Will the internet giants finally be reined in?

Peter Curwen

Amazon, Apple, Facebook and Google are examples of entrepreneurial companies that have grown from very humble beginnings to become global behemoths. Until recently, such companies have been viewed with near universal approval because they appear to satisfy a need and to do so with great efficiency. However, it was inevitable that at some point it would be noted that they had accrued enormous market power and that they could even be viewed as monopolies for all practical purposes.

The odd one out among the four is Apple because it actually controls a minor share of the smartphone market – albeit close to one half in America – with Android-powered devices supplying the major share, but there is only one Apple and many vendors using Android. Furthermore, Apple's brand loyalty is so secure that it can set prices that are far more profitable than its main Android rivals such as Samsung.

One key issue is that all of these corporate giants are based in America – the land of the free that does not, as a general rule, believe you should regulate companies that grow by being better than their rivals. But at some point, the equation begins to gravitate from benign to potentially malign, and that point usually occurs when a company

responds to competition by buying up any rivals that appear to be capable of serious competition – the others can simply be left to go their own way to prove that the market is, indeed, competitive.

Currently, the “big four” are among the largest in the world by market capitalisation – Apple is worth \$2,400bn; Amazon is worth \$1,700bn; Google is worth \$1,800bn; and Facebook is worth \$1,100bn – and are merely the most prominent examples of what is often known as “Big Tech”. One has to go back to the era of oil and railroad barons to find anything comparable, although there has been the odd period when a single company such as Bell Telephone or Microsoft has been seen as in need of regulatory oversight – in 2001, the Court of Appeals for the District of Columbia ruled that Microsoft had abused its market position by bundling its Internet Explorer Web browser together with its Windows operating system.

However, change may be in the air given that, after a 16-month investigation, the Anti-Trust subcommittee of the House of Representatives' Judiciary Committee has recently published a 450-page report on the “big four”, which concluded that they have “too much power, and that power must be reined

in”. But notice that the underlying problem is not entirely consistent: The report alleged that Amazon prioritised its own products over those supplied by third-party sellers as did Apple in its App store; Facebook was viewed as holding a data advantage that allowed it to “acquire, copy or kill” possible rivals; and Google was said to favour its own content ahead of that on other websites.

For its part, the Department of Justice (DoJ) filed an antitrust lawsuit against Alphabet – the parent of Google – in October 2020 which accused it of signing a secret deal with Apple and other smartphone vendors. The deal was alleged to have its origins in a meeting in 2018 when the CEOs of Apple and Google conspired to operate as if they were a single company. Microsoft had previously been the default search engine for Apple, but by switching to Google, Apple had allegedly earned an additional \$8–\$12bn a year. It was also alleged that Google had struck similar deals with the likes of Samsung.

As a result, the DoJ claimed that up to 90% of total searches and 95% of mobile searches in the USA were being done via Google. Its lawsuit was joined by 11 state attorneys general in the District of Columbia's federal district court. The lawsuit accepted that Google had been

set-up with the best of intentions but asserted that it had become “a monopoly gatekeeper for the internet”. It noted that “Google” had evolved from a company name to a verb meaning “to search”.

Furthermore, it had become more than merely the search engine of choice as its position in that sector had enabled it to become a force in its own right as a provider of cloud services and as a smartphone vendor using the “Pixel” own-brand.

Facebook looks likely to follow Google into the cross hairs of the authorities, as the Federal Trade Commission is in favour of taking Facebook to court over its purchase of WhatsApp and Instagram. These are alleged to represent classic examples of how to head off potential competition by buying a company that poses a genuine threat.

On the face of it, the politics behind the above moves is somewhat contradictory. The Senate has a similar antitrust committee to that in the House – which is controlled by the Democrats – but is much less likely in principle to want to act against the “big four” so long as it remains controlled by the Republicans, who notably did not support the report’s recommendations in the House. However, Republicans take the view that Facebook can act as a gatekeeper to exclude opinions that do not accord with those espoused by most Democrats.

While it is the case that the Republican Party supported the takeover of WhatsApp by Facebook – the deal cost a mere \$19bn in 2014 – it appears to have changed its mind, as it is entitled to do, with retrospective action as the consequence. This will probably take the form of regulatory enforcement rather than forcing Facebook to hive off WhatsApp and/or Instagram, although a large fine is certainly on the cards. But, realistically, a fine is not that great a disincentive for a

company valued at \$800bn let alone the other members of the “big four”. Indeed, Facebook merely shrugged off the \$5bn fine imposed as a result of the Cambridge Analytica affair – the largest ever imposed for a violation of privacy.

Amazon, meanwhile, has been accused of competing unfairly with small sellers on its platform and of using the data they provide to further the advantage of its own sales channels. One factor that is common to all of the “big four” is the use of prioritisation – that is, the way in which they either place their own products and services at the top of the list when a search is done or allow third parties to buy priority placement via, in effect, a competitive auction.

It is also worth observing that America – which is clearly best positioned to take action against the “big four” as they are incorporated there – is to some extent following the example set by the European Commission, which has fined Google roughly \$10bn since 2017 for various competition transactions. However, as noted above, Alphabet’s cash hoard worth \$120bn enables it to shrug off fines even on such a scale.

The authorities won the war against Microsoft, but they subsequently lost the battle to decide how to deal with the vanquished when Microsoft was able to overturn on appeal the threat of structural remedies. At the end of the day, only one thing will stop Google in its tracks, which is a court order to sell Android. But who is willing to bet on that?

Structural remedies are anyway easier said than done and inevitably have unforeseen longer term consequences. For example, if an order was issued for the enforced sale of Android, who would be able to acquire it other than another massive – and almost certainly non-American – organisation, which is hardly the desired objective of the US antitrust authorities. Furthermore,

although the issue of prioritisation can be addressed, any solution would need huge resources to be devoted to policing the agreed solution. It must never be forgotten that the adversely affected parties are much better resourced than bodies set up to oversee them and will be perfectly happy to launch a plethora of legal challenges that will delay remedial action.

And when all is said and done, the ability to find anything you need on Amazon, especially in a world of COVID-19 where physical shopping is discouraged, and to get it delivered at incredible speed without leaving home, is a service to which most consumers are rather attached. Similarly, the ability to search the internet using Google is very attractive to consumers, especially as it makes content so readily accessible. It would take a very brave politician to suggest that a perceived deterioration of a service is good for the soul of consumers.

At the end of the day, therefore, the traditional concept of a monopoly as a company that causes detriment to consumers is no longer quite so straightforward to apply. And the political complexion of the US Government will clearly affect its interpretation.

About the author

Peter Curwen joined Sheeld Hallam University in 1970. He took early retirement in 2002 having risen to the position of Professor of Economics. Having switched his research interests from public enterprise and privatisation in 1998, he then took up the post of Visiting Professor of Mobile Communications, first at Strathclyde University and subsequently the Newcastle Business School, finally retiring in 2017 to become a “Gentleman Scholar”. Peter Curwen can be contacted at: pjcurwen@hotmail.com