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Market Concentration and the Rise of Private Gatekeepers

ACCESS TO MARKETS

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WHAT IS ACCESS TO MARKETS?

In America, people love to start businesses, create, build, and trade with one another. But increasingly, they face a problem: The ability to buy and sell things is being restricted and controlled by an insidious form of private regulation.

Take, for example, the software company Basecamp, which in 2020 launched a new service called HEY, which was designed to reinvent email at a cost of $99. “We don’t sell ads,” said the tagline. “We don’t sell data. We don’t sell your private information. We simply sell an excellent email service.”

HEY, however, soon ran into difficulties with Apple’s App Store. Though Apple approved other email apps, it refused to let Basecamp’s app into its store, threatening years of work. The company had a problem accessing a market not because of a government regulator, but a private regulator. And due to Apple’s dominance in mobile phones , phone operating systems, and app distribution, if HEY wanted to reach customers, there was simply no alternative to selling through Apple.

A dominant corporation acting as a gatekeeper to markets, thus making itself a private regulator, is increasingly common. Sometimes incumbents levy a private tax. For instance, both Google and Apple blocked Epic Games from their app stores when Epic created its own in-app payment system, which bypassed Apple and Google’s 30 percent fee.[1] Ben Volach, co-founder of Blix Software, had the same problem with his privacy-enhanced BlueMail, except Apple first copied his innovative privacy features and then blocked his app from the store.[2] Amazon

A dominant corporation acting as a gatekeeper to markets, thus making itself a private regulator, is increasingly common.

1 Nick Statt, “Apple Just Kicked Fortnite Off the App Store,” *The Verge*, August 13, 2020. https://www.theverge.com/2020/8/13/21366438/apple-fortnite-ios-app-store-violations-epic-payments

2 John Porter, “Developer Suing Apple for Stealing Idea Calls on Others to Join the Fight,” *The Verge*, February 5, 2020. https://www.theverge.com/2020/2/5/21124116/apple-developers-sherlocked-blix-bluemail-anonymous-email-feature

forces businesses to pay to use its fulfillment system if they want to access Prime customers and higher listings in Amazon's search results.[3]

Restaurant owners, too, must often negotiate against third-party delivery services to reach their own customers. When Brooklyn restaurant Pitas and Sticks gets an order from Grubhub, the owner puts a personal note on each bag of delivered food: "Small businesses like us need your support in this time of crisis. Online apps such as Grubhub are charging us 30% of each order and $9 or more on orders made using phone numbers on their app or website ... please help save the restaurant industry by ordering directly with us."[4] This is not a business dispute: It is a frustrated business owner angry at a private regulator controlling access to the market.

No matter what sector of the economy an entrepreneur enters, there is likely a gatekeeper—or colluding set of gatekeepers—attempting to charge high tolls and set terms for owners of independent, medium-sized, and even large businesses.

No matter what sector of the economy an entrepreneur enters, there is likely a gatekeeper—or colluding set of gatekeepers—attempting to charge high tolls and set terms for owners of independent, medium-sized, and even large businesses. If you sell medical supplies, it's giant group purchasing organizations; in music performance, it's Live Nation; for defense, it's prime contractors; in breathable sportswear, it's Gore-Tex; for online consumer marketing, it's Google and Facebook; and on and on.[5]

In sector after sector, entrepreneurs and businesspeople largely cannot access markets on fair and equal terms, which means that they cannot compete based on producing better quality goods and services. Making matters even more challenging is the fact that many businesspeople are justifiably afraid of speaking out about these abuses for fear of retaliation by the dominant company engaged in gatekeeping.

3 Matt Stoller, Pat Garofalo, and Olivia Webb, "Understanding Amazon: Making the 21st Century Gatekeeper Safe for Democracy," American Economic Liberties Project, July 2020. https://www.economicliberties.us/wp-content/uploads/2020/07/Working-Paper-Series-on-Corporate-Power_5-FINAL.pdf

4 Benjamin Pu, "Restaurants rebel against delivery apps as cities crack down on fees," *NBC News*, May 21, 2020. https://www.nbcnews.com/tech/tech-news/restaurants-rebel-against-delivery-apps-cities-crack-down-fees-n1211456

5 Krista Brown, "Illusion of Choice," American Economic Liberties Project, February 25, 2020. https://www.economicliberties.us/our-work/the-illusion-of-choice/

Macroeconomic data affirms that this problem is both recent and systemic.[6] But a few statistics bring it into stark relief: America's startup rate has collapsed, falling by nearly half since the 1970s.[7] The number of "high growth" firms—young companies that play an especially important role in employment, productivity, and wage growth—has declined.[8] A report by the Institute for Local Self-Reliance found that "The number of small and medium-sized independent businesses in most sectors of the economy has plummeted; for example, between 1997 and 2012, the number of small manufacturers fell by more than 70,000, local retailers saw their ranks diminish by about 108,000, and the number of community banks and credit unions dropped by half, from about 26,000 to 13,000."[9]

SO WHAT CAUSED THIS PROBLEM?

While the situation is complex, the underlying cause is simple and related to a set of regulatory and legal changes in recent decades. Throughout American history, strong antimonopoly rules have helped safeguard markets to promote broad access. A set of regulatory tools were used to ensure that businesspeople had the right to enter branches of trade without fear of abuse and retaliation from dominant corporations, and they had legal recourse when they were deprived of such opportunities.[10]

In the 1960s, what Apple currently does with its App Store—setting all prices, terms, and conditions for reaching consumers—would not have been tolerated by regulators and antitrust enforcers. As historian Richard Hofstadter wrote in 1964, "managers of the large corporations do their business with one eye constantly cast over their shoulders at the Antitrust Division."

This changed in the 1980s, when Americans began believing that "free markets" resulted from as little government interference as possible. Policymakers stopped enforcing antitrust and other antimonopoly laws. Sometimes this was done under the guise of benefits for consumers, shifting antitrust focus away from the need for open markets and competition to ensuring low consumer prices, a framework that became known as the "consumer welfare" standard. Enforcers relaxed

6 Matt Stoller, Goliath: The 100-Year War Between Monopoly Power and Democracy, Simon & Schuster, October 2019; Tim Wu, The Curse of Bigness: Antitrust in the New Gilded Age, Columbia Global Reports, November 2018; Zephyr Teachout, Break 'Em Up: Recovering Our Freedom from Big Ag, Big Tech, and Big Money, Macmillan, July 2020; Jonathan Tepper and Denise Hearn, The Myth of Capitalism: Monopolies and the Death of Competition, Wiley, November 2018.

7 J.D. Harrison, "The decline of American entrepreneurship—in five charts," *The Washington Post*, February 12, 2015. https://www.washingtonpost.com/news/on-small-business/wp/2015/02/12/the-decline-of-american-entrepreneurship-in-five-charts/

8 Jay Shambaugh, "How Declining Dynamism Affects Wages," The Hamilton Project, February 2018. https://www.brookings.edu/wp-content/uploads/2018/02/es_2272018_how_declining_dynamism_affects_wages.pdf

9 Stacy Mitchell, "Report: Monopoly Power and the Decline of Small Business," ILSR, August 10, 2016. https://ilsr.org/monopoly-power-and-the-decline-of-small-business/

10 "The Courage to Learn: A Retrospective on Antitrust and Competition Policy During the Obama Administration and Framework for a New Structuralist Approach," American Economic Liberties Project, January 2021. https://www.economicliberties.us/our-work/courage-to-learn/#

merger guidelines in the name of efficiency, and a whole set of illegal behaviors designed to block new entrants and crush small firms—such as predatory pricing and tying—became de facto legal.

This shift was sometimes carried out in the name of deregulation, but it wasn't so much about getting rid of rules as it was about moving rule-making power away from public commissions and elected officials to dominant corporations. As a result, as markets became increasingly concentrated, monopolists began governing markets that had previously been competitive.

In other words, dominant corporations that operate as private regulators aren't solely to blame for leveraging their market power and engaging in abusive behavior. Under the current legal and regulatory framework, operating a tollbooth on a vital artery of a market is the best imaginable business model, one that returns high margins and requires little effort. Investors also encourage this strategy, knowing it will lead to outsized returns. And if corporations avoid trying to gain market power by excluding others, their competitors will do so instead. Businesses cannot be faulted for operating in a system designed with incentives to monopolize; rather, policies that allow and encourage such a business model must be challenged and changed.

This paper describes a range of commonly used tactics deployed across sectors that private regulators use to constrict market access. It also presents case studies from several industries to illustrate those tactics in action and the resulting harms to entrepreneurs and growing businesses. Alone, entrepreneurs and businesspeople are isolated and their challenges seem unique. But together, they can build a powerful community to ensure access to markets is a right, not just for themselves, but for future generations of inventors, creators, and businesspeople.

THE HOW MARKET CONCENTRATION HAS AFFECTED ENTREPRENEURSHIP

In a free and open market, the size or market position of a firm should not be of major consequence—rather, the quality, terms of service, reputation, and price of goods and services should determine success, giving entrepreneurs the opportunity to innovate and thrive. However, over the last few decades, the way corporations compete has changed in line with shifts in the regulatory environment. As the competitive playing field has moved from selling in open markets to gatekeeping over markets, the size and market position of a company has become paramount.

Today, concentration has fundamentally altered the structure of markets, affecting everything from a company's ability to raise capital to the way it reaches customers to the exit opportunities it may take. In many ways, the drive to monopoly is a fundamental premise of modern markets, impacting all stages of a company's life cycle.

Today, concentration has fundamentally altered the structure of markets, affecting everything from a company's ability to raise capital to the way it reaches customers to the exit opportunities it may take.

Despite notions of the U.S. being the seedbed of innovation, the country is plagued by historically low business dynamism, low startup rates, and high barriers to entry across industries. Ryan Decker, an economist at the Federal Reserve, found that startup rates have been declining for decades, and that this trend accelerated after 2000, stating that "incentives for entrepreneurs to start new firms in the United States have diminished over time."[11]

One explanation for this is that older, dominant corporations are playing a larger role in the economy by persisting longer, thanks in part to an antitrust and regulatory environment that have allowed them to entrench themselves without challenge. This has a large impact on job

11 Ryan Decker, John Haltiwanger, Ron S. Jarmin, and Javier Miranda, "The Role of Entrepreneurship in U.S. Job Creation and Economic Dynamism," Journal of Economic Perspectives 28: 3-24, 2014. https://www.aeaweb.org/articles?id=10.1257/jep.28.3.3

markets, as most jobs are created by new, rapidly expanding firms, rather than large incumbents.

Dominant corporations and corporate concentration cause several macroeconomic effects that prevent young firms from developing in the aggregate. We explore a few examples briefly below, though there are many others. Specific tactics by dominant corporations are explored in greater detail in the next section.

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- **Kill zones**: The fear of monopolists impacts a startup's ability to access capital as venture investors avoid funding startups that will find their access to a market blocked by a monopolist—a phenomenon known as "kill zones." As one investor told the House Antitrust Subcommittee, "Venture capitalists are less likely to fund startups that compete against monopolies' core products ... As a startup investor, I see this often."[12] As companies like Amazon horizontally expand into ever-widening arrays of industries, including everything from pharmacies to cloud storage, fewer and fewer areas are available for new innovators.

- **Inability to reach customers**: As businesses grow, they are reliant on, and sometimes in direct competition with, the largest players to reach customers. Google, Amazon, and Facebook are now the private regulators between entrepreneurs and potential customers. For instance, Google dominates online search with a 92 percent market share,[13] and most consumers don't look past the first few Google results at the top of the search page. Large companies that can afford to pay for prime placement, like Amazon, benefit, while smaller companies remain invisible without spending huge proportions of their income on advertising.[14] Facebook exerts similar powers over social media, as do Amazon and Apple in their respective spheres. Entrepreneurs can find their prospects destroyed if their business gets delisted on the platforms due to an algorithm change or a machine-learning glitch.

12 "Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations," US House of Representatives Committee on the Judiciary, Subcommittee on Antitrust, Commercial and Administrative Law, 2020. https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf

13 "Search Engine Market Share Worldwide: Feb 2020 - Feb 2021," StatCounter Global Stats, 2021. https://gs.statcounter.com/search-engine-market-share 106 Federal Trade Commission v. Qualcomm Incorporated, 969 F.3d 974 (9th Cir. 2020).

14 Joyce M. Rosenberg, "Google ad costs, not its alleged monopoly, irks businesses," *Associated Press*, November 10, 2020. https://apnews.com/article/business-small-business-new-york-9b499cae32d2fecc00cea237f6c0a51f

- **Inability to compete for government contracts**: Government procurement of goods and services is a massive market that nominally attempts to include small businesses but frequently fails to deliver on that promise. Access to these markets is restricted by everything from cybersecurity and security clearance requirements to contracting methodology. One ongoing concern is the desire of agencies to consolidate contracts, known as contract bundling, which often favors larger players with multiple lines of business that can fulfill many services at once. Some agencies have also moved to automatic IT procurement systems, which small businesses have difficulty accessing.[15]

Creating a general **culture of intimidation** and **fear of retaliation** can also be extremely effective at preventing entrepreneurs from seeking restitution from illegal or abusive behavior. One entrepreneur who founded a staffing agency who faced continued exploitation from Disney told Economic Liberties, "They will bleed me dry if I take them to court, as they drag it out."[16]

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In addition, many invisible, largely unquestioned assumptions are embedded in systems that favor larger players and hurt smaller companies. A handful of examples include university career services offices that are dominated by large employers who can afford to recruit on university campuses; workforce training funding that is focused on job skills training and placement into larger corporations because state and local boards are governed by businesses who have time for those "volunteer" activities; chambers of commerce that are dominated by large corporations, and thus get served by chamber lobbying efforts; and regulatory policy that is weighted toward large corporations that can afford to respond to draft regulations, whereas smaller businesses are too time- and cash-strapped to respond.[17]

15 "Full Committee Hearing On: Are New Procurement Methods Beneficial To Small Contractors?" House Committee on Small Business, House Hearing, 110 Congress, March 6, 2008. https://www.govinfo.gov/content/pkg/CHRG-110hhrg39791/html/CHRG-110hhrg39791.htm

16 American Economic Liberties Project phone interview with entrepreneur, March 3, 2021

17 Victor W. Hwang, We Are All Starters: A Manifesto to Renew Ourselves and Our Nation, June 2020. https://www.righttostart.org/download

But it's also important to note that market access challenges don't solely affect small businesses. Even large companies struggle to compete against monopolists. For example, earlier this year, Slack, which went public in 2019, announced it was being bought by Salesforce. Many speculated this was because Slack had difficulty competing with Microsoft's Teams product.[18] Microsoft uses a gatekeeper strategy of bunding its Teams product with a dominant line of office productivity products. Slack—a multibillion-dollar company with more than 12 million daily users in 2020—was unable to stay public and credibly compete because of the market dominance of its major competitor; Microsoft has about 75 million users on Teams.[19]

Even large companies struggle to compete against monopolists. For example, earlier this year, Slack, which went public in 2019, announced it was being bought by Salesforce. Many speculated this was because Slack had difficulty competing with Microsoft's Teams product.

Another example is Simon and Schuster, which in 2020 was sold to its major competitor, Penguin Random House; Amazon has hobbled the publishing industry to the extent that the merger was conducted to gain negotiating leverage against the giant. Simon and Schuster, because it needed access to relevant markets, had to become big enough to bargain on more equal terms with the private regulator of the book market, Amazon.

These mega-mergers, and others like them, are arguably driven by withered antitrust enforcement. Lack of enforcement has created a vicious loop in which companies take two normative paths to growth and sustainability: 1) become a monopolist by solidifying dominance through acquisition to control fundamental commercial infrastructure and set market terms, or 2) merge or get acquired by a monopolist simply to stay afloat. Lack of regulatory interference has made monopoly seem like the only viable path for many growth-oriented businesses.

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18 Rob Lenihan, "Slack Dips After DOJ Seeks More Data on Salesforce Merger," *MSN*, February 17, 2021. https://www.msn.com/en-us/money/companies/slack-dips-after-doj-seeks-more-data-on-salesforce-merger/ar-BB1dLrd8

19 David Curry, "Slack Revenue and Usage Statistics (2021)," Business of Apps, March 22, 2021. https://www.businessofapps.com/data/slack-statistics/

GATEKEEPER TACTICS

Dominant corporations use many tactics to acquire and maintain power over relevant markets. The inexhaustive list below describes tactics commonly deployed in a broad range of sectors. Corporations will often employ several of these in concert or use power from one line of business to acquire market share in another.

Cartels and collusion: Forms of anticompetitive, horizontal agreements, or cartel behavior, in which corporations use their market power to their benefit at the expense of consumers or other businesses. Price-fixing, bid rigging, and market allocation are all forms of such agreements that violate the Sherman Act, America's most prominent antimonopoly law, and may be criminally prosecuted five years from occurrence. One recent example is an alleged deal between Facebook and Google to divide the online advertising market between them.[20]

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Coercive contract terms and exclusionary contracts: An informal integration of products and services, restricting the ability of a signee to work with other parties. These ultimately restrict the freedom of business operations and are most common between parties along a supply chain. Gore-Tex, for instance, forced users of its breathable fabric not to work with any competitors who made rival material.[21]

Copycatting: The imitation of a product or service by a dominant corporation so that it closely resembles a rival's successful product or service. For example, Amazon is well known for launching copycat products after third-party merchants successfully market and sell original versions through its store.[22]

20 Gilad Edelman, "Texas Accuses Google and Facebook of an Illegal Conspiracy," *Wired*, December 16, 2020. https://www.wired.com/story/texas-accuses-google-facebook-illegal-conspiracy/

21 Mike Kessler, "Insane in the Membrane," Outside, March 7, 2012. https://www.outsideonline.com/1898541/insane-membrane

22 Jaron Schneider, "Peak Design Calls Out Amazon for 'Copycatting' the Everyday Sling Bag," PetaPixel, March 3, 2021. https://petapixel.com/2021/03/03/peak-design-calls-out-amazon-for-copycatting-the-everyday-sling-bag/

Erecting tollbooths: A business strategy or model used by middlemen to unnecessarily extract a percent of a transaction. The practice is often abusive and allows monopolistic corporations to accentuate their market power by demanding unfair cuts of such transactions. Apple pioneered this tactic with its app store model, but tollbooths are increasingly common across a range of markets.

Predatory pricing: The anti-competitive practice of using below-cost pricing to undercut rivals or market entrants, gain market share, and then use that market power to set above-market level prices or fees. Predatory pricing is technically illegal, but rarely enforced, as U.S. case law now requires plaintiffs to prove that a corporation could or did "recoup" its losses on the underpriced goods. This view ignores the way a monopolist such as Amazon might use predatory pricing to gain market power beyond a specific product, which may bolster other, tangential lines of revenue, potentially in different markets.

Self-preferencing: A dominant entity's actions or conduct designed to favor its own products or services over those of its competitors. When a dominant corporation is self-preferencing, it often has exclusionary effects on firms trying to compete or enter a market. For example, Google preferences its own search verticals, such as Google Shopping[23] or its business listings, over specific shopping verticals or business search verticals such as Yelp.[24]

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Tying: A practice defined in U.S. law as "an agreement by a party to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier." It is often used to exclude competitors by leveraging dominance in one market into dominance in another market, as described above when Microsoft tied Teams to its other office products.

Vertical integration: Mergers, acquisitions, or other actions that combine corporations at different stages of a supply chain to create dominance over an entire ecosystem of supply. For example, the chicken industry is vertically integrated, with major processors also owning the inputs—chicken stock and feed mills—that are sold to farmers.

23 Karen Gilchrist and Anita Balakrishnan, "EU hits Google with a record antitrust fine of $2.7 billion," *CNBC*, June 27, 2019. https://www.cnbc.com/2017/06/27/eu-hits-google-with-a-record-antitrust-fine-of-2-point-7-billion.html

24 Lauren Feiner, "Yelp gives senators its list of grievances against Google in antitrust hearing," *CNBC*, March 10, 2020. https://www.cnbc.com/2020/03/10/yelp-testifies-against-google-in-antitrust-senate-hearing.html

Access to Capital and Access to Markets

There is a well-established narrative that lack of access to capital is the main barrier to success for new businesses, especially startups owned by women and people of color. Research confirms that lack of capital is a major problem,[25] and one that has many structural causes outside the scope of this paper.

While venture capital seems synonymous with startups, only about 1% of small businesses obtain venture capital funding.[26] The vast majority of entrepreneurs access funding from institutional banks, credit unions, and government lending programs. Banking consolidation and the shuttering of many local community banks has left capital access deserts for many aspiring entrepreneurs – 80% of whom struggle to obtain any funding at all.[27] In this way, the concentration of financiers—an access to markets issue—has exacerbated an access to capital issue.

Lack of capital access affects women and communities of color the most. And while venture capital is a small slice of overall startup financing, the statistics echo larger trends. Less than 2.5 percent of venture capital goes to 51 percent of the population: women. Data is even more dire for women of color: Latinx women-led startups have raised only 0.32 percent of all venture capital funding over the last decade, while Black women have raised only .0006 percent.[28] Indigenous-led businesses are not widely tracked.

With increasing attention to these issues following worldwide racial justice marches, some corporations stepped forward with capital commitments for founders. In 2020, Bank of America committed $200 million to investing in Black and Hispanic entrepreneurs.[29]

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25 Robert Fairlie, Alicia Robb, and David T. Robinson, "Black and White: Access to Capital among Minority-Owned Startups," Stanford Institute for Economic Policy Research, December 15, 2016. https://siepr.stanford.edu/sites/default/files/publications/17-003.pdf

26 Elizabeth MacBride and Seth Levine, *The New Builders: Face to Face With the True Future of Business*, Wiley, May 4, 2021.

27 Ibid.

28 Cliff Worley, "The Venture Capital World Has A Problem With Women Of Color," Kapor Capital, April 12, 2019. https://www.kaporcapital.com/the-venture-capital-world-has-a-problem-with-women-of-color/

29 Allissa Kline, "BofA details investments to help Black- and Hispanic-owned businesses," American Banker, September 8, 2020. https://www.americanbanker.com/news/bofa-details-investments-to-help-black-and-hispanic-owned-businesses

Google has committed $175 million to support racial equity,[30] with a focus on Black entrepreneurs, and YouTube announced a $100 million fund to "amplify" Black creators on its platform.[31] Google's announcement stated, "These cash awards will go to startups with Black founders, who have been deeply impacted by Covid-19 and who are disproportionately locked out of access to capital … we know there is much more work to be done to level the playing field for founders."

While these efforts will undoubtedly help some entrepreneurs, they also mask the way in which these and other dominant corporations structurally deny smaller firms access to markets. Many dominant corporations entrenched their positions during the pandemic and are now spending a tiny fraction of their resources on promoting entrepreneurs and small businesses, almost always in ways that are deeply integrated with public relations and lobbying campaigns to bolster their brands or forestall regulatory constraints.

The largest corporations also regularly participate in entrepreneurial ecosystems, and may offer cash-grant equivalents of their products and services. One example: Amazon offers startups going through accelerator programs like Y Combinator or 500 Startups $100,000 worth of free AWS credits.[32] Though helpful for startups, it also serves to tie even more businesses to Amazon's platform as it aims to maintain an early lead in cloud storage. Competitors cannot afford to do the same. As one founder of a cloud storage company told Economic Liberties, "I would love to offer thousands of dollars' worth of free storage credits to startups, but that would bankrupt my business."[33]

While access to capital is a critical step in creating more equitable conditions for entrepreneurs to compete, access to markets is overlooked as the vital complementary condition affecting the ultimate success of a business and its ability to challenge incumbent players once growing.

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30 Jacob Kastrenakes, "Google commits $175 million to racial equity with focus on black-owned businesses," *The Verge*, June 17, 2020. https://www.theverge.com/2020/6/17/21294692/google-175-million-racial-equity-black-businesses-entrepreneurs-commitment

31 Taylor Lyles, "YouTube commits $100 million to 'amplify' black creators and artists," *The Verge*, June 11, 2020. https://www.theverge.com/21288066/youtube-black-creator-amplify-fund-initiative-ceo

32 George Batschinski, "How to reduce your AWS costs? Save up to $500k with these guidelines!," Medium, June 26, 2019. https://george-51059.medium.com/reduce-aws-costs-74ef79f4f348

33 American Economic Liberties Project phone interview with entrepreneur, February 2021.

CLOSING OFF ACCESS TO MARKETS: CASE STUDIES IN GATEKEEPER POWER

Monopolists often exert pressure over competitors in common ways that are ubiquitous across industries. This section illustrates the tactics outlined above as deployed by four categories of gatekeepers: Big Tech corporations, restaurant delivery apps, group purchasing organizations in health care, and live music promoters.

HOW AMAZON, APPLE, FACEBOOK, AND GOOGLE FORECLOSE ACCESS TO MARKETS

Amazon's executives could write a textbook on monopoly tactics. As antitrust scholar Lina Khan wrote, it's as if Amazon CEO Jeff Bezos "charted the company's growth by first drawing a map of antitrust laws, and then devising routes to smoothly bypass them." With an obsessive focus on low consumer prices, regulators were blinded to, or flatly ignored, the use of predatory pricing, self-preferencing, tying, extortionary tollbooths, and positioning for federal, state, or municipal contracts—all tactics Amazon employed to build its now dominant footprint.

Fifty-four percent of products sold on Amazon are sold by third-party sellers,[34] which means that 46 percent of its sales come from Amazon's own retail division (including brands owned directly by Amazon). Amazon, despite attempts to market itself as a neutral e-commerce platform, is in direct competition with its third-party sellers and has referred to sellers as "internal competitors" in its corporate documents.[35] But small businesses have little choice but to sell on Amazon if they want to reach the 112 million American households with a Prime account. To reach these customers, sellers on Amazon are

Small businesses have little choice but to sell on Amazon if they want to reach the 112 million American households with a Prime account. To reach these customers, sellers on Amazon are forced to pay advertising tolls to the company, even while Amazon often favors its own products in search results...

34 Tugba Sabanoglu, "Percentage of paid units sold by third-party sellers on Amazon platform as of 4th quarter 2020," Statista, February 11, 2021. https://www.statista.com/statistics/259782/third-party-seller-share-of-amazon-platform/

35 "Investigation of Competition in Digital Markets," US House of Representatives Committee on the Judiciary, 2020.

forced to pay advertising tolls to the company, even while Amazon often favors its own products in search results, something known as **self-preferencing.**

Amazon pushes a narrative that it is helpful to small businesses, stating for example that "during the [2020] holiday season as a whole, small and medium-sized businesses in the U.S. sold nearly one billion products in Amazon's store."[36] But Amazon keeps an average of 30 percent of each sale.[37] Contrast this to Shopify, the Canadian e-commerce platform for businesses, which charges merchants only 2.9 percent plus 30 U.S. cents per transaction.[38] A pay-to-access arrangement in which a monopolist controls, in this case, access to consumer markets is known as a **tollbooth.**

App developers formed the *Coalition for App Fairness* to make similar charges against Apple, claiming it had monopoly control of consumer markets for iOS apps. Apple charges very high transaction fees—up to 30 percent—whenever a purchase is made through the App Store, only recently lowering its rate to 15 percent for businesses under $1 million in revenue after public agitation and threats of lawsuits.[39]

Similarly, Google controls the gateway for most businesses trying to reach consumers. Placement in the top rankings of Google's search is key because most searches start on Google, and very few searchers look past the first results, which often favor other large corporations like Amazon.[40]

One business owner told Economic Liberties he saw an 80 percent fall in sales when his online-only specialty toy business moved down from being listed in the top three organic search results to the seventh or eighth result. His only recourse was to buy more ads to elevate his business in the recommended

One business owner told Economic Liberties he saw an 80 percent fall in sales when his online-only specialty toy business moved down from being listed in the top three organic search results to the seventh or eighth result. His only recourse was to buy more ads to elevate his business in the recommended results.

36 "Amazon.com Announces Financial Results and CEO Transition," Amazon News Release, February 2, 2021. https://ir.aboutamazon.com/news-release/news-release-details/2021/Amazon.com-Announces-Fourth-Quarter-Results/default.aspx

37 Stacy Mitchell, Ron Know, and Zach Freed, Report: Amazon's Monopoly Tollbooth, Institute for Local Self Reliance, July 28, 2020. https://ilsr.org/amazons_tollbooth/

38 Sean Silcoff, "Tobi vs. Goliath: How Shopify is bracing for a looming battle with Amazon," *The Globe and Mail*, February 13, 2021. https://www.theglobeandmail.com/business/article-tobi-vs-goliath-how-shopify-is-bracing-for-a-looming-battle-with/

39 Sarah Perez, "Apple dropping App Store fees to 15% for users with under $1 million in revenues," *TechCrunch*, November 18, 2020. https://techcrunch.com/2020/11/18/apple-to-reduce-app-store-fees-for-small-businesses-with-under-1-million-in-revenues/

40 Matt Southern, "Over 25% of People Click the First Google Search Result," Search Engine Journal, July 14, 2020. https://www.searchenginejournal.com/google-first-page-clicks/374516/

results.[41] Small businesses can see their costs spiral out of control if they attempt to spend enough on ads to receive prominent Google ad placement.[42]

These are all examples of a kind of tax on small businesses and startups: Without paying Google, Apple, or Amazon, they can't acquire customers.

Hiking access tolls on small businesses is sometimes accompanied by slicing product costs on the other end—a double whammy approach to obliterate competition. Amazon's business model for many years involved **predatory pricing**—undercutting rivals on prices while Wall Street subsidized 20 years of unprofitability.

For example, in 2009, executives of baby supply company Quidsi refused an acquisition offer from Amazon. In response, Amazon lowered its Marketplace prices on baby supplies, and directly pegged its baby supplies prices to Diapers.com prices. Executives at Quidsi calculated that Amazon Marketplace lost more than $200 million during three months on diapers alone, in an attempt to corner the market.[43] Quidsi eventually had to concede to an acquisition.

Facebook has employed a "catch and kill" strategy — acquiring competitors only to shelve the competing product or service. As an example, Facebook has made 86 acquisitions since 2005, some of which were killed to avoid competition, including the fitness tracker Moves, the app TBH, and the developer platform Parse.

Tech corporations, and particularly Facebook, have also employed a "catch and kill" strategy —acquiring competitors only to shelve the competing product or service. As an example, Facebook has made 86 acquisitions since 2005,[44] some of which were killed to avoid competition, including the fitness tracker Moves, the app TBH, and the developer platform Parse.[45] Other times, Facebook has simply copied a competitor's products, launching nearly identical ones—a practice known as **copycatting**. One CNN journalist labeled Facebook a "$770 billion clone factory."[46]

41 American Economic Liberties Project interview with entrepreneur, February 9, 2021.

42 Joyce M. Rosenberg, "Google ad costs."

43 Matt Stoller, Pat Garofalo, and Olivia Webb, "Understanding Amazon: Making the 21st-Century Gatekeeper Safe for Democracy," American Economic Liberties Project, July 24, 2020. https://www.economicliberties.us/our-work/understanding-amazon-making-the-21st-century-gatekeeper-safe-for-democracy/

44 Big Tech Merger Tracker, American Economic Liberties Project. https://www.economicliberties.us/big-tech-merger-tracker/

45 Constine, Josh, "Facebook poisons the acquisition well," *TechCrunch*, September 26, 2018. https://techcrunch.com/2018/09/26/m-and-nay/

46 Kaya Yurieff, "Analysis: Facebook has become a $770 billion clone factory," *CNN*, February 12, 2021. https://edition.cnn.com/2021/02/12/tech/facebook-innovation/index.html

Businesses are often prevented from pursuing legal remediation to these abuses because they're bound by mandatory arbitration clauses in their seller agreements. As Amazon seller Jacob Weiss of OJ Commerce recently testified, "Amazon's forced arbitration clauses have made it impossible to get a fair shake. The system is rigged against small and midsized business owners."[47] **Coercive contract terms**, like mandatory arbitration or barring class action lawsuits, are an often-employed tactic of monopolists to limit or prevent weak parties, in this case Amazon's third-party sellers, from collectively seeking redress and combining efforts for better bargaining leverage.

HOW DOORDASH, UBER EATS, GRUBHUB, AND POSTMATES FORECLOSE ACCESS TO MARKETS

The coronavirus pandemic has significantly impacted small and independent restaurants, with more than 110,000 long-term or permanent closures in the U.S. following shutdown orders and capacity curtailments.[48] These 110,000 make up about 17 percent of the total restaurant industry.[49] Restaurants that remain open have done so, in large part, due to an increase in deliveries, providing an opportunity for food delivery apps to entrench themselves between restaurants and their customers. As of June 2020, the four largest delivery apps—DoorDash, Uber Eats, Grubhub, and Postmates—controlled 98 percent of all restaurant delivery sales.[50]

This dominance has allowed delivery app companies to **impose high fees** on restaurant owners, squeezing them out of hard-earned revenue. For many restaurants, delivery app commissions can total 30 percent or more of each individual order. These fees cut deeply into budgets for rent, labor, and food costs, and many restaurants end up losing money on delivery and takeout orders from the apps.[51]

For many restaurants, delivery app commissions can total 30 percent or more of each individual order. These fees cut deeply into budgets for rent, labor, and food costs, and many restaurants end up losing money on delivery and takeout orders from the apps.

47 House Committee on the Judiciary, Subcommittee on Antitrust, Commercial, and Administrative Law, "Justice Restored: Ending Forced Arbitration and Protecting Fundamental Rights," February 11, 2021. https://www.youtube.com/watch?t=2200&v=przXfBshN-U&feature=youtu.be

48 Carolina Gonzalez, "Restaurant Closings Top 110,000 With Industry in 'Free Fall,'" *Bloomberg*, December 7, 2020. https://www.bloomberg.com/news/articles/2020-12-07/over-110-000-restaurants-have-closed-with-sector-in-free-fall

49 Rachel Tillman, "Study: 17% of US Restaurants Closed Due to COVID-19 Pandemic," Spectrum Local News, December 10, 2020. https://spectrumlocalnews.com/nys/rochester/news/2020/12/10/nra-restaurants-closed-during-covid-19-congress-

50 Liyin Yeo, "Which company is winning the restaurant food delivery war?," Second Measure, March 15, 2021. https://secondmeasure.com/datapoints/food-delivery-services-grubhub-uber-eats-doordash-postmates/

51 Nathaniel Popper, "As Diners Flock to Delivery Apps, Restaurants Fear for Their Future," *The New York Times*, June 9, 2020. https://www.nytimes.com/2020/06/09/technology/delivery-apps-restaurants-fees-virus.html

Some examples of Grubhub's anticompetitive behavior help illustrate the exploitative practices of these major delivery apps. Around 2011, Grubhub began buying URLs related to restaurants on its platform and building websites without the restaurants' knowledge.[52] The sites had basic online ordering capabilities that fulfilled orders on the Grubhub platform, ensuring Grubhub would get a 30 percent cut of the transaction despite Grubhub using the restaurants' brand clout, culinary offerings, and consumer loyalty to attract customers.

Also around 2011, Grubhub began switching the phone numbers listed on its own sites and sites it controlled or partnered with, such as Menupages and Yelp, in order to charge partner restaurants a "referral fee" for phone calls generated by those sites.[53] Grubhub executives, including co-founder Mike Evans, insisted that algorithms were able to "predict with a high degree of accuracy which calls are orders" and any that seemed suspect did not result in charges.[54] In reality, however, restaurants were charged for every call lasting longer than 45 seconds. Restaurants across the country reported paying Grubhub an average of nearly $8 per phone call generated from Grubhub-controlled sites.[55]

Grubhub employs the ubiquitous delivery app tactic of posting menus without first obtaining the permission of the restaurant, in order to present the appearance of an official partnership where none actually exists and coerce the restaurant into signing on with the app's platform.

Grubhub also employs the ubiquitous delivery app tactic of posting menus without first obtaining the permission of the restaurant, in order to present the appearance of an official partnership where none actually exists and coerce the restaurant into signing on with the app's platform. As Grubhub CEO Matt Maloney explained on a conference call with investors, unauthorized deliveries convert restaurants into paying partners "because the diner experience sucks" and signing up to pay a commission is "a better experience for anyone involved."[56]

52 H. Claire Brown, "Grubhub is buying up thousands of restaurant web addresses. That means Mom and Pop can't own their slice of the internet," *The Counter*, June 28, 2019. https://thecounter.org/grubhub-domain-purchases-thousands-shadow-sites/

53 Adrienne Jeffries, "Yelp is Screwing Over Restaurants by Quietly Replacing Their Phone Numbers," *Vice*, August 6, 2019. https://www.vice.com/amp/en/article/wjwebw/yelp-is-sneakily-replacing-restaurants-phone-numbers-so-grubhub-can-take-a-cut

54 Christopher Coble, "Grubhub Facing Phony Phone Order Lawsuit," FindLaw, May 23, 2019. https://blogs.findlaw.com/common_law/2019/05/grubhub-facing-phony-phone-order-lawsuit.html

55 Venessa Wong, "Even If You're Trying To Avoid Grubhub By Calling Your Favorite Restaurant Directly, Grubhub Could Still Be Charging It A Fee," *BuzzFeed News*, May 15, 2020. https://www.buzzfeednews.com/article/venessawong/grubhub-phone-order-call-fee-coronavirus

56 See: LYNN SCOTT, LLC; THE FARMER'S WIFE, LLC, on behalf of themselves and all others similarly situated, v. GRUBHUB INC. https://www.classlawgroup.com/wp-content/uploads/Grubhub-Class-Action-Lawsuit-Gibbs-Law-Group.pdf?x76150

The common theme uniting these tactics is Grubhub's unfair and deceptive strategy of using a restaurant's customers for its own profit by inserting itself as a tollbooth operator in the middle of the independent restaurant industry's internet ecosystem—an ecosystem that is now, more than ever, necessary to survive.

HOW GROUP PURCHASING ORGANIZATIONS FORECLOSE ACCESS TO MARKETS

Years before the Covid-19 pandemic struck, federal agencies and businesspeople were warning about future medical supply shortages due to industry concentration and offshoring: Any disruptions in highly concentrated and fragile supply chains would cause American health care workers to struggle to access essential gear like face masks.[57]

Mike Bowen, owner of Prestige Ameritech, is a Texas-based manufacturer of surgical masks and respirators. Bowen was prepared for the Covid-19 pandemic, but he couldn't get a contract because the huge group purchasing organizations (GPOs) that supply hospitals weren't buying.

Mike Bowen, owner of Prestige Ameritech, sounded the alarm years ago. Prestige Ameritech is a Texas-based manufacturer of surgical masks and respirators. Bowen was prepared for the Covid-19 pandemic, but he couldn't get a contract because the huge group purchasing organizations (GPOs) that supply hospitals weren't buying. More than 98 percent of hospitals purchase supplies from group purchasing organizations, rather than directly from a manufacturer.[58] In a relentless pursuit of profits, GPOs for years chose cheaper Chinese manufacturers over smaller, American-based companies.[59] This same theme across many industries has led to fragile, weak, and monopolized supply chains.

Today, GPOs operate essentially as exclusive clubs that allow large makers of medical supplies to monopolize the hospital market. The largest GPO, Vizient Inc., controls about 30 percent of the market for all medical supplies nationally, and the four largest GPOs together receive 90 percent of all hospital purchases across the country.[60] Harvard Law professor Einer Elhauge noted that

57 Ronn Blitzer, "Federal agencies warned of ventilator shortages for nearly two decades," *Fox News*, March 30, 2020. https://www.foxnews.com/politics/federal-agencies-warned-of-ventilator-shortages-for-nearly-two-decades

58 William E. Bruhn, Elizabeth A. Fracica, and Martin A. Makary, "Group Purchasing Organizations, Health Care Costs, and Drug Shortages," JAMA, November 13, 2018. https://jamanetwork.com/journals/jama/article-abstract/2708613

59 Caroline Kelly, Amanda Watts, and Cat Gloria, "US medical mask maker blasts government for failing to prepare for pandemic: 'I've been ignored for so long,'" *CNN*, May 14, 2020. https://www.cnn.com/2020/05/14/politics/bowen-mask-maker-ignored-bright-hearing/index.html

60 Ibid.

some GPO agreements "provide that a signing hospital cannot solicit rival bids, examine rival products, or even entertain rival proposals." This has led to a situation in which "these few firms can dictate which drugs, devices and supplies are used in hospitals and which manufacturers are permitted to gain entry into the healthcare supply-chain."[61] GPOs act as private regulators to exclude from the hospital market firms that make numerous essential devices, such as oxygen-level measurement machines, surgical towels, and specialized syringes.[62]

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Because GPOs are so successful at keeping small and medium-sized manufacturers out of the market, they often artificially create a monopoly in certain medical supplies or devices, which can have negative effects for both suppliers and patients. In 2019, one large company with a GPO-induced dominance in surgical staplers recalled its stapler over safety concerns. Surgeons across the U.S. scrambled for weeks, unable to find an alternative; in some cases, surgeons were forced to cancel surgeries or suture patients by hand.[63]

HOW LIVE NATION FORECLOSES ACCESS TO MARKETS

The Live Nation and Ticketmaster merger is a clear example of the music and entertainment industry's harmful **vertical integration** and consolidation, which have hurt artists and fans. Live Nation's primary business was in live entertainment promotion and Ticketmaster's primary business was in ticket sale distribution. Prior to the merger, Ticketmaster controlled more than 80 percent of the ticketing market.[64]

Live Nation's power over the live music industry's supply chain helps illustrate the dangers of such integration and monopolization. Because Live Nation manages more than 500 major music artists,[65] the company can demand that venues interested in hosting performances with those

61 Einer Elhauge, "GPOs' Business Practices Questioned" North Coast Medical and Rehabilitation Products, September 6, 2012, https://www.ncmedical.com/gpos'-business-practices-questioned

62 "Hospital Group Purchasing: Lowering Costs At The Expense Of Patient Health And Medical Innovations?," April 30, 2002, Subcommittee on Antitrust, Business Rights, and Competition of the Committee of the Judiciary, United States Senate.

63 Christina Frangou, "Colorectal Surgeons Scramble in Wake Of Stapler Recall," *General Surgery News*, July 3, 2019. https://www.generalsurgerynews.com/In-the-News/Article/07-19/Colorectal-Surgeons-Scramble-in-Wake-Of-Stapler-Recall/55365?sub=99B8E3CBF9C5DA1B5F9654C7E125C2717AD47ACEE5D761A6A7D9BCF2DBC7BE

64 David Dayen, "The Ticket Monopoly Is Worse Than Ever (Thanks, Obama)," *The New Republic*, May 15, 2018. https://newrepublic.com/article/148419/ticket-monopoly-worse-ever-thanks-obama

65 "Live Nation companies now manage over 500 artists worldwide," *Music Business Worldwide*, February 27, 2017. https://www.musicbusinessworldwide.com/live-nation-companies-now-manage-500-artists-worldwide/

artists exclusively use Ticketmaster as their ticketing service, thus eliminating any potential competition. Indie music festivals in the United Kingdom have said that Live Nation puts a 'stranglehold' on live music.[66] Without any competition, the company gets away with questionable behavior, such as offering tickets solely on resale sites at higher prices, rather than selling them at face value.[67]

Live Nation manages more than 500 major music artists, the company can demand that venues interested in hosting performances with those artists exclusively use Ticketmaster as their ticketing service, thus eliminating any potential competition.

In an unsuccessful effort to maintain a competitive landscape, the Department of Justice required Ticketmaster to "license its ticketing software—the proprietary system that allowed it to service swarms of customers when a popular concert went on sale—to its competitor AEG. It was also required to divest a ticketing subsidiary, Paciolan, to another competitor."[68] But AEG has not used the software,[69] and Paciolan did not grow into a substantial competitor.[70] This is unsurprising given the size of the merged company that AEG and Paciolan were expected to compete with.

Even in the midst of a pandemic, which has decimated the live music industry, investors recommend Live Nation's stock. Why? "The company," said one fund manager, "operates an impenetrable moat that has a monopoly-like structure."[71]

66 Richard Smirke, "Live Nation's Growing Market Share Putting 'Stranglehold' On Live Music, Warns U.K. Indie Festivals," *Billboard*, August 28, 2018. https://www.billboard.com/articles/business/8472591/live-nation-growing-market-share-indie-festivals-aif-research

67 Kaitlyn Tiffany, "Live Nation admits to helping artists scalp their own tickets to make more money," *Vox*, July 22, 2019. https://www.vox.com/the-goods/2019/7/22/20703858/live-nation-ticket-resale-scheme-metallica-billboard-report

68 "Justice Department Requires Ticketmaster Entertainment Inc. to Make Significant Changes to Its Merger with Live Nation Inc.," Press Release 10-081, January 25, 2010. https://www.justice.gov/opa/pr/justice-department-requires-ticketmaster-entertainment-inc-make-significant-changes-its

69 Mitchell Peter, "AEG Takes On Ticketmaster With New Service," *Hollywood Reporter*, August 22, 2011. https://www.hollywoodreporter.com/news/aeg-takes-ticketmaster-new-service-226072

70 David Dayen, "The Ticket Monopoly."

71 Christine Jurzenski, "Live Nation Stock Can More Than Double in 3 Years, Analyst Says," *Barrons*, April 8, 2020. https://www.barrons.com/articles/live-nation-stock-can-more-than-double-in-three-years-analyst-51586380765

Monopolists Restrain Business Markets and Labor Markets

Franklin Roosevelt, when on the campaign trail in 1940, stated that he foresaw a country “where no businessman can be stifled by the harsh hand of monopoly… where the workers are really free and … their great unions undominated by any outside force.”[72] Roosevelt understood a fundamental principle: Monopolies harm workers and entrepreneurs alike.

Despite political ideologies that have tried to pit the needs of business owners and workers against one another on issues like fair wages or worker protections, both can find a common enemy in monopolists, who squeeze both the margins of small businesses and depress workers’ wages. Businesses might have higher margins to pay fair wages if they were not gouged by dominant incumbents that control much of their essential infrastructure: advertising, cloud data storage, internet access, food delivery, etc.

Monopolists also indirectly force others to operate on exploitative terms to survive, structuring how labor markets operate. Abusive tactics that successfully avoid regulatory challenge provide a template for other businesses. Following California’s passage of Prop 22, which exempted companies from a law requiring gig workers like Uber drivers to be reclassified as full-time employees, other businesses have been emboldened, knowing they are unlikely to face retaliation from regulators. Following Prop 22, Albertsons fired all of its salaried grocery delivery drivers,[73] instead opting to utilize “third-party logistics providers.” Other companies are eliminating salaried positions in efforts to “Uberize”[74] the economy into even more unstable, low-wage, and precarious jobs.

Monopolies harm workers and entrepreneurs alike. Monopolists also indirectly force others to operate on exploitative terms to survive, structuring how labor markets operate.

72 Stacy Mitchell and Susan R. Holmberg, “Why the Left Should Ally With Small Business,” *The Nation*, November 18, 2020. https://www.thenation.com/article/society/democrats-labor-business-monopoly/

73 Soo Kim, “California’s Prop 22 Sparks Outrage as Albertsons, Vons Lay Off Drivers,” *Newsweek*, January 5, 2021. https://www.newsweek.com/california-proposition-22-albertsons-vons-drivers-laid-off-outrage-twitter-1558939

74 Josh Eidelson, “The Gig Economy Is Coming for Millions of American Jobs,” *Bloomberg Businessweek*, February 17, 2021. https://www.bloomberg.com/news/features/2021-02-17/gig-economy-coming-for-millions-of-u-s-jobs-after-california-s-uber-lyft-vote

Increasingly, the bargaining power that small firms have against dominant gatekeepers is similar to the bargaining power that individual workers have—very weak. Entrepreneurs and workers of color often see the worst of it. Liberation in a Generation's report *Anti-Monopoly Activism: Reclaiming Power through Racial Justice* makes a strong case for the disproportionate impact of monopoly power on entrepreneurs and workers of color, calling for movement organizers and leaders or color, who have often played the leading role in worker movements, to unite in a common fight against monopolists: "Putting monopolies in the crosshairs of organizers is critical because they best understand the real human and structural devastation caused by monopoly power."[75]

Increasingly, the bargaining power that small firms have against dominant gatekeepers is similar to the bargaining power that individual workers have—very weak. Entrepreneurs and workers of color often see the worst of it.

75 Jeremie Greer and Solana Rice, "Anti-Monopoly Activism: Reclaiming Power through Racial Justice," Liberation in a Generation, March 2021. https://www.liberationinageneration.org/wp-content/uploads/2021/03/Anti-Monopoly-Activism_032021.pdf

ACCESS TO MARKETS: A MOMENT OF OPPORTUNITY

Today, the nation is at a pivot point. After multiple economic crises in the last 10 years, it is increasingly evident that the public policy underpinning the commercial system is leading to a weaker and more unstable economy. Monopolists acting as private regulators are a clear and present danger to the American system of free enterprise.

But the problem is receiving a new level of attention. Last year, the Antitrust Subcommittee in the House of Representatives published the results of a historic investigation into digital markets, which ended in a call for Big Tech firms to be broken up and regulated to reinvigorate competition. State attorneys general and federal agencies have brought historic antitrust cases and initiated investigations against major monopolists, including Facebook and Amazon. More than 70 cities, states, and counties capped delivery app fees charged by gatekeepers like Uber and Doordash during the pandemic, and several states are pushing for new rules restricting the apps' exploitative tactics. And private litigants are using the substantive evidence amassed in the House report to bolster their own cases. For example, West Virginia news companies have sued Google and Facebook, alleging "anticompetitive and monopolistic practices" that have damaged their revenue streams.[76] Other small-business owners are also bringing cases against Google,[77] Facebook, and Amazon.

Monopolists acting as private regulators are a clear and present danger to the American system of free enterprise.

As business journalist David Dayen has written, "the renewed movement among politicians and law enforcers against Big Tech—which has seen Congressional hearings and thorough reports and enforcement actions—has in my view created a feedback loop that has led states and

76 Marc Tracy, "A West Virginia newspaper company is suing Google and Facebook over online ads," *The New York Times*, February 12, 2021. https://www.nytimes.com/live/2021/01/29/business/us-economy-coronavirus/google-facebook-ads

77 David McCabe, "Big Tech's Next Big Problem Could Come From People Like 'Mr. Sweepy,'" *The New York Times*, February 16, 2021. https://www.nytimes.com/2021/02/16/technology/google-facebook-private-antitrust.html

individual plaintiffs to push harder on the fundamental issues of antitrust. Strength begets strength. Courage is contagious."[78]

This courage extends beyond Big Tech, with state and federal leaders proposing broader antitrust reforms to facilitate access to markets, and policymakers examining the role concentration has played in industries ranging from pharmaceuticals to agriculture and health care, among others. The Biden White House has appointed aggressive enforcers, like antitrust scholar Lina Khan, who have earned support across the political spectrum and are committed to reorienting antitrust to promote fair competition and a diverse, vibrant commercial sphere.

As business journalist David Dayen has written, "the renewed movement among politicians and law enforcers against Big Tech—which has seen Congressional hearings and thorough reports and enforcement actions—has in my view created a feedback loop that has led states and individual plaintiffs to push harder on the fundamental issues of antitrust. Strength begets strength. Courage is contagious."

In short, the moment is ripe for policymakers to accelerate a major shift in perspective and priorities that has transformational potential to protect entrepreneurs and growing businesses from monopolistic gatekeepers and the private regulatory regimes they impose. At a moment when the American economy is at a crossroads—and after 40 years of privileging the power of the largest corporations over creators, innovators, small and medium-sized businesses, and those who invest in them—there's no time to waste.

78 David Dayen, "It's Not a Big Tech Crackdown, It's an Anti-Monopoly Revolution," The American Prospect, December 18, 2020. https://prospect.org/power/its-not-a-big-tech-crackdown-its-an-anti-monopoly-revolution/

If you'd like to share your experiences encountering gatekeepers or facing private regulation, learn more about how antitrust and competition policy can support entrepreneurship and fair competition, or engage with us going forward, here are a few ways to get involved:

Sign up to learn more at AccessToMarkets.org

Email us at accesstomarkets@economicliberties.us

Subscribe to Economic Liberties' Director of Research Matt Stoller's newsletter BIG, which hosts a community of more than 40,000 readers and commentators on the politics of monopoly and finance.

* * *

If you'd like to learn more about antitrust and competition policy and the evolving policy environment, we recommend:

- *Access to Markets: Freeing Entrepreneurs & Independent Businesses from Dominant Gatekeepers Featuring Congressman Joe Neguse*
- *The Courage to Learn: A Retrospective on Antitrust and Competition Policy During the Obama Administration and Framework for a New Structuralist Approach*
- *Rescuing Restaurants: How to Protect Restaurants, Workers, and Communities from Predatory Delivery App Corporations*

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