



**ASPEN TECH
POLICY HUB**

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Policy 101: Antitrust

What is competition?

[Competition](#) is the idea that marketplaces should operate freely and fairly, such that individual companies do not gain too much power in particular industries.

What is antitrust?

Antitrust is one approach to achieving free and fair competition by limiting the market power of a particular company. The term antitrust originated in the early 1900s, when large oil companies were working together as trusts and creating huge [monopolies](#). The US Congress sought broad power [under the Sherman Act and other federal laws](#) to break up these trusts in order to preserve free and fair competition. In recent years, antitrust cases have increasingly been brought against technology companies as they grow in prominence in the United States economy.

Antitrust particularly targets certain types of anticompetitive behavior, such as:

- [Monopolization](#): Acquiring or maintaining a dominant position (“monopoly power”) through improper means;
- [Price-Fixing](#): Efforts by competing firms to collectively agree on prices;
- [Bid-Rigging](#): Coordination among bidders to undermine a collective bidding process.

Under current US law, antitrust laws generally will only be enforced if the action taken by the business negatively affects the consumer, as distinct from whether the outcome harms one or more competitors. This is known as the ‘[consumer welfare standard](#).’ Successful antitrust actions can lead to the forced separation of companies, mandated changes to business practices, and/or monetary damages.

Why are we talking about antitrust now?

The emergence of “Big Tech” has changed the US marketplace as large tech companies amass unprecedented economic power. The current stock market value of the Big Five (Apple, Microsoft, Google, Amazon, and Facebook) is more [than the next 27 companies combined](#) and companies like Amazon own upwards of [40%](#) of sales in the online retail space.

A wide variety of government actors are investigating antitrust actions against these big tech companies. For instance, the [House Judiciary Committee recently completed its investigation](#) into the business practices of the Big Five. Their 16-month investigation found that these companies have engaged in monopolistic practices, including promoting only their own products on their platforms and participating in acquisitions and mergers that stifle competition. In response to this research, the Committee [approved a slate of bills](#) that would weaken the power of large technology companies.



The US federal government is also pursuing antitrust actions against [Google](#) and [Facebook](#). Numerous states including Texas and Colorado, as well as [European](#) and [British](#) regulators, are also pursuing [antitrust actions](#). Significant antitrust activity is happening at a faster pace today than perhaps at any point since the antitrust doctrine first came into being.



What are the arguments for and against antitrust actions?

Supporters of antitrust actions argue that [tech companies have too much power over smaller entrants to the marketplace](#), for instance because they can too easily push out competitors or acquire them. They point to Amazon's ability to replicate products that sell well in their marketplace through their own Amazon Basics line, or Facebook's purchase of competitors like Instagram. For supporters, antitrust actions are essential to restore market competition.

Opponents of antitrust argue even if tech companies have grown very large, the consumer has actually benefited from that largeness. For instance, Amazon is useful to consumers precisely because you can buy almost anything on its website, and Google's success in advertising allows it to provide critical services like its search engine for free. Antitrust action might [harm consumers by raising prices](#). Moreover, opponents argue that breaking up big tech will [stifle innovation](#). If Amazon's profits were reduced, the company might not have had the incentive to develop its all-encompassing marketplace in the first place.

Others agree with the premise that many big tech companies are anticompetitive, but [disagree that breaking them up is the appropriate solution](#). For instance, some argue that [platforms should instead be required to make their systems interoperable](#), so that [consumers can more easily switch from one service to another](#), so as to better encourage competition.

MAJOR ANTITRUST CASES

[Standard Oil Co. of New Jersey v. United States \(1911\)](#)

This landmark antitrust case used the Sherman Act to break up the hugely powerful Standard Oil Company.

[United States v. AT&T \(1974\)](#)

This case was filed over suspicion that AT&T was using monopoly policies. It was settled in 1982 and AT&T was forced to break into 7 different companies.

[United States v. Microsoft Corp. \(2001\)](#)

The court ruled that Microsoft had violated the Sherman Act by illegally maintaining its monopoly position through restrictions on PC manufacturers.

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