IDEAS

There's More Than One Way to Fight Monopoly

Tougher regulation will help, but workers and small businesses also need the ability to join forces against corporate power.

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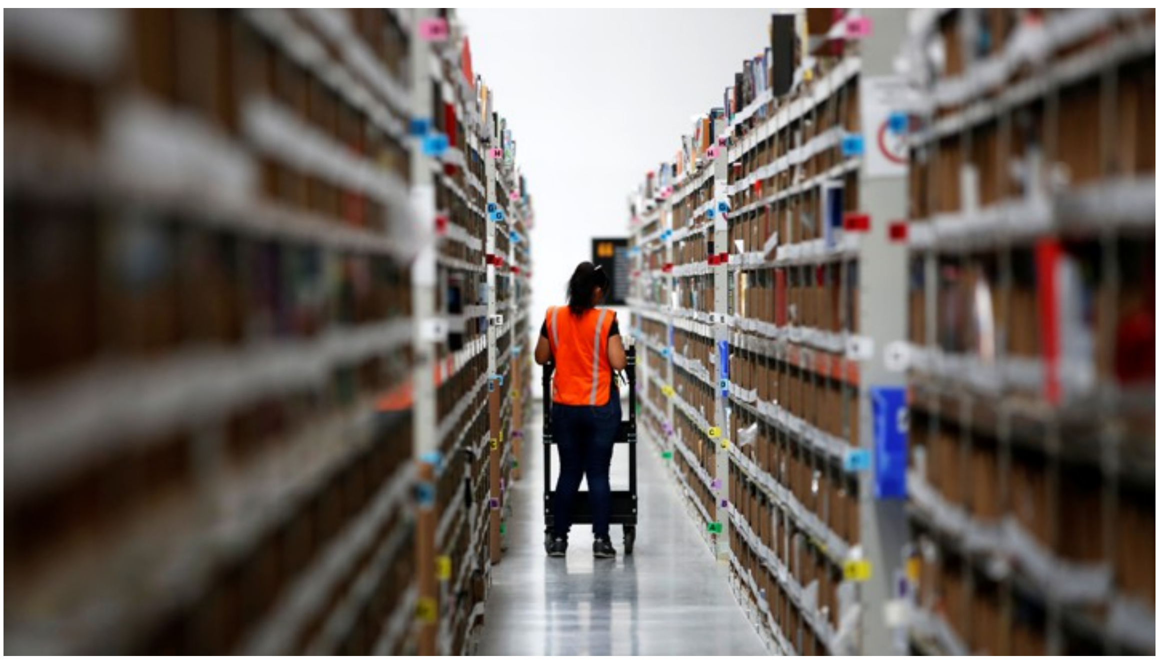

CARLOS JASSO / REUTERS

Finally, the need for tougher antitrust enforcement is dawning on politicians across the American political spectrum. One company dominates online retail. Two ride-hailing companies dictate wages for hundreds of thousands of drivers. In agriculture, two chemical companies control the market for the most important seeds and have the leverage to gouge farmers. This is why a number of Democratic presidential contenders, including Bernie Sanders on the left and Amy Klobuchar in the center, have vowed to act against concentrated corporate power. Meanwhile, Donald Trump's Department of Justice has initiated investigations of big tech companies. If federal agencies start busting up monopolies, halting big corporate mergers, and stopping predatory practices, the two of us would enthusiastically welcome the government's new vigor.

But government agencies like the Justice Department and the Federal Trade Commission shouldn't be the only check on corporate power. The other, equally vital way to keep monopolies and near-monopolies in check is to build up the power of everyone else in the economy—the workers and small-business owners who, in making their livelihoods, must interact with ever-larger corporate giants. Especially when regulators stand down, ordinary people have to be able to join forces and create unions and cooperatives that could hold the largest corporations in check. But all too often, American laws—including, ironically, antitrust laws—put up barriers to this kind of collective power.

[Derek Thompson: Amazon got exactly what it deserved—and so did New York]

You might think of antitrust law, which led to the breakup of Standard Oil and AT&T, as applying primarily to giant corporations. Yet the same set of laws also prevents some of the weakest players in the economy from finding their strength. A corporate cartel whose members set artificially high prices for goods is illegal under long-standing antitrust rules, but so are groups of powerless independent contractors—Uber drivers, home health-care providers, and millions of other workers—or small firms banding together to compete on fairer terms. Indeed, while antitrust enforcers have done little or nothing to check the power of corporate monopolies and stop consolidation, they have attacked the collective action of workers and small firms as illegal collusion. Promoting a rebalancing of power in the economy will require not just more antitrust enforcement against big corporations but a reorientation of antitrust.

Antitrust law should distinguish between huge companies and economic minnows. And collective power—that is, allowing independent workers and small businesses to collaborate to negotiate better treatment from megacorporations, or to start enterprises of their own—should be a pillar of creating an equitable economy.

Workers in traditional employment relationships have an antitrust exemption for some of their concerted activities. That's how labor unions became synonymous with collective power among workers. But unions are in a beleaguered state. Due to legal and political changes over the past 40 years, only about one in 10 American workers belongs to a union. A 2018 Supreme Court decision threatens the viability of public-sector unions, the one segment of organized labor that has bucked the downward trend. All of this has left the American labor movement in a weak position to counter the stagnation of wages or confront the rise of the app-emboldened gig economy.

[Derek Thompson: The booming, ethically dubious business of food delivery]

Nationally, more than a third of workers have part- or full-time arrangements in the gig economy. Indeed, an entire gig economy is built on denying drivers and food deliverers the benefits and protections that would come with treating them as employees. If ride-sharing drivers, home contractors, and freelance editors could band together—if not in a union, then as employees of a co-op or as a coalition of businesses—they could negotiate better terms. Yet when the city of Seattle tried to facilitate collective bargaining for Uber drivers, the U.S. Chamber of Commerce, with an assist from the Department of Justice and the Federal Trade Commission, sued the city using the Sherman Antitrust Act and compelled it to back down. This was not an aberrant misuse of antitrust; it was official policy. The Federal Trade Commission has repeatedly targeted the collective action of professionals and small firms and sued, among other collectives, associations of music teachers, organists, and public defenders.

Where independent producers are allowed to collaborate, they gain leverage. Rural organizations like the Farmers' Alliance and the Grange formed producers' cooperatives that enjoyed significant bargaining power in their dealings with railroads and agricultural middlemen. These efforts formed the basis for later co-op brands like Cabot Creamery and Land O'Lakes, as well as for the New Deal–era electric cooperatives that still bring electricity to 42 million Americans.

Collective power is even more relevant in the internet age. For some time, courts and public-policy makers have been wrestling with whether ride-hailing drivers, whom Uber and Lyft treat as independent contractors, should be reclassified as employees and gain the rights that come with that status. A California Supreme Court ruling has nudged the state's legislature in that direction. Yet converting drivers into Uber employees isn't the only option. An intriguing new bill proposed by the SEIU-affiliated United Healthcare Workers West puts forth another possible arrangement—establishing a new category of cooperative, worker-owned companies that would supply labor to gig-economy platforms. Drivers and other gig-economy workers would be employees of these cooperatives, which would negotiate with Uber, Lyft, and other platforms to set contract terms, such as wages and working conditions. (This approach may be aided by the fact that federal law allows state legislators to protect co-ops from antitrust enforcement, as long as legislatures authorize and supervise their activities.)

Another kind of collective power could transform the governance of the Amazon Marketplace in which 2.5 million third-party sellers participate. While the Marketplace offers new opportunities for small sellers around the world, it also leaves them subject to Amazon's whims. Sellers of most products pay Amazon 15 percent of every sale and can be removed from the platform, or banished to the bottom of search results, for any reason at all. They are at the mercy of rules set by Amazon and, in the event of a legal dispute, forced into individual arbitration.

[Read: Why Silicon Valley loved Uber more than everyone else]

Even while sellers are at the mercy of Amazon, they often resort to unfair and unethical practices against one another as a means of obtaining a competitive advantage, however fleeting. These tactics include submitting fake reviews of rivals' products and making specious trademark-infringement allegations. Although Amazon does punish the worst of these tactics, it benefits immensely from pitting independent sellers against one another.

Organized sellers could build their own cooperative online commerce platform—or at least wield real power against Amazon. An association of sellers could negotiate a lower cut for Amazon, and members could keep 90 or 95 percent of their sales revenue, instead of the typical 85 percent. They could also establish dispute-resolution processes with more transparent rules. Much like what labor unions do with employers, collective power among sellers would transfer some power from Amazon's executives and shareholders to the people whose daily exertions actually make the platform work.

New forms of collective power will require, among other legal reforms, significant legislative revision of the antitrust laws. To protect beneficial cooperation, as we have explained in detail elsewhere, Congress has a template on which to build. The 1922 Capper-Volstead Act grants farmers and other agricultural producers the right to engage in collective action free from antitrust interference. They can cooperate in selling and processing their crops, milk, and other output and marketing the resulting products. While protected from the antitrust prohibition on collusion, farmer cooperation is still subject to oversight by the U.S. Department of Agriculture. Congress should generalize the Capper-Volstead Act and extend its protection to all powerless actors in the economy—workers, professionals, consumers, and small firms. To prevent abuse of the cooperative form, Congress should also ensure this new protection is restricted to bona fide small players.

While restructuring large corporations and establishing rules of fair market conduct are crucial, these aren't the only ways to protect the powerless in today's version of the Gilded Age economy. Cooperation among small actors can remedy the yawning imbalance of power between corporate giants and everyone else.

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