

## **Course Title: Big Tech, Big Battles (Tech 08W)**

### **Course Description:**

*Once regarded as engines of benevolent innovation, or even as global emissaries of democracy, big tech companies have lost their reputational luster in recent years. Their rise coincided with a historic decline in government action against market concentration and abuse of dominance. But now the gloves are off. Since 2020, the U.S. Department of Justice and nearly every state have filed major lawsuits against big tech companies. Lawmakers on both sides of the congressional aisle have introduced new antitrust legislation, including bills targeting internet platforms. Moreover, the new chair of the Federal Trade Commission has vowed to upend decades of assumptions about the appropriate tools for—and even the purpose of—regulating competition.*

*Where did this whirlwind of activity come from? Are tech companies, once known for moving fast and breaking things, about to get broken up? Would that fate be radically unprecedented— or rooted in American tradition? Do a search engine and a public wharf have anything in common? What about a social network and a railroad? Is our democracy at stake? To explore such questions, we will examine historical scholarship, modern research, and legal briefs, and we will conclude by considering recent legislative action. Students will come away understanding the intellectual foundations of the movement driving these changes, as well as issues unique to internet platforms.*

## **Week 1: What Are the Current Stakes?**

### **Topics**

- Introduction to current disputes
- Introduction to U.S. antitrust law

### **Videos**

- Watch weekly overview video on Canvas
- Attend live lecture (or watch afterwards)

### **Readings**

- Sherman Anti-Trust Act (1890)  
<https://www.ourdocuments.gov/doc.php?flash=false&doc=51&page=transcript> (Just read Sections 1-3). *Don't worry if you find the statute difficult to understand; just try to form a first impression of what it might mean. We will learn more about this and similar statutes in later classes.*

## BIG TECH BIG BATTLES - COURSE DESCRIPTION AND SYLLABUS

- Antitrust Modernization Commission: Report and Recommendations (April 2007), [https://digital.library.unt.edu/ark:/67531/metadc1228317/m2/1/high\\_res\\_d/amc\\_final\\_report.pdf](https://digital.library.unt.edu/ark:/67531/metadc1228317/m2/1/high_res_d/amc_final_report.pdf) (bipartisan report to Congress) (*just read the first two and a half pages of the Introduction—stop before Repeal of the Robinson-Patman Act*)
- Cases
  - *Federal Trade Commission v. Facebook, Inc.*, First Amended Complaint (Sept. 8, 2021), <https://storage.courtlistener.com/recap/gov.uscourts.dcd.224921/gov.uscourts.dcd.224921.82.0.pdf> (Just read Section I: Nature of the Case, pages 1-6)
  - *District of Columbia v. Amazon.com, Inc.*, Complaint (May 25, 2021) <https://oag.dc.gov/sites/default/files/2021-05/Amazon-Complaint-.pdf> (Just read Introduction, pages 1-5)
  - *U.S. v. Google LLC*, Amended Complaint (Jan. 15, 2021) <https://www.justice.gov/atr/case-document/file/1428271/download> (Just read Introduction, pages 1-5)
  - *Epic Games, Inc. v. Apple Inc.*, Complaint, <https://www.courtlistener.com/docket/17442392/1/epic-games-inc-v-apple-inc/> (Just read Nature of the Action, pages 1-7)

### Optional Videos

- *If you do not have a background in law, consider watching these videos:*
  - Civil Procedure: How to Draft a Well Plead Complaint (just 2:12-4:42) <https://youtu.be/c4HaGGX2NIY?t=132>
  - Drafting an Answer to a Civil Complaint, <https://www.youtube.com/watch?v=vmdbKS6q65g>
  - Federal Court Litigation Timeline by Attorney Steve, <https://www.youtube.com/watch?v=6oZWICq8trE>

### Question Prompts for Discussion Posts

- What are your primary concerns (if any!) about Big Tech? Which company is most concerning to you? (Feel free to discuss any company—it does not have to be one of the companies named in the lawsuits from this week’s readings).
- Looking at the literal text of the original Sherman Act, what kind of business practices or structures do you think would be outlawed? (For now, put aside any prior knowledge you may have about case law or later legislation— this week is about first impressions).
- What do you think about the goals identified by the 2007 Antitrust Modernization Commission, such as fostering innovation and promoting consumer welfare? Do those goals seem relevant to your concerns about Big Tech— or are they beside the point?
- Choose one of the lawsuits covered in this week’s readings. What is your first impression about that lawsuit? What are you curious to learn more about?

## Week 2: How Did We Get Here? (Part I)

### Topics

- Early English and American Traditions of Business Regulation
  - State charters for corporations
  - Common law principles
  - Common carriage requirements
- Antitrust History (Part 1)
  - The Populist Era
  - The Trustbuster Era
  - The New Deal Era
  - Post-WWII

### Videos

- Watch weekly overview video on Canvas
- Google, Facebook, Amazon and The Future of Antitrust Laws, CNBC (Aug. 16, 2019) <https://youtu.be/IcghGCBROR0> (watch up to 7:08)
- Attend live lecture (or watch afterwards)

### Podcast

- Antitrust 1: Standard Oil, Planet Money (Feb. 23, 2019), <https://www.npr.org/sections/money/2019/02/15/695131832/antitrust-1-standard-oil>, (just listen to 10:23 – 19:03)

### Readings

- David K. Millon, The First Antitrust Statute, 29 Washburn L. J. 141 (1990), <https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1175&context=wlufac> (Read entire article)
- Sanjukta Paul, Recovering the Moral Economy Foundations of the Sherman Act (April 14, 2020). Yale Law Journal, (Volume 131), Available at SSRN: <https://ssrn.com/abstract=3564452> (discussing the original political coalition that drove the Sherman Act) (just read pages 198-203)
- Talia Stender, The Progressive Tradition: An LPE Reading List and Introduction, <https://lpeproject.org/wp-content/uploads/2020/10/Progressive-Tradition-Primer.pdf> (pages 1-3 only)
- Sherman Anti-Trust Act (1890), introduction to the statute by U.S. National Archives and Records Administration [https://www.ourdocuments.gov/print\\_friendly.php?flash=false&page=&doc=51&title=Sherman+Anti-Trust+Act+%281890%29](https://www.ourdocuments.gov/print_friendly.php?flash=false&page=&doc=51&title=Sherman+Anti-Trust+Act+%281890%29)
- Testimony of John D. Rockefeller, President of the Standard Oil Company, 1899, <https://energyhistory.yale.edu/library-item/testimony-john-d-rockefeller-president-standard-oil-company-1899>

## BIG TECH BIG BATTLES - COURSE DESCRIPTION AND SYLLABUS

- The Regulation of Competition Versus the Regulation of Monopoly by Louis D. Brandeis, An address to the Economic Club of New York on November 1, 1912, <https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/the-regulation-of-competition-versus-the-regulation-of-monopoly-by-louis-d.-brandeis> (*the "great leader" of a "new party" referenced in this speech is Theodore Roosevelt of the Progressive/Bull Moose Party; Brandeis served as an advisor to Woodrow Wilson, who won the 1912 Presidential election*)
- Brief Summaries of Selected Laws:
  - The Clayton Antitrust Act, Historical Highlights, U.S. House of Representatives, <https://history.house.gov/HistoricalHighlight/Detail/15032424979>
  - Clayton Antitrust Act, U.S. 1914, Encyclopedia Britannica summary <https://www.britannica.com/event/Clayton-Antitrust-Act>
  - Federal Trade Commission Act, U.S. 1914, Encyclopedia Britannica summary <https://www.britannica.com/event/Federal-Trade-Commission-Act>
  - Federal Trade Commission, U.S. Government Agency, Encyclopedia Britannica, <https://www.britannica.com/topic/Federal-Trade-Commission>
  - Robinson-Patman Act (1936), Encyclopedia Britannica, <https://www.britannica.com/topic/Robinson-Patman-Act>
  - The Celler-Kefauver Act, Investopedia summary, <https://www.investopedia.com/terms/c/the-celler-kefauber-act.asp>
  - Hart-Scott-Rodino Act (1976), FTC summary, <https://www.ftc.gov/enforcement/statutes/hart-scott-rodino-antitrust-improvements-act-1976>
- Robert Pitofsky, *Political Content of Antitrust*, 127 U. Pa. L. Rev. 1051 (1979), [https://scholarship.law.upenn.edu/penn\\_law\\_review/vol127/iss4/19](https://scholarship.law.upenn.edu/penn_law_review/vol127/iss4/19) (pages 1060-1064)
- Louis B. Schwartz, *"Justice" and Other Non-Economic Goals of Antitrust*, 127 U. Pa. L. Rev. 1076 (1979), [https://scholarship.law.upenn.edu/penn\\_law\\_review/vol127/iss4/20](https://scholarship.law.upenn.edu/penn_law_review/vol127/iss4/20) (responding to Pitofsky's characterization of Wright-Patman Act)
- David Morris, *Defending the Public Good: FDR's Portland Speech*, ILSR (Sept. 11, 2013) <https://ilsr.org/defending-public-good-fdrs-portland-speech/>
- Tim Wu, *Bell Labs and Centralized Innovation*, Communications of the ACM, May 2011, Vol. 54 No. 5, Pages 31-33, <https://cacm.acm.org/magazines/2011/5/107696-bell-labs-and-centralized-innovation/fulltext>
- Tim Wu, *Tech Dominance and the Policeman at the Elbow*, COLUMBIA PUBLIC LAW RESEARCH PAPER NO. 14-623 (2019), [https://scholarship.law.columbia.edu/faculty\\_scholarship/2289](https://scholarship.law.columbia.edu/faculty_scholarship/2289) (just read Part III)

### Optional - References

- Modern version of antitrust laws: 15 U.S. Code Chapter 1 <https://www.law.cornell.edu/uscode/text/15/chapter-1> (Sherman Act is Sections 1-7; and the Clayton Act as amended by the Robinson-Patman Act, the Celler-Kefauver Act, and Hart-Scott-Rodino Antitrust Improvements Act, is at Sections 12-27)

*Optional - Selected Cases*

- *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1 (1911), <https://supreme.justia.com/cases/federal/us/221/1/> (breaking up Standard Oil and holding that business combinations are illegal only when engaged in “unreasonable” restraints of trade)
- *United States v. Aluminum Co. of Am.*, 148 F.2d 416, 428 (2d Cir. 1945) (*Alcoa*), <https://law.justia.com/cases/federal/appellate-courts/F2/148/416/1503668/> (Judge Learned Hand rejects “rule of reason” approach)
- *Northern Pacific R. Co. v. United States*, 356 U.S. 1 (1958), <https://supreme.justia.com/cases/federal/us/356/1/> (affirming judgment finding railroad's "preferential routing" agreements to be unlawful as unreasonable restraints of trade under § 1 of the Sherman Act)
- *United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 331 (1961), <https://supreme.justia.com/cases/federal/us/366/316/> (divestiture has “been called the most important of antitrust remedies. It is simple, relatively easy to administer, and sure.”)
- *Brown Shoe Co., Inc. v. United States*, 370 U.S. 294 (1962) <https://supreme.justia.com/cases/federal/us/370/294/> (affirming order of divestiture in merger on basis that it would have substantially lessened competition under § 7 of Clayton Act).
- *United States v. Grinnell Corp.*, 384 U.S. 563 (1966) <https://supreme.justia.com/cases/federal/us/384/563/> (“[t]he offense of monopoly under § 2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.”)

**Question Prompts for Discussion Posts**

- What do you think about John D. Rockefeller’s views of the advantages and disadvantages of trusts?
- Do you think monopoly power is unavoidable in some (or even all) industries? If so, what are the typical characteristics of those industries?
- Do you agree with Louis Brandeis and Tim Wu that monopolies can delay or even suppress innovation?
- What do you think about the statements made by the co-sponsors of the Celler-Kefauver Act? (See Pitofsky article, pages 1062-1063).
- Is there anything else you found interesting in this week’s readings?

## Week 3: How Did We Get Here? (Part II)

### Topics

- The Chicago School & Robert Bork
- The Neo-Brandeisians

### Videos

- Watch weekly overview video on Canvas
- What Is the Consumer Welfare Standard? — Robert Bork Jr., July 22, 2021  
[https://www.youtube.com/watch?v=fW\\_08XmYx-A](https://www.youtube.com/watch?v=fW_08XmYx-A)
- Google, Facebook, Amazon and The Future of Antitrust Laws, CNBC (Aug. 16, 2019)  
<https://youtu.be/IcghGCBROR0> (watch from 7:09 to the end)
- Attend live lecture (or watch afterwards)
  - **Guest Speaker: Hal Singer, Econ One**  
*Hal Singer is an expert in antitrust, consumer protection, and regulation. He has researched, published, and testified on competition-related issues in a wide variety of industries, including media, pharmaceuticals, sports, and finance. He has extensive experience providing expert economic and policy advice to regulatory agencies in the United States and Canada, as well as before congressional committees. Dr. Singer is also a Senior Fellow at the George Washington Institute of Public Policy and an Adjunct Professor at Georgetown University, McDonough School of Business, where he teaches advanced pricing to MBA candidates. In 2018, the American Antitrust Institute honored Dr. Singer with an antitrust enforcement award for his work in the Lidoderm antitrust litigation.*

### Readings

#### The Chicago School and its impact on enforcement

- Bork, Robert H. “Legislative Intent and the Policy of the Sherman Act.” The Journal of Law & Economics 9 (1966). <http://www.jstor.org/stable/724991> (Note: this is free to read online, but requires creating an account on JSTOR) (just read pages 7-14)
- Crane, Daniel A., The Tempting of Antitrust: Robert Bork and the Goals of Antitrust Policy, Antitrust L. J. 79, no. 3 (2014),  
<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2549&context=articles> (just read pages 835-842)
- Antitrust Modernization Commission: Report and Recommendations (April 2007),  
[https://digital.library.unt.edu/ark:/67531/metadc1228317/m2/1/high\\_res\\_d/amc\\_final\\_report.pdf](https://digital.library.unt.edu/ark:/67531/metadc1228317/m2/1/high_res_d/amc_final_report.pdf) (Chicago-friendly account of the rise of consumer welfare standard) (just read pages 33-36)
- Antitrust Enforcement Data, Yale School of Management,  
<https://som.yale.edu/centers/thurman-arnold-project-at-yale/antitrust-enforcement-data> (just read “The state of antitrust enforcement in the United States” section, with charts).
- Sandeep Vaheesan, Privileging Consolidation and Proscribing Cooperation: The Perversity of Contemporary Antitrust Law, 1 Journal of Law & Political Economy 28 (2020), (just read pages 28-31) <https://scholarship.org/uc/item/8cj0z1tq>

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- American Economic Liberties Project, Letter to Chairman Cicilline and Ranking Member Buck, March 18, 2021, <https://www.economicliberties.us/wp-content/uploads/2021/03/ACAL-Letter-Hearing-3-18-21-FINAL.pdf> (just read the section entitled “Unmaking a Flawed Ideology” on pages 2-5)

### The New Brandeis movement

- David Dayen, This Budding Movement Wants to Smash Monopolies, *The Nation*, April 4, 2017, <https://www.thenation.com/article/archive/this-budding-movement-wants-to-smash-monopolies/>
- Lina Khan, *The New Brandeis Movement: America’s Antimonopoly Debate*, 9 J. European Competition L. & Prac. 131 (2018), <https://academic.oup.com/jeclap/article/9/3/131/4915966>
- Lina M. Khan, Amazon's Antitrust Paradox, 126 Yale L.J. (2016), available at: <https://digitalcommons.law.yale.edu/ylj/vol126/iss3/3> (read Introduction and Parts I and II, pages 712-746)

### *Optional - Selected Cases*

- *GTE Sylvania Inc. v. Cont’l T.V., Inc.*, 537 F.2d 980, 1000 (9th Cir. 1976) (en banc), aff’d, 433 U.S. 36 (1977), <https://supreme.justia.com/cases/federal/us/433/36/> (overruling application of *per se* rule to location restrictions in Section 1 action and imposing rule of reason standard instead)
- *Reiter v. Sonotone Corp.*, 442 U.S. 330, 343 (1979) <https://www.courtlistener.com/opinion/110101/reiter-v-sonotone-corp/> (citing Bork for the proposition that Congress designed the Sherman Act as a consumer welfare prescription).
- *Berkey Photo, Inc. v. Eastman Kodak Company*, 603 F.2d 263 (2d Cir. 1979), <https://law.justia.com/cases/federal/appellate-courts/F2/603/263/105215/> (identifying monopoly leveraging—the use of monopoly power to gain a competitive advantage in a second market— as an independent violation of the Sherman Act).
- *Matsushita v. Zenith Radio Corp.*, 475 U.S. 574 (1986), <https://supreme.justia.com/cases/federal/us/475/574/> (“there is a consensus among commentators that predatory pricing schemes are rarely tried, and even more rarely successful. *See, e.g.,* Bork...”)
- *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993), <https://supreme.justia.com/cases/federal/us/509/209/> (establishing test requiring plaintiff to show that the alleged predator both set a price below cost and had a sufficient likelihood of recouping its predation-period losses through post-predation gains.)
- *Verizon Communications Inc. v. Law Offices of Curtis v. Trinko, LLP*, 540 U.S. 398, 408 (2004), <https://supreme.justia.com/cases/federal/us/540/02-682/> (endorsing expansive view of doctrine of implied antitrust immunity—essentially, an assumption that if Congress set up a regulatory scheme that addresses an activity that could be subject to antitrust law, Congress did not want antitrust to also apply, because regulation alone would be sufficient)

### Question Prompts for Discussion Posts

- How much do you think the law should be influenced by economic schools of thought? How much should the law (or individual cases) be influenced by moral or political values—even if they are not easily quantifiable?
- Which views did you find most compelling in this week’s readings?
- What themes are you noticing across the history of antitrust and corporate regulation?

## Week 4: (How) Are Internet Platforms Special?

### Topics

- Overview of issues unique to internet platforms
- Potential regulatory approaches

### Video

- Watch weekly overview video on Canvas
- What Google, Facebook And Apple Can Learn From Microsoft’s 1998 Antitrust Fight, CNBC, Sept. 6, 2019 <https://www.youtube.com/watch?v=e33Go6gbL7s> (start at 0:54)
- Hearing - The Impact of Consolidation and Monopoly Power on American Innovation (Dec. 15, 2021): <https://www.judiciary.senate.gov/meetings/the-impact-of-consolidation-and-monopoly-power-on-american-innovation> (watch 1:08:10 – 1:12:59 and 1:37:38 – 1:41:34)
- Hearing – Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google (July 29, 2020). Watch from 4:09:44 to 4:13:35 (Tim Cook and Lucy McBath), <https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=3113>
- Attend live lecture (or watch afterwards)
  - **Guest Speaker: Antoine Prince Albert III of Public Knowledge**  
*Antoine Prince Albert III is a Government Affairs Policy Counsel at Public Knowledge, Inc., a DC-based public interest group working to defend consumer rights in the emerging digital culture. At PK, Prince delivers high-impact advocacy strategies on issues like online platform governance and competition, Section 230, artificial intelligence and algorithms, music licensing, net neutrality, digital inclusion, and privacy. He is routinely consulted for critical insights on how technology functions within Black, Latino, and Indigenous communities in the United States, the Caribbean, and Africa.*  
*Prior to joining Public Knowledge, Prince worked at Georgetown’s Institute for Technology Law & Policy, The Leadership Conference for Civil and Human Rights, the Office of Senator Ron Wyden (D-OR), and Georgetown’s Center on Privacy and Technology. Before working in public interest technology, he served as an Officer of the United States Navy and a high school teacher at La Salle College High School. Prince earned his J.D. from Georgetown University Law Center as a Global Law Scholar. He is a proud summa cum laude, Phi Beta Kappa alumnus of Morehouse*



*College. He hails from Philadelphia, PA, and expands his knowledge of African Diasporic cultures and music for leisure.*

## **Readings**

### *Required readings*

- Antoine Prince Albert III on the market structure of digital platforms, Public Knowledge (Jan. 3, 2022), <https://publicknowledge.org/antoine-prince-albert-iii-on-the-market-structure-of-digital-platforms/>
- K. Sabeel Rahman, The New Octopus, Logic (April 1, 2018), <https://logicmag.io/scale/the-new-octopus/> (just read the later sections, starting from “Varieties of Corporate Power” to the end)
- Investigation of Competition in Digital Markets, Majority Staff Report of House Judiciary Subcommittee on Antitrust (2020) [https://judiciary.house.gov/uploadedfiles/competition\\_in\\_digital\\_markets.pdf](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf) (Just read section III(A) on pages 36-46)
- Lina M. Khan, Amazon's Antitrust Paradox, 126 Yale L.J. (2016), available at: <https://digitalcommons.law.yale.edu/yjl/vol126/iss3/3> (just read pages 746-755)
- Dina Srinivasan, [The Antitrust Case Against Facebook](#), *Berkeley Business Law Journal Vol. 16, Issue 1 (Updated Jan. 2021)* (Just read pages 46-55)
- Fiona Scott Morton, Why ‘breaking up’ big tech probably won’t work,” Washington Post (July 6, 2019), <https://www.washingtonpost.com/opinions/2019/07/16/break-up-facebook-there-are-smarter-ways-rein-big-tech/>
- Chris Hughes, It’s Time to Break Up Facebook, New York Times (May 9, 2019), <https://www.nytimes.com/2019/05/09/opinion/sunday/chris-hughes-facebook-zuckerberg.html> (Just read the sections starting at “Facebook’s dominance is not an accident of history” and stop at “Since the 1970s, courts have become increasingly hesitant...”)
- John Kwoka, Tommaso Valletti, Unscrambling the eggs: breaking up consummated mergers and dominant firms, *Industrial and Corporate Change*, Volume 30, Issue 5, October 2021, <https://academic.oup.com/icc/article/30/5/1286/6360491> (just read Introduction)
- Matt Stoller, How To Prevent the Next Social Media-Driven Attack On Democracy—and Avoid a Big Tech Censorship Regime, American Economic Liberties Project, (Feb. 3, 2021), <https://www.economicliberties.us/our-work/how-to-prevent-the-next-social-media-driven-attack/>
- Herbert Hovenkamp, Antitrust and Platform Monopoly (July 24, 2021). 130 Yale Law Journal 1952 (2021), U of Penn, Inst for Law & Econ Research Paper No. 20-43, Available at SSRN: <https://ssrn.com/abstract=3639142> or <http://dx.doi.org/10.2139/ssrn.3639142> (Just read Introduction and preamble of Section I-C, which are on pages 1955-1958 and 1969-1972)
- Chris Alcantara et al., How Big Tech Got So Big: Hundreds of Acquisitions, Washington Post (April 21, 2021), <https://www.washingtonpost.com/technology/interactive/2021/amazon-apple-facebook-google-acquisitions/>

- Casey Newton, How social networks got competitive again, Platformer (Feb. 22, 2021), <https://www.platformer.news/p/how-social-networks-got-competitive>

### **Question Prompts for Discussion Posts**

- What do you think about K. Sabeel Rahman’s categories of platform power (transmission power, gatekeeping power, and scoring power)? Are there other types of power you would add? What do you think about the proposed solutions?
- Which industry from the past do you think is most similar to the Big Tech company you are most concerned about?
- Did you learn anything new or surprising about the business models or practices of Big Tech companies?
- Whose argument did you find more persuasive about whether Facebook or other Big Tech companies should be “broken up”?
- What else did you find compelling in the readings?

## **Week 5: Where Are We Now, and What’s Ahead?**

### **Learning Objectives**

- Students will learn about any updates in major cases, and be able to identify key features of proposed legislation

### **Topics**

- Updates and what’s next for Big Tech
- Proposed legislation

### **Question Prompts for Discussion Posts**

- Look back at your first impressions from week 1. Have any of your responses changed since then?
- What do you think about the current cases against Big Tech companies?
- Which proposed bill do you think is most important—or most misguided?
- Which views do you find persuasive in the letters to Congress debating the impact of antitrust bills on national security?
- What other solutions do you think are needed to address your concerns about Big Tech?
- Besides the companies we’ve discussed, what tech companies do you think are on the path to market dominance in the next 5 years?
- What new markets for emerging technologies do you think policymakers or enforcers should keep an eye on?

### **Videos**

- Watch weekly overview video on Canvas
- Current State on Antitrust and Implications for Companies: Bruce Hoffman, The Conference Board (March 3, 2022), <https://www.youtube.com/watch?v=EjKgdqEoQNg>
- What the Senate's Anti-Trust Markup Means for Big Tech, Bloomberg Technology (Jan. 20, 2022), <https://www.youtube.com/watch?v=4aocYECQ9Ok> (*Industry-association*)

*reaction to American Innovation and Choice Online Act; see Readings below for description of the bill).*

- Attend live lecture (or watch afterwards)
  - **Guest Speakers:**
    - **Zach Biesanz, Senior Enforcement Counsel (Antitrust), Office of the Minnesota Attorney General**

*Zach investigates antitrust violations and brings civil and criminal enforcement actions on behalf of the State of Minnesota. Zach has extensive experience bringing cases from the earliest stages of investigation to successful resolution. Zach has collaborated with both federal antitrust enforcement agencies and (almost) every state in investigations and litigation. Previously, Zach worked at the New York Attorney General's office, where he served on the trial team for New York v. Actavis, secured felony pleas from members of a waste cartel, and co-managed the massive multistate investigation that became New York v. Facebook.*
    - **Matt Stoller, Director of Research, American Economic Liberties Project**

*Matt Stoller is the Director of Research at the American Economic Liberties Project. He is the author of the Simon and Schuster book Goliath: The Hundred Year War Between Monopoly Power and Democracy, which Business Insider called "one of the year's best books on how to rethink capitalism and improve the economy." David Cicilline, Chairman of the House Antitrust Subcommittee, has called Stoller's work "an inspiration." Stoller is a former policy advisor to the Senate Budget Committee. He also worked for a member of the Financial Services Committee in the U.S. House of Representatives during the financial crisis. While a staffer, he wrote a provision of law mandating a third party audit of the Federal Reserve's emergency lending activities. He also helped cut part of a \$20 billion subsidy to large financial institutions. His 2012 law review article on the foreclosure crisis, The Housing Crash and the End of American Citizenship, predicted the rise of autocratic political forces, and his 2016 Atlantic article, How the Democrats Killed their Populist Soul, helped inspire the new anti-monopoly movement. His writing has appeared in the Washington Post, the New York Times, Fast Company, Foreign Policy, the Guardian, Vice, The American Conservative, and the Baffler. Stoller writes the monopoly-focused newsletter Big, which has tens of thousands of subscribers.*

## **Readings**

### *Required readings*

- What's Ahead for Big Tech?
  - Choose ONE company to read more about:
    - Apple
      - Sara Morrison, How Much Control Should Apple Have Over Your iPhone? Vox (Dec. 8, 2021), <https://www.vox.com/recode/22822916/big-tech-antitrust-monopoly-regulation>

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- Amazon
  - Sara Morrison, The true cost of Amazon's low prices, Vox (Jan. 13, 2022), <https://www.vox.com/recode/22836368/amazon-antitrust-ftc-marketplace>
- Facebook
  - Shirin Ghaffary and Sara Morrison, Can Facebook monopolize the metaverse? Vox (Feb. 16, 2022), <https://www.vox.com/recode/22933851/meta-facebook-metaverse-antitrust-regulation>
- Microsoft
  - Sara Morrison, Microsoft avoided the latest round of Big Tech antitrust scrutiny. Then it bought a company for \$69 billion. Vox (Jan. 27, 2022), <https://www.vox.com/recode/22893117/microsoft-activision-antitrust-big-tech>
- *Note: Vox will also cover Google, but that piece has not been published yet. You will be able to find it here:*  
<https://www.vox.com/recode/22822916/big-tech-antitrust-monopoly-regulation>
- Executive action
  - Executive Order on Promoting Competition in the American Economy, White House Briefing Room (July 9, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/> (read Section 1: Policy)
- Legislation
  - Two bills advanced from Committee
    - Blackburn, Blumenthal, Klobuchar Introduce Bipartisan Antitrust Legislation To Promote App Store Competition, Press Release (Aug. 11, 2021), <https://www.blackburn.senate.gov/2021/8/blackburn-blumenthal-klobuchar-introduce-bipartisan-antitrust-legislation-to-promote-app-store-competition>
    - Adi Robertson, Everything you need to know about the bill that could blow up the app store, The Verge (Feb. 9, 2022), <https://www.theverge.com/22914479/open-app-markets-act-legislation-senate-committee-markup-explained>
    - Klobuchar, Grassley, Colleagues to Introduce Bipartisan Legislation to Rein in Big Tech, Press Release (Oct. 14, 2021), <https://www.klobuchar.senate.gov/public/index.cfm/2021/10/klobuchar-grassley-colleagues-to-introduce-bipartisan-legislation-to-rein-in-big-tech>
    - Tom Romanoff, The American Innovation and Choice Online Act: What it Does and What it Means, Bipartisan Policy Center, Jan. 20, 2022 <https://bipartisanpolicy.org/explainer/s2992/>
    - Nihal Krishan, Antitrust bill would destroy Amazon Prime, critics say, Washington Examiner (Jan. 14, 2022), <https://www.washingtonexaminer.com/news/antitrust-bill-would-destroy-amazon-prime-critics-say>

## BIG TECH BIG BATTLES - COURSE DESCRIPTION AND SYLLABUS

- Warren, Jones Introduce Bicameral Legislation to Ban Anticompetitive Mergers, Restore Competition, and Bring Down Prices for Consumers, Press Release (March 16, 2022), <https://www.warren.senate.gov/newsroom/press-releases/warren-jones-introduce-bicameral-legislation-to-ban-anticompetitive-mergers-restore-competition-and-bring-down-prices-for-consumers>
- Senator Klobuchar Introduces Sweeping Bill to Promote Competition and Improve Antitrust Enforcement, Press Release (Feb. 4, 2021), <https://www.klobuchar.senate.gov/public/index.cfm/news-releases?ID=A4EF296B-9072-4244-90AF-54FE43BB0876>
- Kennedy, Klobuchar introduce bill protecting newspapers from Big Tech, Press Release (March 10, 2021), <https://www.kennedy.senate.gov/public/2021/3/kennedy-klobuchar-introduce-bill-protecting-newspapers-from-big-tech>
- House Lawmakers Release Anti-Monopoly Agenda for “A Stronger Online Economy: Opportunity, Innovation, Choice” Congressman David Cicilline, Press Release (June 11, 2021) <https://cicilline.house.gov/press-release/house-lawmakers-release-anti-monopoly-agenda-stronger-online-economy-opportunity>
- Senator Hawley Introduces The 'Trust-Busting for the Twenty-First Century Act': A Plan to Bust Up Anti-Competitive Big Businesses, Press Release (April 12, 2021), <https://www.hawley.senate.gov/senator-hawley-introduces-trust-busting-twenty-first-century-act-plan-bust-anti-competitive-big>
- Senator Hawley Introduces the Bust Up Big Tech Act, Press Release (April 19, 2021), <https://www.hawley.senate.gov/senator-hawley-introduces-bust-big-tech-act>
- Trahan, Schakowsky Introduce FTC Whistleblower Act To Protect Consumers (Dec. 1, 2021) <https://trahan.house.gov/news/documentsingle.aspx?DocumentID=2318#:~:text=The%20FTC%20Whistleblower%20Act%20of%202021%20will%20help,disclosure%20of%20unlawful%20activity%20that%20harms%20American%20consumers.%E2%80%9D>
- Annie McDonough, Can New York lead the nation on antitrust enforcement? City & State (Sept. 14, 2020), <https://www.cityandstateny.com/policy/2020/09/can-new-york-lead-the-nation-on-antitrust-enforcement/175645/>
- Debate over impact of Big Tech and antitrust on national security
  - Letter from defense officials to Speaker Pelosi and Minority Leader McCarthy opposing antitrust bills on national security grounds, (Sept. 15, 2021), <https://s3.documentcloud.org/documents/21062393/national-security-letter-on-antitrust.pdf>
  - Letter from non-profit organizations responding to letter from defense officials (Oct. 12, 2021), <https://www.economicliberties.us/wp-content/uploads/2021/10/China-Letter-Final-Signed-10.12.2021.pdf>
  - Letter from industry-association responding to above October 2021 letter (Feb. 1, 2022), <https://itif.org/publications/2022/02/01/open-letter-speaker-pelosi-and-minority-leader-mccarthy-regarding-national>
- How will courts respond to new laws?

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- Crane, Daniel A. "Antitrust Antitextualism." *Notre Dame L. Rev.* 96, no. 3 (2021): 1205-1256. <https://repository.law.umich.edu/articles/2199> (reviewing history of court responses to antitrust legislation and predicting future tensions). (just read Introduction on pages 1205 – 1209)
- Court decisions (so far) in Big Tech cases
  - Rule 52 Order After Trial on the Merits in *Epic v. Apple*, <https://www.courtlistener.com/docket/17442392/812/epic-games-inc-v-apple-inc/> (just read pages 151-155)
    - *This is the court decision that the parties are currently appealing. Epic's appeal brief is included in the optional readings below. Apple's response brief is due later this month.*
  - *FTC v. Meta*: Order denying Facebook's motion to dismiss: [https://storage.courtlistener.com/recap/gov.uscourts.dcd.224921/gov.uscourts.dcd.224921.90.0\\_2.pdf](https://storage.courtlistener.com/recap/gov.uscourts.dcd.224921/gov.uscourts.dcd.224921.90.0_2.pdf) (just read pages 8-34)

### Optional - References

- Proposed legislation
  - H.R. 3816 - American Choice and Innovation Online Act, <https://www.congress.gov/bill/117th-congress/house-bill/3816>, <https://cicilline.house.gov/sites/cicilline.house.gov/files/documents/American%20Innovation%20and%20Choice%20Online%20Act%20-%20Bill%20Text.pdf>
    - Senate Version = S. 2992, <https://www.congress.gov/bill/117th-congress/senate-bill/2992>
  - H.R.3826 - Platform Competition and Opportunity Act of 2021, <https://www.congress.gov/bill/117th-congress/house-bill/3826>, <https://cicilline.house.gov/sites/cicilline.house.gov/files/documents/Platform%20Competition%20and%20Opportunity%20Act%20-%20Bill%20Text%20%281%29.pdf>
    - Senate version = S. 3197 <https://www.congress.gov/bill/117th-congress/senate-bill/3197>
  - H.R.3825 - Ending Platform Monopolies Act, <https://www.congress.gov/bill/117th-congress/house-bill/3825>, <https://cicilline.house.gov/sites/cicilline.house.gov/files/documents/Ending%20Platform%20Monopolies%20-%20Bill%20Text.pdf>
  - H.R. 3489 - Augmenting Compatibility and Competition by Enabling Service Switching (ACCESS) Act of 2021, <https://www.congress.gov/bill/117th-congress/house-bill/3849> & <https://cicilline.house.gov/sites/cicilline.house.gov/files/documents/ACCESS%20Act%20-%20Bill%20Text%20%281%29.pdf>
  - H.R. 3843 - Merger Filing Fee Modernization Act <https://www.congress.gov/bill/117th-congress/house-bill/3843> & <https://cicilline.house.gov/sites/cicilline.house.gov/files/documents/Merger%20Filing%20Fee%20Modernization%20Act%20of%202021%20-%20Bill%20Text%20%281%29.pdf>

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- Senate version = S.228 <https://www.congress.gov/bill/117th-congress/senate-bill/228>
- H.R. 3460, State Antitrust Enforcement Venue Act of 2021, <https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=4616>, <https://www.congress.gov/bill/117th-congress/house-bill/3460>
- HR 6093 FTC Whistleblower Act of 2021, Text: <https://www.congress.gov/bill/117th-congress/house-bill/6093/text?r=2&s=1>
  - <https://constantinecannon.com/2021/12/16/what-potential-whistleblowers-need-to-know-about-the-proposed-ftc-whistleblower-act-of-2021/>
- S. 3847, Prohibiting Anticompetitive Mergers Act of 2022, <https://www.congress.gov/bill/117th-congress/senate-bill/3847/text>
  - House version is H.R. 7101: <https://www.congress.gov/bill/117th-congress/house-bill/7101>
- S.225 - Competition and Antitrust Law Enforcement Reform Act of 2021, <https://www.congress.gov/bill/117th-congress/senate-bill/225>
- S.3267 - Consolidation Prevention and Competition Promotion Act of 2021, A bill to reform the antitrust laws to better protect competition in the American economy, to amend the Clayton Act to modify the standard for an unlawful acquisition. <https://www.congress.gov/bill/117th-congress/senate-bill/3267>
- S.673 - Journalism Competition and Preservation Act of 2021, <https://www.congress.gov/bill/117th-congress/senate-bill/673>
- S. 1074 – Josh Hawley, Trust Busting for the 21<sup>st</sup> Century Act, <https://www.congress.gov/bill/117th-congress/senate-bill/1074/text> <https://www.hawley.senate.gov/senator-hawley-introduces-trust-busting-twenty-first-century-act-plan-bust-anti-competitive-big>
- S. 1204, Josh Hawley, Bust Up Big Tech Act <https://www.congress.gov/bill/117th-congress/senate-bill/1204/text> , <https://www.hawley.senate.gov/senator-hawley-introduces-bust-big-tech-act>
- S. 2710, Open App Markets Act, <https://www.congress.gov/bill/117th-congress/senate-bill/2710> (Links to an external site.)
  - House version: H.R. 5017
- New York State – 21<sup>st</sup> Century Antitrust Act <https://www.nysenate.gov/legislation/bills/2021/s933/amendment/a> (“Relates to actions or practices that establish or maintain a monopoly, monopsony or restraint of trade, and authorizes a class action lawsuit in the state anti-trust law”)
- New York State – AB 6526 <https://www.nysenate.gov/legislation/bills/2021/a6526> (digital app store regulation)