Opinion **The FT View**

# Lina Khan brings a chance to reshape antitrust policy

The 32-year-old lawyer will need to choose her battles carefully

THE EDITORIAL BOARD

Lina Khan's appointment is an important opportunity to equip antitrust policy properly for the Big Tech era © Graeme Jennings/Pool/AP

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The US political wind has not just shifted against Big Tech, it is reaching gale force. First came a highly critical Congressional report last October, followed this month by a set of antitrust bills. Then last week the Biden administration named Lina Khan, an academic who has created a new intellectual framework challenging the power of the tech giants, chair of the Federal Trade Commission.

Those seeking to clip the wings of technology companies must keep in mind that — for all the lurking concerns over privacy and social media's threats to democracy — they remain hugely popular with consumers whose lives they have in many ways transformed. Many proved to be lifelines in lockdown. While bipartisan consensus is growing on the need for action, muscular measures will still struggle to muster the necessary Senate majority.

Yet Khan's appointment is an important opportunity to equip antitrust policy properly for the Big Tech era. She has rightly portrayed as outdated the Chicago School approach — encapsulated by Robert Bork's 1978 book *The Antitrust Paradox* — which prioritised prices as the best measure of consumer welfare. Rising prices signalled harm, but if a company was lowering prices to consumers, its size was not a concern.

Khan's 2017 paper "Amazon's Antitrust Paradox" argued convincingly that power, and harm, are today about more than prices. If companies such as Amazon use predatory pricing and integration across multiple business lines to drive rivals out of business, encouraged by investors for years to pursue growth over profits, consumers suffer from loss of choice and competition. While companies might seem to offer internet search or social media for free, moreover, users are in fact bartering their valuable personal data for those services; privacy, too, is a form of consumer welfare. Khan has also argued against allowing Big Tech firms to operate platforms while competing with companies that use them.

The beauty of pricing is it is easily measured. Less clearly-defined concepts of market power, critics say, risk being abused to rein in successful businesses unfairly. Khan and colleagues in the "new Brandeis" school argue that just as the early 20th-century lawyer Louis Brandeis updated America's anti-monopoly regime for the industrial era, looking at companies' impact on democracy and individual economic freedom, a new updating is needed and feasible for the 21st century.

Unless she has congressional backing, Khan may struggle to put her ideas into action via new laws. But she can creatively reinterpret existing law in terms of what constitutes consumer welfare. Court challenges may follow. With a conservative-dominated Supreme Court, Khan will need to temper her frankness, proceed cautiously, and choose her battles with care. Breaking up tech firms may not be feasible, popular, or advisable. Requiring them, say, to make consumers' data portable, enabling people to switch platforms as easily as they shift bank accounts, might be realistic.

Bipartisan hawkishness towards China is another constraint; Big Tech can argue that restraining it would play into Beijing's hands. Khan argues, with merit, that ensuring powerful incumbents cannot smother innovative newcomers is the best way to outpace China's tech titans.

To bolster her position, the FTC chair should seek common ground with EU regulators, whose thinking she has already influenced. Even as their aims and values towards Big Tech start to converge, the US and EU may diverge on tactics. If she can boost transatlantic co-ordination, her ideas will gain resonance well beyond her own shores.

**Letter in response to this editorial comment:**

*Shoppers adore Amazon* / *From Phillip Hawley, La Jolla, CA, US*