

How An Amazon HQ2 Slayer Plans to Take on Big Tech
Crain's New York Business
Ryan Deffenbaugh
August 19, 2020
[\[Link\]](#)

Mark Zuckerberg, chief executive officer and founder of Facebook, Jeff Bezos, founder and chief executive officer of Amazon, Sundar Pichai, chief executive officer of Alphabet Inc., and Tim Cook, chief executive officer of Apple are displayed on a monitor while swearing in during a House Judiciary Subcommittee hearing in Washington, D.C., on July 29.

One of Amazon's top opponents in Long Island City has launched a new fight against Big Tech, taking a page out of the European law books to make New York a hotbed of antitrust action.

New York companies and regulators would be able to more easily sue tech giants for anti-competitive behavior under the proposal from Queens state Senator Michael Gianaris. He described the bill as bringing New York's antitrust laws 'into the 21st Century.'

New York's statutes haven't been updated for more than a century, he said, and are weaker than federal regulations for what constitutes monopolistic behavior. State prosecutors can currently only go after companies involved in anti-competitive conspiracies, such as when two firms team up on big-rigging or price-fixing.

But Gianaris said that big tech companies are taking actions unilaterally that appear monopolistic. Google, for instance, has been accused of directing search results toward its own products—a charge the company denies.

"So competitors are blocked from that audience but it has been a struggle to figure out what to do about that from a regulatory perspective," Gianaris said.

The bill—which has the backing of state Attorney General Letitia James—would match New York's standards to federal laws, allowing regulators to bring cases against companies for individual monopolistic behavior. The bill would also open the door to more private class-action lawsuits for antitrust actions and boost the penalties for criminal antitrust cases, up from \$1 million to \$100 million.

Antitrust experts say the proposal goes a step beyond federal law by making it illegal for a company to abuse its "dominant position" in the market.

"The bill does not define 'dominant position,' nor does it specify what constitutes an 'abuse,'" noted a legal analysis by the firm Paul, Weiss. "These concepts, which are similar to existing law in the European Union, may (depending on how courts interpret them) extend beyond U.S. law concepts of monopoly power and anti-competitive conduct."

Europe has been much stricter on alleged anti-competitive behavior from tech giants than the U.S., already levying more than \$9 billion in fines against Google since 2018 for various offenses.

European law comes closer to treating dominance in a market as a "wrong in and of itself," explained Benjamin Sirota, a former DOJ antitrust prosecutor now with the firm Kobre & Kim. In the U.S., however, "it is not enough to just be big, you have to show you got big or continue to be big by doing something that is deliberately anti-competitive."

The Congressional hearings on Google, Amazon, Facebook and Apple at the end of July prompted a push from Gianaris for the bill, which had been filed in Albany a week earlier.

"There's a long history in this country of states stepping in when the federal government doesn't, and we can often act as a laboratory for policy," he said.

Gianaris acknowledged the bill is still a work in progress and the exact wording could change before a vote next year. Assemblyman Jeffrey Dinowitz of the Bronx is sponsoring a companion bill.

The bill comes as the state attorney general's office is leading a multi-state antitrust investigation into Facebook and participating in a separate probe of Google.

"As states reinvigorate their antitrust laws, they are remembering how to flex those muscles again, and they have a lot of say on commercial activities within their borders," said Shaoul Sussman, a legal fellow at the Institute for Local Self-Reliance, which supports greater antitrust enforcement.

Tech:NYC, the lobbying group whose founding members include Google and Facebook, is still reviewing the bill and not yet offering direct concerns, said Executive Director Julie Samuels. She said that lawmakers generally should "think about the current environment and what we can do to attract more jobs to New York."