



A New Economic Lens For Exploring the Negative Effects of Digital Platform Antitrust Legislation on American Small Businesses

Cameron D. Miller, Syracuse University
Richard D. Wang, Babson College

White Paper

May 2022

Summary

During the past few years, much of Washington - from Congress to the White House, Federal Trade Commission (FTC), and Department of Justice (DOJ) - has viewed very large tech companies, commonly referred to as “Big Tech,” through an “antitrust lens,” and specifically a “progressive” one (i.e., the neo-Brandesian antitrust movement) which discounts the role of market forces, presumes that “big is bad,” and frames the actions of digital platforms as anticompetitive and harmful to consumer welfare. However, a progressive antitrust lens is not the only way to analyze interactions between digital platforms and the participants in their networks, including millions of small businesses and billions of consumers. To the contrary, not only do we believe that using a [progressive] antitrust lens alone is the wrong way to analyze Big Tech platforms, but that it leads to an incomplete and misguided picture of economic reality of how complex, multi-sided platforms operate and are governed in practice.

Instead, we believe that something different which has developed in the academic literature over the past decade – the “platform governance” perspective – can help explain Big Tech platforms’ behavior that would be unnecessarily (and harmfully) prohibited by the progressive antitrust legislation proposed in Congress. From the platform governance perspective, platforms grow rapidly in order to create more value for participants on both sides of the platform (e.g., small business sellers and consumers, app publishers and app downloaders, etc.), and not to reduce competition on their platform. Once they become large, the platforms may not benefit much by restricting access and raising prices, but rather by enlarging the size of the overall market so that value increases for the ecosystem as a whole, which results in increasing value (or profits) for the vast majority of participating consumers, business users (e.g., small business sellers, small app publishers, etc.) and the platform owner itself.

Several members of Congress have openly expressed concerns about unintended negative consequences of regulating Big Tech platforms.[1] In this paper, we apply the platform governance lens to reveal several significant potential unintended negative effects on small businesses. We also examine how the Big Tech platforms differ and conclude that any one size fits all progressive antitrust regulation will mostly likely fail to benefit consumers or third-party complementors like small businesses.

While the paper describes in more detail how the specific provisions of the progressive antitrust legislation would harm small and medium-size businesses (SMBs) that use the platforms, we summarize the key harms here for the two key kinds of tech platforms: Innovation Platforms that host tools and services for technological creation (e.g., a mobile app platform), and Transaction Platforms that host counterparties that conduct commerce with each other (e.g., an online marketplace for third-party sellers):

Summary of Progressive Antitrust Legislative Harms Related To Innovation Platforms

- Increased cost and uncertainty for independent publishers that develop apps
- Constrained performance of apps
- Degradation of the consumer experience, which will reduce demand for and willingness to pay for apps

Summary of Progressive Antitrust Legislative Harms Related To Transaction Platforms

- More “bad apple” sellers that harm other sellers by, for example, offering low quality products at cutthroat prices that squeeze others’ profits
- More “unhealthy” competition in which sellers generate sales but earn no profits
- Less platform support services and higher costs for sellers

Background

Recently, the scrutiny on Big Tech has ratcheted up in Washington, with several progressive antitrust bills passing out of committee and the Biden administration appointing “hard line” officials in to key posts in the White House, Department of Justice (DOJ) Antitrust Division, and the Federal Trade Commission (FTC). There have been several different bills proposed in both the House and Senate, a fuller analysis of which has been published elsewhere. Here, we focus on two bills—specifically S. 2992 and H.R. 3816—that are out of committee and potentially up for a full House/Senate vote whose authors use a “progressive antitrust lens” to understand the actions of tech platforms. In contrast, we believe that viewing the tech industry through this lens alone distorts the economic realities faced by tech platforms and would lead to regulatory actions that harm both everyday consumers and small and medium-sized business (SMB) users of these platforms covered by the legislation.

In this paper, we argue that legislators need to examine the markets hosted on large tech platforms through an alternative lens, termed “platform governance” in the academic literature, to appropriately place tech company actions in the correct context. Platform governance is the design and implementation of decision rights, access, incentive structures, control mechanisms, and other efforts used by the platform owner to guide and shape the behavior of the platform users.[2] Put simply, a responsible platform owner needs to govern the ecosystem in a way that promotes a healthy business environment. Critically, viewing platform owners’ (e.g., tech companies) actions through a platform governance lens reveals that, perhaps counterintuitively, actions that might seem at first glance to suppress competition are instead necessary for the platform owner to create value and maintain a healthy ecosystem for consumers and small business users alike.[3]

Here, based on this platform governance analysis, we conclude that provisions of the proposed legislation—specifically S. 2992 and H.R. 3816—are likely to inhibit covered tech platforms from growing the economic pie for all users. Worse, the legislation would also likely unwind the positive economic factors that have created tremendous value for small and medium-sized businesses (SMBs) and consumers.[4] These provisions will create unintended consequences that could befall SMBs that comprise 44% of U.S. economic activity and 66% of net new job growth, and consumers who use the platforms. This could directly harm SMBs by raising the costs of developing and maintaining SMBs’ digital products and squeezing SMBs’ profit margins from ecommerce transactions. We discuss the reasoning behind these negative effects below.

Why The Progressive Antitrust Perspective Is Misguided And A Platform Governance Lens Is More Appropriate

The Progressive Antitrust Perspective of Platforms

The size, power, and influence of so-called “Big Tech” platforms such as Google’s search engine, Apple’s app store, and Amazon’s third-party marketplace have made many news headlines (see examples in the WSJ [5] and NYT [6]). In this paper, we do not mean to downplay the potential issues caused by the power and influence of Big Tech; however, it is important to view the actions of Big Tech from the appropriate perspective, take the right approach to enforcement, and to understand potential unintended consequences of actions from Congress, the FTC, DOJ, and other legal and regulatory bodies at the federal or state level.

Recently, it has been popular in Washington to view tech platforms through the lens of antitrust, and not just typical antitrust, but rather a more progressive version variously referred to as the Neo-Brandesian school of antitrust, hipster antitrust, or populist antitrust (“progressive antitrust” here throughout). This antitrust perspective—which disregards the role of market forces [7] and typically promotes “The Curse of Bigness” [8]—has proponents in the White House, the DOJ Antitrust Division, the FTC, and in Congress (e.g., Sen. Amy Klobuchar (D-MN), among others). This approach is misguided, as it does not specify actual harms to consumers or third-party complementors and seek to rectify them with regulation; rather, it discards the consumer welfare standard in favor of justifying regulation because platform owners are of an arbitrary size.[9]

Using this progressive antitrust lens alone, some legislators will incorrectly jump to the conclusion that “big equals bad” and will tend to frame tech companies’ actions while managing their ecosystems as anticompetitive and harmful to consumer welfare, a view that has been recently criticized.[10] From our point of view, however, not only do we believe that progressive antitrust is the wrong way to look at platform businesses, but applying it specifically to Big Tech companies leads to an incomplete and misguided picture of the economic reality.

Viewing Big Differently: Progressive Antitrust vs. Platform Governance

To understand why a platform governance view offers a more appropriate perspective, we need to first consider the difference between a classical monopolist and a modern big tech platform. The classical monopolist might use a variety of anticompetitive tactics to become big (Table 1, upper-left), and once gaining monopoly power, will restrict the quantity supplied to the customer and thereby raise prices (Table 1, lower-left). In this situation, regulators rightly apply antitrust laws to limit the monopolist’s size and power to protect consumer welfare.

Table 1. Comparing [Progressive] Antitrust and Platform Governance Perspectives

	[Progressive] Antitrust Perspective	Platform Governance Perspective
Tactics Companies Use to Grow	<ul style="list-style-type: none"> • Using horizontal and vertical M&A to gain size • Restricting rivals’ access to resources to stifle competition • Using predatory pricing to extract excessive value from customers 	<ul style="list-style-type: none"> • Creating value for both sides of the platform by serving their needs well • Takes governance actions that foster a healthy business environment and foster network effects
Objective of Large Companies Once They Become Big	<ul style="list-style-type: none"> • Capturing a bigger slice of the pie by restricting supply and raising prices, thus damaging consumer welfare 	<ul style="list-style-type: none"> • Enlarging the pie so as to increase value for users and profits for both the third-party business complementors and the platform owner

In contrast, modern big tech platforms became big because their “bigness” benefits both their business users and their consumers. To see how, consider a tech platform that facilitates interactions between consumers and business users (such as app developers on Apple iOS, or sellers on Amazon’s Marketplace). The more businesses there are on the platform, the more consumers will be attracted to the platform, which encourages even more businesses to join the platform. Likewise, the more consumers there are on the platform, the more businesses will be attracted to the platform, which encourages even more consumers to join the platform.

Economists call the pattern described above the “indirect network effect.” Such an effect is also applicable to brick-and-mortar platforms like shopping malls. But whereas the size of a shopping mall is constrained by its physical size, a digital tech platform’s “real estate” can be much bigger which is what draws unwarranted regulatory concerns. The takeaway here is that as a tech platform grows, it becomes more valuable to both SMBs and consumers (Table 1, upper-right).

Another key difference between monopolists and modern big tech platforms is that the latter can become more profitable not by capturing for themselves a bigger slice of the pie from the consumers and the other businesses, but by enhancing the business environment of the platform to grow the size of the pie for everyone (Table 1, lower-right).[11] For instance, a platform owner like Apple might observe that developers on its platform are using a third-party app in their own offerings. However, should the third-party fail to maintain and update the app's quality, developers on Apple's platform may struggle to maintain their app's performance. To address this bottleneck, Apple may offer its own technological solution to compete with the third-party, which could resolve the bottleneck for most developers. Doing so encourages developers to innovate, increases consumer welfare, and strengthens the indirect network effect.

Unfortunately, well-intentioned governance policies and actions by tech platform owners – such as the right to suspend business user accounts, or the offering of competing products – might be easily misunderstood as anticompetitive if they are not carefully examined through the platform governance lens. Using the platform governance lens reveals that such actions are instead vital to the platform owner's ability to maximize value and welfare for all stakeholders in the ecosystem.[12]

The currently proposed legislation could impede these actions and thus create unintended negative consequences for both business users and consumers. In particular, Sections 2.a and 2.b of S. 2992 put forth several provisions that intend to promote a level playing field and restrain the platform owner's ability to take advantage of a particular developer or seller. Yet, these provisions can instead unintentionally restrict the platform owner's ability to govern their ecosystem—essentially limiting their ability to take actions that will create value for users.

Platform Governance: What It Is and Why It Matters

Governance is the means through which firms shape actions by parties that it interacts with, such as employees, customers, and suppliers. Platform governance pertains to managing the actions of parties that interact with the platform, such as app developers and consumers in Apple's iOS app store, sellers and buyers on Amazon Marketplace, hosts and renters on Airbnb, drivers and riders on Uber, and employers and freelancers on Upwork.

The practice of governance is prevalent in many business situations. For example, fast-food franchisors set up rules to govern franchisees' actions – ranging from how the restaurants are decorated to whom the franchisees are allowed to source ingredients – to ensure consistent quality across locations. When necessary, a franchisor would take intervention actions, such as contract termination, against a “bad apple” franchisee. The objective of governance is only to benefit solely the franchisor, but also, and equally importantly, to protect every franchisee, as misbehavior by one franchisee could harm the economic interests of the other franchisees.

Analogously, tech platform owners need to set up rules and take intervention actions to foster and preserve healthy business environments for the overall benefits of platform stakeholders—the platform owner, the business users, and the consumers. Unlike a traditional firm that can govern supplier actions through contracts, platform owners often lack the ability to tailor specific contracts to govern each individual third-party “complementors,” like app developers or marketplace sellers. Failure to use other mechanisms to govern the platform’s ecosystem can result in value destruction.

“In 1983, the videogame market in the USA collapsed, leading to bankruptcy for more than 90 percent of game developers, as well as Atari, manufacturer of the dominant game console at the time. The main reason was a ‘lemons’ market failure: because it had not developed a technology for locking out unauthorized games, Atari was unable to prevent the entry of opportunistic developers, who flooded the market with poor-quality games. At a time when consumers had few ways to distinguish good from bad games, bad games drove out good ones. The videogame market was resurrected six years later only when Nintendo entered with a set of draconian policies to regulate third-party developers more tightly. Central to Nintendo’s strategy was the use of a security chip designed to lock out any game not directly approved by Nintendo.”

“Platform rules: Multi-sided platforms as regulators”
Boudreau & Hagiu (2009, p.163) [14]

Without governance actions, market failure could happen, as history has shown. Consider the case of video console maker Atari, which at its height dominated the home video game market with about a 90% share.[13] Atari’s failure to govern game developers led to a flood of poor-quality games that decreased customer value and contributed to its collapse (See box).

Big Tech Companies Own Multiple Different Kinds of Platforms and They Can’t All Be Regulated in a “One Size Fits All” Way

As written, S. 2992 and H.R. 3816 currently target four large U.S. companies — Google, Amazon, Facebook, and Apple (“GAFA”). As each company operates multiple platforms with different sets of SMB users, and the functions of the platforms can be fundamentally different, these tech platforms cannot be regulated the same way (see Table 2 for examples).

There are two fundamental types of platforms— “Innovation” and “Transaction.”[15] Innovation Platforms (such as Apple iOS) provide technological interfaces for third parties to create new innovations, whereas Transaction Platforms (such as Amazon’s Marketplace) are digital intermediaries that allow parties to exchange goods, services, and information. Each type of platform faces different challenges in creating value for business and consumer users, and hence needs to be governed in different ways. It is critical to understand the issues and governance tactics unique to each platform type so that regulation does not create unintended consequences or become ineffective.[16]

Table 2. Major Tech Platform Examples and Small Businesses That Rely On Them

	Platform Example	Platform Description	SMB Platform Users
Innovation Platforms	Amazon Alexa Voice Services	Cloud-based interface for voice capabilities	App developers, Makers of smartspeakers / voice-operated devices
	Amazon Web Services	Cloud computing and web tools	Users of cloud and other enterprise services
	Apple iOS	Smartphone operating system	App developers, Offline SMBs that reach customers via apps
	Google Android	Smartphone operating system	App developers, Offline SMBs that reach customers via apps
	Meta for Developers	Application interface for developers	App developers
Transaction Platforms	Amazon Marketplace	E-commerce marketplace	Sellers of products
	Apple App Store	Digital app store	Advertisers
	Google Play	Digital app store	Advertisers
	Meta Audience Network	Advertising platform	Advertisers

Using the Platform Governance Lens To Identify Unintended Effects of Proposed Legislation on Small Businesses

We now apply the platform governance lens as described in detail above to reveal how the proposed legislation can create the potential for unintended consequences for platforms. While as described in Table 2 there are many different types of platforms and SMBs that use them, and many different potential legislation-related harms as a result (Tables 3 and 4, below), we go through one example - Apple iOS - to illustrate how new laws trickle down into harm to SMBs.

Apple develops the core iOS platform technology and offers software development tools such as application programming interfaces (APIs) and software developer kits (SDKs) to third-party software developers (most of which are solo practitioners or SMBs) so that they can create and sell software to consumers. As the platform owner, Apple establishes and maintains a set of standards that govern the technological interface between third-party application software and the platform, and across various third-party application software. Apple's objective for platform governance is not only to ensure the core functioning of the platform but also to promote innovation by the software developers that ultimately benefits consumers.

Consider the basic needs and desires of small app developers: They want the necessary technological ingredients to create valuable products readily available on devices [17], for these technologies to be updated and maintained [18], and for these technologies to enhance, not constrain, the performance of their products.[19] Provisions in the proposed Congressional legislation that limit self-preferencing, use of non-public data, or preferential access to the platform could undermine the platform owner's ability to use certain governance tactics to meet the needs of its developers.

Below, we outline in more detail how provisions in the proposed Congressional legislation would affect the various platforms as laid out in Table 2. First, Table 3 highlights some potential negative effects for developers operating in innovation ecosystems like Apple iOS. Second, Table 4 similarly highlights potential negative effects for SMBs using transactional marketplaces such as Amazon.com, Walmart Marketplace, eBay, and Etsy.

In addition to the unintended consequences highlighted in Tables 3 and 4 below, this all highlights the overarching conclusion that different platforms require different platform governance instruments, and therefore, they cannot – and should not – be regulated the same way in a "one size fits all" manner as some members of Congress propose to do with this pending progressive antitrust legislation.

Table 3. Unintended Effects of Proposed Legislation on Innovation Platforms and SMBs

Proposed Legislative Provisions	Potential Impacts on the Platform	Potential Impacts on App Developers
Self-preferencing of platform's own products, limiting competition, and discriminating in enforcement or terms of service	<ul style="list-style-type: none"> Limits the ability to preinstall apps and thus ensure that users have what is needed for other apps to function properly Limits the ability to include a functionality in the core platform when a third party offers a similar functionality. Therefore, the platform owner is unable to ensure that interdependent technologies are updated and maintained simultaneously, or that the technology has sufficient performance, all of which could decrease the platform's value to all users 	<ul style="list-style-type: none"> Increases cost and uncertainty in app development. Weakens network effects by increasing the coordination costs for users which decreases their value Potentially deteriorates the functionality of developers' technologies. The value of the developers' products for users declines
Leverage non-public data	<ul style="list-style-type: none"> Limits the information that could be used to identify technical bottlenecks or innovation gaps 	<ul style="list-style-type: none"> Constrained performance of certain apps. Lower consumer value which will result in less engagement with the entire platform ecosystem
Restrict access of third parties	<ul style="list-style-type: none"> Limits the platforms' ability to include value enhancing functions on restricted areas of the platform, such as the home screen of your phone 	<ul style="list-style-type: none"> Degrades the consumer experience which reduces their demand for and willingness to pay for apps

Table 4. Unintended Effects of Proposed Legislation on Transaction Platforms and SMBs

Proposed Legislative Provisions	Potential Impacts on the Platform	Potential Impacts on Sellers
<p>Limit the ability of another business user's products, services, or lines of business to compete on the platform relative to the covered platforms operator's own products, services, or lines of business in a manner that would materially harm competition on the covered platform</p>	<ul style="list-style-type: none"> Limits the platform's ability to take corrective governance actions through its own product offerings [20] Limits the platform's ability to coordinate across internal business units to optimize resource allocation [22] 	<ul style="list-style-type: none"> The platform owner is less capable of driving away the "bad apple" sellers that harm the other sellers [21] The platform owner is less capable of steering the market away from unhealthy competition where sellers generate sales but earn no profit [23] The platform owner suffers diminished efficiency, resulting in fewer supportive services and higher costs for sellers [24]
<p>Limit the use of non-public data</p>	<ul style="list-style-type: none"> Limits the information that the platform can use to guide market correction actions [25] 	<ul style="list-style-type: none"> Ineffective governance instruments that fail to promote healthy business environment for sellers [26]
<p>Self-prefencing of platform's own products</p>	<ul style="list-style-type: none"> Limits the platform's ability to effectively signal its governance actions [27] 	<ul style="list-style-type: none"> Prolongs unhealthy business environments [28]

Conclusions

In this paper, we argue that legislators need to shift from the progressive antitrust lens to the platform governance lens. Doing so resolves three key misconceptions in the current big tech regulation debate.

First, it removes the negative connotation about platform owner size. The tech platforms became big because they created significant value for consumers and business users alike. Importantly, their current size—in terms of the number of consumers and value adding business users interacting on the platform—is what makes them valuable for all participants.

Second, viewing platform owners' actions through the platform governance lens reveals that tactics that may seem anticompetitive to some businesses are instead vital to the platform owner's ability to maximize value and welfare for all stakeholders in the ecosystem. Specifically, the proposed legislation—S. 2992 and H.R.3816—limits tech platform owners' ability to effectively govern the platform environment which harm the SMBs by:

Summary of Legislative Harms Related To Innovation Platforms

- Increased cost and uncertainty for independent publishers that develop apps
- Constrained performance of apps
- Degradation of the consumer experience, which will reduce demand for and willingness to pay for apps

Summary of Legislative Harms Related To Transaction Platforms

- More “bad apple” sellers that harm other sellers by, for example, offering low quality products at cutthroat prices that squeeze others' profits
- More “unhealthy” competition in which sellers generate sales but earn no profits
- Less platform support services and higher costs for sellers

Third, using the platform governance lens allows us to see that different types of platforms have different needs and therefore, need different governance mechanisms. Regulating all platforms with a one-size-fits all strategy will most likely lead to unintended consequences that will harm consumers and business users.

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[16] We simplify this issue here, even within a platform type there are various business models that can cause even more complications in applying blanket regulations. See Schrepel, T. (2021), *Platforms or Aggregators: Implications for digital antitrust law*, *Journal of European Competition Law & Practice*, 12(1). <https://www.competitionpolicyinternational.com/platforms-or-aggregators-implications-for-digital-antitrust-law/>

[17] This means that to foster innovation, that the Apple or Google will need to preinstall some of the applications that third-party developers most commonly use (e.g., Google Maps comes preinstalled on devices running Android and many apps use its mapping features). Limiting preinstallation can place the burden of coordinating interdependent technologies on the user, while also increasing uncertainty and development costs for app developers.

[18] Technologies running on a platform can become highly interdependent on each other over time and need to be managed, updated, and developed in tandem to function properly. When a technology becomes essential in creating value for a wide variety of developers, the platform owner may want to integrate the technology into the platform in order to manage its evolution in a way that benefits the most stakeholders (e.g., Apple making the flashlight a utility on the home screen rather than just a typical app).

[19] Technical bottlenecks—i.e., when the performance of one technology constrains the performance of others—need to be identified and resolved by the platform owner. To identify bottlenecks, the platform owner may need to use private information about quality, functionality, and linkages across a variety of products in the ecosystem. To address bottlenecks, the platform owner may need to integrate the technology into the platform.

[20] The platform owner could launch their own products, such as Amazon's AmazonBasics private label products, to steer the competitive behaviors of the other sellers through product quality, features, and price attributes. Relying solely on the "invisible hand" of markets to achieve optimal outcomes may be ineffective because when the platform has many fragmented sellers, action taken by a single seller is unlikely to correct the overall competitive behaviors of the other sellers unless the seller is the dominant player.

[21] Examples of "bad apples" include those sellers that offer low quality products (which consumers dislike) at cutthroat prices (which squeeze the profit margins of the other sellers.)

[22] To optimize resource allocation, the platform owner needs to have the ability to coordinate across its businesses. For example, the AmazonBasics private label business unit can help the Fulfillment by Amazon (FBA) business unit optimize resource allocation by deterring excessive entries of non-value enhancing sellers, thus freeing up the distribution capacity at FBA.

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[23] If the platform owner is unable to credibly offer solid quality products at low price, sellers who compete on undercutting prices to gain market shares might not be deterred from continuing to do so. This could lead to unhealthy competitive outcomes where (a) sellers on the platform work hard to generate sales but earn no profit from the sales, and (b) consumers may find the platform flooded with cheap products of subpar quality.

[24] Continuing with the example in [22], by freeing up the capacity at the Amazon FBA, AmazonBasics increases the company's efficiency and thus lowers the distribution costs (both financial and time costs) for the other value enhancing sellers.

[25] The platform owner needs to monitor the health of the platform ecosystem and use the insights to guide governance actions when necessary.

[26] Without the aid of data, the platform owner will be much less capable of designing its market corrective actions to become finely tuned governance instruments, and therefore, much less capable of optimally promoting the benefits for the consumers and the sellers.

[27] The platform owner needs to help its products stand out from the competition in order to effectively signal their governance actions. For example, Amazon displays an AmazonBasics product in an advertisement space next to the consumer search page or product rankings page.

[28] If the platform owner's ability to signal diminishes, consumers and the other sellers may not quickly become aware of the governance instrument thus prolonging the time it will take when (if ever) the governance instrument is able to correct the market. In contrast, if the platform owner has the rights to signal, such as by placing its low-priced solid quality product next to a higher priced product with distinctive features by another seller, not only allows the platform owner to present to consumers a meaningful product variety but also helps the other seller to distinguish her product and support a premium price point.

About the Authors

Cameron D. Miller is an Assistant Professor of Management at Syracuse University's Whitman School of Management. He earned his Ph.D. from the University of Minnesota. The views expressed in this paper do not necessarily reflect the views of Syracuse University.

Richard D. Wang is an Associate Professor of Strategy at Babson College in Wellesley, Massachusetts. He earned his Ph.D. in Business and Public Policy from the University of California, Berkeley. The views expressed in this paper do not necessarily reflect the views of Babson College.

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