

# Big Tech antitrust review: tough policy or publicity stunt?

25 July 2019, by Rob Lever



grandstanding and that there isn't even a serious intent to do anything."

Sagers noted that antitrust enforcers under President Donald Trump who have been wildly inconsistent on policy decisions would need to make a strong case before "a very skeptical" federal judiciary.

"It's a very, very conservative antitrust regime that doesn't believe in monopolization enforcement, and it is just talking the talk because it gets headlines and suits the popular political mood."

US antitrust officials have begun a major antitrust review of Big Tech platforms, but the ultimate outcome looks murky

The antitrust review of Big Tech announced by US regulators could signal a tough new stand on competition policy, but it may just be a political publicity stunt.

Legal experts said any antitrust enforcement action against technology giants remains far off, and that a breakup of any of the Silicon Valley titans is a remote possibility.

The review announced by the Justice Department on Tuesday for major online platforms amounts to gathering information for [antitrust enforcers](#), which could lead to a long and painstaking investigation of individual companies which may need to go before a [federal court](#).

"I wouldn't expect any of the recent news to ripen into meaningful antitrust enforcement," said Christopher Sagers, a professor of antitrust law at Cleveland-Marshall College of Law.

"I think it's possible that this is entirely



Assistant Attorney General for Antitrust Makan Delrahim announced a review of whether major online platforms have stifled competition

## 'Political pressure'

Avery Gardiner, a former antitrust trial attorney with the Justice Department who is now a senior fellow at the Center for Democracy & Technology, said the announcement of a review of the sector without a specific target was "very unusual."

Gardiner said this type of information gathering is

routine for antitrust enforcers.

"The fact that they made it public is an indication they are feeling some political pressure," Gardiner said.

"They wanted to make clear to the Hill and to the public that they are doing their job," she said, adding that the news may be viewed as an act of "transparency."

The antitrust division is reviewing "whether and how market-leading online platforms have achieved market power and are engaging in practices that have reduced competition, stifled innovation, or otherwise harmed consumers," the Justice Department said in a statement.

The news comes after lawmakers and activists raised concerns about the growing dominance of online giants such as Google, Facebook and Amazon in key segments of the [digital economy](#).



Facebook, whose CEO Mark Zuckerberg is seen at a Senate hearing this year, is among the Silicon Valley giants feeling pressure from lawmakers and regulators

Once seen as the darlings of Washington, Silicon Valley firms have become targets for politicians of all stripes. US regulators this week imposed a record \$5 billion fine on Facebook for lapses in privacy and [data protection](#), including the leaking of private data for political consultancy Cambridge

Analytica.

Trump and his allies have also complained, with little evidence, that online platforms use "bias" to suppress conservative views. That may be cause for greater scrutiny even if it does not provide grounds for antitrust action.

Some lawmakers including Democratic presidential candidate Elizabeth Warren have been calling for a breakup of major tech firms, saying they are too big and powerful.

Tech firms and their backers deny monopolistic conduct and argue the fast-evolving digital economy has robust competition and has led to lower prices and more choice for consumers.

"US technology companies make the United States a global leader in innovation, power the economy, and deliver transformative benefits to people worldwide," said Jason Oxman, CEO of the Information Technology Industry Council, representing major tech firms.

Oxman said any review should be done "with precision and be consistent with existing law, and avoid harming America's economy and innovative edge."



Democratic presidential hopeful Senator Elizabeth Warren, whose billboard is seen in San Francisco, has made breaking up Big Tech a key element in her campaign

## Remedy options

US antitrust enforcers have broad authority over companies and can impose fines for violating antitrust law, impose "structural" remedies to allow for more competition or even break them up.

Breakups have been ordered only for Standard Oil in 1911 and AT&T in the 1980s, and many analysts say they are unlikely to be applied to Big Tech.

Gardiner said that while enforcers may seek a breakup a range of other options may be on the table as well, such as "behavioral" remedies which open up platforms to rivals or give competitors better access.

"This could be a major development in the internet industry but until we get more details we don't know," said Eric Goldman, director of the High Tech Law Institute at Santa Clara University.

Goldman said the unpopularity of tech platforms has fueled talk of breaking them up but that such measures are unlikely to resolve the underlying complaints.

"The breakup option is like a nuclear remedy that everyone knows is possible but no one wants," he said.

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