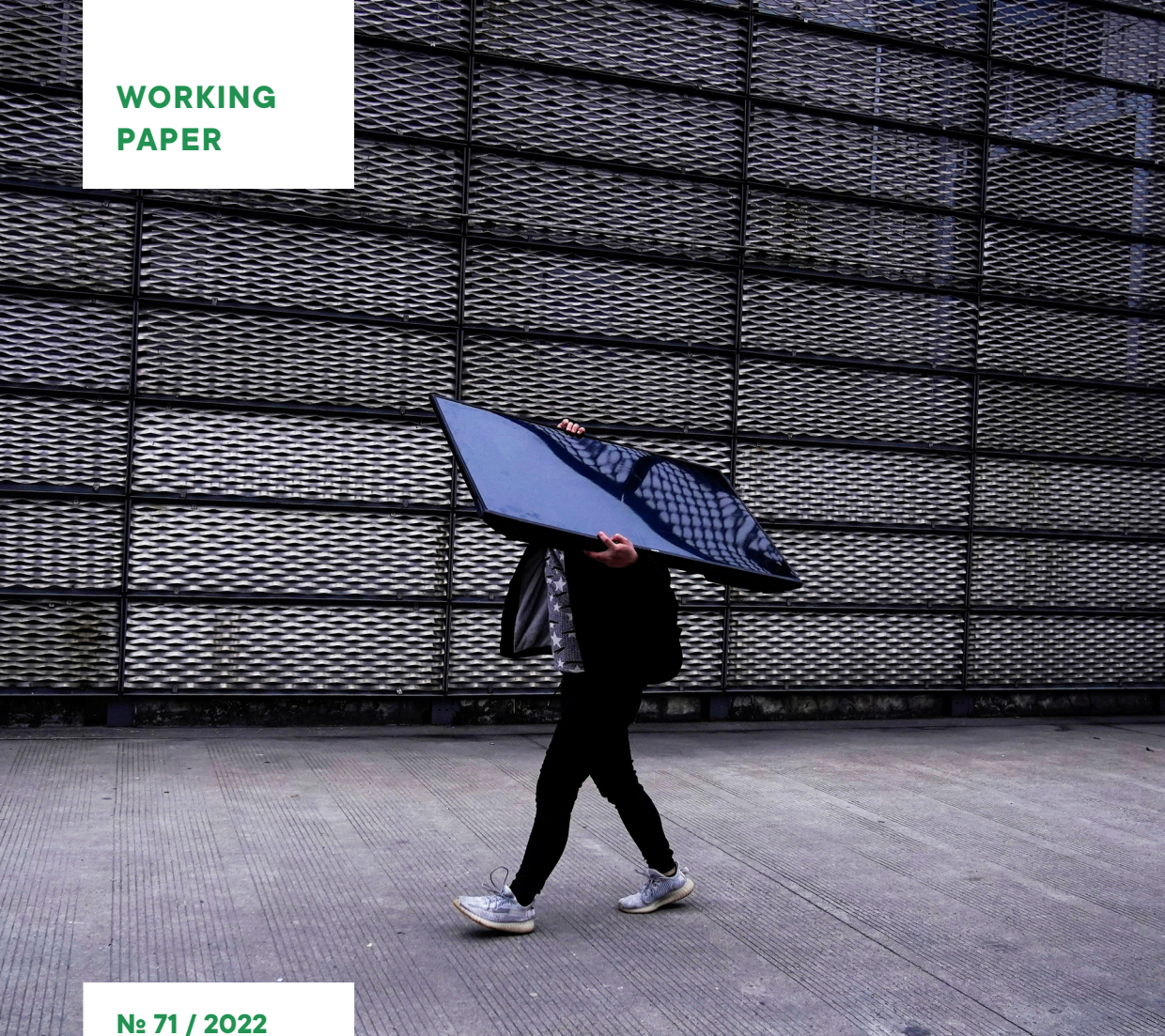


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Big Tech vs Regulators: A Long-Term Global Trend



Russian International
Affairs Council

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Over the past few years, government efforts to regulate tech giants around the world have marked global long-term trends. The authors of this working paper take a closer look at recent key changes in Big Tech regulation both at the international level and in individual jurisdictions of the EU, USA, China and Russia, examining the different ways in which governments have tried to strike a regulatory balance between freedom and security, as well as between digital ecosystem development and healthy competition. This paper also includes an analysis of Big Tech's response to regulatory pressure and discusses the potential options available to develop universal international norms and rules for the industry.

The opinions expressed in this Working Paper reflect solely the personal views and analytical outlook of the authors and do not necessarily represent the views of the Russian International Affairs Council.

The full text of the Working Paper is available on RIAC's website. You are welcome to download it and leave feedback directly at russiancouncil.ru/paper71.

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Introduction

Recent years have indicated a clear and lasting trend in many countries to regulate global technology corporations, or Big Tech. Before becoming the tech giants seen and heard about today, many of these companies (Apple, Microsoft, Amazon, Alibaba, just to name a few) started out as modest IT companies.

There is no arguing that these companies have optimized a wide range social and economic processes, simplified means of communication, and achieved other feats. However, their business models, being designed primarily to generate profit, come with many problems and risks such as privacy abuses, sharing of harmful content, competition and innovation suppression, capitalizing surveillance practices (selling collected user data to third-party advertisers), social polarization over controversial issues, and other problems.

In 2021, the Global Risks Report published by the World Economic Forum identified “digital power concentration” as a high-probability risk¹. According to the report, e-commerce and online payment markets, as well as social media networks have come to be controlled by the ever-shrinking number of companies, leading to discretionary pricing, freedom of speech restrictions, and unequal access to public goods.

Many governments concluded that unless controls over the tech sector are tightened and appropriate regulatory mechanisms installed, the above risks may build up and destabilize various parts of social life.

This working paper examines the history and practices of Big Tech regulation at the international level, as well as in individual jurisdictions in the European Union, Russia, the United States and China. The provided examples of regulatory measures do not cover the full spectrum of initiatives, but they illustrate the different approaches available and the shared challenges that different jurisdictions are forced to deal with. The authors clarify recent instrumental changes in tech regulation and examine the different ways in which governments have been trying to strike a regulatory balance between freedom and security and between digital ecosystem development and healthy competition.

The objective of this study is to use the analysis of regulatory strategies to assess the possibility of reaching an international consensus on Big Tech challenges in the foreseeable future.

The analysis is based on two assumptions: 1) The absence of international alignment on tech regulation may strain the relations between countries and result in cyberspace fragmentation. 2) Excessive tech regulation may impair the development of the digital economy and businesses while inadequate regulation can undermine national security and sovereignty, as well as jeopardize the interests of users.

¹ The Global Risks Report 2021 // World Economic Forum. 2021.
URL: https://www3.weforum.org/docs/WEF_The_Global_Risks_Report_2021.pdf

Why Now is the Time to Regulate Big Tech

Thanks to their ingeniously designed digital ecosystems, global technology corporations know nearly everything about us: our location, purchases, health and bank account status, music preferences, and political views². Moreover, tech giants do not merely amass and analyze that data, but actually influence our thoughts and wishes and predict our behaviors using algorithms. Some experts are raising the alarm and talking of Big Tech dictatorships³.

Tech giants are increasingly referred to as “quasi-states”. Their combined capitalization almost doubled during the Covid-19 pandemic when many domains of social and economic interaction had to be moved online turning digital platforms into critical global infrastructure. At the end of 2019, the total market value of the Big Five or MAAMA – Microsoft, Amazon, Alphabet (Google’s parent company), Meta⁴, and Apple – was \$4.9 trillion, whereas in 2021 it exceeded \$8 trillion⁵ (more than the GDP in most G20 economies)⁶. The “beneficial effects” of the pandemic stand tall in the statistical data cited by the Verge: Apple revenues increased by over \$90 billion in 2021 up to over \$350 billion, or about a third more than in 2020 (and all this regardless of the global chip shortage). Compared to 2019, Amazon sales soared by 67% in 2021, helping the corporation earn \$470 billion. Google revenues totaled \$257 billion in 2021, which is not only 40% up on the 2020 performance, but also the single biggest increase in revenue over the last decade⁷. American tech giants were not the only lucky winners to benefit from Covid restrictions. Chinese e-commerce marketplace Alibaba doubled its profit⁸ in the first quarter of 2020, while Ant Group (Alibaba’s fintech subsidiary) announced its plans for a record-breaking IPO in November 2020.

A big part of tech profits, that depend on a company’s core business, comes from producing and selling gadgets, cloud computing, software, hardware, electronic devices, video games, e-commerce, in addition to other goods and services. But this is not the only source; according to the UCL Institute for Innovation and Public Purpose (UCL IIPP), Big Tech’s vast power and wealth stems from their

² MIT defines a digital ecosystem as a combination of products and services across non-intersecting verticals: mobile communications, banking, foodtech, streaming, e-commerce, etc. It allows companies to harvest huge benefits from the network effect: common customer base, cross sales, brand power, and digital technologies.
URL: https://hightech.fm/2020/09/21/digital_ecosystems?is_ajax=1

³ “How to Survive the 21st Century – Davos 2020” // Yuval Noah Harari. January 24, 2020.
URL: <https://www.ynharari.com/yuval-noah-harari-how-to-survive-the-21st-century/>

⁴ Meta is designated as an extremist organization and banned in Russia.

⁵ “How Can Governments Tame the Power of Big Tech?” // UCL Institute for Innovation and Public Purpose. July 8, 2021.
URL: <https://medium.com/iipp-blog/how-can-governments-tame-the-power-of-big-tech-901a0a3ab45f>

⁶ It is important to note, however, that in 2022 the Big Five’s total capitalization has already plummeted to \$6.6 billion. See: “Seven Biggest US Tech Companies Shed \$3.5 Trillion This Year to Date” // RBC. October 28, 2022.
URL: <https://quote.rbc.ru/amp/news/635b87b29a794766c05c533e>

⁷ “Big Tech’s 2021 Earnings Were Off the Chart” // The Verge. February 11, 2022. URL: <https://www.theverge.com/2022/2/11/22925859/big-tech-companies-2021-earnings-record-revenue-google-amazon-alphabet-meta>

⁸ “Alibaba’s Online Orders Soar During Coronavirus, Fueling a Sales Recovery” // WSJ. August 20, 2020.
URL: <https://www.wsj.com/articles/alibaba-online-orders-fuel-sales-recovery-11597924526>

control over data and digital infrastructure⁹. Take Google, for example. This corporation was among the first to find ways of monetizing behavioral data collected from its users. Shoshana Zuboff, professor at Harvard Business School, called this phenomenon “surveillance capitalism”. The model is based on mining the data amassed on corporate servers, allowing companies to accurately predict the behavior of users and sell these insights to third party advertisers for a handsome profit.¹⁰ No surprise, such companies spend most of their time thinking about monthly active users (MAU), user engagement, customer acquisition costs (CAC) and lifetime value (LTV) – these metrics drive their income¹¹. However, as the UCL IIPP’s report “Crouching Tiger, Hidden Dragons” observes, the lack of mandatory public disclosure of business information regarding Big Tech’s operations¹² prevents public investors, regulators and competitors from seeing a comprehensive picture of global corporations’ revenue sources fed by their ecosystems, which is a major problem limiting fair competition in the IT market.¹³

Tech companies actively lobby their interests and influence the policymaking process. The Digital Economy Report 2021 published by The United Nations Conference on Trade and Development (UNCTAD), claims that five American digital platforms are highly active in matters dealing with the United States Congress and the European Parliament, spending vast amounts of money for lobbying and hiring people with political connections¹⁴. In 2020, Big Tech spent a total of \$63 million on lobbying in the U.S. and \$24 million in the EU¹⁵. China’s tech giants (Alibaba, Tencent, and Baidu) are also trying to lobby their causes in public offices. For example, TikTok (owned by China-based ByteDance) spent a record \$2.14 million to protect its interests in the United States amid an investigation into the app’s data security issues¹⁶.

⁹ “How Can Governments Tame the Power of Big Tech?” // UCL Institute for Innovation and Public Purpose. July 8, 2021. URL: <https://medium.com/iipp-blog/how-can-governments-tame-the-power-of-big-tech-901a0a3ab45f>

¹⁰ Ibid.

¹¹ Strauss, I., O’Reilly, T., Mazzucato, M. and Ryan-Collins, J. (2021). “Crouching Tiger, Hidden Dragons: How 10-K Disclosure Rules Help Big Tech Conceal Market Power and Expand Platform Dominance”. UCL Institute for Innovation and Public Purpose, IIPP Policy Report No. 2021/04. URL: https://www.ucl.ac.uk/bartlett/public-purpose/sites/bartlett_public Purpose/files/pr2021-04_disclosures_crouching_tiger_hidden_dragons_10_dec.pdf

¹² According to the UCL IIPP Report “Crouching Tiger, Hidden Dragons”, the problem is that Big Tech companies still present their business in annual 10-K reports as operating in one or two segments, while, in fact, they are continuously diversifying their digital products. Corporations use regulatory gaps to avoid, where possible, disclosing monetization of digital products and services that were originally free. For example, Alphabet has at least nine largely free products each with more than one billion active monthly users. They have, however, few 10-K disclosure requirements since they are provided free to the consumer. The SEC tried to compel Alphabet to release 10-K financial disclosures on YouTube and its Play Store, as these products have become contributors to their revenue and profits. Few detailed financials followed though and only YouTube’s revenue was released, highlighting the ineffectiveness of current segment reporting rules.

¹³ Strauss, I., O’Reilly, T., Mazzucato, M. and Ryan-Collins, J. (2021). “Crouching Tiger, Hidden Dragons: How 10-K Disclosure Rules Help Big Tech Conceal Market Power and Expand Platform Dominance”. UCL Institute for Innovation and Public Purpose, IIPP Policy Report No. 2021/04.

¹⁴ “Digital Economy Report 2021. Cross-Border Data Flows and Development: For Whom the Data Flows” // United Nations Publications. 2021. URL: https://unctad.org/system/files/official-document/der2021_en.pdf

¹⁵ According to the Digital Economy Report 2021, Facebook and Amazon ended up among top lobbying spenders in 2020 in the US, while Google, Facebook and Microsoft occupied top positions in the EU.

¹⁶ “TikTok owner ByteDance Spends Record US\$2.14 Million on US Lobbying Amid Scrutiny Over App’s Privacy and Security Practices” // South China Morning Post. June 21, 2022. URL: https://www.scmp.com/tech/big-tech/article/3186054/tiktok-owner-bytedance-spends-record-us214-million-us-lobbying-amid?utm_source=SupChina&utm_campaign=c64d6eb514-EMAIL_CAMPAIGN_2022_07_21_07_26&utm_medium=email&utm_term=0_03c0779d50-c64d6eb514-165950370

Another important asset that tech giants possess is their capability to marshal information and news traffic, thus influencing media discourse and public opinion. Google and Facebook run their own news aggregators, whereas some companies take things a step further. In 2013, the Washington Post, one of the oldest and most influential newspapers in the US, was bought up by the former Amazon boss Jeff Bezos¹⁷ for \$250 million¹⁸. Control over information is a powerful political lever in the hands of Big Tech. As observed by Rachel Bovard, senior policy director at the Conservative Partnership Institute, powerful tech companies are suppressing conservative political views, prohibiting the circulation of news stories critical to the Democratic Party, and are changing the nature of independent thinking and public discourse¹⁹. Today as social media becomes a key tool for supporting dialog between political forces and the electorate, corporations do not hesitate to wield their powerful weapon – blocking user accounts on social media. The most prominent example was Facebook and Twitter blocking the accounts of former US President Donald Trump in January 2021 because of the Capitol Riot²⁰. A more recent example includes Facebook blocking the Confederation party's (a Polish far-right group) account, which had over 500,000 followers in the early January 2022, on grounds of spreading misinformation about Covid-19²¹. According to Rachel Bovard, digital platforms have, in fact, anointed themselves as the “primary arbiter” of who can speak in “the digital public square”²².

Some experts believe that IT companies are becoming new agents of public administration. According Wang Jiangang, “digital platform economics is based on dematerialization and virtualization that limits government identification and surveillance capabilities”. More specifically, the expert notes that “Google, Facebook, Alibaba and other new mechanisms of resource distribution outpace the existing government system”²³.

Without a comprehensive framework to regulate the digital environment, global IT corporations have been able not only to accumulate information and material resources, but also to gain power. They set their own rules of the game and impose them on their users. Furthermore, having monopolized the digital technology market, tech giants stunt the development of local businesses, deepen the digital divide between economies, commonly break national laws, and provoke community polarization on controversial issues due to the way their algorithms operate. Experts from the UCL IIPP point out that technological giants behave like

¹⁷ In June 2021, Jeff Bezos handed over to Andy Jassy as Amazon's President and CEO

¹⁸ “The Washington Post Changes Owner” // Kommersant. August 6, 2013. URL: <https://www.kommersant.ru/doc/2249127>

¹⁹ “Why Republicans Must Rethink Antitrust” // The American Conservative. May 26, 2021. URL: <https://www.theamericanconservative.com/why-republicans-must-rethink-antitrust/>

²⁰ “Trump Blocked on Social Media. Is that Legal?” // RBC. January 11, 2021. URL: https://www.rbc.ru/technology_and_media/11/01/2021/5ffc13cb9a794777cf0cbb13

²¹ “Destroying Democracy – Polish Govt Takes Facebook to Task for Banning Right-Wing Party” // Breitbart. January 7, 2022. URL: <https://www.breitbart.com/europe/2022/01/07/destroying-democracy-polish-govt-takes-facebook-task-banning-right-wing-party/>

²² “Why Republicans Must Rethink Antitrust” // The American Conservative. May 26, 2021. URL: <https://www.theamericanconservative.com/why-republicans-must-rethink-antitrust/>

²³ Jiangang, W. “The Impact of IT Giants on Politics” // Meditsyna. Sotsyologiya. Philosophia. Prikladnye Issledovaniya (Medicine. Social Studies. Philosophy. Applied Research). 2019. URL: <https://cyberleninka.ru/article/n/vliyanie-it-gigantov-na-politiku>

states and use our data and personal information to consolidate their dominance, resulting in negative externalities such as large-scale political manipulations²⁴.

With Industrial Revolution 4.0 in full speed, the time is ripe to implement proper regulation of tech giants, who are riding the high wave of digitalization. This issue has been widely debated both in governments and major international organizations and forums, such as the World Economic Forum, G20, OECD, Internet Governance Forum, United Nations, and other bodies.

Heads of states speak openly about the digital dictatorship of Big Tech. For instance, German Chancellor Angela Merkel, speaking in 2019 at the IGF, said that “global companies might build up parallel worlds – with their own rules and standards – which they will then try to impose on others²⁵”. In 2021, Russian President Vladimir Putin noted at the World Economic Forum in Davos that “IT corporations are not merely economic giants, but in some ways, they are de-facto competing with states”. The Russian President raised the question: to what extent is such monopoly aligned with public interest? He pointed out that “the global business may easily cross the line, beyond which it will at liberty to govern our society at its own discretion, replace legitimate democratic institutions, and essentially usurp or restrict the natural right of people to decide for themselves how to live, what to choose and what position to express freely²⁶”. In a similar vein, the need to control digital platforms has been more than once highlighted by Xi Jinping, who pointed out that it was unacceptable to allow market monopolization and “disorderly expansion of capital²⁷”, and Joe Biden who believes that “capitalism without competition is not capitalism, but exploitation²⁸”.

Interestingly, some leaders in the business community show more reserve on the topic. For example, German Gref, CEO of Russia's Sberbank thinks that “the issue is extremely overblown and no ecosystem will be able to compete with the state”. He agrees, nevertheless, that global technology corporations do often cross the line and need to be regulated to “maintain competition on the domestic market and allow smaller players to retain their competitive advantage²⁹”.

The review below considers the progress made by regulators in the European Union, United States, China and Russia in developing a “code of conduct” for the biggest players on the digital field.

²⁴ “Putting Tech and Innovation at the Service of People and the Green Transition” // UCL IIPP. March 9, 2020. URL: <https://medium.com/iipp-blog/putting-tech-and-innovation-at-the-service-of-people-and-the-green-transition-2e039ab8e083>

²⁵ Speech by Federal Chancellor Dr Angela Merkel opening the 14th Annual Meeting of the Internet Governance Forum in Berlin on 26 November 2019 // The Federal Government. November 26, 2019. URL: <https://www.bundesregierung.de/breg-en/news/speech-by-federal-chancellor-dr-angela-merkel-opening-the-14th-annual-meeting-of-the-internet-governance-forum-in-berlin-on-26-november-2019-1701494>

²⁶ The Davos Agenda 2021 online forum session // President of Russia. January 27, 2021. URL: <http://www.kremlin.ru/events/president/news/64938>

²⁷ “China Says Move to Curb Disorderly Expansion of Capital Has Shown Initial Results- State Media” // Reuters. August 30, 2021. URL: <https://www.reuters.com/article/china-economy-idUSKBN2FV0UR>

²⁸ Biden Signs Order to Crack Down on Big Tech, Boost Competition ‘Across the Board’ // CNBC. June 9, 2021. URL: <https://www.cnbc.com/2021/07/09/biden-to-sign-executive-order-aimed-at-cracking-down-on-big-tech-business-practices.html>

²⁹ German Gref — RBC: “State can easily cut any ecosystem down to size” // RBC. April 22, 2022. URL: <https://www.rbc.ru/business/22/04/2021/6078c35c9a79470cc01eb1b4>

Big Tech Regulation Polices

United States

Over the last decades, American regulators have preferred to keep their distance from corporate affairs leaving them ample leeway to develop their businesses unfettered by rigorous rules. In the late 90's there were high-profile anti-trust cases in the United States when Microsoft was charged with abusing its dominant market position³⁰, but even then, the company avoided being broken up into smaller entities³¹. Incidentally, experts have counted about 750 mergers and acquisitions in the digital sector over the last 20 years³², suggesting a rather selective enforcement of antitrust regulations based on the Sherman (1890) and Clayton Antitrust Acts (1914).

Nevertheless, recent years have seen increasing pressure placed by US government on the digital companies. For instance, in July 2019, the Federal Trade Commission (FTC)³³ fined Facebook a record \$5 billion for leaking data of millions of its users to Cambridge Analytica, a consultancy that was advising Donald Trump's election campaign³⁴. This breach of privacy fine became the largest in US history and was nearly five times (as of February 2021) above the fines served by the EU under the General Data Protection Regulation (GDPR)³⁵. The same year (2019) Facebook faced the rap, YouTube, too, had to pay \$170 million for violating children's privacy laws, while Equifax, an American credit bureau, was fined \$575 million for a massive data breach³⁶.

Beginning from June 2019, the US House Judiciary Antitrust Subcommittee conducted a wide-ranging investigation into digital platforms and their online market dominance, which involved the summons of Big Tech CEOs to testify in Congress in July 2020³⁷. The probe led by Democratic lawmakers culminated in October 2020 in the publication of a 450-page report that had a clear message: "Amazon, Apple, Facebook and Google engage in a range of anti-competitive

³⁰ Microsoft was accused of trying to use its market dominance eliminate competing services like Netscape and monopolize the online browser market by bundling the Internet Explorer up with its Windows OS, thus imposing it on Windows users.

³¹ Among its other concessions, Microsoft agreed to allow computer manufacturers more freedom to install competitors' software on its PCs. See: "Trustbusters are Bypassing the Biggest Tech Company of Them All" // The Washington Post. June 28, 2019.

URL: <https://www.washingtonpost.com/technology/2019/06/28/trustbusters-are-bypassing-biggest-tech-company-them-all/>

³² "Why Republicans Must Rethink Antitrust" // The American Conservative. May 26, 2021.

URL: <https://www.theamericanconservative.com/why-republicans-must-rethink-antitrust/>

³³ Federal Trade Commission (FTC) is an independent agency of the United States government whose principal mission is protection of consumer rights, privacy and competition.

³⁴ "Facebook Fined for a Record \$5 Billion" // Forbes. July 24, 2019.

URL: <https://www.forbes.ru/tehnologii/380671-facebook-oshtrafovali-na-rekordnye-5-mlrd>

³⁵ "What the US Can Teach Europe About Privacy" // Politico. February 10, 2021.

URL: <https://www.politico.eu/article/europe-privacy-fines-tech-what-the-us-can-teach/>

³⁶ Ibid.

³⁷ "The CEOs of Apple, Google, Facebook, and Amazon are About to Testify Before Congress in a Historic Antitrust Hearing. Here's What's at Stake for Each Company" // Insider. June 29, 2020.

URL: <https://www.businessinsider.com/google-apple-amazon-facebook-antitrust-hearing-congress-what-to-expect-2020-7>

tactics". The investigators faulted Apple for undermining the development of independent apps; Facebook for buying up its competitors (Instagram and WhatsApp), user privacy violations, and spreading misinformation; Google for tapping vast arrays of user data to become "an ecosystem of interlocking monopolies" in searches, advertising, mapping, mobile and more; and Amazon for strong-arming third-party merchants on its platform and using rival data to develop competing products. In addition to companies abusing their "gatekeeper" status in various internet sectors, the report hit federal agencies that were supposed to keep watch over America's tech giants³⁸. The report recommends a significant overhaul of the federal government antitrust powers and American antitrust laws³⁹, and proposes other changes that would empower consumers to bring lawsuits and give new legal tools to the Justice Department or FTC to block future tech mergers⁴⁰.

The investigation was promptly followed by a series of antitrust lawsuits against Google in the late 2020. On October 20, the US Department of Justice accused the tech giant of suppressing competitors by locking them out from profitable search advertising markets⁴¹. More lawsuits followed the same year in December filed by a whole coalition of attorney generals from over 30 states⁴². Google was charged with using anti-competitive tactics to retain its search engine monopoly and gain higher profits from search advertising, discriminating against vertical search companies, such as Yelp or Kayak, and exploiting its control over digital advertising to impose unfair conditions on advertisers⁴³. These lawsuits against Google became the biggest antitrust cases since the Microsoft trial.

Here it is important to note that however much pressure regulators have exerted against technology "gatekeepers⁴⁴", they have been doing it through court trials, investigations, public hearings and public opinion rather than by tightening laws and introducing new rules. America still has no comprehensive framework at the federal level to regulate the digital sector. There are only a few regulatory enclaves in some states. California, for example, adopted its GDPR analog, the California Consumer Privacy Act (CCPA) that came into effect in 2020, granting users the right to know what personal information internet companies collect and

³⁸ "House Investigation Faults Amazon, Apple, Facebook and Google for Engaging in Anti-Competitive Monopoly Tactics" // The Washington Post. October 6, 2020.

URL: <https://www.washingtonpost.com/technology/2020/10/06/amazon-apple-facebook-google-congress/>

³⁹ "The Big Tech Antitrust Report Has One Big Conclusion: Amazon, Apple, Facebook, and Google are Anti-Competitive" // Vox. October 6, 2020. URL: <https://www.vox.com/recode/2020/10/6/21505027/congress-big-tech-antitrust-report-facebook-google-amazon-apple-mark-zuckerberg-jeff-bezos-tim-cook>

⁴⁰ "House Investigation Faults Amazon, Apple, Facebook and Google for Engaging in Anti-Competitive Monopoly Tactics" // The Washington Post. October 6, 2020.

URL: <https://www.washingtonpost.com/technology/2020/10/06/amazon-apple-facebook-google-congress/>

⁴¹ US Department of Justice lawsuit against Google filed in October 2020 for breach of antitrust laws will not go to trial before 2023.

⁴² "Google Hit with Third Antitrust Lawsuit as More Than 30 US States Accuse Google of Using Search Dominance to Push Out Rivals" // Insider. December 17, 2020.

URL: <https://www.businessinsider.com/google-hit-with-third-antitrust-lawsuit-as-more-than-30-us-states-sue-2020-12>

⁴³ "Google's Antitrust Cases: A Guide for the Perplexed" // Wired. October 18, 2020.

URL: <https://www.wired.com/story/google-antitrust-lawsuits-explainer/>

⁴⁴ Technology giants are regarded as gatekeepers between business and consumers who create bottlenecks in the economy because of their market power and control over digital ecosystems.

how they use it⁴⁵. The CCPA also requires companies that sell personal information to provide a “Do Not Sell My Personal Information” link or button on their websites⁴⁶. Similarly, Virginia, Utah, Colorado and Nevada⁴⁷ adopted their own user privacy laws⁴⁸, whereas Florida and Texas have social media laws that punish digital platforms for censoring conservative views⁴⁹.

Reasons for Lagging Regulation

There are several reasons for US government’s hesitancy to discipline dominant companies with tougher rules and its prevailing reliance on self-regulation.

First, US antitrust policy of the last 40 years has been intellectually driven by the ideas of the Chicago School⁵⁰. Its fundamental precepts were to abandon the goals of creating an egalitarian business environment and discourage strict scrutiny of dominant firm conduct and merger practices where such mergers offer economic efficiencies. Additionally, it urges courts and enforcement agencies to focus on consumer interests in applying their enforcement powers with regard to dominant companies, as well as other notions. The ideas of the Chicago School, mainly those of its leading theorist Robert Bork, were put into practice by President Ronald Reagan with his relaxed 1982 Merger Guidelines. Since then, according to American scholar Jonathan Tepper, the US Department of Justice and the Federal Trade Commission adopted the “consumer welfare standard” and almost never reject mergers so long as companies promise to keep prices low. The expert also notes that all concerns over economic and political power concentration, damage to innovation, and the economic vitality of suppliers and workers has disappeared. Firms engage highly paid law firms and economists to argue that mergers will promote efficiency and lower prices⁵¹. To make matters worse, there are still many of Bork’s followers in US courts so that lawsuits filed by FTC or state attorneys general are often ineffectual⁵². For example, in

⁴⁵ “California Adopts Toughest Law in US to Protect Internet User Data” // Kommersant. June 29, 2018.
URL: <https://www.kommersant.ru/doc/3673035>

⁴⁶ “The Nevada Privacy Law (SB-220) vs. The California Consumer Privacy Act (CCPA)” // Onetrust. September 17, 2019.
URL: <https://www.onetrust.com/blog/the-nevada-privacy-law-sb-220-vs-the-california-consumer-privacy-act-ccpa/>

⁴⁷ Ibid.

⁴⁸ “As Europe Approves New Tech Laws, the US Falls Further Behind” // The New York Times. April 22, 2022.
URL: <https://www.nytimes.com/2022/04/22/technology/tech-regulation-europe-us.html>

⁴⁹ “Conservatives Slam Big Tech at CPAC while Touting a ‘Parallel Economy’” // NBS news. February 26, 2022.
URL: <https://www.nbcnews.com/tech/tech-news/conservatives-slam-big-tech-cpac-touting-parallel-economy-rcna17763>

⁵⁰ However, William E. Kovacic, professor of law and ex-FTC officer, begs to disagree. In his essay, he claims that alongside the Chicago School the evolution of US antitrust policies was significantly influenced by the Harvard School and also other ideas. He focuses on two landmark publications as intellectual underpinnings of modern US antitrust system: “The Antitrust Paradox” (1978) by Robert Bork from the Chicago School and the first three volumes of “Antitrust Law” (1978) by the Harvard School’s Philip Areeda and Donald Turner. According to Kovacic, American case law more strongly reflects the Harvard School’s ideas than the Chicago School’s. Moreover, he believes that Areeda and Turner provided vital support to the view that courts and enforcement agencies should reject a broadly egalitarian view of the proper aims of antitrust policy. See: Kovacic, W. E. “The Chicago Obsession in the Interpretation of US Antitrust History” // The University of Chicago Law Review. 2020. URL: https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/Kovacic_Obsession_87UCLR459.pdf

⁵¹ “Why Regulators Went Soft on Monopolies” // The American Conservative. January 9, 2019.
URL: <https://www.theamericanconservative.com/why-the-regulators-went-soft-on-monopolies/>

⁵² “Big Tech on Trial: What Could be the Consequences of Antitrust Lawsuits Against Tech Giants” // Forbes. August 04, 2021.
URL: <https://www.forbes.ru/tehnologii/436519-big-tech-na-sude-chem-mogut-obernutsya-antimonopolnye-iski-protiv-tehnogigantov>

June 2021, the court rejected two antitrust lawsuits against Facebook⁵³ filed in December 2020 by the FTC and a group of attorneys general from 48 US states. US District Judge James Boasberg ruled that the FTC's complaint was "legally insufficient" and didn't provide enough evidence to prove that Facebook was a monopoly on the social media market⁵⁴.

The second, rather stark reason lurks in the very close ties between government and private business supported by the so-called "revolving doors"; this allows two-way career traffic between public offices and private firms, as well as active corporate lobbying. For example, Alphabet, Apple, Amazon, Meta* and their commercial groups have poured almost \$95 million into lobbying since 2021 seeking to derail the new antitrust bill⁵⁵.

Third, there is little agreement in US Congress on how narrow and rigid the antitrust regulations should be. Fierce debates continue in both parties. Dozens of federal bills on privacy protection, personal information and online security have been rejected for lack of bipartisan support. One of the few issues, on which American lawmakers did come to terms, is children's online privacy⁵⁶. The related bill largely repeats many provisions of the EU's Digital Services Act (DSA), such as algorithmic transparency requirements and forcing companies to vet their products⁵⁷. A bipartisan coalition of House lawmakers is pushing to pass a major package of antitrust bills that directly targets tech giants, but other lawmakers on both sides of the aisle have pushed back on that approach⁵⁸. Also, technology industry groups and some Republicans resist the efforts of some Democrats to expand FTC powers citing concerns about excessive government intervention and the absence of federal privacy standards established by Congress.

Finally, increasing political and economic fragmentation encourages nations to form technoeconomic blocs where Big Tech is a foundational component. Technology corporations drive America's economic and technological leadership with its dominance and influence on the global digital scene. This explains the US government's rather cautious handling of the digital sector. Add to this new challenges and uncertainty amid the technological rivalry with China that inevitably exacerbate regulator concerns. This is all the more relevant considering

⁵³ Legal claims against Facebook concerned its WhatsApp and Instagram acquisitions and could force the tech giant to sell these assets. See: "US Court Refuses to Hear Antitrust Lawsuits Against Facebook" // Interfax. June 29, 2021. URL: <https://www.interfax.ru/business/774374>

⁵⁴ "US Court Refuses to Hear Antitrust Lawsuits Against Facebook" // Interfax. June 29, 2021. URL: <https://www.interfax.ru/business/774374>

⁵⁵ "Big Tech's \$95 Million Spending Spree Leaves Antitrust Bill on Brink of Defeat" // Bloomberg. September 6, 2022. URL: <https://www.bloomberg.com/news/articles/2022-09-06/tech-giants-spree-leaves-antitrust-bill-on-brink-of-defeat>

⁵⁶ "Big Tech on Trial: What Could be the Consequences of Antitrust Lawsuits Against Tech Giants" // Forbes. August 4, 2021. URL: <https://www.forbes.ru/tehnologii/436519-big-tech-na-sude-chem-mogut-obernutsya-antimonopolnye-iski-protiv-tehnogigantov>

⁵⁷ "The US Won't Catch Up to Europe on Tech Regulation Anytime Soon" // The Washington Post. April 25, 2022. URL: <https://www.washingtonpost.com/politics/2022/04/25/us-wont-catch-up-europe-tech-regulation-anytime-soon/>

⁵⁸ "Will the US Follow the E.U. Playbook to Crack down on Silicon Valley giants?" // The Washington Post. September 28, 2021. URL: <https://www.washingtonpost.com/politics/2021/09/28/will-us-follow-eu-playbook-crack-down-silicon-valley-giants/>

American Big Tech's announcements in the summer of 2022 about a growth and hiring slowdown⁵⁹ due to supply chain disruptions, protectionism, rising costs, inflation, and changes in customer spending behavior.⁶⁰

It is becoming obvious today that politics and technology are highly interdependent and the state cannot safeguard its power and influence without the support from technoeconomic agents. The formula is simple: the stronger the American business, the greater the US power.

Why Regulate Now?

In spite of its traditionally benign attitude towards technology corporations, even America has shown a growing appetite for reining them in over the recent years.

In October 2020, the Subcommittee on Antitrust, Commercial and Administrative Law of the US House Committee on the Judiciary published a report which revealed three types of damaging consequences from unregulated tech giant activities: spreading misinformation and hate, market monopolization, and consumer rights violations⁶¹. The concern about the growing tech power is equally shared by the current US President Joe Biden who pledged during his election campaign that combating monopolies would be a priority for his administration⁶².

Public worries deepen as the increasing political and economic influence of dominant tech companies result in fewer startups, lower productivity and wages for workers, rising inequality and higher prices⁶³. Moreover, experts speak of “concentrated corporate power as actually contributing to a broad range of harms for workers⁶⁴, innovation, prosperity and a resilient democracy overall⁶⁵”. According to some scholars, the Chicago School left behind a ruined economy with high

⁵⁹ Moreover, the misguided strategy of overinvesting and rapid expansion during the Covid pandemic resulted in sweeping job cuts in the tech sector. In November 2022, Amazon planned to lay off approximately 10,000 people in corporate and technology jobs in what would be the largest job cuts in the company's history. Elon Musk halved Twitter's head count, and Meta announced it was laying off 11,000 employees, about 13 percent of its work force. See: “Amazon Is Said to Plan to Lay Off Thousands of Employees” // The New York Times. November 14, 2022.
URL: <https://www.nytimes.com/2022/11/14/technology/amazon-layoffs.html>

⁶⁰ “Big Tech is Bracing for a Possible Recession, Spooking Other Industries” // The Washington Post. July 23, 2022.
URL: <https://www.washingtonpost.com/technology/2022/07/23/big-tech-recession-concerns/>

⁶¹ “Investigation of Competition in Digital Markets” // US House Judiciary Committee. October 1, 2020.
URL: https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519

⁶² “Big Tech on Trial: What Could be the Consequences of Antitrust Lawsuits Against Tech Giants” // Forbes. August 4, 2021.
URL: <https://www.forbes.ru/tehnologii/436519-big-tech-na-sude-chem-mogut-obernutsya-antimonopolnye-iski-protiv-tehnogigantov>

⁶³ “Why Regulators Went Soft on Monopolies” // The American Conservative. January 9, 2019.
URL: <https://www.theamericanconservative.com/why-the-regulators-went-soft-on-monopolies/>

⁶⁴ Amazon and Apple stores' personnel are unhappy about their pay levels that lag behind inflation and working conditions. Now, Big Tech sees a rising wave of unionization inspired by the example of Starbucks. See: “Starbucks Baristas Are Unionizing, and Even Howard Schultz Can't Make Them Stop” // Bloomberg. May 12, 2022.
URL: <https://www.bloomberg.com/news/features/2022-05-12/starbucks-workers-inspire-amazon-union-show-labor-s-power>. Amazon staff were the first to raise their voice in the big tech before they were followed by Apple employees. See: “Apple's Flagship Store Employees to Unionize” // Vesti. April 18, 2022.
URL: <https://www.vesti.ru/hitech/article/2705775>

⁶⁵ “Biden's Bid to Take on Big Business Sets Off Battle Over Who Holds Power in US Economy” // Washington Post. July 9, 2021. URL: <https://www.washingtonpost.com/business/2021/07/09/biden-executive-order-promoting-competition/>

and growing industrial concentration as well as undermined democratic institutions threatened by corporate leviathans and their stooges in federal enforcement agencies⁶⁶.

Regulators are concerned not only by the consequences of Big Tech's economic expansion jeopardizing the very foundations of capitalism⁶⁷, but also by their ability to influence domestic politics, censor presidents, etc. The presidential elections in 2020 and US Capitol attack in 2021 demonstrated the power of social media and the control they can exercise over public sentiment. Like his predecessor Donald Trump, Joe Biden threatened to amend or even altogether delete Section 230 of the Communications Decency Act of 1996, which allows social networks to avoid being treated as publishers and thus protects them from being held liable for statements posted by third parties that use their services⁶⁸. Republicans want to amend or revoke Section 230 to fight alleged censorship of conservative users online, while Democrats largely see it as a way to make companies liable for harmful content, like disinformation⁶⁹. While the revoke-or-amend dilemma is still unresolved, its members of Congress have already introduced as many as 18 different regulatory bills⁷⁰.

Privacy protection has emerged as the perhaps one of the most sensitive issues over the recent years. The debate heated up after Facebook's personal user data was leaked to Cambridge Analytica. Democratic Senator Ron Wyden, for example, highlighted privacy as a key priority for U.S. lawmakers⁷¹.

The lack of a comprehensive Big Tech regulation framework at the federal level is damaging to America's international image. Some politicians and experts begin to worry that the US economy has become too monopolized and therefore less attractive to the rest of the world, comprising the ability of the United States to provide constructive input for developing informed international standards to govern competition and technology.

Practical Steps

The signal for the government's battle against corporate titans was formally given on July 9, 2021 when US President Joe Biden signed an executive order to crack down on monopolist practices and unfair competition and enhance economic

⁶⁶ See Lynn, B. C., "Cornered: The New Monopoly Capitalism and the Economics of Destruction ix-x" (2010). Jonathan Tepper, "Why Regulators Went Soft on Monopolies" (The American Conservative, January 9, 2019).

⁶⁷ "Why Republicans Must Rethink Antitrust" // The American Conservative. May 26, 2021.
URL: <https://www.theamericanconservative.com/why-republicans-must-rethink-antitrust/>

⁶⁸ "The Facebook Whistleblower Told Congress it Should Amend Section 230, the Internet Law Hated by Both Biden and Trump. Here's How the Law Works" // Insider. October 6, 2021.
URL: <https://www.businessinsider.com/what-is-section-230-internet-law-communications-decency-act-explained-2020-5>

⁶⁹ "Why 2022 Might Disappoint Big Tech Antitrust Crusaders" // Variety. February 22, 2022.
URL: <https://variety.com/vip/why-2022-might-disappoint-big-tech-antitrust-crusaders-1235174942/>

⁷⁰ "All the Bills on Section 230" // CivicGenius. February 9, 2022.
URL: <https://www.ourcivicgenius.org/learn/all-the-bills-on-section-230/>

⁷¹ "What the US Can Teach Europe about Privacy" // Politico. February 10, 2021.
URL: <https://www.politico.eu/article/europe-privacy-fines-tech-what-the-us-can-teach/>

growth⁷². The order contains 72 initiatives challenging the business practices of America's enormous technology, health-care, agricultural and manufacturing firms. Their primary focus is on mergers (especially those involving dominant digital platforms), unfair methods of competition on internet market places, and rules on collecting personal data⁷³.

At the same time, the executive order does not introduce any immediate and specific measures to regulate tech giants. Instead, it directs federal agencies to begin work on their own rules, a process that, experts believe, may take a fairly long time⁷⁴. The administration is issuing only recommendations to independent agencies crucial to much of the antitrust push, such as the FTC, that are not subject to directives from the White House. Nevertheless, experts also note some promising movements that inspire optimism: the House Energy and Commerce Committee approved a new Federal Trade Commission (FTC) bureau focused on privacy and data abuses, and the National Telecommunications and Information Administration launched listening sessions on privacy and civil rights concerns, signaling the administration takes the issue seriously⁷⁵.

Observers at The Washington Post and Bhaskar Chakravorti, dean of global business at Tufts University's Fletcher School⁷⁶, foretold that 2022 could be a watershed year for "gatekeepers" regulation in the US⁷⁷. Looking at the interim progress of Biden's battle with tech giants, the wins are not so obvious. Of the bills that are being considered by Congress, the most consequential is the American Innovation and Choice Online Act (AICO), which prohibits Apple, Alphabet, Amazon and Meta* from self-preferencing by promoting their own services and products in their app stores and marketplaces above those offered by competitors. Although the bill has strong bipartisan support in both the House of Representatives and the Senate, the chances of passing it into law are waning by the day due to heavy lobbying and criticism by Big Tech.⁷⁸ Along with AICO, Congress is reviewing such bills as the Open App Markets Act (OAMA) and Platform Accountability and Transparency Act (PATA)⁷⁹.

⁷² Fact Sheet: Executive Order on Promoting Competition in the American Economy // The White House. July 9, 2021.
URL: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/>

⁷³ "Biden Signs Executive Order on Promoting Competition" // Forbes. July 9, 2021.
URL: <https://www.forbes.ru/newsroom/biznes/434455-bayden-podpisal-ukaz-o-zashchite-konkurencii>

⁷⁴ "Biden's Bid to Take on Big Business Sets off Battle Over Who Holds Power in US Economy" // Washington Post. July 9, 2021. URL: <https://www.washingtonpost.com/business/2021/07/09/biden-executive-order-promoting-competition/>

⁷⁵ "Can Biden Build the Internet Back Better?" // AccessNow. January 20, 2022.
URL: <https://www.accessnow.org/biden-internet-policy/>

⁷⁶ "Why 2022 Might Disappoint Big Tech Antitrust Crusaders" // Variety. February 22, 2022.
URL: <https://variety.com/vip/why-2022-might-disappoint-big-tech-antitrust-crusaders-1235174942/>

⁷⁷ "Why 2022 Could be a 'Watershed Year' for Tech Regulation" // The Washington Post. January 3, 2022.
URL: <https://www.washingtonpost.com/politics/2022/01/03/why-2022-could-be-watershed-year-tech-regulation/>

* A recognized and banned extremist organization in Russia.

⁷⁸ "Big Tech Just Got One Step Closer to Squashing Key US Antitrust bill" // Ars Technica. August 8, 2022.
URL: <https://arstechnica.com/tech-policy/2022/08/big-tech-just-got-one-step-closer-to-squashing-key-us-antitrust-bill/>

⁷⁹ "To Fix Social Media, Senators Turn to a Research Transparency Bill" // Protocol. September 14, 2022.
URL: <https://www.protocol.com/bulletins/platform-accountability-act-senate>

The US government is trying hard to show that they are not ignoring the problem, but rather are responding to it. To prove they mean business, the Biden administration produced the executive order against anticompetitive practices of June 9, 2021 and appointed to key government offices vocal critics of tech dominance: Lina Khan (Chair of the FTC), Tim Wu (Special Assistant to the President for Technology and Competition Policy) and Jonathan Canter (Assistant Attorney General for the Department of Justice Antitrust Division)⁸⁰.

The US government has been scoring points with conspicuous activity on the international arena as well. For example, Washington managed to gather global governments to sign the Declaration for the Future of the Internet in April 2022 and also successfully promoted the Global Cross-Border Privacy Rules initiative. However, according to an annual report by the nonprofit Freedom House, the flurry of action in advocating for internet freedom globally stood in stark contrast to the lack of movement at home⁸¹.

In the near future, the United States is unlikely to adopt anything similar to the Digital Market Act, Digital Services Act or GDPR at the federal level. This is a longer journey and making it through could take more than reaching consensus on regulation policy within each of the two parties, which may not help until the government has completely redesigned the model of engagement between regulators and big private business.

There appear to be several factors that may prompt Congress into a more decisive action. First, the adoption of tech laws by individual states as in California, Virginia, etc. Second, activism and advocacy groups that would be difficult to ignore. Third, digital regulation models promoted by other global centers of power such as the European Union. Some experts point that this regulatory gap leaves US companies exposed in other jurisdictions where they operate⁸². America's digital leadership could be challenged by other nations laying down the rules for the digital market. Furthermore, Matthew Slaughter, Professor of International Business at the Tuck School of Business at Dartmouth College, and David McCormick, who he served in senior positions during the George W. Bush administration at the US Commerce Department, the National Security Council, and the US Treasury Department, openly say that shaping the rules of digital power is a key component of geopolitical competition⁸³.

European Union

Over the last few years, EU authorities have expressed serious concern over the growing clout of global technology companies and have committed themselves to change their business model. In particular, European regulators have been trying

⁸⁰ "Monopoly Games the Biden Administration was Supposed to Mark a Major Shift in Antitrust Thinking. What Happened?" // *Intelligencer*. January 23, 2022. URL: <https://nymag.com/intelligencer/2022/01/bidens-antitrust-monopoly-games.html>

⁸¹ "US Made 'Marginal' Gains in Internet Freedom, Report Finds" // *The Washington Post*. October 18, 2022. URL: <https://www.washingtonpost.com/politics/2022/10/18/us-made-marginal-gains-internet-freedom-report-finds/>

⁸² Wheeler T. "A Focused Federal Agency is Necessary to Oversee Big Tech" // *Brookings*. February 10, 2021. URL: <https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/>

⁸³ Slaughter M. J., McCormick D. H. "Data is Power" // *Russia in Global Affairs*. July 1, 2021. URL: https://globalaffairs.ru/articles/dannyeto-vlast/#_ftn1

to stop non-European multinationals from overtaking the EU market, protect personal data of EU citizens, prevent the spread of fake and harmful content on the web, and enforce algorithm transparency. To address the above concerns, Brussels has produced one of the world's most thoroughly designed regulation framework, most of which are already effective.

General Data Protection Regulation (GDPR)

A key battleground between the tech industry and the EU authorities was control over user data, which, according to some European experts, is the raw material for the digital economy and should be considered as a part of public infrastructure such as electricity, water, roads and clean air⁸⁴. In 2018, the European Union adopted the General Data Protection Regulation (GDPR), which is an extraterritorial law, providing a range of personal information rights to users and specifies corresponding obligations for digital companies⁸⁵. For instance, it requires operators to securely protect personal data against their illegal processing, destruction or damage; update or delete inaccurate information; enable users to manage their personal data and request information about the location and purpose of their data processing. During the first year alone after the GDPR became law, some IT companies faced €56 million-worth of fines⁸⁶, and by February 2021, the amount went up to \$329.8 million (about €275 million)⁸⁷. Notably, the GDPR proved to be an attractive role model on the international scene providing a good starting template for drafting data privacy legislation in Brazil, Japan, South Africa, South Korea and other countries⁸⁸.

Digital Services Act and Digital Markets Act

In 2020, Brussels proposed two related bills aiming essentially to contain the expansion of American digital platforms and establish controls over their operations: The Digital Services Act (DSA) and the Digital Markets Act (DMA). This regulation package is expected to better protect consumers and their rights online, establish robust transparency and a clear accountability framework for online platforms, and foster innovation, growth, and competitiveness within the single market⁸⁹. Some experts believe this initiative will have global implications for the industry⁹⁰.

⁸⁴ "Putting Tech and Innovation at the Service of People and the Green Transition" // UCL IIPP Blog. March 9, 2020. URL: <https://medium.com/iipp-blog/putting-tech-and-innovation-at-the-service-of-people-and-the-green-transition-2e039ab8e083>

⁸⁵ Balashov A. "GDPR Changes the Rules" // RIAC. April 17, 2018. URL: <https://russiancouncil.ru/analytics-and-comments/analytics/gdpr-menyayet-pravila/>

⁸⁶ "Facebook, Google, Apple, Other Data-Driven Firms, Defy the Global Move to Strong Privacy Regulations" // Forbes. June 26, 2019. URL: <https://www.forbes.com/sites/gilpress/2019/06/26/facebook-google-apple-other-data-driven-firms-defy-the-global-move-to-strong-privacy-regulations/?sh=28eee3b51ae0>

⁸⁷ "What the US can Teach Europe About Privacy" // Politico. February 10, 2021. URL: <https://www.politico.eu/article/europe-privacy-fines-tech-what-the-us-can-teach/>

⁸⁸ "Confronting Reality in Cyberspace: Foreign Policy for a Fragmented Internet" // Council on Foreign Relations. July 2022. URL: <https://www.cfr.org/report/confronting-reality-in-cyberspace/findings>

⁸⁹ "7 Things You Need to Know About the Digital Services Act (DSA)" // SEJ. April 28, 2022. URL: <https://www.searchenginejournal.com/digital-services-act-overview/447789/>

⁹⁰ "EU vs Big Tech: The Bid to Weaken the Digital Gatekeepers" // The Irish Times. December 14, 2020. URL: <https://www.irishtimes.com/business/technology/eu-vs-big-tech-the-bid-to-weaken-the-digital-gatekeepers-1.4436563>

The Digital Services Act (DSA)

The DSA⁹¹, adopted on October 19th, 2022, is an ambitious rules package with an extraterritorial scope designed to regulate the digital environment and fight illegal content. It obligates internet companies to remove illegal content, sets clear rules to ensure advertising transparency and counter disinformation, and includes transparency requirements that compel large digital platforms to disclose to regulators and external supervisors the details of their services, algorithms and content moderation methods.

The last DSA vote by the EU Parliament clearly shows that Europeans want a free internet but stronger privacy protections⁹². In other words, MEPs supported higher platform transparency, more professional content moderation and user rights protection, and, simultaneously, opted against upload filters and unreasonable take down obligations. The EU Parliament also decided to step up the fight against “surveillance capitalism”, adopting new rules to restrict data processing by major tech companies that will be prohibited from using certain private user data for target advertising.

The DSA is broad in scope – applying to a range of key players across the digital ecosystem, with in-scope service providers categorized as one of (i) intermediary services, (ii) hosting services, (iii) online platforms bringing together sellers and consumers, or (iv) very large online platforms or very large online search engines (“VLOPs” / “VLOSEs”)⁹³ with over 45 million users⁹⁴. Note that VLOPs and VLOSEs are subject to enhanced regulation. Infringing service providers will face fines of up to 6% of the worldwide annual income or turnover⁹⁵. Also, each EU member state is required to appoint a “Digital Services Coordinator” which will be responsible for supervising and enforcing the digital platform compliance with their obligations under the DSA.

The Digital Services Act came into force on November 16th, 2022. It will be rolled out in a so-called staggered start – the majority of the provisions will apply from mid-February 2024, while certain transparency reporting requirements will apply to online platforms immediately with an expected deadline of February 2023⁹⁶. Digital companies are thus allowed time to adapt to tougher governance and security rules. Commenting on the DSA’s adoption in a statement, Jozef Sikela, the Czech minister for industry and trade, said “the Digital Services Act has the potential to become the ‘gold standard’ for other regulators in the world⁹⁷”.

⁹¹ “Digital Services Act: EU’s Landmark Rules for Online Platforms Enter into Force” // European Commission. November 16, 2022. URL: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6906

⁹² “DSA: EU Parliament Vote Ensures a Free Internet, but a Final Regulation Must Add Stronger Privacy Protections” // EFF. January 20, 2022. URL: <https://www.eff.org/deeplinks/2022/01/dsa-eu-parliaments-position-ensures-free-internet-human-rights-safeguards-need-be>

⁹³ “The Digital Services Act: Europe’s New Framework for Online Regulation to Come into Force Next Month” // LEXOLOGY. October 26, 2022. URL: <https://www.lexology.com/library/detail.aspx?g=3bdd6911-7878-4398-9497-7829e096939c>

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ “Europe Gives Final Sign Off to Rebooted e-commerce Rules” // Join TechCrunch+. October 4, 2022. URL: <https://tcrn.ch/3SBZoj8>

The Digital Markets Act (DMA)

The DMA is an attempt by EU regulators to rein in digital gatekeepers that control online markets leaving little chance to European companies to compete. The rules set for digital platforms are designed to provide a level of competitive ground for the digital sector.

The first big antitrust step was taken by the EU Antitrust Commission back in 2017 when Google⁹⁸ was fined €2.42 billion⁹⁹ for showing preference to its own Google Shopping service in product search results on Google search engine. Later, in 2018, the EU Antitrust Commission fined Google as much as €4,34 billion¹⁰⁰ for abusing its position on the Android market in order to strengthen its dominance on the online search service market¹⁰¹. However, fines alone were apparently not enough to shake the dominance of American companies. “I think they’ve come to realize that fines against these tech monopolies are meaningless,” says Gary Reback, an antitrust lawyer with Carr & Ferrell. “It’s just a cost of doing business. They generate so much free cash, there’s no amount you can fine them that makes any difference to their behavior¹⁰²”.

In 2019, the European Court of Auditors recognized that Brussels lacked the legal muscle to restrain tech giants from destroying competitors given that the sort of probes it typically conducted took too long before any meaningful action was taken¹⁰³. So, the DMA was meant to be the logical extension of the set policy course that would draw red lines for dominant players that were eroding free competition. The new legislative proposal aimed to “ensure a competitive and fair digital sector with a view to promoting innovation, high-quality digital products and services, fair prices, and high quality and choice in the digital sector¹⁰⁴”.

The Digital Markets Act will be a preventive tool to contain company illegal behavior instead of penalizing them with antitrust trials as it happens in the US. European regulators want to have the power to bring antitrust charges in a matter of months, not years. This was the objective of drafting the “code of conduct” that clearly defines prohibited behaviors. For example, under the DMA, tech companies

⁹⁸ As of 2022, in search, Google has more than a 60% share in the United States and more than 90% in Europe, Brazil, and India. See: “Can Big Tech Be Disrupted?” // Harvard Business Review. February 2022.
URL: <https://hbr.org/2022/01/can-big-tech-be-disrupted>

⁹⁹ “The EU Antitrust Commission fined Google a record €2.42 billion for breach of antitrust laws” // Inc. June 27, 2017.
URL: <https://incrusia.ru/news/evrokomissiya-oshtrafovala-google-na-rekordnyie-e2-42-mld-za-narusenie-antimonopolnogo-zakonodatstva/>

¹⁰⁰ “Enough is enough: the reason Google faces a \$5 billion fine” // Forbes. July 18, 2018.
URL: <https://www.forbes.ru/tehnologii/364863-vsemu-est-predel-za-chto-google-poluchila-rekordnyy-shtraf-v-5-mlrd>

¹⁰¹ Google required users to reinstall its search app and browser that is generally used for internet searching. Those who refused to do so were denied access to Google Play.

¹⁰² “Regulating or Breaking up Big Tech: An Antitrust Explainer” // MIT Technology Review. June 5, 2019.
URL: <https://www.technologyreview.com/2019/06/05/135080/big-tech-breakup-regulation-antitrust-apple-amazon-google-facebook-doj-ftc-policy/>

¹⁰³ “EU vs Big Tech: The Bid to Weaken the digital gatekeepers” // The Irish Times. December 14, 2020.
URL: <https://www.irishtimes.com/business/technology/eu-vs-big-tech-the-bid-to-weaken-the-digital-gatekeepers-1.4436563>

¹⁰⁴ “Regulating ‘big tech’: Council agrees on enhancing competition in the digital sphere” // Council of the EU. November 25, 2021. URL: <https://www.consilium.europa.eu/en/press/press-releases/2021/11/25/regulating-big-tech-council-agrees-on-enhancing-competition-in-the-digital-sphere/>

are prohibited from giving ranking preference to their own services, prevent users from un-installing any pre-installed software or app if they wish so¹⁰⁵. Nor will they prevent users from linking up to businesses outside their platforms, or make it unnecessarily difficult to unsubscribe from core platform services¹⁰⁶. In addition, the DMA provides that gatekeepers will be required to notify the Commission of mergers involving other core platform services providers.

The scope of the DMA applies to companies with an annual turnover of at least €7.5 billion within the EU in the past 3 years or have a market valuation of at least €75 billion; have at least 45 million monthly end-users or at least 10,000 active business users established in the EU in the last 3 years; and control one or more core platform services (search engines, social networks, cloud services, marketplaces, etc.) in at least three Member States¹⁰⁷. Addressing criticism that these thresholds could capture too many companies, the European Parliament proposed changing the turnover/capitalization threshold figures so that it would catch companies with turnover of €8 billion and a market capitalization of €80 billion.

Failure to comply with the rules will result in serious sanctions for companies in breach, with the DMA envisaging fines of up to 20% of annual worldwide turnover of the breaching digital platform.

The Digital Markets Act was approved by the European Parliament on 15 December 2021 and on 25 March 2022 the EU Council and the Parliament reached a “provisional political agreement” on the DMA text¹⁰⁸. The DMA entered into force on November 1st, 2022 and the main provisions will apply from May 2nd, 2023, with the European Commission (EC) working in the meantime on implementing rules, including a notification form for gatekeepers¹⁰⁹. Moreover, the new regime governing digital platforms is not complete and all stakeholders are invited to participate. The EC’s Directorates General for Competition, and for Communications Networks, Content and Technology, will jointly enforce the new rules.

The MEPs believe that the DSA and DMA is Europe’s chance to shape the digital economy at the EU level as well as to become a global standard-setter on digital regulation, which may offset the EU’s defeat in the race for technology leadership¹¹⁰. The President of the European Commission Ursula von der Leyen

¹⁰⁵ “Digital Markets Act: EU’s new regulation of ‘gatekeepers’ pushes ahead in 2022” // Osborne Clarke. January 6, 2022. URL: <https://www.osborneclarke.com/insights/digital-markets-act-eus-new-regulation-gatekeepers-pushes-ahead-2022>

¹⁰⁶ The DMA permits sideloading, i.e. installing third-party apps from sources other than official app stores.

¹⁰⁷ “DMA 10 Things to know” // Simmons+Simmons. October 2022. URL: https://assets.contentstack.io/v3/assets/bl3d-e4d56151f717f2/blt74db558f19289b9f/6348d7cbdcd7cf2a1074e32f/DMA_-_10_things_to_know22697157v1_AGP.pdf

¹⁰⁸ Digital Markets Act (DMA): agreement between the Council and the European Parliament // European Council. March 25, 2022. URL: <https://www.consilium.europa.eu/en/press/press-releases/2022/03/25/council-and-european-parliament-reach-agreement-on-the-digital-markets-act/>

¹⁰⁹ “The entry into force of the Digital Markets Act kicks off new era of digital regulation in Europe” // Lexology. October 25, 2022. URL: <https://www.lexology.com/library/detail.aspx?g=53626e20-c15a-463d-b7f7-6528fd5120a8>

¹¹⁰ “Facebook whistleblower Frances Haugen testifies in Parliament on 8 November” // European Parliament. November 3, 2021. URL: <https://www.europarl.europa.eu/news/en/press-room/20211028IPR16121/facebook-whistleblower-frances-haugen-testifies-in-parliament-on-8-november>

speaks in her Political Guidelines for the next European Commission 2019–2024 about the need to find a “European way” in the digital sector, balancing the flow and wide use of data while preserving high privacy, security, safety and ethical standards¹¹¹. According to Francesca Bria, an Honorary Professor at the UCL IIPP, Europe has a unique chance to take a stand between the “monopolistic model of US digital capitalism and the authoritarian model of Chinese capitalism”, proposing a sustainable and more democratic digital economy¹¹².

Transatlantic Cooperation in Digital Regulation

The relations with the United States are going to be an important factor in the near future for implementing and making the EU’s digital regulations work, given that these contain-and-control measures mostly target American IT corporations. Andreas Schwab, a member of the Committee on Internal Market and Consumer Protection (IMCO), on behalf of which he recently led a delegation to Silicon Valley, emphasizes the need for deeper transatlantic cooperation on digital regulation to “avoid misconceptions and proactively set the global agenda on tech regulation together¹¹³”.

The meeting between Joe Biden and the EU leaders in June 2021 showed that, on the whole, Americans are ready to agree and expand their cooperation with the EU in technology policymaking. Their willingness was confirmed by the establishment in September 2021 of the Trade and Technology Council (TTC), a new transatlantic platform for discussing technology standards and governance and for maintaining official dialog on competition in technology markets. In addition, in March of 2022, the EU and the US announced a political agreement on a new Trans-Atlantic Data Privacy (TADP) Framework to safeguard commercial cross-border data flows¹¹⁴.

However, many EU experts are rather skeptical about the possible development of universal regulations in the near future. For example, the Center for European Reform (CER) observes that there are obvious limits to transatlantic digital cooperation because the US is much less committed to restricting Big Tech power than Europe¹¹⁵. Experts at the French Institute of International Relations (IFRI) also point that the transatlantic technological relationship is asymmetrical, making it more challenging for cooperation to produce common rules and standards for the digital sector¹¹⁶. It appears that in the near term, TTS will be more likely to

¹¹¹ “Political Guidelines for the next European Commission 2019–2024”

URL: https://commission.europa.eu/system/files/2020-04/political-guidelines-next-commission_en_0.pdf

¹¹² Putting tech and innovation at the service of people and the green transition // UCL IIPP Blog. March 9, 2020. URL: <https://medium.com/iipp-blog/putting-tech-and-innovation-at-the-service-of-people-and-the-green-transition-2e039ab8e083>

¹¹³ “The EU ushered in a new era of digital regulation. Will the US follow suit?” // The Parliament. June 30, 2022.

URL: <https://www.theparliamentmagazine.eu/news/article/eu-new-era-digital-regulation-will-us-follow-suit>

¹¹⁴ “EU officials hope that the new TADP Framework will be finalized and adopted by the end of 2022.” See: US-EU Trans-Atlantic Data Privacy Framework // Congressional Research Service. June 2, 2022.

URL: <https://crsreports.congress.gov/product/pdf/IF/IF11613>

¹¹⁵ “Reality Bytes: The limits of transatlantic digital co-operation” // Center for European Reform. June 13, 2021.

URL: <https://www.cer.eu/insights/reality-bytes-limits-transatlantic-digital-co-operation>

¹¹⁶ “Europe in the Geopolitics of Technology: Connecting the Internal and External Dimensions” // April 9, 2021.

URL: https://www.ifri.org/sites/default/files/atoms/files/pannier_europe_geopolitics_technology_2021_.pdf

focus on coordinating policies to steer the member countries through heightened geopolitical risks rather than harmonizing standards, and its paramount goal will be to maintain Western leadership in technology amid cutthroat competition with China and confrontation with Russia¹¹⁷. As some experts note, the TTC has become a “central pillar” of the transatlantic partnership, indispensable in facilitating coordination on sanctions and export control¹¹⁸.

On the whole, the Biden administration is seemingly on course to tighten regulation and take steps to contain the gatekeepers, but will it support EU rules to check the hegemony of the Silicon Valley giants? That is very unlikely as the new EU legislation compels the US and its technology sector to virtually machete their way through the jungle of supranational regulations. So, the United States could be well expected to take every opportunity to resist EU digital markets and services regulations, jealously mistrust the rules developed in the EU and not in America, and protect the interests of American tech giants overseas.

China

Over the last 20 years, China has made a major breakthrough in creating its own isolated “digital empire”. Especially notable is the success of Chinese internet technology trailblazers Baidu, Alibaba and Tencent (BAT) that propelled their country into global leadership in a number of new technology sectors. According to the International Monetary Fund (IMF), in 2018, China accounted for over 40% of global transactions in e-commerce, while in fintech Chinese companies accounted for more than 70% of the total global valuations¹¹⁹.

There have been several key factors driving such steep ascent of Chinese Big Tech. First, China is the largest online market with the world’s biggest number of users. In 2021, China had 1.02 billion internet users versus 307 million in the United States^{120,121}. Second, restricted access to and blocking of Western digital services and inability of Western tech giants to adapt to the local market and cultural realities have helped Chinese technology startups develop their digital services unencumbered by the pressure of foreign competition¹²². Third, Chinese Big Tech has benefited from international investment inflows as it raised billions of dollars to upscale its business from SoftBank, Sequoia Capital, Goldman Sachs, and an assortment of sovereign and pension funds.

¹¹⁷ Tolstukhina A. “EU Technological Sovereignty and Its Limits” // Valdai. October 7, 22.
URL: <https://ru.valdaiclub.com/a/valdai-papers/valdayskaya-zapiska-119/>

¹¹⁸ “US-EU Trade and Tech Council: Paris Takeaways and Next Steps” // Global Policy Watch. June 13, 2022.
URL: <https://www.globalpolicywatch.com/2022/06/u-s-eu-trade-and-tech-council-paris-takeaways-and-next-steps/>

¹¹⁹ Zhang L., Chen S. “China’s Digital Economy: Opportunities and Risks” // IMF Working Papers. 2019. P. 4–5.
URL: <https://www.imf.org/en/Publications/WP/Issues/2019/01/17/Chinas-Digital-Economy-Opportunities-and-Risks-46459>

¹²⁰ DIGITAL 2022: CHINA // Datareportal. 09.02.2022. URL: <https://datareportal.com/reports/digital-2022-china>

¹²¹ DIGITAL 2022: The United States of America // Datareportal. February 9, 2022.

URL: <https://datareportal.com/reports/digital-2022-united-states-of-america>;
Zhang L., Chen S. “China’s Digital Economy: Opportunities and Risks” // IMF Working Papers. 2019. P. 6.

¹²² Kai-Fu Lee. “AI Superpowers: China, Silicon Valley, and the New World Order”. Boston: Houghton Mifflin Harcourt, 2019. P. 43

Although initially China's leadership was not worried by the explosive tech growth, it was still keeping an eye on its digital dragons. In the earlier years of the internet, Chinese regulators mostly targeted Western companies. Since the late 1990s Chinese authorities had been painstakingly deploying the Great Firewall in order to block a range of foreign online resources, such as Facebook and Google, that could influence public opinion. Some of the few tech corporations that stayed on the Chinese market on special terms that benefited local authorities, were Microsoft and Apple. In 2016, Apple promised \$275 billion of investment in the country in exchange for relaxing pressure on its business¹²³.

The central government took cautious steps to tighten controls over its home-grown tech sector too, for example by setting up special party committees in tech companies to make sure they do not stray from the CPC agenda¹²⁴. In parallel, China's regulators were discussing potential acquisition of 1% stake (a so-called "golden share") in some social-media giants to secure special voting rights¹²⁵. On top of that, Chinese venture capital was also dominated by government funds that controlled over \$750 billion of investments¹²⁶.

Still, all government interventions before 2021 had been rather patchy and sporadic. The more rigorous and consistent effort at regulating China's tech firms began with the canceled IPO of Ant Group, a fintech company, followed by anti-trust probes, data security checks and multimillion fines. Regulatory onslaught swept over other major players in nearly all digital subsectors, including fintech, e-commerce, logistics, food delivery, video games, education services and cryptocurrencies.

A massive bureaucratic army was mobilized to bring Big Tech back in line. This "Big Tech crusade" was spearheaded by the State Administration for Market Regulation (国家市场监督管理总局, SAMR), the Cyberspace Administration of China (国家互联网信息办公室, CAC), the People's Bank of China (中国人民银行, PBoC), and the Ministry of Industry and Information Technology of the PRC (工业和信息化部). The State Administration for Market Regulation (SAMR) was particularly active with its antitrust department being rebranded as the State Antitrust Bureau and raised to the deputy minister level. Along with a bigger budget, the new authority saw its headcount boosted by nearly a third¹²⁷. These are all telling steps to institutionalize the regulator intentions to take Big Tech under tougher control.

¹²³ "Apple's ugly China deal mostly bought time" // Reuters. December 8, 2021.
URL: <https://www.reuters.com/breakingviews/apples-ugly-china-deal-mostly-bought-time-2021-12-08/>

¹²⁴ Feng E. "Chinese tech groups display closer ties with Communist party" // FT. October 10, 2017.
URL: <https://www.ft.com/content/6bc839c0-ace6-11e7-aab9-abaa44b1e130>

¹²⁵ Li Yuan. "Beijing Pushes for a Direct Hand in China's Big Tech Firms" // WSJ. October 11, 2017.
URL: <https://www.wsj.com/articles/beijing-pushes-for-a-direct-hand-in-chinas-big-tech-firms-1507758314>

¹²⁶ Pan Yue. "China's \$798B Government Funds Redraw Investment Landscape" // China Money Network. October 31, 2017.
URL: <https://www.chinamoneynetwork.com/2017/10/31/chinas-798b-government-funds-redraw-investment-landscape-largest-funds-must-know>

¹²⁷ "China's antitrust agency looks to boost headcount as Beijing amends Anti-Monopoly Law to target internet platforms" // SCMP. October 20, 2021. URL: <https://www.scmp.com/tech/policy/article/3153032/chinas-antitrust-agency-looks-boost-headcount-beijing-amends-anti?module=inline&pctype=article>

Certain legislative changes introduced over the past two years indicate the adopted rules are a new normal rather than temporary measures. In November 2021, the Chinese government published the Antitrust Guidelines for Platform Economy which defined specific characteristics of online platforms, provided guidance on identification of platform's market dominance and recommendations on how to eliminate abuses of dominant position¹²⁸. At the same time, China's lawmakers were working, for the first time since 2008, on amendments to the Anti-Monopoly Law (AML) that came into force in August 2022¹²⁹. One of the key changes was a tenfold increase in fines – up to ¥5 million or up to 10% of company's revenue in the preceding year. Furthermore, the amended law introduced a new definition of M&A deals that require mandatory approval by the regulator and make it more difficult to buy up startups. As a result, Chinese tech giants began to cut back their strategic investment teams, while the number of investment deals dropped by 75% in the first half of 2022¹³⁰.

Another fundamental change in the rules of the game was the significant strengthening of the regulatory framework for data security, making it harder to collect, process and transfer huge arrays of data. The Chinese government got clearly concerned by the fact that corporations have accumulated data on millions of users which they do not want to share with regulators but can easily transfer to other countries. So, China adopted the Data Security Law (DSL) and the Personal Information Protection Law (PIPL) that became effective in 2021 to ensure full data localization, restrict its cross-border transfers, and categorize data based on its importance. The long arm of data control has reached so far that Chinese internet giants have for the first time shared with Beijing some details of their algorithms that are usually closely guarded as commercial secrets¹³¹. In the United States, Meta* and Alphabet have so far successfully rebutted government demands for similar disclosures.

Financial Technology (FinTech)

The first and most high-profile victim of the aggressive regulation was Alibaba's subsidiary Ant Group which had its IPO cancelled after Jack Ma's notorious speech at the Bund Finance Summit in Shanghai on 24 October 2020¹³².

¹²⁸ "10 Highlights of the Antitrust Guidelines for Platform Economy" // China Law Insight. November 18, 2020.
URL: <https://www.chinalawinsight.com/2020/11/articles/compliance/10-highlights-of-the-antitrust-guidelines-for-platform-economy/>

¹²⁹ Zhang Y. "First draft of the antitrust law completed, including guidelines for platform economy" (Chinese: 反垄断法完成首修平台经济监管入法) // Caixin. June 26, 2022.
URL: https://china.caixin.com/2022-06-26/101904290.html?mc_cid=c6f6cbb595&mc_eid=1344e27413

¹³⁰ Feng C. "China's Big Tech companies, from Tencent to ByteDance, cut back on strategic investments as Beijing's scrutiny continues" // SCMP. July 14, 2022.
URL: <https://www.scmp.com/tech/big-tech/article/3185178/chinas-big-tech-companies-tencent-bytedance-cut-back-strategic>

¹³¹ Zhang J. "Alibaba, ByteDance Share Details of Prized Algorithms With Beijing for First Time" // Bloomberg. August 15, 2022. URL: <https://www.bloomberg.com/news/articles/2022-08-15/tech-giants-share-details-of-prized-algorithms-with-beijing?sref=QmOxnLFz>

* A recognized and banned extremist organization in Russia.

¹³² "Jack Ma's Bund Finance Summit Speech" // Marcellus. September 12, 2022.
URL: <https://marcellus.in/story/jack-mas-bund-finance-summit-speech/#>

Though many observers attributed the troubles of Ant Group to Ma's daring attack on Chinese financial regulators, the main reason was in fact the high risks of Ant Group's business model. The first and most apparent problem was that the company was not a commercial bank and therefore was not subject to a whole set of requirements, including mandatory capital reserves and checks by the People's Bank of China.

To mitigate the risks to the economy, the PBoC ruled that Ant Group should set up a financial holding and restructure its business or, in other words, break up into several entities. Although in 2021 Ant Group's consumer lending business was granted license, under which it should finance at least 30% of loans and continually submit reports to regulators, the restructuring process is still ongoing¹³³.

Even tougher measures have been applied by fintech regulator to peer-to-peer (P2P) lending and cryptocurrencies.

P2P platforms, whose number at some point exceeded 5,000 companies with a combined annual transaction turnover of \$459 billion, had overstepped the bounds of their IT intermediary roles and started offering risky loans that eventually provoked a wave of defaults in 2018¹³⁴. The introduction of tight requirements by the PBoC led to closing of nearly all P2P platforms by the end of 2020.

At the same time, Chinese regulators prohibited cryptocurrency mining and trading in autumn 2021, though China accounted for over 70% of global crypto-mining¹³⁵. Apart from the risk of being used for money laundering and funding illegal activities, cryptocurrencies offered an alternative to the digital yuan (DCEP) vigorously promoted by the PBoC.

E-commerce and Food Delivery

E-commerce companies have become another important target for the enhanced Big Tech regulation. Alibaba, which accounted for 62% of China's e-commerce market in 2019, could not avoid bearing the brunt of the regulators' attack on the sector for abuse of dominant position¹³⁶. In December 2020, the SAMR initiated an antitrust investigation against Alibaba that took only four record-breaking months to complete.

Following the probe, the Chinese market regulator reported that Alibaba had used methods that "eliminated and restricted competition" and "undermined the rights of merchants on its platform"¹³⁷. Alibaba was actively applying the "choose one of

¹³³ "Ant Group consumer finance unit in Chongqing wins operating approval" // Reuters. June 3, 2021. URL: <https://www.reuters.com/technology/ant-group-consumer-finance-unit-chongqing-wins-operating-approval-2021-06-03/>

¹³⁴ "Chong Koh Ping. China Hails Victory in Crackdown on Peer-to-Peer Lending" // WSJ. December 9, 2020. URL: <https://www.wsj.com/articles/china-hails-victory-in-crackdown-on-peer-to-peer-lending-11607515547>

¹³⁵ John A., Shen S., Wilson T. "China's top regulators ban crypto trading and mining, sending bitcoin tumbling" // Reuters. September 24, 2021. URL: <https://www.reuters.com/world/china/china-central-bank-vows-crackdown-cryptocurrency-trading-2021-09-24/>

¹³⁶ Chi S. "Alibaba: Punishment and Collaboration" // Verfassungsblog. May 20, 2021. URL: <https://verfassungsblog.de/alibaba/>

¹³⁷ "The State Administration for Market Regulation to discipline Alibaba Group Holding Co., Ltd. for "one of two" exclusive dealing practice on Chinese online retail services market". (Chinese: 市场监管总局依法对阿里巴巴集团控股有限公司在中国境内网络零售平台服务市场实施"二选一"垄断行为作出行政处罚) // State Administration for Market Regulation. April 10, 2021. URL: https://www.samr.gov.cn/xw/zj/202104/t20210410_327702.html

two” (二选一) practice, using punishments and rewards to compel merchants to post their products exclusively on its platforms. This resulted in limited freedom of choice for merchants and infringement of consumer rights.

For its abusive market behavior, the SAMR penalized Alibaba with a whopping fine of \$2.8 billion, or 4% of Alibaba domestic sales in 2019¹³⁸. Also, the company had to submit detailed reports on compliance with new requirements during three years, make sure it does not use antitrust algorithms, report M&A deals, etc.

Three weeks after the resounding Alibaba fine announcement, the SAMR homed in on Meituan, a food and groceries delivery giant. In October 2021, the regulator concluded that Meituan also abused its dominant position, forcing stores and restaurants to “choose one of two” and preventing them from using competitor platforms. The resulting fine amounted to \$527 million, or 3% of the domestic company’s sales in 2020¹³⁹.

Meituan also found itself at the center of a labor rights abuse investigation. The State Administration for Market Regulation together with six other regulators ordered online platforms to ensure food delivery riders earn above the country’s minimum wage, have access to social security, and be allowed longer intervals between deliveries controlled by algorithms¹⁴⁰.

Other e-commerce platforms got their share of SMAR rulings as well: JD, Pinduoduo, Kuaishou and Vipshop. All were fined for using devious pricing algorithms that charged customers different prices depending on their search history and purchasing behavior, and for nondisclosure of previous M&A deals as required by law¹⁴¹.

Ride-Hailing and Digital Freight

Apart from antitrust investigations, data security became the second major thrust in the government’s crackdown on Big Tech. In July 2021, two days after the biggest Chinese IPO in the United States made by Didi, the Cyberspace Administration of China (CAC) launched an inquiry into Didi app’s security and asked the company to stop registering new users for the sake of “national security and public interests”. Later, similar restrictions were imposed on two other Chinese companies that had gone public in the US: digital freight platform Full Truck Alliance and recruiting platform Kanzhun.

With 88% of the ride-hailing market, Didi deliberately pushed ahead with its IPO regardless of the regulator’s warnings and requests to wait for proper CAC

¹³⁸ Zhong R. “China Fines Alibaba \$2.8 Billion in Landmark Antitrust Case” // NYT. September 1, 2021.
URL: <https://www.nytimes.com/2021/04/09/technology/china-alibaba-monopoly-fine.html>

¹³⁹ “Chinese delivery giant Meituan handed \$527 million antitrust fine” // Reuters. October 8, 2021.
URL: <https://www.reuters.com/article/china-regulation-meituan-idUSKBN2GY0U5>

¹⁴⁰ Ye J. “China moves to protect food delivery drivers from digital exploitation” // SCMP. July 26, 2021.
URL: <https://www.scmp.com/tech/big-tech/article/3142588/china-moves-protect-food-delivery-drivers-digital-exploitation?module=inline&module=inline&pgtype=article&pgtype=article>

¹⁴¹ “China proposes rules to punish illegal e-commerce pricing” // Reuters. July 2, 2021.
URL: <https://www.reuters.com/technology/china-proposes-rules-punish-illegal-e-commerce-pricing-2021-07-02/>

approval¹⁴². Such reckless behavior led to an investigation that lasted a year and a few months and a \$1.2 billion fine, or approximately 4% of Didi's revenue in 2020¹⁴³. Didi was accused of illegally collecting and processing 64 billion units of personal data, including face recognition and driver education profiles, and also of creating major security risks for the key national information infrastructure¹⁴⁴. During the 12 months of the investigation, the "Chinese Uber" lost about 80% of its market valuation, was forced to delist from the New York Stock Exchange and has not yet resumed registration of new users¹⁴⁵.

Such ferocious punishment served to Didi is explained by the serious risk for national security. In 2020, the United States adopted the Holding Foreign Companies Accountable Act, which requires Chinese companies to comply with audit requirements lest they should be delisted in three years' time¹⁴⁶. Full accountability to US auditors is one of the most unacceptable scenarios for Beijing; even while Didi's data on movements of millions of Chinese citizens is safe for now, there is no guarantee that US authorities would not demand access to this data later. Edward Snowden's revelations in 2012 made a strong impression on China's leadership ingraining their concerns about the way American security forces exploit private technology companies.

Education Technology (edtech)

Coming as a big surprise for investors were massive restrictions that hit the education industry, which before the new regulations had been estimated at \$100 billion. In July 2021, the General Office of the CPC Central Committee and the General Office of the State Council released a joint decree approving the policy of "dual reduction" (双减). Under the new rules, the learning workload of secondary school students was to be reduced in terms of school classes and compulsory homework as well as off-site tutoring¹⁴⁷.

The new law also set tough rules for Chinese education technology (edtech) companies that were incompatible with their business models. All private firms were to become non-profit organizations, give up on their plans for stock exchange

¹⁴² Wei L., Zhai K. "Chinese Regulators Suggested Didi Delay Its US IPO" // WSJ. July 5, 2021. URL: <https://www.wsj.com/articles/chinese-regulators-suggested-didi-delay-its-u-s-ipo-11625510600>

¹⁴³ "China Fines Didi \$1.2 Billion After Wrapping Year-Long Probe" // Bloomberg. July 21, 2022. URL: https://www.bloomberg.com/news/articles/2022-07-21/china-fines-didi-1-2-billion-after-wrapping-cybersecurity-probe?utm_source=SupChina&utm_campaign=c64d6eb514-EMAIL_CAMPAIGN_2022_07_21_07_26&utm_medium=email&utm_term=0_03c0779d50-c64d6eb514-165950370&sref=QmOxnLFz

¹⁴⁴ "Cyberspace Administration of China answers journalists' questions about the decision to impose administrative punishment on Didi Global Co., Ltd." (Chinese: 国家互联网信息办公室有关负责人就对滴滴全球股份有限公司依法作出网络安全审查相关行政处罚的决定答记者问) // Cyberspace Administration of China. July 21, 2022. URL: http://www.cac.gov.cn/2022-07/21/c_1660021534364976.htm?utm_source=substack&utm_medium=email

¹⁴⁵ "Inside Didi's \$60 Billion Crash That Changed China Tech Forever" // Bloomberg. June 30, 2022. URL: <https://www.bloomberg.com/news/articles/2022-06-30/inside-didi-s-60-billion-crash-that-changed-china-tech-forever?sref=QmOxnLFz>

¹⁴⁶ "Holding Foreign Companies Accountable Act" // GovTrack. December 4, 2020. URL: <https://www.govtrack.us/congress/bills/116/s945/text>

¹⁴⁷ The General Office of the CPC Central Committee and the General Office of the State Council published "Opinions on further reducing the burden of homework and off-campus training for compulsory education students". (Chinese: 中共中央办公厅 国务院印发《关于进一步减轻义务教育阶段学生作业负担和校外培训负担的意见》) // The State Council. July 24, 2021. URL: http://www.gov.cn/zhengce/2021-07/24/content_5627132.htm

listings and foreign investments, and stop tutoring during school vacations and weekends – the most popular tutoring time.

The consequences of the July decree were truly devastating for the online education industry in China. Share value of major players nearly evaporated: New Oriental Education shares were down by 86% and its rival TAL Education Group lost more than 93% of its shares' worth¹⁴⁸. Yuanfudao and Zuoyebang, Chinese edtech unicorns – had to abandon their ambitious IPO plans. Smaller players simply went bust. The ones that survived have been trying to switch business to other countries or reconfigure their courses to attract parents instead of their children.

The reason behind the central government's prohibitory logic was the runaway parent spending on their children's education and ever mounting pressure on students. Chinese education system and high school graduation exams known as gaokao (高考) are among the most competitive in the world. In 2020, less than 2% of 11 million high school graduates managed to enter one of the 150 top-ranking universities in China¹⁴⁹. To improve graduate chances of admission, which opens access to one of the few social ladders in China, millions of parents spent fortunes on tutoring. Given that low-income families had obviously no means to compete for quality education, this only aggravated social inequality.

The Chinese government intervened not only because they were wary of growing social tensions, but because the soaring education costs stopped parents from having a second or a third child. Since 2021, Beijing has been actively promoting the "One Family, Three Children" policy (三胎政策) to fill the looming demographic gap. In 2020, the birth rate in China was down to 1.3, way below the needed 2.1, and without urgent action China will have lost half of its population by 2100¹⁵⁰.

Video Gaming

Although first regulatory restrictions for video gaming were introduced in China in back in the early 2000s, the gaming industry has for years been growing at a double-digit pace, relentlessly expanding its user base, which was the biggest in the world anyway. In 2020, nearly half of Chinese citizens spent their time playing computer games, helping game developers earn about \$40 billion that year¹⁵¹. China's Tencent and NetEase were especially successful in creating entertainment content and capturing more than half of the gaming market.

¹⁴⁸ Zaagman E. "The casualties of China's education crackdown" // TechCrunch. September 22, 2021. URL: <https://techcrunch.com/2021/09/22/the-casualties-of-chinas-education-crackdown/>

¹⁴⁹ "Why China Is Cracking Down on After-School Tutoring" // Bloomberg. June 9, 2021. URL: <https://www.bloomberg.com/news/articles/2021-06-09/why-china-s-cracking-down-now-on-education-tech-firms-quicktake?sref=QmOxnLFz>

¹⁵⁰ Pike L. "The end of China's population boom has arrived" // Grid. July 12, 2022. URL: <https://www.grid.news/story/global/2022/07/12/the-end-of-chinas-population-boom-has-arrived-how-will-the-countrys-changing-demographics-shape-its-future/>

¹⁵¹ "The Gaming & E-Sports Market In China" // Vlaanderen. December 2021. URL: https://www.flandersinvestmentandtrade.com/export/sites/trade/files/market_studies/2021%20Market%20Research%20Gaming%20%26%20E-sports%20Industry%20in%20China.pdf

For the Chinese government, video gaming has always been a confusing dilemma: on the one hand, advances in gaming technology spilled over and contributed to the progress in related technology, for example, 3D simulations of real cities or manufacturing of more powerful processors. On the other hand, China's leadership has regarded video games as "spiritual opium"¹⁵² that is addictive and harmful for young people. The fears of losing the new generation to the wrong values had eventually prevailed and in summer 2021 Chinese authorities hit the gametech sector with some of the harshest restrictions.

The government focused on three lines of regulatory action: limiting gaming time for children, censoring of game content, and the licensing system. The National Press and Publication Administration issued rules that prohibited underage users to play video games on any days except from Friday to Sunday and for no more than one hour a day¹⁵³. The second avenue of attack focused on thorough content censoring: now games should first of all emphasize a "set of appropriate values" and provide an authentic portrayal of China's historical, cultural and political background. Failure to comply with appropriate content criteria could lead to distribution license being delayed or denied altogether. While the National Press and Publication Administration approved 9369 titles in 2017 and then slightly above 2000 titles in 2018, its 2021 shortlist ran as low as 755¹⁵⁴. In 2022, China's gaming regulator took over six months to issue new licenses whereas the biggest game developers, Tencent and NetEase, had to wait in line for over 14 months¹⁵⁵.

The "screw tightening" campaign against the digital entertainment and gaming sector led to the first since 2008 reduction in the number of gamers and the total revenue of gaming companies¹⁵⁶. With stalled license approval process, major gametech players have to look for new opportunities outside China, but it remains to be seen whether video games designed for Chinese audiences could gain as much traction elsewhere.

Why the New Rules of the Game?

The above-mentioned companies and sectors that have been disciplined by regulators over the last 18 months are only a sampling of examples that clearly show

¹⁵² Deng I., Shen X. "Chinese newspaper labels gaming 'spiritual opium' and calls out Tencent, fanning fears of a crackdown" // SCMP. August 3, 2021.

URL: <https://www.scmp.com/tech/article/3143609/chinese-newspaper-labels-gaming-spiritual-opium-and-calls-out-tencent-fanning>

¹⁵³ "Notice of the National Press and Publication Administration on Further Strictly Regulating and Effectively Preventing Online Video Gaming Addiction in Minors"

(Chinese: 国家新闻出版署关于进一步严格管理切实防止未成年人沉迷网络游戏的通知) // National Press and Publication Administration. August 30, 2021. URL: <https://www.nppa.gov.cn/nppa/contents/279/98792.shtml>

¹⁵⁴ Mullin K. "Game over? China's game industry navigates post-crackdown era" // Aljazeera. April 25, 2022.

URL: <https://www.aljazeera.com/economy/2022/4/25/after-licence-freeze-chinas-game-developers-see-tough-recovery>

¹⁵⁵ "Tencent and NetEase allowed to issue new games after 14-month freeze" // Nikkei Asia. September 14, 2022.

URL: <https://asia.nikkei.com/Business/Media-Entertainment/Tencent-and-NetEase-allowed-to-issue-new-games-after-14-month-freeze>

¹⁵⁶ "China gaming crackdown: revenue, user base shrink for first time" // SCMP. July 21, 2022.

URL: https://www.scmp.com/tech/big-tech/article/3186058/china-gaming-crackdown-revenue-user-base-shrink-first-time-under?utm_source=SupChina&utm_campaign=c64d6eb514-EMAIL_CAMPAIGN_2022_07_21_07_26&utm_medium=email&utm_term=0_03c0779d50-c64d6eb514-165950370

how resolute and consistent the Chinese government has been in its efforts to tighten control over Big Tech.

It is important to understand that, far from being an overnight surprise move, this large-scale revamping of a rather immature regulatory framework, including antitrust, labor, finance and cyberspace law, had been in preparation for several years. Actually, 2021 seemed to be a relatively safe time to take decisive action compared to the trade war period that started in 2018, the first wave of the Covid-19 pandemic in 2020 or the momentous 20th CPC Congress in the autumn of 2022.

Of course, Beijing's regulatory crackdown is not an object in itself, but a part of a broader strategy to make the technology industry healthier and more sustainable¹⁵⁷. On the whole, there are two overarching goals that the Chinese government is looking to achieve by setting the new rules of the game.

Common Prosperity

In August 2021, Xi Jinping made a landmark speech calling to promote Common Prosperity (共同富裕), a policy to reduce inequality in China¹⁵⁸. Although this phrase was used by previous Chinese leaders, including Mao Zedong and Deng Xiaoping, the current President of the PRC used in a new context and with renewed vigor.

China's leadership realizes that growing social divides across Chinese society increase the risks of social unrest and unsettle the stability of the communist rule. According to the China's National Bureau of Statistics, the Gini index for China peaked at 0.49 in 2008 before sliding to 0.47 in 2020, which is still considerably above the average of OECD countries¹⁵⁹. The successful completion of an 8-year campaign to eliminate extreme poverty announced by the Communist Party in 2020 is an important but surely not the last milestone on the way towards "common prosperity". According to a member of the People's Bank of China, the target is to lower the Gini coefficient to 0.35 by 2035¹⁶⁰.

Having achieved the goal of a "medium prosperity society" (小康), Beijing went on to combat the "uncontrolled growth of capital" that, apart from exacerbating inequalities, gives too much influence to corporations as alternative centers of power. The antitrust campaign against tech giants began in fact as a part of the government's pushback against super profits and unscrupulous money-making.

¹⁵⁷ "Several Opinions on Promoting the Healthy and Sustainable Development of the Platform Economy" (Chinese: 关于推动平台经济规范健康持续发展的若干意见) // National Development and Reform Collection. January 18, 2022. URL: https://www.ndrc.gov.cn/xwd/tzgg/202201/t20220119_1312327.html?code=&state=123

¹⁵⁸ Xi Jinping: Promoting common prosperity in the course of high-quality development (Chinese: 习近平：在高质量发展中促进共同富裕) // CCTV. 17.08.2021. URL: <http://m.news.cctv.com/2021/08/17/ARTIckJsaSn9knfB4KVh9ONQ210817.shtml>

¹⁵⁹ Press Conference on China's Common Prosperity White Paper (Chinese: 中国的全面小康》白皮书新闻发布会答记者问) // National Bureau of Statistics. September 29, 2021. URL: http://www.stats.gov.cn/tjsj/zxfb/202109/t20210929_1822623.html

¹⁶⁰ Hancock T. "China Needs Cut to Inequality for Common Prosperity" // Bloomberg. November 29, 2021. URL: <https://www.bloomberg.com/news/articles/2021-11-29/china-needs-cut-to-inequality-for-common-prosperity-pbocs-cai?sref=QmOxnLFz>

The overall focus on limiting “growth at the expense of public interest” could be regarded as the motivational context for calling off the giant IPO of Ant Group which used a “predatory” lending model; for the ban on commercial tutoring that drained family budgets; restrictions against online games that are addictive for children; fines against e-commerce platforms that use price discrimination; penalizing delivery services for exploiting their drivers, etc. Prevention of unfair competition helps not only to protect consumer interests, but also to support development of innovation and small and medium-size business, which in China accounts for 80% of jobs in the private sector.

The strong correlation between the Common Prosperity Policy and the Big Tech regulation drive was made even more obvious by so-called social responsibility programs and funds launched by Chinese tech giants. Alibaba Group pledged \$15.5 billion over five years to bankroll Xi Jinping’s social project, including support for small companies¹⁶¹. Tencent has also earmarked \$15 billion to help the poor, improve healthcare and subsidize education programs¹⁶². Pinduoduo, an e-commerce giant, announced that it launched a \$1.5 billion agriculture initiative to help rural residents¹⁶³. China’s billionaires, too, joined the social initiatives, including founders of ByteDance, Xiaomi and Meituan.

Therefore, tough measures taken by Beijing against Big Tech is part of a comprehensive social and economic policy designed to make dividends of development available to every member of Chinese society. Tackling inequality has been the key personal agenda of President Xi who was keen to demonstrate strong progress on his domestic and foreign policies as he was gearing up for his third term re-election.

Real Economy Instead of Virtual Economy

Along with trying to make tech giants more socially responsible, there is one more objective that transpires from China’s regulatory rampage.

Most of the companies (over 90%) of Chinese Big Tech hit with regulatory repressions were digital platform operators like Didi and Meituan¹⁶⁴. It was platform economy (平台经济) that came under fire as the primary victim of Beijing’s antitrust campaign, whereas hardware producers, such as Huawei or Xiaomi, and companies in new sectors like electric vehicles (EV) and biotechnology remained nearly unscathed. Moreover, their market capitalization has grown severalfold over the past two years.

¹⁶¹ Liu C. “Alibaba Pledges \$15.5 Billion to ‘Common Prosperity’ Drive” // Bloomberg. September 2, 2021.
URL: <https://www.bloomberg.com/news/articles/2021-09-02/alibaba-pledges-15-5-billion-to-xi-s-common-prosperity-drive?sref=QmOxnLFz>

¹⁶² Huang Z. “Tencent Doubles Social Aid to \$15 Billion as Scrutiny Grows” // Bloomberg. August 19, 2021.
URL: <https://www.bloomberg.com/news/articles/2021-08-19/tencent-doubles-social-aid-to-15-billion-as-scrutiny-grows?sref=QmOxnLFz>

¹⁶³ Shen X. “China’s Big Tech Answers Xi’s call for ‘common prosperity’ as Tencent, Meituan and Pinduoduo launch new initiatives” // SCMP. September 1, 2021.
URL: <https://www.scmp.com/tech/big-tech/article/3147185/chinas-big-tech-answers-xis-call-common-prosperity-tencent-meituan>

¹⁶⁴ Huang R., Henderson J. “Is There a Method Behind China’s Tech Crackdown Madness?” // Macropolo. October 21, 2021.
URL: <https://macropolo.org/china-tech-crackdown-software-hardware/?rp=e>

From the central government's perspective, the problem is that the excessive power of Chinese online platforms tends to be bad for innovation as well as for market competition. The steep growth of online consumer platforms since the second half of the 2000s was largely underpinned by favorable externalities, including rising disposable incomes and state-sponsored construction of the extensive information and communication infrastructure, rather than by cutting-edge technology. But today, with enormous cash flows under their control, the same digital companies are buying up startups with strong tech potential and thus reducing competition on the market. As a result, such killer acquisitions undermine innovation itself.

China's leadership is committed to transforming the country by 2049 (100 years from the foundation of the PRC) from the "global factory" into a world's leading innovation center that can independently design and manufacture high added-value products. This goal is motivated, among other reasons, by the need to substitute American companies with local producers in such critical 21st century sectors as semiconductors, robotics, advanced medical equipment and aircraft engineering. So Chinese government has no intention to stifle the technology industry, but wants to shift it away from the American towards the German development pathway¹⁶⁵, focusing on the real economy instead of the virtual one (脱虚向实).

To accomplish this, Beijing needs to reallocate human and financial resources to the innovation-driven sectors to make them more attractive for entrepreneurs, investors and employees, thus lessening the attraction of online platforms. In 2018, as part of the government support, the Ministry of Industry and Information Technology set the objective to cultivate 600 "little giants" (专精特新) or government-nurtured startups focused on core strategic industries (by analogy with the German Mittelstand model)¹⁶⁶. To date, Chinese government has provided assistance to over 4,000 such firms and plans to increase this number to 10,000 by 2025. Recent data on Maimai, China's professional networking platform similar to LinkedIn, also indicate a gradual migration of talent from traditional tech firms like Baidu, Alibaba, and Tencent to trending manufacturing companies¹⁶⁷.

As seen from these two reasons behind the sweeping tech cleansing, technology companies must abide by two principles: one, contribute to China's public interests and common prosperity and, two, stay aligned with national priorities of industrial and innovation-based development.

¹⁶⁵ While America's Dow Jones Industrial Average is dominated by IT giants like Apple and IBM, Germany's DAX index is led by more conventional industries: automotive, chemicals, and electric equipment manufacturing.

¹⁶⁶ 'Little giants' to drive tech breakthroughs // The State Council of the People's Republic of China. November 28, 2018. URL: http://english.www.gov.cn/news/top_news/2018/11/28/content_281476409703026.htm

¹⁶⁷ "Chinese tech talent is migrating to five growing industries" // TechNode. July 26, 2022. URL: https://technode.com/2022/07/26/chinese-tech-talent-is-migrating-to-five-growing-industries/?utm_source=SupChina&utm_campaign=dce4b2ad63-EMAIL_CAMPAIGN_2022_07_26_09_22&utm_medium=email&utm_term=0_03c0779d50-dce4b2ad63-165950370

What's Next?

The abrupt souring of the business environment for Big Tech quickly crippled its attraction for investors. Five leading Chinese IT corporations lost at least 46% of their combined valuation¹⁶⁸, while the entire technology sector lost \$2 trillion of its market value, or 11% of China's GDP¹⁶⁹. Furthermore, venture financing in China hit its 8-year low in the second quarter of 2022 due to both Covid-19 restrictions and multiple new regulatory barriers in the tech sector¹⁷⁰.

New methods introduced to regulate online platforms proved to be effective, perhaps even too much so. In a fairly short time, the Chinese government went from watching Big Tech from a distance to a nearly complete sector control. Some government overreach was inevitable as evidenced by conflicting actions of different regulators that occasionally promoted opposite interests and fell over themselves trying to outstrip other competing agencies. For example, the Cyberspace Administration of China (CAC) is focused on national security, a priority that pits it firmly against other agencies with agendas dominated by economic development.

After the “shock therapy”, 2022 has been a quieter year for Big Tech in terms of government oversight, because most of the regulatory interventions had been over and the new legislation already in place. Besides, it is the wrong time to rock the boat because Beijing must get the economy back on recovery track given the modest GDP growth of 2.5% in the first half of 2022. The need to stabilize the situation was also dictated by upcoming the 20th CPC Congress XX, the highlight of Chinese political cycle over the last 5 years.

From the early 2022, the Chinese government has softened the rhetoric on Big Tech, sending positive signals to the market¹⁷¹. In May, Li Keqiang, Premier of the State Council, called to take urgent steps to support sustainable development of platform economics. Later the Vice Premier Liu He said that the government supported tech companies' IPO plans both at home and abroad. In July the State Council launched the inter-ministerial joint meeting mechanism to better link twenty government bodies for more efficient collaboration on digital economic policies. Fitting the trend are also the renewal of video game licensing, Kanzhun and Full Truck Alliance apps being allowed to register new users again, and closing of the more than a year-long investigation against Didi.

¹⁶⁸ Lee E. “Top 5 Chinese tech firms have lost nearly half of combined market cap in 2 years” // TechNode. May 9, 2022.
URL: <https://technode.com/2022/05/09/top-5-chinese-tech-firms-have-lost-nearly-half-of-combined-market-cap-in-2-years/>

¹⁶⁹ Ren S. “How Useful Is Big Tech in a Covid Lockdown, Really?” // The Washington Post. May 10, 2022.
URL: https://www.washingtonpost.com/business/how-useful-is-big-tech-in-a-covid-lockdown-really/2022/05/09/3ec9cbce-cff4-11ec-886b-df76183d233f_story.html

¹⁷⁰ “China startup funding plunges to 8-year low in Q2” // Nikkei Asia. July 26, 2022.
URL: https://asia.nikkei.com/Business/Startups/China-startup-funding-plunges-to-8-year-low-in-Q2?utm_source=SupChina&utm_campaign=dce4b2ad63-EMAIL_CAMPAIGN_2022_07_26_09_22&utm_medium=email&utm_term=0_03c0779d50-dce4b2ad63-165950370

¹⁷¹ Wu Y. “China Eases its Crackdown on the Technology Sector: Recent Developments” // China Briefing. May 23, 2022.
URL: <https://www.china-briefing.com/news/china-tech-crackdown-recent-developments-signal-easing-regulations/>

None of this easing-up, however, should be mistaken for a revision of the overall Big Tech policy. It is important to understand that new regulatory measures are there to stay in the long term as indicated by the news of the government's possible acquisition of significant stakes in private firms to establish closer public-private partnerships¹⁷². Nevertheless, Beijing could be expected to take a more balanced approach in the near future based on a transparent and predictable regulatory process. The first growth in valuations posted by Chinese online companies in four quarters could be a sign that the tech sector is adapting to the new environment and beginning to revive¹⁷³. The outlook for China's digital platforms does not need to be pessimistic because they are inherent to the development of the world's second largest economy and indispensable for China to compete on the global market.

Russia

As one of the few countries that have created their own digital platforms and ecosystems Russia has developed a regulatory regime for foreign internet platforms. Challenging external conditions and the need to protect the country against unfriendly activity on the internet called for localization of and tighter controls over international IT giants.

First of all, Russia was concerned that the gatekeepers were not complying with its national laws, evaded taxes, did not submit any reports, and ignored court rulings. Over the last few years, there have been increasing calls to legalize major global players within the Russian legal framework and establish proper communications between the parties for effective dialog with digital corporations expected to open their local offices in Russia as a key step in this direction. The legal tool that was supposed to prod them into action was Federal Law On Activities of Foreign Persons in the Information and Telecommunication Network Internet in the Territory of the Russian Federation (also known informally as the Internet Onshoring Law), which was approved by the Federation Council on June 23rd, 2021 and entered into force on January 1st, 2022¹⁷⁴. Under the new law, owners of online information services that have daily audiences in excess of 500,000 Russian users shall set up a branch, representative office or a Russian-based legal entity that would fully represent the interests of its parent company and act as the main point of contact with regulators in Russia.

By the early 2022, online companies have commenced the “onshoring” process, setting up online accounts on the website of the Russian media watchdog Roskomnadzor (Federal Service for Supervision of Communications, Information

¹⁷² Gu T., Hwang C. "China moves to take control of private tech firms with 'joint venture' deals" // Radio Free Asia. November 4, 2022. URL: <https://www.rfa.org/english/news/china/ventures-11042022140146.html>

¹⁷³ Chinese Academy of Information and Communication Technologies published a report "Chinese Internet Companies Listed on the Stock Exchange: Q2 2022 Status Report". (Chinese: 中国信通院发布《2022年二季度我国互联网上市企业运行情况》研究报告) // Sina. August 19, 2022. URL: <https://finance.sina.com.cn/tech/internet/2022-08-20/doc-imizmscv6970089.shtml>

¹⁷⁴ Law on foreign persons' activities on the internet in Russia // President of Russia. July 1, 2021. URL: <http://www.kremlin.ru/acts/news/65985>

Technology and Mass Media) and opening their offices in Russia (for example, Apple¹⁷⁵, Google¹⁷⁶ and Meta^{*177}).

Things took a dramatic turn, though, after the beginning of the special military operation in Ukraine at the end of February 2022, when some online companies announced their exit from the Russian market, like Spotify, or were blocked, like Meta* services. Those who stayed face more severe newly adopted fines for breach of the Internet Onshoring Law. The recent amendments provide for turnover-based fines ranging from 1/15 to 1/10 of the total revenue in a previous calendar year¹⁷⁸.

Another equally serious issue for the Russian authorities has been the dissemination of harmful content on the web. Moscow has been long concerned that foreign digital platforms could destabilize public order and act as tools of putting political pressure on the Russian government¹⁷⁹. To regulate online content, changes were made on February 1st, 2021, to the Federal Law on Information, Information Technology, and Data Protection, which made internet companies responsible for identifying and blocking harmful content on their platforms, including child pornography and extremist materials. Additionally, in September 2021, Roskomnadzor (RKN) started to maintain a register of social media networks that were subject to that obligation (among foreign companies included on the list are Meta*, Twitter, TikTok, Likee, and YouTube)¹⁸⁰. Failure to delete harmful information is punishable by a fine of ₺8 million and it can run as high as 20% of the infringing company's revenue for a repeat offense¹⁸¹.

Since the beginning of 2021, international digital platforms that refused to delete prohibited content have been fined a total of ₺187 million, including Meta* (₺70 million), Twitter (₺38.4 million), and Google (₺32.5). Moreover, on December 24th, 2021, the Magistrate's Court of the Tagansky District of Moscow slapped Google and Meta* for repeat offenses with unprecedented ₺7.2 billion and ₺2 billion fines, respectively¹⁸². In April 2022, Meta* was designated as an extremist organization for spreading calls to violence against Russian troops and then Roskomnadzor blocked all access to Facebook and Instagram¹⁸³.

¹⁷⁵ "Apple opens representative office in Russia" // RIA Novosti. February 4, 2022.
URL: <https://ria.ru/20220204/apple-1771053263.html>

¹⁷⁶ "Google takes steps to comply with the "onshoring" law" // Kommersant. February 25, 2022.
URL: <https://www.kommersant.ru/doc/5236725>

* A recognized and banned extremist organization in Russia.

¹⁷⁷ "Meta has met the first requirement of the "onshoring" law" // Interfax. February 22, 2022.
URL: <https://www.interfax.ru/russia/823785>

¹⁷⁸ Putin signs turnover penalty law against IT giants refusing to "onshore" // Interfax. June 14, 2022.
URL: <https://www.interfax.ru/russia/852102>

¹⁷⁹ "Foreign Ministry calls for bigger government role in internet governance" // RIA Novosti. June 7, 2021.
URL: <https://ria.ru/20210607/mid-1735986524.html>

¹⁸⁰ Roskomnadzor explained the need for social media register // Izvestia. September 23, 2021.
URL: <https://iz.ru/1225699/2021-09-23/v-roskomnadzore-obiasnili-neobkhodimost-reestra-sotcsetei>

¹⁸¹ "Owner of the fence is responsible for what is written on it" // Kommersant. May 25, 2021.
URL: <https://www.kommersant.ru/doc/4826455>

¹⁸² "Internet companies fined 187 million rubles for refusing to delete prohibited content in 2021" // Kommersant. November 1, 2021. URL: <https://www.kommersant.ru/doc/5061125?tg>

¹⁸³ "Restriction of access to Instagram social network" // RKN. March 11, 2022.
URL: <https://rkn.gov.ru/news/rsoc/news74180.htm>

Russian regulators are also focused on personal data protection. The related laws have been in place since 2006 and continuously improving with new amendments. For instance, changes to Federal Law on Personal Data were passed on 14 July 2022 establishing new rules for cross border data transfer¹⁸⁴.

To provide additional protection for Russian user data, another law was adopted in 2015 that obligated foreign companies to store all the data on Russian users inside Russia¹⁸⁵. Not all digital platforms, however, were willing to localize user data and had to be disciplined by the authorities. For example, LinkedIn, a recruiting network, was blocked in autumn 2016 for failure to comply with the Personal Data Law¹⁸⁶. In July 2021, the Magistrate's Court of the Tagansky District of Moscow awarded a fine of €3 million against Google for refusing to localize Russian user data¹⁸⁷.

The Russian government has a range of mechanisms at its disposal to put pressure on international digital platforms infringing on Russian regulations. If the worst comes to the worst, companies can be completely banned from operating in Russia as happened with Meta*. Also, international firms found in breach of Russian law can be forbidden to advertise and collect personal data¹⁸⁸. Yet another method is to slow down the traffic on offending digital platforms. In March 2021, Roskomnadzor used its cyber threat response system to slow down Twitter traffic for its refusal to filter its content, a first such intervention in the history of the Russian internet, sending a warning signal to other online companies¹⁸⁹. Finally, regulators can resort to legal action all the way to criminal prosecution.

Antitrust measures have become a separate focus for Russian regulators to prevent foreign digital platforms from monopolizing the Russian market. In February 2022, the Federal Antimonopoly Service of the Russian Federation (FAS) found Google in breach of Russian antimonopoly law. According to the agency, YouTube, owned by Google, is harming the interests of its users and restricts competition on related markets by blocking Russian channels on its video hosting platform. Google is not the only case as the FAS has probed the business practices of other tech giants too (e.g. Microsoft and Apple)¹⁹⁰.

While putting pressure on foreign IT firms, the Russian government has provided increasing support for Russian digital platforms. For example, new rules entered into force on April 1st, 2021, requiring companies to preinstall Russian software

¹⁸⁴ Federal Law No. 266-FZ dated 14 July 2022 // President of Russia. July 14, 2022.
URL: <http://www.kremlin.ru/acts/bank/48190>

¹⁸⁵ "Processing and storage of personal data in the RF. Changes since 1 September 2015" // RF Ministry of Digital Development, Communications and Mass Media. September 1, 2015. URL: <https://digital.gov.ru/personaldata/>

¹⁸⁶ "Service providers ordered to block LinkedIn" // RKN. November 17, 2016. URL: https://rkn.gov.ru/news/rsoc/news41615.htm?utm_source=lenta.ru&utm_medium=referral&utm_campaign=lenta.ru&utm_referrer=lenta.ru

¹⁸⁷ "Google fined 3 million rubles for the first time for refusing to localize Russian users' data" // Kommersant. July 29, 2021. URL: <https://www.kommersant.ru/doc/4920019>

¹⁸⁸ *Ibid.*

¹⁸⁹ Roskomnadzor has slowed down Twitter traffic. What is important to know about restrictions // RBC. March, 10, 2021. URL: https://www.rbc.ru/technology_and_media/10/03/2021/6048ca449a7947480d4791de

¹⁹⁰ "Russian antitrust watchdog on the warpath: litigating against Google and other IT giants" // Forbes. February 10, 2022. URL: <https://www.forbes.ru/tehnologii-photogallery/339115-cena-na-iphone-i-drugie-pretenzii-fas-k-mezhdunarodnym-it-gigantam>

on mobile phones and tablets, including Yandex and Gosuslugi (State Services) apps¹⁹¹. In June 2022, the Russian Ministry of Digital Development also came forward with a draft bill mandating platform to preinstall RuStore, a Russian mobile applications store, on smartphones, starting from 2023¹⁹².

The special military operation in Ukraine was a major turning point for the Russian IT sector which had to cope with huge fast-paced challenges within a short space of time both in the domestic and global environment. First, about 40,000 IT professionals left Russia in the first half of 2022¹⁹³. Although some will come back, there is no denying that this key sector of the economy has to deal with a major brain drain. Second, Western sanctions have largely shut down imports of hardware critical for Russian IT firms, including semiconductors and processors made by AMD, TSMC and Intel. Third, Russian tech giants, whose supply chains were tailored to supply lucrative international markets, have been cut off from Western countries. Some companies (e.g. 1C and Kaspersky) were banned altogether because of personal sanctions against their owners, while others lost part of their revenues because they could not transfer payments¹⁹⁴. Fourth, the economic conditions toughened at home with many companies refocusing on smaller chores at hand as they were no longer able to invest in long-term projects.

Amid the emerging new normal, Russian IT regulators responded by shifting their efforts towards providing incentives for Russian tech companies to fast-forward the import substitution drive. To make sure that the Russian IT sector continues developing advanced solutions that can replace foreign analogs, the government introduced support measures, including preferential loans made available for digital transformation projects at an annual interest rate of 1% to 5%, reduced income tax, exemption from standard regulatory checks for three years, military draft deferment for IT specialists, etc.¹⁹⁵

Many analysts, speaking at the Russian Internet Governance Forum (RIGF-2022) in September 2022, emphasized that excessive regulation in the face of unprecedented challenges and economic turmoil might be very damaging for Russian digital ecosystems and therefore it would be wiser to opt for self-regulation. They also agreed that the central objective for IT regulators should be to ensure support to national tech players and preserve the favorable environment for creating new ecosystems and platforms¹⁹⁶.

¹⁹¹ "Mandatory preinstalled software law comes into force in Russia" // TASS. April 1, 2021.

URL: https://tass.ru/ekonomika/11044599?utm_source=google.com&utm_medium=organic&utm_campaign=google.com&utm_referrer=google.com

¹⁹² "Russian Digital Development Ministry announces RuStore preinstallation on gadgets to become mandatory from 2023" // RG. July 21, 2022. URL: <https://rg.ru/2022/07/21/minicify-anonsirovalo-obiazatelnuuu-ustanovku-rustore-na-gadzhetah-s-2023-goda.html>

¹⁹³ "Reports surface on how many IT specialists have left Russia" // Gazeta.RU. May 28, 2022.

URL: <https://www.gazeta.ru/tech/news/2022/05/28/17824010.shtml>

¹⁹⁴ "Poland bans Russia's Kaspersky, 1C and Wildberries" // CNews. April 26, 2022.

URL: https://www.cnews.ru/news/top/2022-04-26_v_polshe_zapretili_deyatelnost

¹⁹⁵ Decree of the President of the Russian Federation On Measures to Ensure Accelerated Development of the Information Technology Industry in the Russian Federation // Consultant Plus. March 2, 2022.

URL: https://www.consultant.ru/document/cons_doc_LAW_410684/

¹⁹⁶ Forum News // The 12th Russian Internet Governance Forum (RIGF). URL: <https://rigf.ru/>

So today, stimulating, rather than restrictive, regulation is the order of the day for Russian IT companies. This is quite the opposite approach to foreign tech giants that as gatekeepers pose existential threats for Russian digital platforms and services.

According to the 2016 Information Security Doctrine of the Russian Federation, Russia supports equitable and mutually beneficial cooperation between all stakeholders in cyberspace¹⁹⁷. Therefore, Russia will not tolerate the unrestrained dominance of global tech giants and violations of its digital sovereignty, and will do its best to protect the national IT sector¹⁹⁸. Having said that, it is important for Russia to engage more actively in discussions to develop international technology norms and standards to make sure its voice has been clearly heard and heard.

International initiatives

Governments around the world have already taken some steps to regulate digital gatekeepers at the international level. Listed below are some examples.

In 2021, OECD and G20 leaders struck a global deal to tax income earned by multinational corporations from digital sales in a particular jurisdiction at a minimum rate of 15%¹⁹⁹. The new minimum tax rate is expected to apply to companies with an annual revenue of over €750 million (\$866 million) and generate about \$150 billion in additional global tax returns a year²⁰⁰. Under the agreement, technology giants are to pay taxes in countries where they sell their products and services even in those where they have no offices or legal presence. This global tax reform for international companies has been approved by over 130 countries, but, according to Bloomberg, it will take effect no earlier than 2024²⁰¹.

Apart from taxation, the international community is deeply concerned with the issue of cross border data transfer. Speaking at the World Economic Forum in Davos in 2019, the former Prime Minister of Japan Shinzo Abe introduced the concept of Data Free Flow with Trust (DFFT) which aims to minimize barriers to cross border data transfer by setting common regulation principles. Subsequently, the DFFT concept was included in the G20 Osaka Leaders' Declaration²⁰² and has

¹⁹⁷ Decree of the President of the Russian Federation No. 646 dated December 5, 2016 On Approval of the Information Security Doctrine of the Russian Federation // President of Russia. December 5, 2016. URL: <http://kremlin.ru/acts/bank/41460>

¹⁹⁸ There is no agreed definition for "digital sovereignty". In the Russian political context, digital sovereignty can be defined as the primacy of the state and national law in the digital (cyber)space, and also the state's control over digital infrastructure components located within the territories under its control. See: Vasilkovsky S.A, Ignatov A.A. "Internet Governance: System Imbalances and Ways to Resolve Them" // International Organizations Research Journal. 2020. Vol. 15. #4. Pp. 7–29.

¹⁹⁹ "And Dublin Too" // Kommersant. October 11, 2021. URL: <https://www.kommersant.ru/doc/5028324>

²⁰⁰ "Global Deal to End Tax Havens Moves Ahead as Nations Back 15% Rate" // The New York Times. October 8, 2021. URL: <https://www.nytimes.com/2021/10/08/business/oece-global-minimum-tax.html>

²⁰¹ "The Global Tax Revolution for Tech Giants Is Delayed to 2024" // Bloomberg. July 11, 2022. URL: <https://www.bloomberg.com/news/articles/2022-07-11/the-global-tax-revolution-for-tech-giants-is-delayed-to-2024?srnd=premium-europe>

²⁰² G20 Osaka Leader's Declaration // G20. Japan. 2019. URL: https://www.mofa.go.jp/policy/economy/g20_summit/osaka19/en/documents/final_g20_osaka_leaders_declaration.html

been recognized since then as an important initiative by G20 members²⁰³, with its intellectual core being developed by OECD think tanks. Indonesia, presiding over G20 in 2022, identified DFFT a key priority in promoting digitalization²⁰⁴.

In April 2022, the Global Cross-Border Privacy Rules Forum was established to promote interoperability and help bridge different regulatory approaches to data protection and privacy, as the declaration says. The Forum should help to set up the Global Cross Border Privacy Rules and Privacy Recognition for Processors Systems (CBPR and PRP), first-of-their-kind data privacy certifications that help companies demonstrate compliance with internationally recognized data privacy standards²⁰⁵. The founding members of the Global CBPR Forum include Canada, Japan, South Korea, the Philippines, Singapore, Taiwan, and the United States²⁰⁶.

The Christchurch Call to eliminate terrorist and violent extremist content online; the participating internet companies are committed to immediately remove any terrorism-related information from their digital platforms. To date, the Christchurch Call was supported by 58 countries (India, the USA, France, Argentina, etc.), UNESCO, European Council, European Commission, and 12 online service providers (Amazon, Meta*, Google, Microsoft, etc.)²⁰⁷. Russia and China are not among the supporters.

The Global Digital Compact, an initiative put forward by the UN Secretary General Antonio Guterres in autumn 2021. The Compact that will set out the fundamental principles of responsible behavior in cyberspace, is due to be developed and agreed before 2024. The process involves all stakeholders, from governments and the expert community to small and medium-sized businesses to common users. According to Chan Yu Ping, Senior Program Officer in the Office of the UN Secretary-General's Envoy on Technology, this document should be concerned not only with role of the government and activities in cyberspace, but also with digital platforms and user rights protection²⁰⁸.

In April 2022, a Declaration for the Future of the Internet was announced and supported by 60 countries, including the United States and all member states of the European Union. The Declaration lays out priorities for an "open, free, global, interoperable, reliable, and secure" internet, and highlights goals like affordability, net neutrality, and removing illegal content without curtailing free

²⁰³ G20 Rome Leader's Declaration // G20. Italy. 2021.

URL: <https://www.governo.it/sites/governo.it/files/G20ROMELEADERSDECLARATION.pdf>

²⁰⁴ Data Free Flow with Trust – and How That Trust Should be Built // Asia Global. September 8, 2022.

URL: <https://www.asiaglobalonline.hku.hk/data-free-flow-trust-and-how-trust-should-be-built>

²⁰⁵ "Taiwan joins US-led Global Cross-Border Privacy Rules Forum" // Taiwan Today. April 22, 2022.

URL: <https://taiwantoday.tw/news.php?unit=2&post=217999>

²⁰⁶ "New Global Cross-Border Privacy Rules Forum established by APEC CBPR members" // Allen & Overy. April 26, 2022. URL: <https://www.allenoverly.com/en-gb/global/blogs/digital-hub/new-global-cross-border-privacy-rules-forum-established-by-apec-cbpr-members>

²⁰⁷ "Christchurch "Call. Supporters" // Christchurch call.

URL: <https://www.christchurchcall.com/our-community/countries-and-states/>

* A recognized and banned extremist organization in Russia.

²⁰⁸ RIGF 2022. Russian Internet Governance Forum // RIGF. 2022. URL: <https://rigf.ru/en/press/?p=video>

expression²⁰⁹. Also, the signatories share the belief that the internet should operate as a single, decentralized system of networks, where digital technologies are used in a trustworthy way, avoiding unfair discrimination between individuals and allowing for contestability of online platforms, and for fair competition among businesses²¹⁰. However, the document provides little details of how to achieve these goals and has no binding commitments or new policy initiatives, which is its main weakness. Russia and China have not supported the initiative²¹¹.

China, in turn, is promoting its own initiative documented in a white paper “Jointly Build a Community with a Shared Future in Cyberspace” that was published in November 2022²¹². The initiative essentially encourages governments, international organizations and internet companies to embrace an approach based on multilateralism, respect for sovereignty, openness, and close coordination to strike a good balance between cybersecurity and digital development.

We have listed only some examples of international initiatives that are merely first steps towards a comprehensive regulatory framework for Big Tech on the global scale. International harmonization is extremely challenging and given the differences in regulatory approach, the outlook for laying down universal rules in the foreseeable future is rather uncertain. Achieving alignment and consensus may take years, but the benefits for all countries are obvious; this will mitigate the risks of human rights abuses, fraud, and corruption, keep the markets open, and forestall the fragmentation of the global digital environment.

²⁰⁹ The EU, US, and 32 other countries just announced a ‘Declaration for the Future of the Internet’ // The Verge. April 28, 2022. URL: <https://www.theverge.com/2022/4/28/23046652/declaration-for-the-future-of-the-internet-eu-us-regulation-commitment-announced>

²¹⁰ EU and international partners put forward a Declaration for the Future of the Internet // European Commission. April 28, 2022. https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2695

²¹¹ “Confronting Reality in Cyberspace: Foreign Policy for a Fragmented Internet” // Council on Foreign Relations. July 2022. URL: <https://www.cfr.org/report/confronting-reality-in-cyberspace/findings>

²¹² “Jointly Build a Community with a Shared Future in Cyberspace” // China Daily. November 7, 2022. URL: <https://www.chinadaily.com.cn/a/202211/07/WS63687246a3105ca1f2274748.html>

Big Tech's Response to Regulators

US Big Tech

On the whole, technology companies support the regulation trend. “Every day, we make difficult decisions on where to draw lines between free expression and harmful speech, privacy, security and other issues,” Robin Koch, a Facebook spokesman, said in a statement. “But we should not be making these decisions on our own, which is why for years we’ve been advocating for updated regulations where democratically elected legislators set industry standards to which we can all adhere²¹³”.

Quite often IT giants follow the requirements laid down by governments in different countries. Google, for example, obeyed the new rules under the Russian law for “onshoring” foreign digital platforms and registered its account on the official website of Roskomnadzor²¹⁴. Apple agreed to operate in China on the terms set by the local authorities²¹⁵. Much of corporate America has been wary of the Biden administration’s tax plans, but has been supportive of parts of the global tax agreement because “it would provide some clarity over their tax bills²¹⁶”.

Silicon Valley giants are calling on Western governments to be more actively involved in regulating confidential data protection, suppressing attempted election meddling, dealing with harmful content, and handling data portability²¹⁷. From time to time, tech firms themselves come forward with initiatives to develop common standards for the digital sector that would establish a more comfortable environment for doing business. For example, Mark Zuckerberg, while attending a meeting with European commissioners in Brussels in 2020, proposed a document titled Charting the Way Forward: Online Content Regulation²¹⁸. In 2021, during the inaugural meeting of the US–EU Trade and Technology Council, Google together with other companies and trade groups urged officials to reach a deal on trans-Atlantic data flows²¹⁹.

²¹³ “Facebook Hearing Strengthens Calls for Regulation in Europe” // The New York Times. October 6, 2021.
URL: <https://www.nytimes.com/2021/10/06/technology/facebook-european-union-regulation.html>

²¹⁴ “Google sets up an account on Roskomnadzor website” // RIA Novosti. February 25, 2022.
URL: <https://ria.ru/20220225/google-1775164469.html>

²¹⁵ “Point of no return: implications of billion-dollar fines for Google and Meta” // Forbes. December 24, 2021.
URL: <https://www.forbes.ru/tehnologii/451023-tocka-nevozvratna-cem-grozat-miliardnye-strafy-google-i-meta>

²¹⁶ “Global Deal to End Tax Havens Moves Ahead as Nations Back 15% Rate” // The New York Times. October 8, 2021.
URL: <https://www.nytimes.com/2021/10/08/business/oecd-global-minimum-tax.html>

²¹⁷ Tolstukhina A. “Business and the State: Together into the Brave “Cyber World”?” // RIAC. May 13, 2020.
URL: <https://russiancouncil.ru/en/analitics-and-comments/analitics/business-and-the-state-together-into-the-brave-cyber-world/>

²¹⁸ “EU rejects Facebook’s proposals for online regulation” // Financial Times. February 17, 2020.
URL: <https://www.ft.com/content/81ae47b0-51a9-11ea-8841-482eed0038b1>

²¹⁹ “The latest on EU, US data flows” // Iapp. September 30, 2021.
URL: <https://iapp.org/news/a/agreement-needed-for-eu-us-data-flows/>

* A recognized and banned extremist organization in Russia.

Among the main reasons for Big Tech's calls for governments to regulate the cyberspace are endless litigations, investigations and scandals eroding user trust. The last one is especially damaging as dwindling customer loyalty due to misinformation; personal data leaks or media account blocking takes a painful toll on tech corporations. With this, a global platform outage, such as the one that downed Meta* services in October 2021, can leave a deep and lasting dent in a company's reputation. Rather than demonstrating the importance of the platform in people's everyday life, such incidents make it seem unreliable, prompting users to look for alternatives. Even gatekeepers, in spite of their power and influence, are afraid of competition. Rivals may exploit user pain points to rapidly grow and win over their custom. TikTok is a perfect example of a non-Western startup that quickly found its segment and audience to become a formidable competitor for Meta's* digital platforms.

It is worth noting, however, that tech giants agree to regulation within reasonable bounds without crossing the red lines of their business interests. Meta*, for example, has opposed some key areas of the EU proposals about meeting transparency requirements, conducting risk assessments and doing more to detect illegal content, goods and services²²⁰. Apple, in turn, warns that the Digital Markets Act, which allows sideloading of apps on the iPhone outside of the App Store, would "destroy iPhone security" as some companies would be able to avoid privacy rules and track users against their will²²¹. Along with European regulatory proposals, American initiatives, too, take their share of corporate criticism. For example, The American Innovation and Choice Act sparked heated rhetoric from the tech companies that oppose it. The four biggest tech firms and their third-party groups spent \$35.3 million alone during the first half of 2022 on lobbying to protect their interests²²².

Of course, regulation is a highly sensitive issue for IT giants, especially with regard to maintaining their status quo on the market. None of the companies wants to lose its influence and multibillion-dollar profits. Moreover, tech firms are look not merely to retain but reinforce their market position. They continue to invest in all upcoming high-end sectors (from driverless cars to quantum computing) to make sure they do not become another cautionary example like IBM which at some point in its history missed out on the next major technology turn and lost its alias of "America's most profitable firm".²²³

American Big Tech lobbyists are arguing fiercely against excessive regulation, proffering the following reasons:

* A recognized and banned extremist organization in Russia.

²²⁰ "Facebook Hearing Strengthens Calls for Regulation in Europe" // The New York Times. October 6, 2021.
URL: <https://www.nytimes.com/2021/10/06/technology/facebook-european-union-regulation.html>

²²¹ "Tim Cook Delivers Speech Emphasizing Apple's Opposition to Sideloading" // MacRumors. April 12, 2022.
URL: <https://www.macrumors.com/2022/04/12/tim-cook-global-privacy-summit/>

²²² "Tech Antitrust Bill Threatens to Break Apple, Google's Grip on the Internet" // Bloomberg. July 26, 2022.
URL: <https://www.bloomberg.com/graphics/2022-tech-antitrust-bill/>

²²³ "Big Tech's Supersized Ambitions" // The Economist. January 22, 2022.
URL: <https://www.economist.com/leaders/2022/01/22/big-techs-supersized-ambitions>

- This could put American tech companies at an unfair disadvantage to their foreign competitors, who wouldn't have the same legal obligations²²⁴.
- US government oversight over Big Tech would jeopardize national security and America's ability to compete with China²²⁵.
- It may thwart the process of creating and deploying innovations²²⁶, which could have immense implications particularly at a time of widening confrontation with China.

It can be concluded from the above that American tech giants will continue to resist what they see as excessive regulation, lobby their interests and vigorously promote their own regulatory initiatives for the digital sector.

China's Big Tech

In spite of all the severity of Chinese regulatory storm that had a big impact on digital firm operations, the response of China's tech giants was as conciliatory as it gets. Unlike the Western Big Tech, which is occasionally jousting with regulators on equal terms, the biggest tech players in China are way more dependent on Beijing and do not dare to defy it. None of the companies have publicly questioned regulator rulings or filed a court appeal to challenge investigation findings.

After being served with a \$2.8 billion fine, Alibaba released a statement saying that it accepted the penalty and would ensure its compliance "with determination"²²⁷. "The penalty issued today served to alert and catalyze companies like ours," Alibaba said, exactly what most regulators expected to hear. Didi, in a similar vein, admitted, immediately after CAC launched its investigation, that Didi Chuxing app violates PRC laws and promised to rectify any problems²²⁸. The story of Jack Ma, Alibaba's founder, who had rather openly begged to disagree with the government's policies before Ant Group's IPO was canceled but who then kept a very low profile for quite some time after the start of the antitrust campaign, sent a clear warning message to all those who might have had ideas about trying to resist.

²²⁴ "Will the US follow the E.U. playbook to crack down on Silicon Valley giants?" // The Washington Post. September 28, 2021.

URL: <https://www.washingtonpost.com/politics/2021/09/28/will-us-follow-eu-playbook-crack-down-silicon-valley-giants/>

²²⁵ CNN Business Exclusive: Google CEO reacts to looming US antitrust probes for first time // CNN Business. June 17, 2019.
URL: <https://edition.cnn.com/2019/06/14/tech/sundar-pichai-google-antitrust/index.html>

²²⁶ "New Digital Realities; New Oversight Solutions in the US The Case for a Digital Platform Agency and a New Approach to Regulatory Oversight" // Harvard Kennedy School. August 2020.
URL: https://shorensteincenter.org/wp-content/uploads/2020/08/New-Digital-Realities_August-2020.pdf

²²⁷ "A Letter to Our Customers and to the Community" // Alibaba. April 10, 2021.
URL: <https://www.alizila.com/a-letter-to-our-customers-and-to-the-community/>

²²⁸ "DiDi Announces App Takedown in China" // Businesswire. July 4, 2021.
URL: <https://www.businesswire.com/news/home/20210704005014/en/DiDi-Announces-App-Takedown-in-China>

Conclusions

Despite sharing common problems, the EU, the U.S., China, and Russia have all taken different paths to bring Big Tech into line.

The European Union has made the greatest legislative progress by taking a pre-emptive approach to tech regulation. The EU adopted one of the most comprehensive and strict laws on personal data protection, the General Data Protection Regulation (GDPR), followed by the Digital Markets Act and the Digital Services Act aiming to create a safer digital environment and stimulate innovation and competition in the IT sector. With all this, it is important to emphasize that the EU does not renege on the concept of a free, common and undivided internet, but wants to make sure it guarantees privacy, security and fair competition. EU polices are mostly focused on human rights. While recognizing the commercial value of data, European policymakers give priority to privacy and security. The EU relies on the extraterritorial reach of the DMA, DSA and GDPR to make other countries align their practices with theirs²²⁹.

The situation in the United States is more uncertain in terms of codifying the rules of the game for tech giants. America is market-oriented and its data management policy is designed to help unlock economic potential. Unlike the EU, the United States prefers to use trade deals or international organizations rather than pass legislation to facilitate cross border data flows. Despite all the promises made by the Biden administration, America still lacks laws regulating Big Tech at the federal level leaving the industry to regulate itself. Nevertheless, the tech regulation trend has not bypassed the United States with its growing dissatisfaction with the way the digital reality has been evolving. The last few years have seen dozens of regulation bills being drafted, several lawsuits filed by attorneys general and the US Department of Justice against tech offenders and some of them slapped with hefty fines.

China is concerned with national security and sovereignty. Hence, the restrictions on cross border data flows and localization requirements. Even with its limited experience of antitrust regulation, it took China little time to effectively curtail its tech sector down to size. For instance, the Alibaba probe took only a few months, whereas in the United States antitrust investigations can drag on for years. However, the restrictions and turnover-based fines introduced by Chinese regulators proved to be even too effective, toppling the shares of Alibaba, Tencent and other tech giants that, nevertheless, have not taken the chances of resisting the government's attack.

Russia, like China, is more focused on ensuring national security and sovereignty. It has taken steps to localize foreign IT companies and provide information security. The beginning of the special military operation in Ukraine accelerated the process of sovereignizing the Russian cyberspace and providing enhanced sup-

²²⁹ "Data Free Flow with Trust – and How That Trust Should be Built" // Asia Global. September 8, 2022. URL: <https://www.asiaglobalonline.hku.hk/data-free-flow-trust-and-how-trust-should-be-built>

port for local tech firms that are expected to replace their foreign counterparts on the Russian market.

The above tech regulation models each have their specific benefits. The adopted EU regulations maximize user interests and personal data protection; the US approach tips the balance in favor of the tech corporations, helping the United States to maintain its leadership in technology; China has quickly strong-armed its Big Tech to toe the line of the public good; and Russia has created a stimulating environment to support its national IT sector. As for their limitations, the UNCTAD Digital Economy Report 2021 identified such common challenges of Big Tech regulation as lack of coordination between regulators, insufficient communications with the private sector, use of ambiguous definitions of key concepts, and inadequate technical requirements²³⁰.

Today, coming to terms on an international policy to regulate Big Tech is an uphill fight, while the outlook for laying down universal rules and standards is highly uncertain. At the same time, competition is tightening with countries striving for leadership in digital technologies and solutions and in development and implementation of regulatory policies, standards and mechanisms. The closest cooperating partners are the United States and the European Union that discuss digital policies within the framework of the US-EU Trade and Technology Council. However, the rule-making process should not be unilateral and exclusively Western-centric.

The most dangerous scenario would be the fragmentation of the global digital economy with competing data governance policies, different antitrust philosophies and incompatible technology standards. The solution to this problem lies in building trust between global actors and coordinating their efforts to establish the rules of the game for the ICT environment.

Tech giants, on the other hand, should strive to change their image and business models, to make them more human-centric and transparent. Hopefully, government pressure, user exodus²³¹ and tumbling revenues will eventually push them towards that direction.

²³⁰ Digital Economy Report 2021 // UNCTAD. 2021. URL: <https://unctad.org/webflyer/digital-economy-report-2021>

²³¹ "Facebook loses users for the first time in its history" // The Washington Post. February 3, 2022. URL: <https://www.washingtonpost.com/technology/2022/02/02/facebook-earnings-meta/>

Appendix

Global Technology Companies: Summary Profile

Company	Head Office	Market valuation, end of 2022	Core business and services
Apple Inc.	California, USA	\$2.35 trillion	Personal computers and mobile devices Software Augmented and virtual reality
Microsoft Corp.	Washington, USA	\$1.86 trillion	Unmanned vehicles Information technologies Software IT services Cloud platform (Azure)
Alphabet Inc.	California, USA	\$1.3 trillion	Mixed reality technology Web search and advertising services (Google); Web maps (Maps, Waze) Mobile operating system (Android) Video (YouTube) Cloud services (Google Cloud Platform); Software
Amazon Inc.	Washington, USA	\$928 billion	Technology for unmanned vehicles E-commerce platform Cloud computing services (Amazon Web Services) Virtual and augmented reality
Meta* Platforms Inc.	California, USA	\$270 billion	Unmanned vehicles (Zoox) Social media (Facebook, Instagram) Messenger (WhatsApp); Digital advertising services Equipment and software for virtual and augmented reality (Reality Labs)
Tencent Holdings Ltd.	Shenzhen, China	\$376 billion	Social media (WeChat, QQ) Online payment system (WeChat Pay) E-commerce solutions Video gaming
Alibaba Group Holding Ltd.	Hangzhou, China	\$241 billion	E-commerce platforms (Taobao, Tmall) Financial services (Ant Group) Cloud services (Alibaba Cloud)
Baidu Inc.	Beijing, China	\$48 billion	Web search platform Digital advertising services Unmanned vehicles

* A recognized and banned extremist organization in Russia.

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Russian International Affairs Council

The Russian International Affairs Council (RIAC) is a non-profit organization focused on developing practical recommendations for all Russian foreign affairs agencies, public and private companies, and other organizations that are actively involved in international activities.

RIAC engages experts, political leaders, entrepreneurs and members of civil society in public discussions with the aim of increasing the effectiveness of Russian foreign policy.

Along with research and analysis, RIAC is involved in activities aimed at creating a solid network of young global affairs and diplomacy experts.

RIAC is an active player on the public diplomacy arena, presenting Russia's vision on the key issues of global development on the international stage.

RIAC members are the leaders in Russia's foreign affairs community – diplomats, businesspeople, scholars, public leaders and journalists.

RIAC President Igor Ivanov, a Corresponding Member of the Russian Academy of Sciences, served as Minister of Foreign Affairs of the Russian Federation from 1998 to 2004 and Secretary of the Security Council from 2004 to 2007.

Andrey Kortunov is the Director General of RIAC. From 1995 to 1997, Dr. Kortunov was Deputy Director of the Institute for U.S. and Canadian Studies of the Russian Academy of Sciences.

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