AMERICAN ECONOMIC LIBERTIES PROJECT

Myth vs Fact on Big Tech Monopolies

Amazon, Google, and Facebook make big claims. Are they true?

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In October 2020, the House Antitrust Subcommittee published the *findings and recommendations* from its 16-month investigation into the market power of Google, Apple, Amazon, and Facebook. These recommendations include imposing breakups of companies, implementing new regulations, and overturning Supreme Court precedent. That same month, the Department of Justice and 11 state attorneys general sued Google. In December, 48 states and the Federal Trade Commission separately sued Facebook to unwind its anti-competitive acquisitions of Instagram and WhatsApp, and another, more broad state AG-led antitrust lawsuit against Google was also filed.

In response, these corporations have made misleading arguments to policymakers about their lines of business. This memo catalogues their claims, and provides evidence on how they attempt to mislead. The arguments we identify here are drawn from these firms' defense against the House Antitrust Subcommittee, court cases, public-facing lobbying materials, and private conversations with legislators and staff.

AMAZON

CLAIM #1: Amazon makes up a small fraction of retail.

In defending his corporation against the Antitrust Subcommittee's claim that the firm has monopoly power, Jeff Bezos argued that Amazon's share of the retail market is modest. Amazon, he said, "accounts for less than 1 percent of the $25 trillion global retail market and less than 4 percent of retail in the U.S,"[1] and that online and physical retail stores compete with one another for the same customers.[2]

FACT: Amazon has significant market power in e-commerce.

Amazon is misleading policymakers by distorting the definition of its relevant market. When responding to the House Antitrust Subcommittee's questions about Amazon's largest competitors and relevant market, Amazon replied: "estimates of total retail share are the most appropriate and relevant method of estimating"[3] Amazon's market share. The Subcommittee noted in its report that Amazon's approach of defining their relevant market as 'all retail, online and offline, globally,' "is inconsistent with evidence gathered by Subcommittee staff, conventional antitrust analysis of relevant product markets, and common sense." The Subcommittee noted that when responding to a request for Amazon's top ten competitors, the corporation "identified 1,700 companies, including Eero (a company Amazon owns), a discount surgical supply distributor, and a beef jerky company."[4] The appropriate approach when sizing up Amazon's market power, as the Subcommittee pointed out, is to look at the market for online commerce.

While Amazon does not report its share of the e-commerce market, numerous market research firms estimate Amazon's share between 40 percent and 74 percent of online retail.[5] Digital Commerce 360 revealed that Amazon controls more than 70% of all online marketplace sales in the U.S., more than triple its closest online marketplace competitor eBay Inc.[6] While Amazon is not a viable competitor to Google on general search, it is the gateway to online retail, so dominant that *more than half* of all online product searches begin directly on Amazon.

CLAIM #2: Amazon's size allows it to invest in small businesses.

Amazon argues it has a mutually beneficial relationship with independent, third-party sellers, pointing to the growing number of third-party merchants on its platform. In 2018, Jeff Bezos wrote that "Third-party sellers are kicking our first-party butt. Badly."[7]

1 Murdock, Jason, "Jeff Bezos Tells Congress Rest of World 'Would Love Even the Tiniest Sip of the Elixir We Have Here in the U.S.'," July 29, 2020 https://www.newsweek.com/amazon-ceo-jeff-bezos-antitrust-congress-hearings-us-elixir-1521306

2 In fact, Amazon's monopoly power comes from its ability to leverage its dominance in the *e-commerce* market to gain an anticompetitive foothold across industries.

3 House Judiciary Committee, Antitrust Subcommittee, "Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations," October 4, 2020 https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf

4 Ibid.

5 Ibid.

6 Soper, Spencer, "Amazon is Accused of Forcing Up Prices in Antitrust Complaint," Bloomberg, November, 8, 2019 https://www.bloomberg.com/news/articles/2019-11-08/amazon-merchant-lays-out-antitrust-case-in-letter-to-congress?sref=q0qR8k34

7 Bezos, Jeff, "2018 Letter to Shareholders," Amazon.com, April 11, 2019 https://www.aboutamazon.com/news/company-news/2018-letter-to-shareholders

At the time, Bezos was responding to arguments by antitrust scholar Lina Khan[8] and Members of Congress like Keith Ellison, that Amazon was using its market power to levy a private tax third-party sellers.

FACT: Amazon steals from small businesses.

To sell goods online, small businesses must pay Amazon or risk failure. Amazon commands the #1 spot in online product search, and uses its market share to compel sellers to use its logistics service, Fulfillment By Amazon. It then hikes fees for those businesses, taking increasingly large cuts of their revenue streams, as much as 46 percent *in one case*.[9] In a 2019 survey of independent retailers, Amazon's market power was overwhelmingly listed as the top threat to their businesses.[10]

Finally, Amazon works with local political leaders to dodge state and local tax responsibilities for its fulfillment centers across the country, in effect using the tax money paid by independent, local businesses to subsidize its own destruction of those businesses.[11]

CLAIM #3: Amazon's size allows it to invest in workers.

Amazon touts itself as a job creator. "We're proud that Amazon has created more jobs in the U.S. over the past decade than any other company,"[12] Amazon wrote in a September 2020 *press release*.

FACT: Amazon destroys more jobs than it creates, and its jobs are not good jobs.

Amazon's labor model—replacing brick-and-mortar retail jobs with automated warehouse and shipping—causes net job losses.[13] Furthermore, Amazon is a *leader* in workplace injuries, fatalities, and safety violations, based on just the injuries it reports. This is due to the "Amazon model" for warehouse work: break-neck pace, aggressive

8 Khan, Lina, "Amazon's Antitrust Paradox," Yale Law Journal, January 2017 https://www.yalelawjournal.org/note/amazons-antitrust-paradox

9 Mitchell, Stacy, Knox, Ron, and Freed, Zach, "Amazon's Monopoly Tollbooth," ILSR, July 2020 https://cdn.ilsr.org/wp-content/uploads/2020/07/ILSR_Report_AmazonTollbooth_Final.pdf

10 "2019 Independent Business Survey," ILSR, August 6, 2019 https://ilsr.org/2019-independent-business-survey/

11 House Judiciary Committee, Antitrust Subcommittee, "Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations," October 4, 2020 https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf

12 Amazon Staff, "Fact Check: Sizing up Amazon," Amazon Staff, September 15, 2020 https://www.aboutamazon.com/news/how-amazon-works/fact-check-sizing-up-amazon

13 Jones, Janelle, Zipperer, Ben, "Unfulfilled Promises," Economic Policy Institute, February 1, 2018 https://www.epi.org/publication/unfulfilled-promises-amazon-warehouses-do-not-generate-broad-based-employment-growth/

worker surveillance, and heavy-handed punishment for time spent not working. Amazon is well-known for *reports* that workers had to urinate in bottles for fear of being caught "off-task" when going to the bathroom. Any hiring in-house is insufficient to make up for the jobs it destroys. Amazon has also fought all union organizing efforts among warehouse workers across several states.

CLAIM #4: Amazon's practices are no different than any other retailer, like a supermarket.

Amazon, via the *Progressive Policy Institute*, which it *funds for the explicit purpose of arguing in public on its behalf*, argues that "ad fees on Amazon are analogous to slotting fees in brick and mortar stores. Brands have been paying for promotion in retail long before the e-commerce revolution. Prime shelf space and prime search rankings are both scarce resources that are auctioned off to the highest bidder."[14]

FACT: Amazon is not a supermarket.

Slotting fees—which means a kickback a manufacturer pays to put something on a store shelf—are themselves controversial,[15] and their legality has even been up for debate in some cases.[16] But there are two key differences between Amazon and retailers using slotting fees. First, unlike most retailers, the vast majority of businesses must sell on Amazon in order to succeed in e-commerce. In a 2019 survey of independent business owners, one bookstore owner in Minnesota was quoted as saying "we are stuck with them [Amazon] when it comes to selling." If we had the choice, we would rather not be selling on the marketplace."[17] That means that Amazon has the power to set prices and terms over suppliers, because those suppliers have nowhere else to go. Second, Amazon is online, and doesn't have to hold inventory. Amazon's unparalleled ability to surveil its suppliers—Amazon sellers—makes it different from a typical retailer, and makes the fees it charges them exploitative.

14 Stapp, Alec, "Amazon, Antitrust, and Private Label Goods," Progressive Policy Institute, April 24, 2020 https://www.progressivepolicy.org/pressrelease/amazon-antitrust-and-private-label-goods/

15 Edwards, Phil, "The Hidden War Over Grocery Shelf Space," Vox, November 22, 2016 https://www.vox.com/2016/11/22/13707022/grocery-store-slotting-fees-slotting-allowances

16 Cannon, Joseph, and Bloom, Paul, "Are Slotting Allowances Illegal Under Antitrust Laws?" Journal of Public Policy and Marketing, 1991 https://www.jstor.org/stable/30000258?seq=1

17 "2019 Independent Business Survey," ILSR, August 6, 2019 https://ilsr.org/2019-independent-business-survey/

CLAIM #5: Amazon is disciplined by consumer behavior, as consumers can easily choose another shopping platform.

In his testimony before the House Antitrust Subcommittee, Jeff Bezos said: "Customer trust is hard to win and easy to lose. When you let customers make your business what it is, then they will be loyal to you—right up to the second that someone else offers them better service."[18] In this statement, Bezos seems to suggest that Amazon's competitors have a strong position, and are ready to usurp the company's place as leader at an opportune moment.

FACT: Amazon's dominance is insulated from bad press, fraudulent activity, and a growing number of safety issues.

Amazon's prices are low because it has the power to force suppliers to do whatever it wants. Until 2019, through what are known as price parity agreements (or most favored nation clauses), Amazon prohibited merchants from giving a better price to rival retailers who might compete on quality, location or service.[19] It had the power to force suppliers to sign these contracts because it was so dominant in terms of market share.

At the same time as it enforced price parity agreements, Amazon has aggressively sought to raise 'switching costs' for consumers through its Prime membership program, which now has 112 million members in the U.S.[20] Prime members tend not to comparison shop and simply default to buying through Amazon. Jeff Bezos made this strategy clear in designing Prime, apparently telling employees that he sought to "draw a moat around our best customers." He continued, arguing "I'm going to change the psychology of people not looking at the pennies differences between buying on Amazon versus buying somewhere else."[21]

Finally, Amazon has maintained its status as the market leader in e-commerce throughout issues of counterfeits, fake sellers, fake reviews, and other forms of fraud on its platform.[22] In 2019 and 2020, the Wall Street Journal published a series of articles

18 Bezos, Jeff, "Statement by Jeff Bezos to the U.S. House Committee on the Judiciary," July 28 2020 https://www.aboutamazon.com/news/policy-news-views/statement-by-jeff-bezos-to-the-u-s-house-committee-on-the-judiciary

19 Kelly, Makena, "Amazon silently ends controversial pricing agreements with sellers," The Verge, March 11, 2019 https://www.theverge.com/2019/3/11/18260700/amazon-anti-competitive-pricing-agreements-3rd-party-sellers-end

20 For a description of the use of Prime to impose 'switching costs,' see: Wohlsen, Marcus, "Why Amazon Prime Could Soon Cost You Next to Nothing," Wired, March 13, 2013, https://www.wired.com/2013/03/amazon-prime-could-soon-cost-next-to-nothing/; The 112 million Prime members number comes from: House Judiciary Committee, Antitrust Subcommittee, "Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations," October 4, 2020 https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf

21 Stoller, Matt, Garofalo, Pat, Webb, Olivia, "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/

22 Berzon, Alexandra, Shifflett, Shane, Scheck, Justin, "Amazon Has Ceded Control of Its Site. The Result: Thousands of Banned, Unsafe or Mislabeled Products," The Wall Street Journal, August 23, 2019 https://www.wsj.com/articles/amazon-has-ceded-control-of-its-site-the-result-thousands-of-banned-unsafe-or-mislabeled-products-11566564990; Emont, Jon, "Amazon's Heavy Recruitment of Chinese Sellers Puts Consumers at Risk," The Wall Street Journal, November 11, 2019 https://www.wsj.com/articles/amazons-heavy-recruitment-of-chinese-sellers-puts-consumers-at-risk-11573489075; Stevens, Laura "On Amazon, Fake Products Plague Smaller Brands," Wall Street Journal, July 19, 2018 https://www.wsj.com/articles/on-amazon-fake-products-plague-smaller-brands-1532001601

detailing issues with unsafe and mislabeled products, deceptive counterfeit sellers, and other fraudulent activity on its platform. Despite these revelations, Amazon's exponential growth has continue apace.[23] This dynamic suggests a lack of competition in the e-commerce space.

FACEBOOK

CLAIM #1: Facebook has many competitors and is not a monopoly.

Like Amazon, Facebook defines its relevant market as widely as possible, writing in a press release responding to the House Antitrust Subcommittee that it "compete[s] with a wide variety of services with millions, even billions, of people using them."[24] Facebook and Google also claim to compete with one another in the online advertising market.

FACT: Facebook is a monopoly.

As the House Antitrust report found, "Facebook has monopoly power in the market for social networking."[25] The corporation held its position as a social media monopolist for nearly a decade, despite changes in technology and new entrants, through *spying on and subsequently buying* potential competitors, as shown in both the FTC and state AG cases filed against it. Facebook's growth and dominance are reinforced by "network effects": the more users join Facebook, the more other potential users will want to join. According to a 2018 internal memo, Facebook "considers competition from its own family of products as more considerable than competition from any other firm."[26] Furthermore, the lawsuit filed by 10 state Attorneys General alleges that Facebook and Google, far from competing in the advertising market, actually colluded with each other to prevent new competitors from entering, while also violating consumer privacy and fixing advertising prices.[27]

23 "Net revenue of Amazon from 1st quarter 2007 to 4th quarter 2020," Statista, February 2021 https://www.statista.com/statistics/273963/quarterly-revenue-of-amazoncom/

24 Bond, Shannon, Selyukh, Alana, Allyn, Bobby, "How are Apple, Amazon, Facebook, Google Monopolies? House Report Counts the Ways," NPR, October 6, 2020 https://www.npr.org/2020/10/06/920882893/how-are-apple-amazon-facebook-google-monopolies-house-report-counts-the-ways

25 House Judiciary Committee, Antitrust Subcommittee, "Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations," October 4, 2020 https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf

26 Ibid.

27 Tracy, Ryan, Horowitz, Jeff, "Inside the Google-Facebook Ad Deal at the Heart of a Price-Fixing Lawsuit," The Wall Street Journal, December 29, 2020 https://www.wsj.com/articles/inside-the-google-facebook-ad-deal-at-the-heart-of-a-price-fixing-lawsuit-11609254758

CLAIM #2: Facebook competes with TikTok, Twitter, and other social networks.

In a 2018 Senate hearing, Lindsey Graham asked Mark Zuckerberg to name Facebook's "biggest competitor." Zuckerberg struggled with the question, and named Apple, Google, Amazon, and Microsoft.[28] In his testimony before the House Antitrust subcommittee, Facebook's head of public policy, Matt Perault, cited competition from TikTok and WeChat, as well as Twitter.[29]

FACT: Facebook's dominance in online display advertising sets it apart from its competitors.

Though Facebook often points to other social media companies as rivals, the United Kingdom's Competition Authority put it best in 2020 when it published a report stating that "overall, rival social media platforms do not act as a material threat to Facebook's competitive position. Although new entry is possible, new platforms must overcome network effects and other barriers by offering a differentiated proposition that induces users to switch. No current platform offers a range of services comparable to Facebook's and none can provide access to a similarly extensive user base."[30] TikTok in particular was largely able to rise to prominence in the United States by conducting a massive, multi-million dollar ad blitz through Facebook and Google, which together control roughy 80% of U.S. online display advertising.[31]

CLAIM #3: Facebook's size allows it to invest heavily in improving its services.

Facebook, in its press release criticizing the Antitrust Subcommittee's investigation, argues that Instagram and WhatsApp "have reached new heights of success because Facebook has invested billions in those businesses."[32] Facebook has argued privately for several years that its critics can't prove the company has harmed consumers,[33] and that its acquisitions of Instagram and WhatsApp benefited consumers. Proving "consumer harm" is an important legal test for whether a company has violated antitrust law.

28 Jeong, Sarah, "Zuckerberg struggles to name a single Facebook competitor," The Verge, April 10, 2018 https://www.theverge.com/2018/4/10/17220934/facebook-monopoly-competitor-mark-zuckerberg-senate-hearing-lindsey-graham

29 Perault, Matt, "Testimony of Matt Perault, Director of Public Policy, Facebook," US House Judiciary Committee, July 16, 2019 https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-Wstate-PeraultM-20190716.pdf

30 "Online Platforms and Digital Advertising," UK Competition & Markets Authority, July 1, 2020 https://assets.publishing.service.gov.uk/media/5efc57ed3a6f4023d242ed56/Final_report_1_July_2020_.pdf

31 Roy, Ranjan, Duruk, Can, "TikTok, The Facebook Competitor?" Margins, July 24, 2020 https://themargins.substack.com/p/tiktok-the-facebook-competitor

32 Feiner, Lauren, "House Democrats say Facebook, Amazon, Alphabet, Apple enjoy 'monopoly power' and recommend big changes," CNBC, October 6, 2020 https://www.cnbc.com/2020/10/06/house-democrats-say-facebook-amazon-alphabet-apple-enjoy-monopoly-power.html

33 Romm, Tony, "'Unconstitutional, unlawful, and unsupported': How Facebook tried to fight a multibillion-dollar US Fine" The Washington Post, September 30, 2019 https://www.washingtonpost.com/technology/2019/09/30/unconstitutional-unlawful-unsupported-how-facebook-initially-tried-fight-multi-billion-dollar-us-fine/

FACT: Facebook invests heavily in maintaining its monopoly, which gives it the power not to have to compete on privacy and other metrics that are important to consumers.

In the social media market of the early 2000s, Facebook had to compete with a number of formidable rivals, including Myspace, Friendster, and other social networking sites. Facebook became the market leader in the early 2010s by beating its competitors on privacy, user experience, and a number of other metrics.

It was around this time when Facebook bought Instagram, because it posed a threat to Facebook's dominance. Mark Zuckerberg *agreed* in a 2012 email that buying Instagram was a move to "neutralize a potential competitor,"[34] as another Facebook executive phrased it. In 2014, Facebook bought WhatsApp. When its rivals had exited the market, Facebook had cemented its position as the dominant social network. Facebook dropped its commitments to user privacy and started tracking user activity outside of the Facebook platform.[35]

The quality of Facebook's user experience has degraded as the platform has grown larger—misinformation has become more widespread, advertising is more prominent, and user privacy has become compromised. And with those changes, consumers have certainly been harmed.

CLAIM #4: Facebook's size allows it to invest heavily in small businesses.

Due to Facebook's social media advertising monopoly, small businesses rely on the platform to communicate with customers. Mark Zuckerberg, in his first appearance before Congress in 2018, touted the value Facebook's targeted ad business creates for small businesses, testifying that "there are more than 70 million small businesses around the world that use [Facebook's] tools to grow and create jobs."[36] In the same hearing, he also argued against regulating targeted online advertising by saying that "targeting helps small businesses be able to afford—and reach—people as effectively as big companies have typically had the ability to do for a long time."[37]

34 https://arstechnica.com/tech-policy/2020/07/zuck-email-instagram-deal-could-neutralize-a-potential-competitor/

35 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3247362

36 https://www.congress.gov/event/115th-congress/house-event/LC58821/text?s=1&r=1

37 Ibid.

FACT: Small businesses hate having to play by Facebook's ever-changing rules.

Facebook has been criticized for making unilateral, disruptive *decisions* that have negatively impacted the businesses that must rely on its platform. These include changes to its news feed algorithm, events pages, and paid advertising business that have cut off audience reach for small businesses.

Facebook encouraged small businesses, artists, and musicians to build Facebook pages, but then limited their reach, forcing those business owners and creators to buy ads to reach the customers and fans they already acquired. As one small business owner said, "I feel that Facebook holds small businesses hostage by only displaying posts on their choice of 10 percent of my followers unless I pay to 'boost' posts."[38] Fan Pages launched in 2007, but by 2012, only 16 percent of posts on those pages were actually reaching fans; by 2014, that had fallen further, to just 6.5 percent.[39]

Facebook's random algorithm changes can substantially reduce visibility and sales for small businesses, with little warning and no way to deduce the impact before the changes occur. One change "decreased my income from Facebook by 60 percent, overnight. No explanation," a small business owner told NBC.[40] But because of Facebook's dominance, there aren't other avenues for businesses to connect to customers over social media.

Facebook allows counterfeiting on its platform. Facebook Marketplace, the platform which allows individuals to connect to buy and sell specific items, is rife with counterfeit items.[41] Facebook is reactive about taking down fake ads, often doing so only when they're flagged, so small business owners find themselves "in a constant whack-a-mole trying to find the fake ads so they can get Facebook to act."[42]

Facebook ad markets are opaque and plagued by bots. A majority of small business owners report that Facebook ads don't reach their intended audience. Instead, Facebook forces small businesspeople to pay more to "boost" posts, and then allows bots to create ad views that small businesses are charged for. "When I have purchased ads on

38 Sophy, "62 Percent of Small Business Owners Say Facebook Ads Miss Their Targets, Weebly Reports."

39 Bernazzani, Sophia, "The Decline of Organic Facebook Reach & How to Adjust to the Algorithm," Hubspot, May 3, 2018 https://blog.hubspot.com/marketing/facebook-organic-reach-declining

40 Barrett, Maura, Michael Cappetta and Jo Ling Kent, "Goodbye Facebook? Why some small businesses are quitting the social network," NBC, Sept. 3, 2018 https://www.nbcnews.com/business/business-news/goodbye-facebook-why-some-small-businesses-are-quitting-social-network-n905171

41 "We tried to see how easy it is to get duped by counterfeit items online. Here's what happened," ABC 25, Jan. 23, 2020 https://www.kxxv.com/news/25-investigates/we-tried-to-see-how-easy-it-is-to-get-duped-by-counterfeit-items-online-heres-what-happened

42 Stoller, Matt, "Absentee Ownership: How Amazon, Facebook, and Google Ruin Commerce Without Noticing," BIG, July 28, 2020 https://mattstoller.substack.com/p/absentee-ownership-how-amazon-facebook

Facebook and viewed the profiles of the 'clicks' I've received, they haven't all been valid profiles. They are bots and fake accounts," one small business owner said.[43]

Facebook is also unresponsive to substantive concerns about hate speech by small businesses. When more than 600 advertisers boycotted the platform for allowing hate speech, Mark Zuckerberg commented that they would be "back on the platform soon enough,"[44] without making any substantive changes to the way the platform treats hate speech and disinformation.

CLAIM #5: Facebook welcomes regulation, and would be a benevolent partner in crafting regulation.

Facebook, under increasing scrutiny around the world for the way it treats content moderation, has publicly called for policymakers to regulate how it treats content on its news feed. Facebook COO Sheryl Sandberg has been *open* about Facebook's desire to help craft such legislation. "New rules need to be written for the internet and we want to help make that happen,"[45] said Sandberg in a 2019 interview with *Bloomberg*.

FACT: Facebook is only interested in making its own regulatory choices.

Facebook, a corporation that is trying to create its own currency,[46] has the motto of "move fast and break things." When faced with regulation it disagreed with in Australia, Facebook's decision was to unilaterally pull news content for the entire country. Facebook's conduct in this case shows that it is primarily interested in regulation that it can craft for itself. Facebook does have a vision for how it interacts with the world, and its vision is articulated in the mission of its oversight board: A group of Facebook-compensated public-facing figures who can provide a thin veneer of accountability for actions it already planned on taking.

Facebook has rolled out a number of initiatives to help attach "unbiased" information to any potentially false or misleading content. In late September 2020, Sandberg touted these initiatives in an *interview*, but then admitted that the company was "playing whack-a-mole" with misinformation. Facebook's inability to address misinformation is due to its business model, which relies on the addictive quality of such content. Facebook's flawed business model that prioritizes engagement has directly resulted in

43 Sophy, Joshua, "62 Percent of Small Business Owners Say Facebook Ads Miss Their Targets, Weebly Reports," Small Business Trends, Jan. 3, 2017 https://smallbiztrends.com/2017/01/do-facebook-ads-work.html

44 Clayton, James, "Zuckerberg: Advertisers will be back to Facebook 'soon enough'," BBC, July 2, 2020 https://www.bbc.com/news/technology-53262860

45 "Facebook's Sandberg Says 'We Are Calling for More Regulation,'" Bloomberg Technology, July 19, 2019 https://www.youtube.com/watch?v=j5_Xwd9Cdw0

46 Murphy, Hannah, "Facebook's Libra currency to launch next year in limited format" Financial Times, November 27, 2020 https://www.ft.com/content/cfe4ca11-139a-4d4e-8a65-b3be3a0166be18

numerous instances of offline violence, including a state-sponsored ethnic cleansing campaign in Myanmar, and the recent *siege* on the United States Capitol building. Facebook should be completely uninvolved in crafting regulation to deal with the problems it has actively made worse through governing itself.

CLAIM #6: Chinese companies will take over.

Sheryl Sandberg has argued publicly that if Facebook is broken up, Chinese companies will become dominant, usurping Facebook's power. "While people are concerned with the size and power of tech companies, there's also a concern in the United States with the size and power of Chinese companies, and the realization that those companies are not going to be broken up,"[47] said Sandberg in May 2019.

FACT: Goliaths taking on other Goliaths is not necessary for prosperity.

The one Chinese social media product that has been successful in gaining market share in the U.S. is TikTok. TikTok's success is directly tied to two decisions made by Mark Zuckerberg: first, Facebook decided to cut Vine off from Facebook in 2013.[48] Second, Facebook allowed TikTok to blitz Facebook with advertising. TikTok spent more than $1 billion on advertising in 2018 alone, much of it on Facebook.[49]

Baidu, Tencent, AliBaba, and other Chinese tech companies are not allowed to gain a foothold in the United States because our government actively works to keep them from gaining a foothold. Similarly, Uber, Lyft, Facebook, and Google are not allowed by China to penetrate the Chinese market. Governments have enormous power to structure domestic markets through law, and breaking up a domestic monopoly will not change that.

47 Rodriguez, Salvador, "Facebook's Sheryl Sandberg: Chinese tech companies are also poweful, and will not be broken up," CNBC, May 17, 2019 https://www.cnbc.com/2019/05/17/facebooks-sheryl-sandberg-cnbc-interview.html

48 Kraus, Rachel, "Mark Zuckerberg Gave the Order to Kneecap Vine, Emails Show," Mashable, December 5, 2018 https://mashable.com/article/mark-zuckerberg-helped-thwart-vine/

49 Dave, Paresh, Paul, Katie, "Facebook defies China headwinds with new ad sales push," Reuters, January 7, 2020 https://www.reuters.com/article/us-facebook-china-focus/facebook-defies-china-headwinds-with-new-ad-sales-push-idUSKBN1Z616Q Wells, Georgia, Kubota, Yoko, "TikTok's Videos Are Goofy. Its Strategy to Dominate Social Media is Serious," The Wall Street Journal, June 29, 2019 https://www.wsj.com/articles/tiktoks-videos-are-goofy-its-strategy-to-dominate-social-media-is-serious-11561780861

GOOGLE

CLAIM #1: Google's size benefits consumers and small businesses.

"Americans simply don't want Congress to break Google's products or harm the free services they use every day,"[50] Google argued in a press statement criticizing the House Antitrust Subcommittee, adding "Many of the proposals bandied about in today's reports—whether breaking up companies or undercutting Section 230—would cause real harm to consumers, America's technology leadership and the U.S. economy—all for no clear gain."[51] In *a blog post* responding to the DOJ's October lawsuit, Google claims that antitrust law is meant to "help consumers," and not "make it harder for people to get the services they want,"[52] in reference to *the DOJ's claim* that Google has harmed consumers.

FACT: Google harms consumers and small businesses to benefit itself.

Because of Google's search monopoly, small businesses and consumers have no choice but to accept the terms that Google's search and advertising arms dictate, however unfavorable. Academic studies have shown Google degrades its own search product in order to preference other Google properties, such as Maps and Shopping. Google's monopoly over search and online display advertising hurts consumers in other discrete ways. For instance, deceptive, predatory scammers were able to use Google's platform to find vulnerable addicts, target them via phone, and pressure them into paying for ineffective "drug treatment" by exploiting Google's AdWords system.[53] After the Verge published an exposé on this harmful practice, Google unilaterally pulled all AdWords marketing for addiction treatment. This snap decision has given large, consolidated rehab conglomerates more power, and largely made it more difficult for addicts to seek treatment.[54]

Google's search properties, either general search or via its Maps subsidiary, also often *hurt local businesses* and residents by allowing scammers to infiltrate their listings. As one independent business owner told the Wall Street Journal in 2019, "It's less harmful

50 "Statement on Democratic and Republican House Antitrust Subcommittee Reports," Google Public Policy, October 6, 2020 https://blog.google/outreach-initiatives/public-policy/statement-democratic-and-republican-house-antitrust-subcommittee-reports/

51 Ibid.

52 Walker, Kent, "A deeply flawed lawsuit that would do nothing to help consumers," Google Public Policy, October 20, 2020 https://blog.google/outreach-initiatives/public-policy/response-doj

53 Ferguson, Cat "Searching for Help," The Verge, September 7, 2017 https://www.theverge.com/2017/9/7/16257412/rehabs-near-me-google-search-scam-florida-treatment-centers

54 Dayen, David, "Google is so big, it is now shaping policy to combat the opioid epidemic. And it's screwing it up.," The Intercept, October 17, 2017 https://theintercept.com/2017/10/17/google-search-drug-use-opioid-epidemic/

to piss off the government than piss off Google," Mr. Abuhazim said. "The government will hit me with a fine. But if Google suspends my listings, I'm out of a job. Google could make me homeless."[55] Core parts of Google (and Facebook)'s business models have *decimated local news outlets* by siphoning off the localized advertising dollars that have traditionally funded local journalism. In addition to being small businesses themselves, local news outlets provide a lifeline to small independent community businesses by providing a means to advertise to their communities.

CLAIM #2: "Competition is a click away."

In 2012, responding to the threat of antitrust action by the FTC, Google co-founder and former CEO Larry Page wrote in a public post that "*competition is only a click away.*"[56] This line, which Google and its allies have repeated ever since,[57] is meant to imply that there is essentially no cost to switch between Google and rival search engines. Therefore, there's no competitive harm posed by Google's roughly *90%* share of the search market in the U.S. and worldwide.

FACT: Switching costs are high, and competition is not a click away.

The United Kingdom's Competition and Markets Authority (CMA), which enforces UK antitrust law, published a study in 2020 on online platforms and digital advertising. In it, the CMA notes that switching costs are high for publishers and advertisers, who are consumers of Google's online display advertising business.[58] For Google search consumers, both the CMA and Yale economist Fiona Scott Morton have noted that switching search engines is daunting and complex, often by design, and that having Google pre-installed on a device raises the barriers to switching for consumers.[59]

Google has aggressively acted to maintain its monopoly through a series of contracts with other companies like Apple. Google used its dominant position to acquire YouTube, giving it an unfair foothold in digital video advertising, and it owns *nearly every aspect of the digital advertising industry*. Like Facebook, Google's monopoly over

55 Copeland, Rob, Bindley, Katherine, "Millions of Business Listings on Google Maps Are Fake — and Google Profits," Wall Street Journal, June 20, 2019 https://www.wsj.com/articles/google-maps-littered-with-fake-business-listings-harming-consumers-and-competitors-11561042283

56 Brin, Sergey, Page, Larry, "2012 Update from CEO," 2012 https://abc.xyz/investor/founders-letters/2012/

57 Portuese, Aurelien, "A Search for Sanity in Antitrust: Move (Too) Fast, Break (Innovative) Things?," Innovation Technology & Innovation Foundation, October 28, 2020 https://itif.org/publications/2020/10/28/search-sanity-antitrust-move-too-fast-break-innovative-things

58 "Online Platforms and Digital Advertising," UK Competition & Markets Authority, July 1, 2020 https://assets.publishing.service.gov.uk/media/5efc57ed3a6f4023d242ed56/Final_report_1_July_2020_.pdf

59 Scott Morton, Fiona, Dinielli, David, "Roadmap for a Monopolization Case Against Google Regarding the Search Market," Omidyar Network, June 2020 https://omidyar.com/wp-content/uploads/2020/09/Roadmap-for-a-Monopolization-Case-Against-Google-Regarding-the-Search-Market.pdf

search has not wavered with new entrants or technological changes, due to network effects. As the co-founder of Basecamp *told the Judiciary Committee* in January 2020, DuckDuckGo, Bing, and Yahoo could all drop his company's listings tomorrow "and we'd barely notice," but "[w]e lose our listing in Google and we may go out of business."[60]

CLAIM #3: The DOJ is suing Google for normal business practices that many other firms in the economy use.

Google argues that paying distributors like Apple and Mozilla to be the default search engine on their browser is a standard practice. In its *response* to the DOJ's suit, Google wrote: "Yes, like countless other businesses, we pay to promote our services, just like a cereal brand might pay a supermarket to stock its products at the end of a row or on a shelf at eye level. For digital services, when you first buy a device, it has a kind of home screen eye level shelf."[61]

FACT: Google is trying to maintain its monopoly through kickbacks.

The Department of Justice is right: Google shovels its monopoly profits into schemes to maintain that monopoly. This includes paying Apple billions of dollars a year to make Google the default search engine on its iPhones and computers. While slotting fees are commonplace in retail, Google's leverage as a monopolist makes its conduct unique, anticompetitive, and according to the government, illegal. Indeed, the House Antitrust Subcommittee Report characterizes Google's deals as "a series of anticompetitive contracts."[62]

60 House Judiciary Committee, Antitrust Subcommittee, "Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations," October 4, 2020 https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf

61 Walker, Kent, "A deeply flawed lawsuit that would do nothing to help consumers," Google Public Policy, October 20, 2020 https://blog.google/outreach-initiatives/public-policy/response-doj

62 House Judiciary Committee, Antitrust Subcommittee, "Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations," October 4, 2020 https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf

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