Crafting Effective Rules for Internet Platforms

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Jeffrey Krehely: On behalf of our partners at the GWU institute of public policy, I want to welcome you to today's event, which will advance the current conversation happening in D.C. and elsewhere on antitrust issues among Big Tech companies.

Now, it is likely no secret to anyone who is in this room that competition in high-tech industries has been reduced to nearly nothing, and that this reality has huge and largely negative impacts on the economy and people's daily lives. While other experts around town debate the actual existence of this problem, today's event is more reality-based. So we're operating from the assumption that the problem is, in fact, real and is in dire need of solutions. And the experts who are gathered here today will give us their best thinking on what those solutions may be may be and what we need to do to make them happen.

More specifically, today we will hear from three expert panelists that will discuss how best to reinvigorate competition for three of the biggest players in today's economy and society: Google, Amazon, and Facebook. These experts will explore questions about whether or not current public antitrust enforcement laws and agencies are up to the task of regulating these behemoths and whether or not the consumer welfare standard that undergirds current antitrust law needs to be changed. And, if we can't rely on the enforcement of current laws and regulations, can Congress intervene in other ways to promote innovation and enhance competition for these three companies, which most of us probably use many times each and every day?

But before we get to the panels, we will begin with an interview of Jonathan Tepper, who along with Denise Hearn, just published a new book titled *The Myth of Capitalism: Monopolies and the Death of Competition*. Jonathan will be interviewed by CNN's Lydia DePillis, who is a senior economics writer for the network. She covers the real economy in America, focusing on how statistics and policy play out in people's everyday lives, and I think everyone here can also agree that it is decidedly *not* fake news that Google, Amazon, and Facebook do impact us all and that fundamental changes do need to be made.

So thank you all for joining us today, and special thanks to Lydia and all the other experts who have gathered here today to tackle this topic, as well as the staff of Roosevelt and GWU who have worked hard to get this together. Please join me in welcoming Lydia and Jonathan to the front of the room.

Lydia DePillis: Hi everyone, thank you for coming. Thanks to Jonathan for traveling across the Pond to join us on the first stop of his book tour.

So this is an opportune day. Before I got here, I was racing through the documents that Amazon had agreed to with New York and Virginia about coming to their deal for various real estate locations. It was a really interesting display of economic power. It’s a good backdrop for our discussion of how that has grown in America in the last several decades.

Jonathan runs an advisement firm for hedge funds and [this is] his third book. So Jonathan, first of all, there're lots of examples that we can point to of very complicated industries, from airlines to shipping companies. How, though, do you know statistically that overall, in aggregate, the American economy is growing more concentrated? What would you point to to demonstrate that?

Jonathan Tepper: You can look at median increases in concentration, so just go industry by industry. There are quite a few papers that map the economy overall. One of the best papers is, “Are U.S. Industries Becoming More Concentrated?” by Gustavo Grullon [and others] from Rice University. Basically, across industries, you see an increase in concentration over the last 20 years, and it has pretty much doubled the median industry. So it's very well based, and clearly not every industry is more concentrated.

In the book, I talk about regulation being one of the key drivers of increased concentration. So when you end up with crony capitalism or essentially revolving doors, it's much easier to erect barriers around industries. In the case of banking, Glass-Steagall was 35 pages. It worked very well for 70 years. And then Dodd-Frank was 2,200 pages, but that was more pages delegated to rule-writing committees. And, shockingly, we’ve had essentially fewer than a half-dozen banks that have formed in the last 20 years. So it does vary industry by industry, but [there has been] a very clear increase.

In my new book, I show charts [that are] sort of like the 16 teams of the World Cup. I start with 16 teams, and then go down to eight, and then four. And I show in these charts, industry by industry, how essentially competitors and competition have disappeared.

DePillis: That was my favorite part of the book. Ones that show enforcement actions over time. There are just lots of great statistics. How are you starting to see this show up in macroeconomic effects?

Tepper: I really am not an expert in antitrust. I'm not an expert in industrial concentration. The reason I came to this—and I hope I'm now becoming some sort of [an expert], I spent the better part of two years reading all sorts of papers and research—but I came to it because my company built leading economic and leading reporting indicators for the economy. So if you want to know what whether U.S. house prices are going to turn up or down, there are good inputs that can help you predict that. If you want to find out if the Chinese economy is going to turn up or down, it can help you. So we have a leading indicator for U.S. wages, and basically they were telling us that wages should be going up pretty strongly, and they weren't. And so some of our hedge fund clients were [saying], well, what's going on with wages? Is your leading indicator broken? And at first I was thinking, well, this is a very long lead, just be patient. Wages will turn. And of course wages didn't turn up. And then you're sitting here about 10 years after the financial crisis, and it's only now that we're starting to see wages rise, but not at all in line with global standards. It's quite clear that something is broken. The inverse of wages, essentially. So wages [unintelligible] equity, corporate profits very well. The flip side of that is very high corporate profits.

And so I thought, this clearly matters an enormous amount, if you care about the macro side or you're a labor economist. But it also matters an enormous amount if you're an investor. If these profit margins are structurally changed, would you pay a higher fee for them?

So I got into the issue really just purely finding out if my [indicator] was broken, and then realized that there are structural reasons why companies have very high profit margins. And it primarily is [because] they can squeeze workers. And I have found out others have done great work on labor monopsony, but they also can squeeze suppliers. You go industry by industry in terms of how that happens—doesn't really capture the consumer welfare standard, but it's clearly a transfer of wealth from the supplier to the monopolist or the oligopolist. And talk about inclusion. And then, essentially, you have pricing power over the consumer. And obviously [you can] go into whether the consumer welfare standard, in fact, does anything to reduce prices for consumers.

DePillis: Let's unpack that piece of that. Why is it that antitrust regulators have missed this incredible concentration? Why has that been allowed to happen?

Tepper: Upton Sinclair said that it's very difficult to get a man to understand something if his salary depends on him not understanding it. If you look at sort of the revolving door between K Street, the FTC, and George Mason University, for example, and it's one of many universities—you can go to Berkeley and find Carl Shapiro—and Google . . . it's not what you receive . . . and look at Wall Street Banks, right? This year alone, they've been paid $76 billion dollars to facilitate [unintelligible] and mergers. There's a very strong financial incentive to keep things going in [unintelligible] and merging. And there isn't any financial incentive on the other side to prevent mergers. Where companies have power, workers tend not to. Large companies have power and the suppliers tend not to, so that's one reason.

But what’s fascinating in terms of understanding why these deals go through . . . the book, by the way, has [unintelligible] and all these things are there, and the reason that they're there is that I want it to be a roadmap for anyone that actually cares to actually find the evidence and look at it for themselves. So there’s a section in there, one of the chapters on the ills of concentration, showing that almost all of the models to premerger, to justify mergers, tend to be wrong. Almost all of the industries where we've seen competitors get material reduced lead to higher prices. John Kwoka has done the most amount of work in showing that prices rise in 95 percent of all cases. And then go industry by industry showing studies where prices have increased.

So generally, what happens is, you promise that you won't raise prices. You hire [unintelligible] or Charles River Associates. You then pay them to do a model, and then they say that prices will magically fall in these wonderful synergylike shares of the consumer. To give you a sense of just how sordid everything is: In 2015, Deloitte accounting added up the synergies that were promised in merger deals, and they added up to $1.9 trillion dollars. That's $250 almost for every person on the planet. And of course these were not passed on to people. There was an era of rampant price deflation. So the consumer welfare standard sounds great, in theory, but in practice, it's completely irrelevant to our lives.

DePillis: There’s a great ProPublica piece about the firms that are hired to do these studies and that are sort of usually post hoc proving it.

So I think back to a time when having large companies was not necessarily a bad thing for workers because there were some unions that could be a check on them. In fact, the company that I'm now employed by, AT&T, that merger was championed by CWA, which is represented by their employees. Some want larger companies. What is the role of labor power in allowing this to happen? Would it be as bad if union [unintelligible]?

Tepper: So what we've seen overall is a declining of the unionization rate. It’s been very steady, a structural change, and that is a multidecade affair. At the same time, the increase in concentration has been a multidecade affair going back about 40 years, since 1982. Clearly what you have is rising concentration at the corporate level and deconcentration at the worker level. And that explains, in part, the enormous imbalance of power.

At the same time, corporations tend to be much better informed; workers tend to be less well informed because, for example, you can go to your grocery store and find out the price of bread or a bottle of wine. It’s not as obvious from a worker standpoint what the right rate for their labor is. Mortenson has done work on this. These fractions essentially mean that workers are much more powerless than they would otherwise be without the role of unions.

DePillis: I'll ask a more personal question because you, among the many biographical items, built and sold a company to one of the largest photo-distribution and rights licensing organizations in the country. How does that inform your understanding of big business and why small companies have a hard time competing?

Tepper: I don't begrudge some starting entrepreneurs from selling their companies. I talk in the book about how, in the last five years, there have been 435 acquisitions by the FANGS—Facebook, Amazon, Netflix, and Google. Netflix, I wouldn't necessarily put in, necessarily, the monopolist category. They might end up there. Right now, they mainly seem to be monopsonist purchasing entertainment, to the great joy of every writer in Hollywood. But I started a user-generated news [unintelligible]. We were brokering photographs from the average person but, more generally, from a local student reporter in Tehran. And when they kicked all the Reuters and other photographers out in the Green [Movement], we were supplying photographs and information. But, one of the problems is, it was a duopoly. You had photos on Getty, on the supply side, and then you had AP and Getty Images on the news side. And so it's very difficult to be against some of the big players, particularly if they have longer-term contracts with people you're trying to sell to. So there is quite a lot of money and power held there by monopoly. And I think it was very difficult being against them because of that power. Most people hate them. We're kind of like the [unintelligible] lower turnover fees that everyone pays for two years. Good luck with any competition there.

DePillis: So another really interesting thing about Jonathan's argument in the book is that this is not a liberal or a conservative cause, even though it seems like liberals tend to champion antitrust and [addressing] corporate bigness. The Elizabeth Warrens of the world. It doesn't have to be that way. How do you pitch this argument to conservatives?

Tepper: If I had to identify myself along the liberal spectrum, I would probably be more right wing—not far right, just sort of right of center. And it's quite interesting that I've come to write a full-on frontal assault on the status quo because I think that this is terrible for economic dynamism. I think this is terrible for productivity, and for start-ups. And I don't think this is a left or right issue. If we're going to be genuine, people are going to have to come together across the aisle, and I hope they do.

Before I started writing a word of the book, I was reading through Milton Friedman, and Hayek, and writers on the left, squeezing the monopoly, and rereading Marx. And what's fascinating is that you have early Friedman and late Friedman. Friedman, initially, [didn't] want economic concentrations of power because he didn't like political dictatorships, and he thought that economic concentrations of power would lead to political concentrations of power. And he firmly stressed that. Later Friedman obviously disavowed early Friedman, but Hayek never changed. And Hayek did come from Europe, where he was keenly aware of the problems of cartels and trusts in terms of supporting Hitler. And so Hayek said he would prefer to live with a little bit of inefficiency in his life if he had greater freedom. Now, my own view is that imposing antitrust doesn't lead to more inefficiency, but even if it were that trade-off, Hayek was essential in favor of more freedom of choice.

DePillis: Thank you so much. It's a really decently written book, I recommend it to everyone.

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Maggie Reardon: I'm Maggie Reardon. I'm a senior writer at CNET. I'm going to let each of the panelists here introduce themselves, and then we're going to kind of get right into a discussion of what to do about Facebook.

Jason Kint: I'm Jason Kint, CEO of Digital Content Next. We're a nonprofit trade association. We represent news entertainment companies. We're the only association out there that's 100 percent focused on the content companies, and we're 100 percent focused on the future and making sure we have sustainable environments for producing entertainment.

Sandeep Vaheesan: Hi, I'm Sandeep Vaheesan. I'm the legal director of the Open Markets Institute, an antimonopoly organization that focuses on tech, but also on other sectors of the economy, to combat monopoly.

Jonathan Tepper: I'm Jonathan Tepper. I wrote a book on capitalism.

Sally Hubbard: I'm Sally Hubbard. I'm a senior editor at *The Capitol Forum*. I write about antitrust and tech platforms. I used to be an antitrust enforcer at the New York AG's office.

Reardon: Is antitrust law, as it's written today, enough to police some of these big platforms, or does something else need to happen here?

Hubbard: I think that we can do a lot with what we currently have. I think that there's under-enforcement, even under the current standards, but we could also certainly make it easier for enforcement . . . by having a legislative fix that changes the standards a bit. I think the standards are off, but I think more can be done. For example, the Google Android case that was brought in Europe is nearly the same as the U.S. Microsoft case. So there are cases that could be brought, but there's not really political will to bring the cases, and there's also too high a fear of losing [and] inadequate support to bring the hard cases.

Reardon: But you had written before, right after the election of President Trump, that you thought that there was more risk to these companies and antitrust. So when you say there's not enough political will, what do you think is going on there?

Hubbard: Well, I think there's more risk from the very top. I [unintelligible] there's any more risk under Trump than there would have been under Hillary than there was under Obama. And that's largely just because of the political relationships with Silicon Valley. But who we put in to lead the Department of Justice, for instance—Makan Delrahim is still a pretty conservative thinker in terms of antitrust and is one of those believers of "the markets will take care of it," and that's what's gotten us where we are today.

Reardon: Does anybody else want to jump in with thoughts on antitrust law as it is currently is? Is that sufficient?

Vaheesan: I would echo what Sally said. If you look at the level of the trees, there are precedents in a range in areas, including monopolization and mergers, where it seems like the agencies have quite a bit on which to draw. But zooming out and looking at the forest, I think the big problem is that the philosophy of antitrust today prizes—not exclusively, but principally—short-term harrms to consumers, namely short-term price effects. And I think that really constrains enforcement, notwithstanding some good case law that still exists. The agencies might say, “You know, we'll draw on Microsoft or cases from the ’60s, but we worry that, despite these good precedents, the judges will say, ‘Well, you didn't show price effects, so we’re going to throw you out on [unintelligible].’”

Hubbard: To clarify, we could do more to current law, but also we could have some legislative fixes that would changes the standards. Not so much emphasis on having a price effect, which doesn't make sense in a digital market. Changing standards for vertical acquisitions. Some of the bad case law that's out [there] makes it hard for anyone bringing a monopolization case. There are some bad cases that make it really hard in [unintelligible]. So fixing some of those things on top of getting more aggressive with what we have.

Reardon: Yeah, I think Delrahim was on CNBC today, actually, and asked this question, and he said, “I'm not sure that there is enough evidence under antitrust.” So it doesn’t sound like he’s champing at the bit to dig into it.

Kint: Stepping out, in terms of the media sector, where Google and Facebook made most of their money . . . Facebook, 99 percent of their money, of their revenue, comes from advertising. We have about 80 members, and that includes *The New York Times*, *Washington Post*, all the broadcast networks, and 20 or so media visual companies, so the full representation of the media industry. A number of companies are seeing success, for sure. But if you look at the whole sector, about 80 percent of our membership’s digital revenue comes from advertising. So that’s what pays for the high-quality professional entertainment that we all enjoy. Google and Facebook are taking roughly 90 percent of the incremental growth in that industry, the digital advertising industry. And we started tracking that and trying to simplify it for the industry almost three years ago. We started using the term *duopoly*, and it kind of worked its way through the industry, but most of the growth is going to two companies.

The part that hasn't been connected enough, and also that the policy and antitrust discussion hasn’t connected enough, is that growth and dominance by those companies is due to their ability to collect data across the entirety of the web. Facebook has data collection tags across more than 8 million publisher sites; Google has the ability to collect data across over 75 percent of the top million sites. So no one else can see across the web and across the app ecosystem like those two companies. And they use that data to microtarget advertising and squeeze out the rest of the ecosystem, and that’s what’s happening. So until we start to connect big data and the dominance there to the advertising media market dominance, we’re going to run into issues. And the problem we have is antitrust has mostly been focused on price and doesn't really capture that data can be a part of that value.

Reardon: So what's another way to crack this nut? There's been a lot of talk about privacy and possible legislation there. Is that another way to rein it in?

Kint: Absolutely. I'll give you two things. One, we already have FTC consent decrees with Google and Facebook that need to be enforced. Facebook, I can sit here and give you 20 minutes about how they've broken their consent decree. So enforce it and make it painful for them. Do it. They already broke the law six or seven years ago.

Second is data protection and privacy law, including GDPR [General Data Protection Regulation] and Europe. If properly written and properly enforced, it actually creates risk for Google and Facebook. There's this fear that it's just going to make the incumbent stronger, but if you enforce it properly, it actually creates risk for them. And it can be beneficial to the entire ecosystem and raise the bar.

Reardon: Anybody else want to talk about that idea about keeping them in check?

Tepper: One of the things that I write about in the book is that, quite often, more extensive regulation tends to lead toward greater barriers to entry, and generally it leads toward the capture of the regulator. I think that it is undeniable that that's happening, of course, with the FTC in terms of Google. I think that Facebook is obviously a latecomer in the sense that they started after Google did, but I don't think it would be any different if you established a strong regulator.

My own view and recommendation broadly is to break up previous mergers. I think what really matters is the industry structure, which is an idea that's hated very much by, particularly, Chicago economists. But you could have a 100 percent monopoly that is an angel and will behave well. My own view is that power corrupts, and absolute power corrupts absolutely. To the extent that you do have a complete dominance in search or search, you will violate the [unintelligible].

Reardon: So how do you do that, though? How do know where to draw the line in terms of breaking up the companies?

Tepper: In the case of Facebook and WhatsApp, they made certain representations before the deal was done that they would not be sharing data, they would not be changing practices on users. They basically violated all of that. But no one cares, because the deal was approved and it's done. I love a phrase, stolen from [unintelligible], I think he's so wonderful—he talks about [unintelligible] random nonenforcement. So an active "do not [unintelligible]." And I think that's really what we're seeing.

Vaheesan: Looking in hindsight, even at the time, any number of commentators said the FTC is allowing Facebook to buy out two of its most promising nascent competitors. And if the FTC had seriously enforced the Clayton Act against mergers, I think we would have maybe three or four firm social media oligopolies, instead of the monopoly we have today. But what's encouraging is, under the Clayton Act, the agencies do have the authority to go back and undo deals. So, at a minimum, we should ask the FTC to unwind Facebook’s acquisition of both WhatsApp and Instagram.

Reardon: So why isn't that happening? Why are they doing anything about that?

Vaheesan: A combination of revolving-door appointments and also just intellectual capture. This feeling that, unless they can show harm, it's best for the antitrust enforcers to stand aside and let these giants swallow up entire sectors. I will agree that the courts are a big part of the problem, but I think there is a serious intellectual problem at both the agencies, where they believe that, besides garden-variety cartels, they should be doing next to nothing on mergers and monopolies.

Reardon: And Jason, what do you think?

Kint: I speak a lot about the data-protection piece, and what we see in Europe are these purpose limitations, which means, align with consumer expectations. If a user is giving data on Facebook, you shouldn't be able then to go use it in a completely different environment, which is the core of the Facebook business model. If you make it so that Facebook and Instagram and WhatsApp can't share data the way they are, you put constraints on them. Certainly breaking them up is a clear way to make that happen . . . and I’ve heard a lot of people say we need to break them up. There’s logic in that. That would be the clearest solution. So something absolutely needs to be considered. It is an intellectual exercise. Instagram was allowed to be acquired because it was considered a photo app and Facebook was a social media app. In hindsight . . .

Reardon: That’s not the same thing?

Kint: Yeah. And now we're at a point where Facebook has done a miraculous job, both in the hearings in D.C.—which I think [unintelligible] recognizes were a difficult exercise, to hold Facebook in check—but even in smarter environments, or discussions, like what's happening in the E.U. competition [unintelligible] office, and in the U.K. I think there’s a really smart set of hearings from the parliamentary committee on it. They've managed to keep Instagram out of the discussion entirely—it's all about Facebook, entirely. It’s all about Facebook and Facebook’s product. In reality, most of Facebook's growth and future is in Instagram. Facebook is actually losing time spent with its users, and it's declining rapidly in trust, and young people are all moving to Instagram. But nobody's connecting the dots that it is the same company, same product, same problems coming, and it relies on the same data from Facebook.

Reardon: I don't think that a lot of the people on those Senate panels and Congressional hearings realized it's the same thing.

Tepper: Orrin Hatch asked Zuckerberg what their business model was, and Zuckerberg told him it was advertising.

Hubbard: I wanted to echo this point about Instagram being the backup plan, and so therefore consumers don't really have a choice. They don't have a way to vote with their feet. After the Cambridge Analytica scandal, I had lots of smart people tell me, “Oh, I’m stopping using Facebook, but I’m still on Instagram”—not realizing that it was the same company. This is why I view competition as one of main tools we need to use to get Facebook and Google to do better. [Facebook] needs to do better on a lot of measures. It’s using engagement algorithms that prioritize the most incendiary content, and that’s what serves its business model. But it’s leading to genocide and political polarization and fake news—this freight of horribles. And consumers would normally keep a company in check by saying, “You know what? This platform is a disaster. I'm going to go use the other choices.”

Reardon: Friendster?

[*laughter*]

Hubbard: The fact that they own the other main alternative is a problem. I think if they open up competition in addition to what Jason said about ensuring that they don't have this kind of lock on data, because their tracking us all around the web gives them an insurmountable advantage in targeted advertising. But also interoperability that could help to lower entry barriers and get some competition is another thing to be looking at.

Reardon: It seems like there is an appetite on the Hill for some kind of legislation, particularly in the privacy area. I mean, would you all say that regulation is kind of a done deal? I know we’re in Washington; nothing’s a done deal, right? But people on both sides are hollering about it, so you have a new Congress coming in—are we going to see something there?

Kint: I think it's maybe at fifty-fifty now, federally, which is high for anything. If it's going to happen, it's going to happen now, and there's bipartisan discussion around it. And even the companies who have fought it the most over the last decade are now supporting federal regulation. [unintelligible] filed on Friday supporting federal regulation. There are many who just want it to be on the table to grant regulation. That's now happening in California, that’s now moving forward in other states. If everybody does their job in a bipartisan way, the bar should be raised across the entire industry, and that should happen federally so we don't have to have a patchwork of regulations. So now we're down to a matter of: Can Washington do something?

Vaheesan: I'm concerned that, even if Congress passes legislation, they will delegate a lot of the hard policy-making work to some hopelessly captured agency. You can call me overly cynical, but I wouldn't trust Ajit Pai’s FCC to make rules in the public interest.

Hubbard: I'm also concerned about the preemption issue to the extent that it's being motivated by what California's doing. I also want to make sure that they put an antitrust savings clause in there, so that antitrust law is not preempted by it. That's been used in the industry to make antitrust really weak. I worry about the state preemption and I worry about the antitrust preemption. I also worried about the amount of money that these platforms are spending on lobbying right now to influence this process.

Reardon: Steve Ballmer, the former of CEO of Microsoft, was at the *Wall Street Journal* tech conference yesterday and actually was talking about how these companies really should work with regulators now, because if they don't, there's going to be a whole lot of pain later. What do you think about that? Do you think, by their eagerness to be involved now, that we're going to get something that's really not all that effective because it's going to be writing the legislation?

Kint: It's possible. I think that that's the risk, and it could be a lot worse for them down the road. We tried to say that to them five years ago, and we ended up with Cambridge Analytica and other very obvious examples where consumer expectations are being violated in a significant way—where your data is being used for completely different purposes. Now is the time, and it's important that the consumer voice is represented. It's important that everybody is able to collaborate in a way that the power players aren't able to write it. I think that's critical.

And I think that it's important to understand the myths that they're throwing at you. You're going to hear, "If you over-protect the data, you're going to break the internet." They're going to create a binary discussion. If you watch what Mark Zuckerberg said after Cambridge Analytica, he told you, this is our business model. This is they way it works. And if we're not allowed to do this, then we have to charge for Facebook for 2.2 billion people around the globe, and most people can't afford that. They create a binary discussion, as if to say there's no way that they can do a better job of protecting their audience and make a little less money. It's either one or the other. So I think you have to prepared for those myths that are going to be thrown at you.

Tepper: You were talking about how it might break the internet if we change the business model. Tim Berners-Lee, one of the creators of the World Wide Web, he thinks it's already broken. If you think of the original idea was that I would have an interesting blog, and you might have one, and I link to you, and then we make the [unintelligible], and so you get this very rich environment going on—it's meant to be decentralized. Ideally [it could] withstand nuclear attack. The problem is that, in 2014, over half of all the web is traveling through Google, so there's a duopoly in terms of a portal to the internet, and that's rising to 70 percent today. This is exactly opposite of what was intended when the internet itself was created. We've regressed to AOL 2.0, but it's just a lot less cool. That's sort of where we are right now. I would argue that the damage is already done; it's really about trying to fix it.

Reardon: So how do we fix it?

Vaheesan: As a basic principle, I reject the idea that it's a choice between addressing structure and conduct. You have to address both. On the structure side, breaking up Facebook by requiring them to sell off WhatsApp and Instagram is a good start. But I don't feel that much comforted in anticipating a world where you have three or four platforms propagating fake news instead of just one. So I think conduct remedies are just as essential. And I share Jonathan's concern about capture and the incumbents gaming the rules.

I think that, rather than saying we don't need regulation, our approach should be to favor simple rules that are hard to game. Ideally, Congress would just establish a list of do's and don'ts that are very, very hard for these companies to circumvent, instead of saying, "Well, we'll let the FCC figure out the rules and specifics." I feel like that would be a recipe for something maybe worse than what we have right now.

Tepper: I'm not against regulation, by the way. My problem generally is with principles-based law or regulations and then rules-based laws. Generally what happens, when you end up with extensive rules-based laws, is people violate the spirit, the principle [of the law] and stick to the rules. Enron, believe it or not, actually didn't violate any accounting standards. It's true. Basically, they'd figured out that, with certain ownership levels, you could have [unintelligible] that you'd have to report. They committed other crimes. So the problem is, the greater the layers of complexity, you can find a way around that. I think having a clear set of principles, meaning that people would fall under those, is more effective, rather than a 2,200-page Dodd-Frank, versus a [unintelligible]-page [unintelligible], is the example I always go to, but there are many of those.

Hubbard: In addition to the antitrust enforcement of breaking up the bad mergers, stopping future acquisitions, making sure that they're not doing monopolization conduct, which I think Facebook does—it prioritizes the content that keeps people on its platform longer. It's kind of very similar to how Google would put its own products in the search results, at the top of the search results. So I think there's all those issues. But I also think that we do need to look at privacy not just as a way of getting rid of the competitive advantage that they have by tracking users across the web, that makes them amass such market power in digital advertising. We need to actually take a hard look at the digital advertising, the target advertising model, which is basically massive surveillance of the citizenry.

Reardon: But everybody tells me that it's supposed to be good for me. Because then, Facebook knows that I need to buy new shoes. It keeps popping up. I wouldn't buy those shoes. I just had to buy them.

Tepper: How did we survive?

[*laughter*]

Reardon: I didn't know I needed them.

Hubbard: That's always the argument that's given, is that it's great for consumers—it gives them targeted ads. I just don't ever recall thinking, I really need my ads to be targeted. I never felt that way before this afternoon. I certainly didn't feel like I really need private corporations to track my every thought, action, and more offline and online and combine it and make it available to companies that can influence my election. The federal government can get it whenever it wants. I think it's very dangerous.

One of the most compelling thinkers on this is Zeynep Tufekci. It’s very compatible with authoritarian governments. Spying has always been used as a way to oppress people. In New York, there's a lot more history of this, so that's why you have a lot more consciousness about it.

Tepper: Is it a digital Stasi?

Hubbard: It is, it is. David Dayen has actually proposed we just ban targeted advertising. If that's going too far, then we do need to think about some real constraints. People are bringing these Echos and Portals into their homes, so these companies can track their every movement at home with their families. And there's no regulation. I think I there needs to be something.

Reardon: I'm going to push back a little bit. I work for an online publication. Advertising pays my salary, so please, keep coming to CNN so that I have a job. At least in my business, everybody is trying to figure out how to get more page views and get our stories read, and it's all about eyeballs, eyeballs, eyeballs. That's what pays the bills, so how do we pay the bills?

Hubbard: How did we used to pay the bills?

Tepper: But specifically, in the case of advertising, what often happens is, one, you could deliver ads without a surveillance capitalism part of it, but two, they're not actually advertising on CNN, generally. What happens is, there are CNN readers who go to . . .

Reardon: On CNN? People do advertise on our site.

Tepper: A friend of mine, a very close friend, works at Google [unintelligible]. What they're really doing is saying, you are a CNN reader, but you also go to this third-rate website, which is cheaper than CNN, and I’ll review their user and sell you a CNN user, but you can place your ad in another place. And so a lot of these site visits, they still do get ads, but they’re missing a lot of the ads, which essentially comes from the surveillance, where they’re selling you the person, rather than the CNN property.

Kint: That's right. And the companies that can uniquely track data across the experience, across devices, across the entirety of the web, across the app ecosystem, should have a higher bar because they see everything. There is a direct relationship between the user and a CNET website. I choose to go to the CNET website, and if I get an ad targeted at me because I look at a certain computer or device or whatever, that makes sense to me. That may actually be valued by me, or the user. And I have a choice that, if it crosses the creepy line, to no longer go to the CNET website. That’s a direct, established value exchange. Just like when I walk into CVS and go to buy something, and I feel that they're over targeting me in their store, I can choose to go to Walgreens from now on. It's when there's an intermediary or a company that is tracking me on the CNET website and then targeting me in a completely different context that it gets really uncomfortable. I don't know about it, and I don't have a choice to not let that happen. And Google and Facebook are the clear culprits of that. If Walgreens was tracking me as I was walking around CVS, that would be a very different issue.

Reardon: I do wonder, because I cover a lot of the wireless companies and phone companies—what about those guys? They're becoming big platforms; they want to advertise to everyone; they have a lot of data about us. Are they going to be effective competitors, in any sense? Are they going to have to be reined in, or are they just going to be bad players, like Google and Facebook, too?

Tepper: They're very, very different, in the sense that they can monopolize or abuse the privacy of the people who are their customers directly. But they can't do that to people who are not their customers, whereas Google or Facebook can do that to every cable company and phone company's customers on a broad base. They certainly can do it. It's sort of different and sort of more direct.

Kint: Verizon bought two of the four top websites and most of the big ad-tech companies, and four years later, or three years later, it's a mess. And Tim Armstrong doesn't have a job anymore. We're already watched that play out. AT&T will now try that with Time Warner and AppNexus and bunch of assets they're buying.

Vaheesan: I think that they have bottleneck power, in a somewhat different way. In a sense, the problems with the telecoms have been talked about for a longer time, and we have a more robustly developed set of solutions—for example, in 2015, with the Open Internet Order, and then attempts to introduce competition among broadband providers, such as municipal broadband. So we have a better sense of what the problem is there and a clearer idea of what the solutions are. Now the challenge is really recognizing that the true bottleneck, at the international level, are Google and Facebook, rather than Comcast and AT&T.

Reardon: So if we say that there should be a structural change, how does that happen? Who does it? Is it the FTC? Is it Congress?

Vaheesan: The FTC can do a lot here. The [unintelligible] acquisition of Facebook, they can undo those. And they have a huge residual source of authority called Section 5 of the FTC Act, which allows them to prohibit unfair methods of competition. Congress delegated this authority to the FTC and said, these are tough questions—you guys should figure this out. Unfortunately, the FTC has never really used this authority. If there is a time to use this authority, it's now, given the extraordinary challenges posed by Facebook and Google. So even without the action of Congress, I think the FTC [unintelligible]. I'm not too optimistic that they will, but they have the statutory power.

Hubbard: I also want to emphasize the point that Jason made earlier that there is this consent decree violation that the FTC is investigating right now. And the [unintelligible] were trillions of dollars worth of damages. Obviously, the government is not going to fine Facebook a trillion dollars, but that is a big stick. When you come to a settlement, you come with your biggest stick. You don't come with, "Oh, we might fine you five million dollars"—you come with, "We can fine you trillions of dollars, so what are you going to do to fix these problems in which you keep violating [user] privacy?" I just don't see that kind of enforcement coming from these agencies. Actually, Google probably also violated it [unintelligible]—so you have the two halves of this ecosystem both before you as persistent recidivists that have violated the rules and their promises to you. You have a lot of power to do something real; whether they're going to do something real is a question that we're hopefully going to see [an answer to] soon.

Kint: It's a matter of political will. I think Europe's helpful here. I think understanding that we're an international world, more than ever, with these companies is critical. You'll also see the narrative that this is just Europe getting back at the success of Big Tech and Google and Facebook. We need to kill that narrative, because the work we've done out of Brussels is important to this. And I think supporting it is helpful. Now we've got five parliaments that are trying to get Mark to Zuckerberg to finally testify, including the U.K. Imagine big data jumping in. He can't even visit the United Kingdom right now—the CEO of Facebook can't visit the United Kingdom because they're going to have to summons him. So actually helping our international [unintelligible] ask the right questions. They actually know the right questions more than Congress right now. Senator Harris, when she asked Mark Zuckerberg, did you make a decision not to inform your users? When up to 80 million of them had their data taken and used ultimately for political operatives. He couldn't even answer that question clearly. The FTC consent decree depends on the answer to that question. And it is $40,000 times 87 million users, so to Sally's trillions—use that stick.

Hubbard: Anything that can open up competition will force Facebook to do better, to stop violating privacy, to stop promoting fake news. So anything that is antitrust enforcement and also privacy enforcement. But another thing that we haven't talked about that I want to make sure I include is, we have to have a lot more transparency for the user about what is being collected against them, what is being done. I know the [unintelligible] story about data collection being outside of consumer expectations. If we're going to be able to have competition on those measures, so that people say, "I'm going to chose this privacy-protecting thing instead of Facebook," they need to actually know what's being done. So there needs to be transparency also.

Tepper: I do think we need to break up Facebook, and obviously there's a separate panel for Google. I think regulation is important. And I think that, more broadly, you have to prevent the revolving door. I think, given that there has been intellectual capture by the FTC and even courts and case law, I think we probably do need another Sherman Act. I think that probably will come to pass. And one that isn't purely tied to the consumer welfare standard.

In the case of Google and Facebook, these are not free. People are handing over their own privacy, and that has immense value. And this data does have value. The fact that these such wildly [unintelligible] companies telling me that this date is valuable. It just is a sort of payment that's in kind, rather than customer [unintelligible]. I think if people were given a dollar value of their privacy, they might think twice before using those services.

Vaheesan: I think we need to reconceptualize Facebook. It is really a virtual public space, except it's controlled by a single company that doesn't answer to anyone. So we should be asking, Why do we allow this single company to dominate a global common space? Why shouldn't we have five or 10 or 15 of these entities? And we can talk about restoring some modicum of competition by undoing some of these mergers. If this is a public space, we should have public rules governing them. We wouldn't accept a public park where someone can shout obscenities and spew conspiracy theories [without] demanding the local government take action. I think we really need to do the same with Facebook. I think the antitrust laws offer a partial solution here, but I think we'll have to go beyond that, too.

Reardon: I think the power of Facebook, as a suburban mom—that's all who's on Facebook, that's me, the demographic, but that's where we gather, right? And the platform would not be as powerful if there were 10 different networks out there. Because I'd be, like, Oh my God, how am I going to ask Suzy what to bring to the PTO meeting today?

Vaheesan: You can have decentralisation and then require interoperability, whereby different platforms can talk with each other. So we could have the best of both worlds. We didn't have interoperability standards for the now-departed AOL Instant Messenger and other chat services.

Kint: I also worry about giving them too much power and censorship of what . . . In some ways, that person yelling the conspiracy theory is a positive, just like the [unintelligible] park, but you need to make sure it doesn't enjoy the viral benefits. Infowars or any of these sites that have the worst conspiracy theories—the issue is that they were being amplified and they were enjoying the benefits of social media. If one person is crazy enough to want to follow conspiracy theories, they should go and do it. That's their choice, but that's a different [unintelligible].

I would just emphasize that, as much as Facebook, in particular, would love to present DCN and me as existing to be adversarial to them, that's not the case at all. We put out research a couple of years ago as to why publishers and news entertainment tend to [unintelligible] into Facebook, because that is the public space, and that is how users wanted to receive their content. That still is genuine. The challenge is that they are squeezing the oxygen out of the newsrooms, the journalists, the entertainment companies, and it's having real societal consequences. If we care about the impact on local media, we need to do something about it, and I would point back to the stuff already in place, including this consent decree, and European efforts, too, as needing support.

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