

**CDoS:**

When a company denies one or more users, businesses, or governments the ability to access its platform or services, this is an example of what the Future Today Institute calls a CDoS, a corporate denial-of-service (CDoS).

4TH YEAR ON THE LIST

# Antitrust Action



U.S. Sen. Amy Klobuchar (D-Minn.) is the incoming antitrust chair.

## KEY INSIGHT

**U.S. antitrust laws ensure and promote fair competition between companies for the benefit of consumers. A move to break up big tech companies Apple, Facebook, Google, and Amazon has galvanized rare bipartisan support. In 2021, the Biden administration will pursue a number of lawsuits targeted at America's tech giants.**

## EXAMPLES

Outside the U.S., regulators plan to limit the world's largest tech companies' reach and power. Lawmakers and federal agencies express antitrust concerns about Big Tech's expanding power, including the companies' ability to control data; their power to impose terms on competitors; their dual role as both platform participants and owners; the potential for algorithms to thwart competition; the giants' habits of infringing on small competitors' patents; and recent merger and acquisition activity, which has helped powerful tech interests consolidate even more power. Incoming antitrust chair U.S. Sen. Amy Klobuchar (D-Minn.)

argues that today's antitrust laws don't work in the age of big data and algorithmic decision-making. Expect in 2021 to see increased funding for the U.S. Federal Trade Commission and Justice Department, renewed investigations of market dominance, new scrutiny of acquisitions and control of user data, and new lawsuits that aim to decouple WhatsApp and Instagram from Facebook.

# Antitrust Action continued



Facebook faces antitrust action in 2021.

## DISRUPTIVE IMPACT

The Biden administration may expand the scope of investigations against Google, Amazon, Facebook, and Apple, while pursuing stricter enforcement of mergers. But existing antitrust laws don't always mesh with our ever-evolving business landscape. For example, Amazon's acquisitions of Zappos, Diapers.com, and Whole Foods expanded the company's overall retail footprint significantly, but the acquisitions do not amount to unfair competition in their respective markets. (By contrast, one could not make the same argument if Walmart bought Publix and Safeway.) Breaking up Big Tech could prove difficult: Amazon's moves to build digital payments, logistics, and delivery infrastructure could indirectly crush retailers outside its platform—yet it isn't illegal. No U.S. laws prohibit being really, really smart. The European Union's Digital

Services and Markets Acts will require tech giants to protect consumers against illegal goods and counterfeits and will prohibit platforms from algorithmically favoring their own products, with fines as high as 10% of annual revenue. The European Parliament must approve the new reforms before they take effect.

## EMERGING PLAYERS

- Margrethe Vestager, executive vice president of the European Commission's A Europe Fit for the Digital Age
- U.S. Sen. Amy Klobuchar (D-Minn.)
- Rohit Chopra, former FTC commissioner (and proposed Consumer Financial Protection Bureau Commissioner as of this writing)
- Lina Khan, Columbia Law School professor and antitrust expert
- U.S. Department of Justice's Antitrust Division

1ST YEAR ON THE LIST

# States Unite Against Big Tech



New York Attorney General Letitia James is leading a lawsuit against Facebook for anticompetitive business practices.

KEY INSIGHT

**State governments are taking action on their own, filing antitrust lawsuits against the tech giants.**

EXAMPLES

On Dec. 17, 2020, attorneys general from 38 states filed antitrust lawsuits against Google, alleging that the company's search results favor its own services and arguing it used its dominance to become the default search engine across nearly all digital devices, including web browsers, smartphones, connected cars, and connected home appliances. Just one day earlier, a separate multistate lawsuit was filed against Google accusing the company of misleading, false, or deceptive acts through its Google Ads auction process. Many of these very same states also filed lawsuits against Facebook, alleging that the company bought competitors such as Instagram and WhatsApp in an aggressive, predatory manner.

DISRUPTIVE IMPACT

Companies that have typically benefited from gridlock at the federal level may find themselves in lawsuits against a coalition of attorneys general. These AGs have the authority to sue for violations of both state and federal antitrust laws. While these lawsuits may take years to unfold, mounting pressure from state AGs could give a Democratic-controlled federal government the ammunition to update antitrust laws. Current antitrust laws were written to protect consumers from unfair pricing. The big tech companies have far broader power, controlling the news we read, the ads we see, and sometimes even how we see ourselves.

EMERGING PLAYERS

- U.S. Sen. Amy Klobuchar (D-Minn.)
- Anindya Ghose, antitrust expert witness and professor at the New York University Stern School of Business
- Letitia James, New York attorney general
- Lina Khan, Columbia Law School professor and antitrust scholar
- Timothy Wu, Columbia Law School professor and antitrust scholar

