone, and with Apple's ownership of the App Store giving Apple the ability to control which apps are allowed to be marketed to Apple users, you hold immense power over small businesses to grow and prosper," Johnson said. The rules of the store can be opaque and are "arbitrarily enforced," he went on, and iOS app developers have no choice but to roll with it. "Does Apple not treat all app developers equally?"

"We treat every developer the same," Cook replied. "We have open and transparent rules."

The committee, however, obtained emails showing that Apple

agreed to halve its fee for revenue generated through Amazon's apps. Apple likewise waives its cut for certain streaming video services in exchange for those developers agreeing to integrate certain Apple features into their apps.

"What's to stop Apple from increasing its commission to 50 percent?" Johnson asked.

"We have never increased commissions in the store since the first day it operated," Cook responded, denying that there was no mechanism for preventing it. "There is a competition for developers just as there is a competition for customers. They could develop their app for Android or Windows or Xbox or Playstation... so competitive I would describe it as a street fight for market share in the smartphone business."

Several members pressed Amazon about its use of data generated by third-party merchants who use its marketplace as a selling platform.

"You've referred to third-party sellers today as Amazon's 'partners' and said that your success depends on their success," Rep. Lucy McBath (D-Ga.) said to Bezos. "But over the past year, we've heard a completely different story."

Small-business owners that spoke with the committee members described their relationship with Amazon using words such as "bullying," "fear," and "panic," McBath went on, before she played back a recording of a bookseller whose Amazon marketplace business was allegedly delisted in 2019 in retaliation for becoming too large.

Rep. Pramila Jayapal (D-Wash.) echoed the charge. "You have access to data that your competitors do not have, so you might allow third-party sellers onto your platform," she explained to Bezos. "But if you are continuously monitoring the data to make sure that they're never going to get big enough that they can compete with you, that is actually the concern that the committee has."

Jayapal concluded:

The whole goal of this committee's work is to make sure that there are more Amazons, that there are more Apples, that there are more companies that get to innovate and small businesses that get to thrive, and that is what we're trying to get at—that is why we need to regulate these marketplaces—so that no company has a platform so dominant that it is essentially a monopoly.

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