

To Politicians: We Don't Need Your Help Making Good Decisions

Does anyone truly believe that our government -- which consistently creates monopoly privileges for companies with its own cronyism -- can be trusted to ensure that private markets remain competitive? Apparently so. Consider the resurgence of antitrust efforts against "Big Tech." If history is our guide, going after disfavored companies will result in less competition, not more, along with fewer choices and higher prices for you and me.

Take the American Innovation and Choice Online Act recently approved by a Senate panel. This bill would block a handful of tech companies like Amazon and Apple from favoring their own products and services over those of competitors who also use these platforms. For instance, independent merchants who sell on Amazon claim to be punished if they sell their products for less on their own websites or on other sites like Walmart's or Target's.

The theory is that Amazon controls what happens on marketplaces across the internet, and in doing so, it makes products more expensive for everyone. The preferred solution seems simple: stop a few specific big techs from engaging in this practice.

While there is no empirical evidence to this claim, it's a mistake to assume that government must (and can) prevent it. Along with other antitrust actions now being considered by Congress and federal agencies, it presupposes that politicians, bureaucrats and courts possess a deep understanding of each platform and how it will react to a regulation. But the enormous complexity and dynamism of e-commerce should instead guide government officials toward humility.

The wannabe perfectors of Amazon or Apple don't offer a good explanation for why so many sellers, customers and platforms all continue to use the current practices. Aren't they at least curious why new corners of the digital economy continue to emerge with these practices in place? Have they considered that if practices are failing to satisfy consumers, there are huge profit opportunities for new innovators to break the mold?

In "10 Things the American Innovation and Choice Online Act Gets Wrong," legal scholar Dirk Auer examines the allegedly problematic "closed platforms" like those under Congress' microscope versus "open" platforms that legislators favor. "(I)f recent commentary is to be believed," he wrote, "it is the latter that should succeed." And if consumers and platforms were to gain most from choosing the open platforms, "then we should see intermediaries step into that breach. But this does not seem to be happening in the digital economy."

In other words, if government succeeds in "reforming" Amazon, it will deny sellers and consumers a service they're truly choosing. Legislators have no business questioning this choice and eliminating it would push people toward platforms they find less useful. Currently, customers enjoy the ability to choose between both Amazon's and independent retailers' products in one place.

Writing for Regulation, Thomas Lenard explains that, thanks to this act, "Amazon might have to choose between its third-party platform business and its Amazon-branded business. Either way, prices would be higher, choices fewer, and consumers would lose. So, likely, would many small

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companies that built their businesses on the Amazon platform."

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But for all the talk of protecting consumers, antitrust cases are rarely about that. Long before becoming famous for his failed nomination to the U.S. Supreme Court, Robert Bork won plaudits for his 1978 book, "The Antitrust Paradox." Bork demonstrated that during the first 80 years of its existence, antitrust was used to stifle competition and protect powerful incumbent firms from innovative and often smaller rivals.

Research done since then reveals that the original goal of the 1890 Sherman Antitrust Act (and subsequent statutes) wasn't competition in the first place. The real goal was to protect politically powerful producers from market competition.

If Sen. John Sherman -- after whom Congress's first antitrust act is named -- were really a friend of competition, he wouldn't have staunchly supported the McKinley Tariff, which Congress passed a mere three months later. It was one of the largest tariff hikes in U.S. history and was meant to insulate powerful businesses from their rivals.

And so it goes today. Those who demand a revival of antitrust regulation to "promote competition" may not realize that they're inciting a revival of cronyism to suppress competition.

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