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## What is at Stake if Antitrust Regulation Fails?

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Momentum for regulating Big Tech is growing across the world. The European Union has been leading this fight for the past decade, frequently leveraging its antitrust laws, data protection laws, and other regulatory instruments to reclaim control over the industry. But the EU is no longer the lone crusader prepared to take on the tech giants. The Chinese government has initiated an unprecedented crackdown on its tech sector in the name of advancing “common prosperity” and ensuring that its tech giants do not overpower the state. The tide may now finally be turning even in the United States, where Congress is reassessing the need to re-write US antitrust laws, enact a federal privacy law, or revisit its absolutist stance on free speech online.

While these leading regulatory regimes—the US, China, and the EU—may be converging in their view that tech regulation is needed, each [digital empire](#) holds a different vision for the digital economy. These visions are reflected in the contrasting regulatory models they have adopted: The US has pioneered a largely *market-driven* model, China a *state-driven* model, and the EU a *rights-driven* model. The American regulatory model centers on free speech, the free internet, and incentives to innovate. It is characterized by discernible techno-optimism, placing its faith often in tech companies’ self-regulation. In contrast, the Chinese regulatory model rests on a state-driven vision for the digital economy. It seeks to maximize China’s technological dominance while maintaining social harmony and government control over its citizens’ communications. The European regulatory approach differs from both the US and Chinese models in that it is distinctly rights-driven. According to the EU, regulatory intervention is needed to uphold the fundamental rights of individuals, preserve the democratic structures of society, and ensure a fair distribution of benefits in the digital economy.

These dominant digital powers not only have a different vision but also a varying ability to effectively govern digital markets. Take antitrust law as an example. Over the past decade, the EU has earned a reputation, quite deservedly, as the regulatory superpower. It is viewed as the most aggressive antitrust enforcer in the world, vested with the ability to shape global markets through [the Brussels Effect](#). Many of the EU's recent antitrust enforcement actions have targeted the tech industry, including companies such as Google, Meta, Amazon, and Apple. In 2022, the European Commission also gained new regulatory powers when the EU adopted a pathbreaking Digital Markets Act (DMA). The DMA vests the EU with authority to regulate the business conduct of so-called digital gatekeepers, *ex-ante* prohibiting them from engaging in certain business practices while at the same time mandating them to engage in other practices.

However, the EU's digital regulations often fail to translate into effective enforcement, compromising their goals in practice. Even though the EU has fined Google over eight billion euros across three antitrust cases in the past decade, critics note that these fines have hardly made a dent in Google's market dominance. Some argue that tech companies are simply “too big to regulate,” possessing the kind of market power that is too entrenched for regulators to dismantle. Today's largest tech companies rival many countries in their size and influence, and their tremendous economic, political, and social influence makes it difficult for the EU to police their business practices. The EU's commitment to the rule of law and due process compounds the antitrust enforcement challenge. A dramatic and speedy crack-down on the tech industry, akin to what has recently taken place in China, is not feasible in Europe. Instead, proposed laws such as the DMA must go through a legislative process that consists of numerous democratic checks and balances across several institutions to ensure that all interests are carefully considered. Similarly, in enforcing its antitrust laws, the EU remains sensitive to tech companies' right to be heard and offers two layers of appeals following any adverse decision the Commission adopts against them.

The US is in no better position than the EU to effectively police the tech industry. Over the past years, the US government has begun to re-assess its commitment to free markets as a foundation of the digital economy. As one manifestation of this ongoing shift, the US Department of Justice and the Federal Trade Commission (FTC) are now deploying their long-dormant antitrust powers to challenge a number of leading tech companies, including Meta, Google, and Microsoft. However, the FTC's recent high-profile court defeats suggest that the revived agency action targeting tech companies may end up faltering in courts. The US judiciary may not be ready for an “antitrust revolution” and remains guided by the influential Chicago school orthodoxy and entrenched American techno-libertarian ideals.

American reformists' hopes may therefore lie with the US Congress. Over the past years, Congress has been holding hearings and deliberating bills that would revive antitrust laws. A 2020 House Antitrust Report contains a condemning assessment after a sixteen-month investigation into the sector, declaring that Amazon, Apple, Google, and Meta all engaged in forms of monopolistic behavior. Several bills have been introduced in Congress, each seeking to impose tighter antitrust constraints on the larger tech companies, including the 2021 American Innovation and Choice Online Act. However, even while Democrats and Republicans in Congress increasingly agree that tech companies need to be regulated, there is little agreement on how to regulate them. Lawmakers also harbor concerns that tighter regulation would undermine American technological progress and innovation—a concern that is particularly pronounced in the era of intense US-China tech rivalry. The tech companies' lobbying is also relentless—and remains effective—in the US. The bipartisan anti-tech crusade may therefore never amount to a genuine shift in US policy.

While the US is struggling to legislate—and the EU is struggling to enforce its antitrust laws—the Chinese antitrust state faces no similar obstacles. The Chinese government recently leveraged its antitrust laws to rein in companies such as Ant Group, Alibaba, and Tencent as part of an unprecedented regulatory assault on its domestic tech industry. Without the need to adhere to the democratic process, the Chinese government faces fewer political hurdles to enact legislation or enforce its regulations. It tolerates little dissent from tech companies, all of which know that compliance is their only option. In April 2021, on the same day that the Chinese government fined Alibaba a record \$2.8 billion, the company made a public statement saying that it “accept[ed] the penalty with sincerity and will ensure . . . compliance with determination.” To further show its commitment to the Chinese government's goal to spread wealth, Alibaba vowed shortly thereafter to invest \$15.5 billion into the country's common prosperity initiatives. Other Chinese tech companies have followed a very similar script, submitting to the government's demands and pledging their commitment to the values espoused by the government.

This relative “success” of the Chinese regulatory model in obtaining compliance from tech companies stands in stark contrast with the repeated difficulties faced by European and American regulators in holding tech companies accountable. In the EU and the US, regulators are often forced to fight lengthy legal battles as tech companies contest, rather than acquiesce to, the regulatory actions targeting them. This makes the Chinese state-driven regulatory model attractive to many other governments that are reluctant to be drawn into these kinds of regulatory battles that the US and EU are struggling to win.

While the US and the EU rightly defend their commitment to democratic lawmaking, independent courts, and the rule of law, they face growing pressures to show that the democratic governance model can ultimately deliver benefits to consumers, citizens, and societies. To the dismay of the US, the EU, and their democratic allies, China’s state-driven model is doing well in the global contest for influence. Beijing has already proven wrong the assumption that political freedom is necessary for innovation, showing how it can combine thriving innovations with political control. This has provided many authoritarian-leaning governments with an additional reason to embrace the Chinese regulatory model. Now China is sending another message that is equally unsettling for many: that a commitment to democracy and effective digital governance are increasingly hard to combine.

There is a robust, ongoing discussion of whether the tech companies are “new governors” and whether the world is no longer bipolar or multipolar but “technopolar.” However, the real question today is less whether governments, as a general matter, can control tech companies, but whether *democratic* governments can do so. If the US and the EU continue to lose their regulatory battles to tech companies, we may be forced to concede that only authoritarians have the tools to effectively govern digital markets while democracies are destined to fail in that same endeavor. This would suggest that the true digital empires are either tech companies or authoritarian governments—both with the power to shape the global digital order towards their interests and values. The prospect of that outcome should unsettle anyone who believes in liberal democracy as a form of government and as a foundation of a free and thriving society.

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