

Consumer Welfare-Based Antitrust Enforcement is the Superior Means to Deal with Large Digital-Platform Competition Issues

November 2, 2021

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There has been a rapid proliferation of proposals in recent years to closely regulate competition among large digital platforms. The European Union's [Digital Markets Act](#) (DMA, which will become effective in 2023) imposes a variety of data-use, interoperability, and non-self-preferencing obligations on digital “gatekeeper” firms. A host of other regulatory schemes are being considered in Australia, France, Germany, and Japan, among other countries (for example, see [here](#)). The United Kingdom has established a [Digital Markets Unit](#) “to operationalise the future pro-competition regime for digital markets.” Recently introduced U.S. Senate and House Bills—although touted as “antitrust reform” legislation—effectively amount to “regulation in disguise” of disfavored business activities by very large companies, including the major digital platforms (see [here](#) and [here](#)).

Sorely missing from these regulatory proposals is any sense of the fallibility of regulation. Indeed, proponents of new regulatory proposals seem to implicitly assume that government regulation of platforms will enhance welfare, ignoring real-life regulatory costs and regulatory failures (see [here](#), for example). Without evidence, new regulatory initiatives are put forth as superior to long-established, consumer-based antitrust law enforcement.

The hope that new regulatory tools will somehow “solve” digital market competitive “problems” stems from the untested assumption that established consumer welfare-based antitrust enforcement is “not up to the task.” Untested assumptions, however, are an unsound guide to public policy decisions. Rather, in order to optimize welfare, all proposed government interventions in the economy, including regulation and antitrust, should be subject to decision-theoretic analysis that is designed to minimize the sum of error and decision costs (see [here](#)). What might such an analysis reveal?

Wonder no more. In [a just-released Mercatus Center Working Paper](#), Professor Thom Lambert has conducted a decision-theoretic analysis that evaluates the relative merits of U.S. consumer welfare-based antitrust, ex ante regulation, and ongoing agency oversight in addressing the market power of large digital platforms. While explaining that antitrust and its alternatives have their respective costs and benefits, Lambert concludes that antitrust is the welfare-superior approach to dealing with platform competition issues. According to Lambert:

This paper provides a comparative institutional analysis of the leading approaches to addressing the market power of large digital platforms: (1) the traditional US antitrust approach; (2) imposition of ex ante conduct rules such as those in the EU's Digital Markets Act and several bills recently advanced by the Judiciary Committee of the US House of Representatives; and (3) ongoing agency oversight, exemplified by the UK's newly established "Digital Markets Unit." After identifying the advantages and disadvantages of each approach, this paper examines how they might play out in the context of digital platforms. It first examines whether antitrust is too slow and indeterminate to tackle market power concerns arising from digital platforms. It next considers possible error costs resulting from the most prominent proposed conduct rules. It then shows how three features of the agency oversight model—its broad focus, political susceptibility, and perpetual control—render it particularly vulnerable to rent-seeking efforts and agency capture. The paper concludes that antitrust's downsides (relative indeterminacy and slowness) are likely to be less significant than those of ex ante conduct rules (large error costs resulting from high informational requirements) and ongoing agency oversight (rent-seeking and agency capture).

Lambert's analysis should be carefully consulted by American legislators and potential rule-makers (including at the Federal Trade Commission) before they institute digital platform regulation. One also hopes that enlightened foreign competition officials will also take note of Professor Lambert's well-reasoned study.

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