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The People vs. Tech

SIZE MATTERS. Today, the top seven companies in the S&P 500 index are all tech companies. Large companies wield power, and that power often leads to a clash between these companies and “The People,” that is, with governments. This clash has been imminent. In January 2019, I wrote in this column: “If society finds the surveillance business model offensive, then the remedy is public policy, in the form of laws and regulations, rather than an ethics outrage.” In November 2019, I wrote: “What may have been a radical position less than a year ago has become a conventional wisdom now. There have been initiatives to regulate big tech and the question is how rather than if.” I also quoted legal scholar Tim Wu’s 2018 book, *The Curse of Bigness: Antitrust in the New Gilded Age*, where it is argued that the government must enforce anti-trust laws. Now we have a flurry of lawsuits by governments against tech companies, described by the media as “a stunning reversal of fortunes for Silicon Valley.”^a

Attorneys general in more than 30 U.S. states launched a lawsuit against Google in December 2020. They accused Google of an illegal monopoly in its search business. This is the third government lawsuit against Google. It follows two suits filed by the U.S. Federal Trade Commission and 48 states against Facebook for abusing its power in social networking. Action is not limited to the U.S.; in December, Chinese regulatory agencies announced scrutiny of Chinese tech giants Ali Baba and Ant, following European Union anti-trust charges against Amazon.

The effort of the people to control large corporations is over a century old.

The U.S. Sherman Antitrust Act of 1890^b aims at ensuring competition in commerce. According to the U.S. Supreme Court, the act is to protect people from market failure: “The law directs itself ... against conduct which unfairly tends to destroy competition itself.” Most major applications of the Sherman Act have often been aimed at “big tech” of the time. In the late 19th century this was railroad tech, and the Sherman Act was aimed at busting railroad cartels. In the early 20th century, it was oil tech, as when President Theodore Roosevelt used the Act to break up the monopolistic oil giant Standard Oil.

Anti-trust actions aimed at communication and computing companies—against AT&T, IBM, and Microsoft—played a crucial role over the past 50 years in shaping today’s tech industry. In the 1970s, the U.S. argued that AT&T was using monopoly profits from its Western Electric subsidiary to subsidize the costs of its network, which was contrary to U.S. antitrust law. The case was settled in 1982, which led to the 1984 breakup of the old AT&T into new, seven regional Bell operating companies and the much smaller new AT&T (which has since been acquired by Southwestern Bell). Without this breakup, the Internet of today would likely have been run solely by what was known as “The Phone Company.”

Throughout the 20th century the U.S. government repeatedly clashed with IBM. In 1936, IBM was forced to no longer require only IBM-made punch cards, and to assist alternative suppliers of cards with competing production facilities. In 1956, IBM was forced again to allow more competition in the data-processing industry. Following long-running (1969–1982) U.S. anti-

trust action, IBM softened its anti-competitive conduct in ways that probably stopped it from buying Intel and Microsoft in the 1980s—two critical suppliers of the IBM PC—who ultimately controlled the PC platform.

In 1998, the U.S. used anti-trust law to accuse Microsoft of maintaining a monopoly position in the PC market. The U.S. prevailed in the trial, but Microsoft won on appeal. The final 2001 settlement required Microsoft to share application programming interfaces with third-party companies, as well as other softening of Microsoft’s anti-competitive conduct, which, arguably, enabled Google and Facebook to grow and become “tech giants.”

The issue has always been “large,” not “tech,” but the connection between large size and tech stands out.^c In 1901, President Roosevelt asked the U.S. Congress to curb the power of trusts because of their size: “Great corporations exist only because they are created and safeguarded by our institutions,” he said, adding that it is “our right and our duty to see that they work in harmony with these institutions.” Anti-trust law enforcement has served us well over the past 130 years. With market capitalization of the top five Big Tech corporations now at over USD7T,^d the people, working through governments, are carrying on this anti-trust law legacy. It should be welcomed!

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^c <https://cacm.acm.org/magazines/2019/11/240377-the-winner-takes-all-tech-corporation/fulltext>

^d <https://finance.yahoo.com/?gucounter=1>

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^b <https://www.americanhistoryusa.com/topic/sherman-antitrust-act/>

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^a <http://bit.ly/3oeXZ2Y>