

Let the public decide on Big Tech regulation

BUSINESS

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to be older, conservative types who are historically more likely to align themselves with large corporations.

As one legal scholar pointed out to me, such judges are reluctant to be seen as people who don't understand complexity, even when it's in a realm far outside their own. This may make them more likely to agree with the arguments put forward by expert witnesses — the Nobel laureates who construct auction models, for example — than average people who are willing to admit they simply don't get it.

This certainly fits my own experience. I've been amazed in my 30 years as a journalist how often just saying, "I don't understand — explain this to me again," can lead to an "aha" moment. When experts can't explain a complex concept in plain terms, they either don't understand it themselves, or are trying to get something over on the journalist.

"Technologists often use a lot of magical language to explain fundamental concepts," says Saffron Huang, a former Google DeepMind engineer who now runs a policy organisation, the Collective Intelligence Project, which aims to educate the public about technology. "But it's not magic. It's linear algebra."

Deconstructing complexity is something that this justice department is quite serious about. "Think about what happens when you check a weather forecast or purchase your morning coffee," said Kanter in a speech a year ago about modernising merger guidelines. "In seconds, whether you see them or

not, you interact with dozens of distinct services that share complex interactions and business relationships. Many present an opportunity to create or exploit market power."

Not only is Kanter putting the business model of surveillance capitalism in plain terms for the public, he wants them to weigh in on how antitrust policy should evolve. "The views of consumers, workers, innovators, and others on the ground feeling the harms of market concentration present an incredibly valuable perspective for our efforts," he said. "Here is our message to the entire American public: please share your views — we need your input and we care what you think."

This is a very different approach to the one that regulators and politicians

took towards complexity in the wake of the 2008 financial crisis. Back then, there were endless wonky conversations about topics such as tier one capital levels, leverage ratios and whether specific deals constituted hedging or proprietary trading. That's not to say that these aren't important issues. But there was far less discussion about whether banking was actually serving the needs of society and real people.

I remember a conversation in 2013 with a former Obama administration official who had been a key player during the crisis. He insisted that post-crisis financial regulatory efforts weren't being unduly influenced by Wall Street lobbyists. When I pointed out academic research showing that 93 per cent of regulatory consultations on the most contentious parts of the Dodd-Frank Act were with banks themselves, his disarming response was: "Who else should we have taken them with?"

But the current justice department, and the Biden White House in general, is working hard to avoid that kind of cognitive capture. The New Brandeis school

of legal theory — of which Kanter, Federal Trade Commission chair Lina Khan and former White House antitrust adviser Tim Wu are part — is built on the idea that power exists in the political economy and it can't be modelled algorithmically. To them, "antitrust law is something that belongs to the public, not judges or an elite legal fraternity," says Matt Stoller, the director of research at the American Economic Liberties Project and author of *Goliath*, a history of monopoly power in the 20th century.

There are, of course, risks to policy by populism. Look at Britain's departure from the EU after the 2016 referendum, which has left the country poorer. But that's how democracy works. Allowing important decisions over key issues like corporate power and the rules of surveillance capitalism to be made by technocrats behind closed doors also carries dangers. The justice department is quite right that ordinary people should be able to hear the arguments.

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