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# Online platforms in the spotlight: What to look for

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For years, large online platforms such as Google, Facebook, Apple, and Amazon were favorably viewed as disruptors and innovators by policymakers on both sides of the political aisle. However, in the last Congress there was a sea change in terms of how big tech is regarded on Capitol Hill. These companies faced criticism from both Republicans and Democrats on issues such as illegal content and political disinformation, which has led to calls to reform Section 230 of the Communications Decency Act that gives online platforms legal immunity from liability for third-party content on their platforms.

There has also been a steady drumbeat of concerns that these large online platforms have too much power and are stifling competition in the online marketplace. Democrats on Capitol Hill who oversee antitrust policy, some Republicans, and antitrust regulators are squarely focused on these tech giants engaging in perceived anti-competitive behavior, such as buying out upstart rivals before they can become a competitive threat or refusing to deal with rivals.

An in-depth review of big tech companies began last Congress when the House Judiciary Subcommittee on Antitrust, under the leadership of Chairman David Cicilline (D-Rhode Island), carried out a 16-month investigation of the online platforms and issued a 450-page Majority Staff Report. It concluded that Facebook, Google, Amazon, and Apple engaged in anti-competitive behavior. The report recommendations included imposing restrictions on acquisitions by dominant tech platforms and prohibiting these firms from competing with businesses on their platforms. Several House Judiciary Republicans, including current subcommittee lead Republican Ken Buck (R-Colorado), released a separate report, which also found anti-competitive behavior by the platforms and signaled bipartisan interest in some revisions to the antitrust laws. Oversight hearings of the large online platforms were also held by several Senate committees.

In the current Congress, the House and Senate Judiciary Committees, both now under control of the Democrats, have been hard at work on legislation to reform the antitrust laws with a special focus on addressing anti-competitive behavior by these tech giants. Such a major spotlight on the tech industry has not occurred since 1998, when the Senate Judiciary Committee held hearings on whether Microsoft was abusing its market power in the software marketplace and the Department of Justice (DOJ) brought an antitrust suit against Microsoft.

In February, Chairman Cicilline and Ranking Member Buck began a bipartisan effort to consider legislative proposals to address the rise and abuse of market power online and modernize the antitrust laws. The committee held hearings to address gatekeeper power, lower barriers to entry online, and ensure the survival of trustworthy news sources online. House Democrats, albeit with a slim margin in the House, have moved forward with legislation to amend antitrust laws. Securing support of some Republicans would make it easier for any bills to move through the House and increase the chances of serious consideration in the Senate.

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The congressional spotlight on the dominant tech platforms this Congress will be a positive echo chamber to the DOJ and FTC's decisions to investigate and bring suits against actions of big tech companies that will also clearly get the attention of the tech giants.

**Andy Blocker**

Head of US Government Affairs

Just this month, the House Judiciary Committee approved a comprehensive set of bills, ranging from moderate to controversial, that collectively seek to change the way large tech companies such as Amazon, Apple, Google, and Facebook do business and dominate their respective marketplaces. Among other items, the package of six bills, some of which have bipartisan support, would: 1) empower DOJ or the Federal Trade Commission (FTC) to break up tech firms by forcing them to sell off parts of their businesses that create conflicts of interest, 2) prohibit tech companies from giving their own service preference over their rivals, and 3) block big tech companies from acquiring nascent competitors. The sweeping package represents the culmination of months of study and congressional inquiry into the rapidly evolving power wielded by big tech companies. While many of these reforms are bipartisan, there is notable opposition among the membership of the New Democratic Caucus as well as House Republican leadership, which makes it unclear whether these bills could make it through the full House.

On the other side of the Capitol, Senate Judiciary Antitrust Subcommittee Chairwoman Amy Klobuchar (D-Minnesota), joined by four Democrat colleagues, has introduced antitrust reform legislation seeking to increase resources for enforcement and strengthen prohibitions against anti-competitive mergers. Some Republicans such as Senator Josh Hawley (R-Missouri) have also been very critical of the dominant tech platforms' behavior. With a razor-thin margin in the Senate, Democrats would need to carefully craft an antitrust bill to hold all the Democrats and secure enough Republican support to get it through the Senate.

Federal and state regulatory agencies have also taken steps in the last couple of years to zero in on the behavior of the large tech platforms. During the Trump administration, the DOJ and the FTC began a serious review of the online platforms' behavior. Last October, DOJ brought an action against Google for engaging in anti-competitive behavior, and in December, more than 30 state attorneys general (AGs) joined the DOJ suit. At the end of last year, Facebook had been hit by lawsuits brought by the FTC and 46 states for anti-competitive behavior, most notably for buying up rivals Instagram and WhatsApp. Additionally, DOJ and the state AGs are looking at Apple's app store policies, while the FTC and the New York and California AGs are investigating Amazon for potential anti-competitive behavior regarding third-party sellers on its platform.

### Big tech antitrust reviews in the headlines

	Google	Apple	Facebook	Amazon
	Jan. 2021: Biden administration DOJ will continue scrutiny on big tech companies			
DOJ	<ul style="list-style-type: none"> <li>Oct. 2020: DOJ announces antitrust lawsuit following DOJ and state AGs investigations into Google's anticompetitive behavior.</li> </ul>	<ul style="list-style-type: none"> <li>Oct. 2021: DOJ Google suit finds that Apple's partnership with Google is a potential threat of monopoly.</li> <li>Jun. 2020: DOJ takes first steps in launching antitrust probe into Apple.</li> </ul>	<ul style="list-style-type: none"> <li>Nov. 2020: DOJ begins probing into Facebook's potential abuse of power in the internet economy (If a suit is filed, it would be the first antitrust suit against Facebook in the US).</li> </ul>	
State AGs	<ul style="list-style-type: none"> <li>Dec. 2020: More than 30 state AGs join DOJ antitrust lawsuit, alleging illegal search monopoly against Google.</li> <li>Dec. 2020: California becomes first state with Democratic AG to join 11 Republican state AGs in DOJ antitrust lawsuit against Google.</li> <li>Oct. 2020: State AGs announce antitrust investigation following imminent DOJ lawsuit.</li> </ul>	<ul style="list-style-type: none"> <li>Jun. 2020: State AGs take steps toward launching a probe against Apple, particularly looking at its app store and inconsistencies between charges of Apple-owned apps and other apps.</li> </ul>	<ul style="list-style-type: none"> <li>Dec. 2020: 46 states AGs have filed an antitrust lawsuit against Facebook, alleging illegal purchase of competitors.</li> <li>Oct. 2019: 47 states AGs investigate Facebook antitrust violations.</li> </ul>	<ul style="list-style-type: none"> <li>Aug. 2020: NY and CA AGs are investigating potential antitrust lawsuit against Amazon in partnership with FTC.</li> </ul>
FTC			<ul style="list-style-type: none"> <li>Dec. 2020: FTC sues Facebook for illegal monopolization.</li> </ul>	
	Feb. 2020: FTC issues special order to require information about prior acquisitions not reported to antitrust agencies under Hart-Scott-Rodino (HSR) Act.			

During his presidential campaign, President Joe Biden signaled concern about economic concentration and monopoly power. There is every indication that in the new Biden administration, the DOJ will continue its suit against Google and the FTC will continue its suit against Facebook.

In the spring, the White House named Lina Khan, a Columbia University legal scholar who has been a champion for anti-big tech activists, to be a commissioner on the FTC. Khan was confirmed by the Senate in June with bipartisan approval. On June 15, the White House announced that Khan will be serving as chairwoman. This is the most recent signal to big tech companies that Biden and Congress will be focused on an aggressive antitrust regulatory and enforcement agenda.

The congressional spotlight on the dominant tech platforms this Congress will be a positive echo chamber to the DOJ and FTC's decisions to investigate and bring suits against actions of big tech companies that will also clearly get the attention of the tech giants.

However, the actions of the federal and state regulatory agencies with their pending litigation is where the rubber will hit the road. The outcome of these lawsuits is likely to have the most impact on changing the behavior of the large tech platforms in the online marketplace.

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## Invesco US Government Affairs



**Andy Blocker**  
Head of US  
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**Andy Blocker** serves as Head of US Government Affairs for Invesco. In this role, he drives Invesco's legislative and regulatory advocacy initiatives with policymakers, engages with clients and opinion leaders on public policy developments, and seeks to maximize the company's political footprint. Previously, Andy served as executive vice president of public policy and advocacy for the Securities Industry & Financial Markets Association, where he led a team engaging lawmakers on international, federal and state issues impacting the financial services industry. Andy spent five years as managing director for the US Office of Public Policy for UBS. He also served as vice president of government relations for the New York Stock Exchange, as managing director of government and international affairs for American Airlines, and for the White House as special assistant to the president for legislative affairs.



**Jennifer Flitton**  
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**Jennifer Flitton** is Vice President of Federal Government Affairs with the US Government Affairs team where she advocates on behalf of Invesco's policy initiatives with policymakers and regulators, and ensures the firm is an influential part of the Washington conversation. Jen joined Invesco from the Securities Industry and Financial Markets Association, where she led lobbying initiatives on behalf of the asset management and broker dealer industries. Jen spent 16 years on Capitol Hill, last serving as the Deputy Chief of Staff and Legislative Director for Congressman Patrick McHenry, and as Congressman McHenry's designee to the House Financial Services Committee's Oversight and Investigations Subcommittee.

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