June 19 Pro Case [Labeling your pages as well as using page numbers can help you organize your cases and evidence!]

Rachel and I affirm: “Resolved: The United States federal government should enforce antitrust regulations on technology giants.”

[This case does not include definitions or framework because the meanings of key terms and criteria for the debate are built into the contentions. However, if they were included, they would go here.]

Contention 1: Monopolistic Practices

[CLAIM] The Legal Information Institute explains that the Sherman Antitrust Act of 1890 “prohibits activities that restrict interstate commerce and competition in the marketplace”. The current actions of tech giants fall under that description.

- McLaughlin writes for Fortune in 2019 that “Google and Facebook Inc. together control almost 60 percent of digital ad revenue in the U.S. and 64 percent of mobile ad revenue”. “Apple Inc. has about 45 percent of the U.S. smartphone market. About 47 percent of all U.S. e-commerce sales go through Amazon.com Inc.”
- [WARRANT] Further, Hubbard of the Open Markets Institute in 2019 elaborates that tech giants are not merely monopolistic but also demonstrate anticompetitive practices through what’s known as platform privilege, wherein tech giants have “the incentive and ability to prioritize their own goods and services over those of competitors that depend on their platforms.” This allows them to distort the playing field and crush competitors using their market power. For example, Google “used its monopoly in mobile operating systems to exclude competition in mobile apps” and “has also been accused of prioritizing its own reviews, maps, images and travel booking services in its search results, excluding competition in those markets.” Amazon, too, “often excludes marketplace sellers from selling products it wants to sell” and uses “its competitors' data to create Amazon versions of popular products,” allowing it to dominate the market. Facebook “moved to exclude a rival app from using Facebook integrations available to others.” Tech giants have empirically used their power to squash competition.
- [IMPACT] The impact is price discrimination. According to Longman from Washington Monthly in 2019, tech giants are “giving some of us far worse prices and terms of services than others, based not only on our membership in different demographic groups but also on our individual characteristics, as revealed by our online activities.” The massive amount of data available to tech giants is exploited

to push the maximum price upon consumers. For example, “Amazon was routinely charging some customers 20 percent more (and in some cases 166 percent more) than other customers for the same Kindle e-book,” and “Google would recommend more expensive or cheaper models of digital cameras, headphones, and other products to different customers based on what Google’s algorithm concluded was their ability to pay.” This type of price discrimination is specifically because of the monopolization of the tech industry because “engaging in egregious price discrimination doesn’t work very well when customers can easily take their business elsewhere. But for monopolistic corporations—which increasingly know that you have no real choice but to deal with them—price discrimination is both possible and highly lucrative”.

Contention 2: Innovation

[CLAIM] Yglesias in 2019 reports for Vox that the Clayton Act, “bars one company from acquiring another when ‘the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.’” Tech giants violate this act.

- [WARRANT] According to the Economist in 2018, venture capitalists in the tech industry “now talk of a ‘kill-zone’ around the giants” because tech giants “pay to scoop them up early to eliminate a threat”. The article explains that “venture capitalists are wary of backing startups in online search, social media, mobile and e-commerce” and that “it has become harder for startups to secure a first financing round.” In fact, “in 2017 the number of these rounds were down by around 22% from 2012.”
- [WARRANT] This kill-zone has led to startups shifting to the mentality of building themselves simply to sell to tech giants rather than to seek long-term expansion and stability. Acquisitions are becoming more and more common, as shown by the fact that “Alphabet, Amazon, Apple, Facebook and Microsoft spent a combined $31.6bn on acquisitions in 2017.” An expert in the field of technology investment noted, “Ninety percent of the startups I see are built for sale, not for scale”.
- [IMPACT] The impact is innovation. Relihan in 2018 wrote for MIT that “antitrust policy around mergers and acquisitions” is necessary to “stimulate more innovation by giving small firms a chance to sink or swim instead of being immediately bought up by their larger competitors”.

To promote competition and innovation in the tech industry, Rachel and I affirm.

[Remember that cases can be formatted however you want! This case uses a large number of direct quotations but also paraphrases sometimes. You can do the same, or you can choose to use only direct quotations, or to only paraphrase.]

[On the next few pages, the evidence used in the case is included in the form of cards.]

June 19 Pro Case Evidence

Contention 1: Monopolistic Practices [Notice that the cards are set in a particular order! They are organized by contention and in the order in which they appear in the case.]

Sherman Antitrust Act [The bolded portions before the cards themselves are "taglines", which can help you quickly identify in round which card contains which argument.]
LII n.d. (Legal Information Institute. "Sherman Antitrust Act." n.d. https://www.law.cornell.edu/wex/sherman_antitrust_act)
The Sherman Antitrust Act of 1890 is a federal statute which prohibits activities that restrict interstate commerce and competition in the marketplace. The Sherman Act was amended by the Clayton Act in 1914. The Sherman Act is codified in 15 U.S.C. §§ 1-38.

Market shares of tech giants
McLaughlin 19 (David McLaughlin. Fortune. "Why Were Facebook, Amazon, Apple, and Google Allowed to Get So Big?" 16 Mar 2019. http://fortune.com/2019/03/16/google-amazon-antitrust-laws/)
They're powerful, for sure. Google and Facebook Inc. together control almost 60 percent of digital ad revenue in the U.S. and 64 percent of mobile ad revenue, according to eMarketer. Apple Inc. has about 45 percent of the U.S. smartphone market. About 47 percent of all U.S. e-commerce sales go through Amazon.com Inc. But under modern antitrust enforcement, those percentages alone aren't enough to alarm regulators in the U.S., which long ago stopped equating big with bad. (For comparison's sake, Standard Oil's market share got as high as 88 percent late in the 19th century.) What's illegal is for a monopoly to abuse its market power to prevent rivals from threatening its dominance. Federal courts ruled Microsoft Corp. did so in the 1990s.

US v. Microsoft case proves Big Tech create monopolies with platform privilege
Hubbard 19 (Sally Hubbard - former assistant attorney general in the New York AG Antitrust Bureau, heads up big tech and monopolization for The Capitol Forum, director of enforcement strategy at the Open Markets Institute. CNN Business. "The case for why Big Tech is violating antitrust laws." 2 Jan 2019. https://www.cnn.com/2019/01/02/perspectives/big-tech-facebook-google-amazon-microsoft-antitrust/index.html Accessed RP 6/13/2019)
The nearly 20-year-old case of US v. Microsoft illustrates how today's tech giants are breaking the law. The court held that Microsoft used its monopoly power in "Intel-compatible desktop PC operating systems" to squash the Netscape browser by requiring computer makers to instead install Microsoft's own Internet Explorer browser. Rather than competing on the merits, Microsoft used its monopoly power to try to take over the internet browser market. Ironically, if the Department of Justice had not sued Microsoft to stop its anticompetitive behavior, Google might not exist! After taking over the internet browser market, Microsoft could have required computer makers to use its own search engine, too. Google, Amazon and Facebook are following the same playbook. The tech giants have "platform privilege" — the incentive and ability to prioritize their own goods and services over those of

competitors that depend on their platforms. By doing so, they contend they are improving their products and benefiting customers. An entrepreneur can create a superior product or service and still get crushed because Big Tech is controlling the game and playing it, too. This distorted playing field strikes at the heart of the American Dream. And it deprives consumers of the choice, innovation and quality that comes from competition on the merits.

Example of violations -- Google

Hubbard 19 (Sally Hubbard - former assistant attorney general in the New York AG Antitrust Bureau, heads up big tech and monopolization for The Capitol Forum, director of enforcement strategy at the Open Markets Institute. CNN Business. "The case for why Big Tech is violating antitrust laws." 2 Jan 2019. https://www.cnn.com/2019/01/02/perspectives/big-tech-facebook-google-amazon-microsoft-antitrust/index.html Accessed RP 6/13/2019)

Just as Microsoft used its monopoly in PC operating systems to exclude competition in internet browsers, Google used its monopoly in mobile operating systems to exclude competition in mobile apps. The European Commission fined Google $5 billion in July for requiring phone makers using Android to pre-install Google's apps and not competitors' apps. The Commission said 80% of smart phones in Europe and worldwide run on the system. By closing the gates of competition, Google cemented its monopoly in mobile search. The Commission ordered Google to stop its anticompetitive conduct, but many question whether it's too little too late. Google has appealed. The Android case followed the European Commission's Google Shopping case from a year prior, when it fined Google $2.7 billion for burying its comparison shopping competitors on page four, on average, of Google search results. The Commission found that Google used its monopoly on internet search to take over the comparison shopping market without competing on the merits. It ordered Google to give equal treatment to competing comparison shopping services and its own service. Google has made changes but some competitors say it's not complying with the decision. Google has also been accused of prioritizing its own reviews, maps, images and travel booking services in its search results, excluding competition in those markets. Google has rejected claims that it tries to hurt competitors, and has appealed this decision as well.

Example of violations -- Amazon

Hubbard 19 (Sally Hubbard - former assistant attorney general in the New York AG Antitrust Bureau, heads up big tech and monopolization for The Capitol Forum, director of enforcement strategy at the Open Markets Institute. CNN Business. "The case for why Big Tech is violating antitrust laws." 2 Jan 2019. https://www.cnn.com/2019/01/02/perspectives/big-tech-facebook-google-amazon-microsoft-antitrust/index.html Accessed RP 6/13/2019)

Amazon, too, is following the monopolist's playbook, picking and choosing which products consumers discover and determining who gets to compete on its platform, which accounts for nearly one out of every two dollars spent online. Amazon often excludes marketplace sellers from selling products it wants to sell and prohibits brands from selling their own products, taking the retail margin for itself. This exclusionary conduct, combined with Amazon's ability to use its competitors' data to create Amazon versions of popular products, giving them priority placement on Amazon.com, destroys competition on the merits.

Example of violations -- Facebook

Hubbard 19 (Sally Hubbard - former assistant attorney general in the New York AG Antitrust Bureau, heads up big tech and monopolization for The Capitol Forum, director of enforcement strategy at the Open Markets Institute. CNN Business. “The case for why Big Tech is violating antitrust laws.” 2 Jan 2019. https://www.cnn.com/2019/01/02/perspectives/big-tech-facebook-google-amazon-microsoft-antitrust/index.html Accessed RP 6/13/2019)

Facebook, in turn, uses its platform privilege to pick and choose what content we see. Facebook competes against news publishers and content creators for consumers' time and data, the fuel for its advertising model. Profit-maximizing algorithms prioritize content that keeps you on the platform, including Facebook's own Instant Articles and content that makes you fearful and angry (or as Facebook calls it, "engaged"). Facebook's exclusionary conduct goes beyond its algorithm: Internal company documents recently made public by the UK Parliament reveal how Mark Zuckerberg moved to exclude a rival app from using Facebook integrations available to others.

Tech giants practice price discrimination

Longman 19 (Phillip Longman - policy director at Open Markets Institute, lecturer at Johns Hopkins University, Knight-Bagehot fellow at Columbia University, awarded UCLA’s Gerald Loeb Award and top award from Investigative Reporters and Editors. Washington Monthly. “Big Tech Is Spying On Your Wallet.” April/May/June 2019. https://washingtonmonthly.com/magazine/april-may-june-2019/big-tech-is-spying-on-your-wallet/)

Yet the debate over internet privacy has so far ignored what may be the most significant privacy issue of all: price discrimination. Perhaps you missed it, for example, when in 2017, an Uber executive admitted in an interview with Bloomberg News that the company had taken its familiar “surge pricing” model to a whole new level. Under the old model, it raised prices for everyone in a certain location when local demand became strong. The new fare system, called “route-based pricing,” is essentially micro-surge: the company sets rates according to what it thinks each individual customer is willing to pay based on factors including how poor or affluent their destination is. Uber is hardly alone in its attempt to engage in ever finer degrees of price discrimination. Marketers have always offered different prices and deals to different kinds of customers. Sometimes this is benign, as when companies give discounts to students or veterans, for example. But the combination of Big Data and Big Business is making possible something different in kind: giving some of us far worse prices and terms of services than others, based not only on our membership in different demographic groups but also on our individual characteristics, as revealed by our online activities. When it comes to the greatest abuses of our personal data, the debate should not just be about who has access to it. It also needs to be about the already acute problem of how corporations use our data to discriminate in the marketplace—not only against consumers, but also as producers and sellers—and how to keep it from getting much worse. … Yet this kind of market discrimination is the defining mega-trend of our ever more digitized commercial life. Attempts to expand its use and effectiveness are the overwhelming reason why corporations are so eager to scoop up our personal data in the first place. As Andrew Odlyzko, the former head of the University of Minnesota's Digital Technology Center, has written, "The powerful movement to reduce privacy that is coming from the private sector is motivated by the incentives to price discriminate, to charge different prices to various customers for the same goods or services." Corporations have no intrinsic interest in invading your privacy. They really don't care who your Facebook friends are or even how many of them you've slept with. No, the real reason corporations want more and more of your personal data is because they are after something that businesses have coveted for millennia but could only imperfectly pull off. Think of the haggling rug merchant in the bazaar, or the car salesman on the showroom floor. What they most want to know is the maximum you'll pay today for whatever they have on offer. In the past, a salesman had to rely on intuition and crude, often biased indicators, like how customers dressed or spoke, their expressed interest or need, their credit rating, and often their race or gender. Sometimes this resulted in low-income customers getting a lower price because the merchant figured that otherwise he couldn't make the sale at all. But more often the favoritism went, and still does, to those who need discounts the least. Abundant studies show, for example, that white male car buyers tend to be quoted significantly lower prices than black and female car buyers. A typical salesman will offer "special deals" to customers he thinks are too savvy to pay the "regular" price, or who he thinks have the wherewithal to act on better deals elsewhere. In the past, these judgments were inevitably shaded by the seller's assumptions and personal prejudices. That's still true, but now they are more and more likely to be based on correlations that some algorithm thinks it has discovered by crunching a trillion points of big data about you and "your kind." No one likes being discriminated against when all they want to do is buy a car. But today, it's getting harder and harder to avoid dealing with marketers who can estimate with increasing accuracy just how much you, personally, are willing to pay, and who charge you accordingly. Until a few years ago, efforts to personalize prices using digital data about the customer were relatively primitive. In 2012, for example, a Wall Street Journal investigation found that Staples.com was quoting people higher prices if they lived in an area that lacked an Office Depot or other Staples competitor. <u>The same year, researchers published evidence that Amazon was routinely charging some customers 20 percent more (and in some cases 166 percent more) than other customers for the same Kindle e-book based on the customers' location. The same researchers also found that Google would recommend more expensive or cheaper models of digital cameras, headphones, and other products to different customers based on what Google's algorithm concluded was their ability to pay.</u> By 2016, a ProPublica investigation revealed that Amazon was engaging in a different dimension of marketplace discrimination—one that affects both buyers and sellers and that deeply distorts the ability of markets to set fair and efficient prices. Amazon both provides a platform for third-party vendors and sells products directly on the same platform. In this way, not only does Amazon own the biggest store in the largest mall, it owns the mall itself. What ProPublica found was that when consumers entered this virtual mall and searched for the best deal on, say, Loctite Super Glue, Amazon would prominently display offers available directly from Amazon rather than those offered by highly rated merchants who were selling the same glue for less. This is just the beginning. When people try to sell their wares on Amazon, whether they are publishers trying to sell books or merchants trying to sell glue, they have to accept the terms Amazon offers. Indeed, these days many can't reach the customers they need except through Amazon, which makes it very hard for them to say no when, for example, Amazon suggests it's time to fork over more money so it doesn't bury their offers at the bottom of every search. And because Amazon effectively has the ability to look into their cash registers, it has deep knowledge of just how much they can afford to pay. It can use this knowledge to wring more money from sellers. On current trends, these forms of discrimination are poised to get far worse. One reason is the vastly increasing amounts of data that individuals and businesses generate online. Second is the rapidly increasing processing power available through machine learning, artificial intelligence, and other advances in computing, which enable more sophisticated, highly tailored means of discriminating. According to a report by Deloitte and Salesforce, 40 percent of brands that currently deploy AI are using the technology not just to personalize the customer experience but also to tailor pricing and promotions in real time. A third reason is the growth of tech platforms. Whether you are a merchant selling wares on Amazon, a driver selling rides on Uber, a homeowner renting out rooms on Airbnb, or a publisher posting content on Facebook, you are in a dependent relationship with a dominant corporation that can use its deep knowledge of your business to figure out how much it can get away with charging you. A final, highly important reason is the increasing degree of corporate concentration found throughout the economy. Engaging in egregious price discrimination doesn't work very well when customers can easily take their business elsewhere. But for monopolistic corporations—which increasingly know that you have no real choice but to deal with them—price discrimination is both possible and highly lucrative.

Contention 2: Innovation

Clayton Antitrust Act

Yglesias 19 (Matthew Yglesias - cofounder of Vox, previously wrote for Slate, Think Progress, The Atlantic, TPM, and The American Prospect. Vox. "The push to break up Big Tech, explained." 3 May 2019. https://www.vox.com/recode/2019/5/3/18520703/big-tech-break-up-explained)

The Clayton Antitrust Act, for example, is more than 100 years old and its predecessor the Sherman Act is even older. Both arose in an era when increasingly financial sophistication was allowing the creation of large industrial organizations — often with classic Gilded Age generic names like US Steel, Standard Oil, and the American Sugar Refining Company — that dominated their respective industries. Rather than specifying any particular analysis to address worries about monopolization, the Clayton Act simply bars one company from acquiring another when "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly" and does not offer much in the way of further definition or elaboration of what that means.

Tech giants kill startups

Economist 18 (Economist. "American tech giants are making life tough for startups." 2 Jun 2018. https://www.economist.com/business/2018/06/02/american-tech-giants-are-making-life-tough-for-startups)

The behemoths' annual conferences, held to announce new tools, features, and acquisitions, always "send shock waves of fear through entrepreneurs", says Mike Driscoll, a partner at Data Collective, an investment firm. "Venture capitalists attend to see which of their companies are going to get killed next." But anxiety about the tech giants on the part of startups and their investors goes much deeper than such events. Venture capitalists, such as Albert Wenger of Union Square Ventures, who was an early investor in Twitter, now talk of a "kill-zone" around the giants. Once a young firm enters, it can be extremely difficult to survive. Tech giants try to squash startups by copying them, or they pay to scoop them up early to eliminate a threat. The idea of a kill-zone may bring to mind Microsoft's long reign in the 1990s, as it embraced a strategy of "embrace, extend and extinguish" and tried to intimidate startups from entering its domain. But entrepreneurs' and venture capitalists' concerns are striking because for a long while afterwards, startups had free rein. In 2014 The

Economist likened the proliferation of startups to the Cambrian explosion: software made running a startup cheaper than ever and opportunities seemed abundant. Today, less so. Anything having to do with the consumer internet is perceived as dangerous, because of the dominance of Amazon, Facebook and Google (owned by Alphabet). Venture capitalists are wary of backing startups in online search, social media, mobile and e-commerce. It has become harder for startups to secure a first financing round. According to Pitchbook, a research company, in 2017 the number of these rounds were down by around 22% from 2012 (see chart). The wariness comes from seeing what happens to startups when they enter the kill-zone, either deliberately or accidentally. Snap is the most prominent example; after Snap rebuffed Facebook's attempts to buy the firm in 2013, for $3bn, Facebook cloned many of its successful features and has put a damper on its growth. A less known example is Life on Air, which launched Meerkat, a live video-streaming app, in 2015. It was obliterated when Twitter acquired and promoted a competing app, Periscope. Life on Air shut Meerkat down and launched a different app, called Houseparty, which offered group video chats. This briefly gained prominence, but was then copied by Facebook, seizing users and attention away from the startup. The kill-zone operates in business software ("enterprise" in the lingo) as well, with the shadows of Microsoft, Amazon and Alphabet looming large. Amazon's cloud service, Amazon Web Services (AWS), has labelled many startups as "partners", only to copy their functionality and offer them as a cheap or free service. A giant pushing into a startup's territory, while controlling the platform that startup depends on for distribution, makes life tricky. For example, Elastic, a data-management firm, lost sales after AWS launched a competitor, Elasticsearch, in 2015. Even if giants do not copy startups outright, they can dent their prospects. Last year Amazon bought Whole Foods Market, a grocer, for $13.7bn. Blue Apron, a meal-delivery startup that was preparing to go public, was suddenly perceived as unappetising, as expectations mounted that Amazon would push into the space. This phenomenon is not limited to young firms: recently Facebook announced it was moving into online dating, causing the share price of Match Group, which went public in 2015, to plummet by 22% that day. It has never been easy to make it as a startup. Now the army of fearsome technology giants is larger, and operates in a wider range of areas, including online search, social media, digital advertising, virtual reality, messaging and communications, smartphones and home speakers, cloud computing, smart software, e-commerce and more. This makes it challenging for startups to find space to break through and avoid being stamped on. Today's giants are "much more ruthless and introspective. They will eat their own children to live another day," according to Matt Ocko, a venture capitalist with Data Collective. And they are constantly scanning the horizon for incipient threats. Startups used to be able to have several years' head start working on something novel without the giants noticing, says Aaron Levie of Box, a cloud and file-sharing service that has avoided the kill-zone (it has a market value of around $3.8bn). But today startups can only get a six- to 12-month lead before incumbents quickly catch up, he says. There are some exceptions. Airbnb, Uber, Slack and other "unicorns" have faced down competition from incumbents. But they are few in number and many startups have learned to set their sights on more achievable aims. Entrepreneurs are "thinking much earlier about which consolidator is going to buy them", says Larry Chu of Goodwin Procter, a law firm. The tech giants have been avid acquirers: Alphabet, Amazon, Apple, Facebook and Microsoft spent a combined $31.6bn on acquisitions in 2017. This has led some startups to be less ambitious. "Ninety per cent of the startups I see are built for sale, not for scale," says Ajay Royan of Mithril Capital, which invests in tech. This can be enriching to founders, who can go on to start another firm or provide financing to peers with smart ideas. To the extent that such exits provide more capital to spur innovation, this is no bad thing. The tech giants can help the firms they acquire grow more than they might have been able to do on their own. For example, Facebook's acquisition of Instagram took out a would-be competitor, but it has thrived under the social-networking giant's sway by adopting the technical infrastructure, staff and know-how that Facebook had in place. But plenty of people in the Valley reckon the bad outweighs the good and that early, "shoot-out" acquisitions have sapped innovation. "The dominance of the big platforms has had a meaningful effect on the entrepreneurial culture of Silicon Valley," says Roger McNamee of Elevation Partners, a private-equity firm, who was an early investor in Facebook. "It's shifted the incentives from trying to create a large platform to creating a small morsel that's tasty to be acquired by one of the giants." And when startups are bullied into selling, as some are, it is even more worrying. Big tech firms have been known to intimidate startups into agreeing to a sale, saying that they will launch a competing service and put the startup out of business unless they agree to a deal, says one person who was in charge of these negotiations at a big software firm (which uses such tactics). There are three reasons to think that the kill-zone is likely to stay. First, the giants have tons of data to identify emerging rivals faster than ever before. Google collects signals about how internet users are spending time and money through its Chrome browser, e-mail service, Android operating system, app store, cloud service and more. Facebook can see which apps people use and where they travel online. It acquired the app Onavo, which helped it recognise that Instagram was gaining steam. It bought the young firm for $1bn before it could mature into a real threat, and last year it purchased a nascent social-polling firm, tbh, in a similar manner. Amazon can glean reams of data from its e-commerce platform and cloud business. Another source of market information comes from investing in startups, which helps tech firms gain insights into new markets and possible disrupters. Of all American tech firms, Alphabet has been the most active. Since 2013 it has spent $12.6bn investing in 308 startups. Startups generally feel excited about gaining expertise from such a successful firm, but some may rue the day they accepted funding, because of conflicts. Uber, for example, took money from one of Alphabet's venture-capital funds, but soon found itself competing against the giant's self-driving car unit, Waymo. Thumbtack, a marketplace for skilled workers, also accepted money from Alphabet, but then watched as the parent company rolled out a competing service, Google Home Services. Amazon and Apple invest less in startups, but they too have clashed with them. Amazon invested in a home intercom system, called Nucleus, and then rolled out a very similar product of its own last year. Recruiting is a second tool the giants will use to enforce their kill zones. Big tech firms are able to shell out huge sums to keep top performers and even average employees in their fold and make it uneconomical for their workers to consider joining startups. In 2017 Alphabet, Amazon, Apple, Facebook and Microsoft allocated a whopping $23.7bn combined to stock-based compensation. Big companies' hoarding of talent stops startups scaling quickly. According to Mike Volpi of Index Ventures, a venture-capital firm, startups in the firm's portfolio are currently 10-20% behind in their hiring goals for the year. A third reason that startups may struggle to break through is that there is no sign of a new platform emerging which could disrupt the incumbents, even more than a decade after the rise of mobile. For example, the rise of mobile wounded Microsoft, which was dominant on personal computers, and gave power to both Facebook and Google, enabling them to capture more online ad dollars and attention. But there is no big new platform today. And the giants make it extremely expensive to get attention: Facebook, Google and Amazon all charge a hefty toll for new apps and services to get in front of consumers. Seeing little opportunity to compete with the tech giants on their own turf, investors and startups are going where they can spot an opening. The lack of an incumbent giant is one reason why there is so much investor enthusiasm for crypto-currencies and for synthetic biology today. But the giants are starting to pay more attention. There are rumours Facebook wants to buy Coinbase, a cryptocurrency firm.

Antitrust regulation through limiting mergers and acquisitions helps innovation

Relihan 18 (Tom Relihan. MIT Sloan School of Management. "Will regulating big tech stifle innovation?" 27 Sept 2018. https://mitsloan.mit.edu/ideas-made-to-matter/will-regulating-big-tech-stifle-innovation Accessed RP 6/13/2019)

MIT Sloan professor emeritus Richard Schmalensee worked as an expert witness for Microsoft on the landmark antitrust case brought against the company in 1998 and settled in 2001. Schmalensee said traditional methods of regulation aren't likely to work on big tech firms like they have in the past for other industries, and concerns about their chilling effect on the march of innovation are well-founded. Common forms of public utility regulation, including price controls like those imposed against electric and gas companies, won't happen, nor would they make much sense for big tech companies, Schmalensee said. Attempts to break the megafirms up are unlikely to work either. In the Microsoft case, U.S. regulators accused the company of engaging in monopolistic behavior by, among other things, bundling its Internet Explorer web browser together with Windows. The government initially argued that the company should be split, but the final decision was much less drastic. Breaking up a company like Facebook, where the business model relies at its core on creating a large network to connect everyone on a single platform, could ruin the business itself and harm customers, Schmalensee said. But some forms of antitrust regulation could take aim at the scale of those companies and their ability to retain market dominance. Take, for example, antitrust policy around mergers and acquisitions, Schmalensee said. Large companies often snap up smaller companies that could one day become a major competitor, acquiring their technology while eliminating the future threat. "A lot of people have argued for being tougher on acquisitions," Schmalensee said. "It's not an extension of U.S. antitrust law or policy for that matter, to say 'You really ought to be a little more skeptical of mergers, even with small companies, when they might grow into big competitors or have technology that can be used to make it difficult for others to compete.'" Most of those firms are relatively small, with market shares to match, so their acquisition doesn't usually trigger much scrutiny by antitrust authorities, Van Reenen said. Facebook's 2012 purchase of Instagram for $1 billion in cash and stock stands as the classic example of the sort of forward-looking strategies regulators would need to detect and address. "It's very hard because it requires the antitrust authorities to take a view over how competition is likely to evolve in this marketplace," Van Reenen said. "Maybe Instagram would never have got to be a big enough platform [to challenge Facebook]." In that case, the deal was allowed to go through because Instagram did not sell advertising like Facebook did, regulators concluded. However, Facebook used the acquisition to drive even higher engagement with its platform, and engagement is what sells advertisements. Today, companies advertise on Instagram through Facebook's advertising platform. If the effect of mergers and acquisitions by large tech titans is that they're blocking off future competition and innovation, then some regulation of the strategy could actually stimulate more innovation by giving small firms a chance to sink or swim instead of being immediately bought up by their larger competitors, Van Reenen said