

**Silence No More:**

# Addressing Anti-Competitive Opportunity Hoarding in the Tech Industry

**Cierra Robson,**  
Doctoral Student in Sociology & Social Policy, Harvard University

**Ruha Benjamin,**  
Professor, Department of African American Studies, Princeton University

## Summary

In this paper, we examine the racial dimensions of five recently proposed antitrust bills targeting the tech industry. Racial inequity has always been maintained by formal laws and policies (i.e., de jure discrimination) and informal norms and practices (i.e., de facto discrimination). While the aforementioned bills prevent de jure anti-competitive behavior, they do not completely address de facto discrimination. Drawing upon the concept of *opportunity hoarding* (Tilley 1998), in which members of privileged social groups monopolize valuable resources to maintain their advantage over subordinated groups, we argue that workplace discrimination stifles opportunities for Black, Indigenous, and people of color (BIPOC) talent within the tech industry and is, therefore, relevant to tech policy debates. To advance racial equity, advocates must address how workplace culture perpetuates opportunity hoarding, and proposed legislation must be combined with systemic efforts to directly address racism in the tech industry.

# Introduction

In June 2020, two Black women, Ifeoma Ozoma and Aerica Shimizu Banks, resigned from Pinterest and filed complaints over wage discrimination and retaliation at the social media company. When they began to speak publicly about the case, their lawyer informed them that [due to non-disclosure agreements](#) (NDAs) they had signed before starting their jobs there, they were only allowed to discuss the gender discrimination, but not the racism, they experienced. The experiences of Ozoma and Banks illustrate that conversations about antitrust must also attend to racial equity. While many understand NDAs as a neutral method of keeping the market competitive by preventing companies from stealing ideas from one another, this case illustrates that NDAs can prevent marginalized tech workers from proper protection against discrimination. Legal mechanisms of ensuring competition, then, can have detrimental consequences for racial equity, even if the laws themselves do not explicitly mention race.

In this paper, we consider the relationship between five proposed antitrust bills that purport to foster fair and healthy competition in the industry and the racism that Ozoma, Banks, and many other BIPOC tech workers face. We find that laws against well-known anti-competitive practices are not enough to ensure racial equity. Instead, this legislation may replicate existing discriminatory practices throughout the industry and perpetuate an antitrust environment even after antitrust legislation is passed.

Over the spring and summer of 2021, five antitrust bills were proposed in the U.S. Congress specifically targeted at preventing Big Tech companies from accumulating too much power through anti-competitive practices. Two bills are aimed at developing an infrastructure for competition within the industry, while three others are aimed at halting current anti-competitive practices. While legislators have taken a step in the right direction by creating formal laws and policies against anti-competitive behavior or de jure antitrust regulation, we argue that these bills alone are insufficient to address de facto anti-competitive practices or those maintained by informal norms and practices. The bills that aim to build infrastructure for competition allow discriminatory practices of the largest companies to proliferate throughout the industry. The bills that aim to regulate anti-competitive behavior do not address how workplace culture within the industry shapes the future of competition.

In what follows, we explore these five bills with an eye to racial equity. After describing the distinction between de jure and de facto discrimination and introducing the five antitrust bills, we argue that the bills to impede anti-competitive behavior should also consider how racist norms and practices in the workplace dampen competition by facilitating opportunity hoarding. Next, we describe how the infrastructure bills reinforce racism throughout the industry by making

discriminatory practices of the largest tech companies portable to newer firms. Throughout, we focus on the documented experiences of BIPOC tech workers to explore how de facto discrimination prevents them from transitioning to higher ranked jobs or starting their own businesses. We discuss their experiences of racist, sexist, and microaggressive workplace cultures, which leave many BIPOC tech workers disaffected and frustrated, often leading to negative performance reviews and high rates of job turnover. As a result, not only are BIPOC employees in the tech industry disadvantaged in future hiring processes, they are also less inclined to work within the tech sector as entrepreneurs themselves.

We conclude by arguing that in order to advance racial equity in the tech regulatory policy debate, advocates must not lose sight of the more subtle processes that can push out prospective entrepreneurs of color. While proposed antitrust legislation focuses on formal anti-competitive practices, it should be coupled with legislation that addresses de facto anti-competitive behavior in order to fully advance racial equity in the tech industry.

## De Jure vs. De Facto

Racial inequality has always been maintained by formal laws and informal norms. While many recognize that explicitly racist laws and policies can contribute to racial inequity, even facially neutral laws that do not explicitly deal with the norms and practices of racism can maintain inequality. Unlike anti-miscegenation laws which prohibited marriage between races or the Three-Fifths Compromise which counted enslaved Black Americans as three-fifths of a person in census counts to apportion congressional representation, laws that do not explicitly focus on race are often viewed as neutral. Yet, scholars have documented how even laws that in writing—de jure—promote racial equity can in fact—de facto perpetuate racialized harm.

The tension between de jure and de facto segregation is evident in the landmark civil rights case, *Brown v Board of Education* which, in 1954, ruled that state laws that followed the “separate but equal” doctrine to promote school segregation were unconstitutional. Yet today, [public schools in America are still segregated](#) with detrimental effects especially for students of color. In law, Brown prohibited segregation; in fact, segregation continues to proliferate as social processes like white flight, gentrification, and school tracking (assigning students to upper and lower-level classes based on test scores and teacher recommendations) perpetuates geographic and educational separation across racial groups.

Following the civil rights movement, lawmakers began to create laws that did not mention race in the text. While the prevailing logic maintained that laws that did not explicitly mention race could not negatively impact racialized groups, countless examples show that race neutral policies would, in fact, bolster racial discrimination precisely by ignoring the context of racism and white supremacy that shape history and society. Political scientist [Ira Katzelson shows](#) how seemingly neutral laws like the Servicemen's Readjustment Act or the G.I. Bill of 1944, Social Security, and minimum wages laws de jure allowed all veterans to receive education, housing, and other social benefits, but de facto systematically barred Black Americans from receiving these benefits. While the text of the policies never explicitly mentioned race, they did bar those who worked in agricultural or service industries from many benefits. Due to widespread employment discrimination, Black Americans were typically only allowed to work in agriculture or as domestic servants, and thus, they were unable to reap the benefits that would go on to create a predominantly white middle class today.

The distinction between de jure and de facto discrimination yields a substantive point and an analytical one. First, the substantive: as these examples and countless others show, laws can be implicated in maintaining racial injustice even when they do not explicitly draw on race as a concept. Thus, all laws—even the most mundane and seemingly removed from the matter of race—should be evaluated for their potential impacts on racial equity. For this reason, the distinction between a goal being accomplished de jure and it being accomplished de facto is a useful analytical device. While typically used to describe discriminatory practices, the distinction between de jure and de facto can be meaningfully applied to any legislative goal, including antitrust policy. In what follows, we apply this point to five proposed antitrust policies, examining whether they are likely to foster a competitive tech industry and their impact on racial equity.

## Overview of Antitrust Bills

Over the past year, Congress proposed five bills aimed at regulating the tech industry. These bills were developed after at least five years of rare bipartisan support surrounding the regulation of Big Tech. While Republicans argued that the largest platform companies curbed free speech, Democrats argued that the companies continued to spread misinformation with detrimental consequences for democracy. Such debates had one thing in common: Big Tech would need to be regulated by government actors. Shielded from most legal attacks by [Section 230 of the Communications Decency Act](#), a law stating that the tech companies would not be held responsible for content posted on their own platforms, the industry seemed untouchable to legal claims about platform content itself. Antitrust law, or legislation aimed at regulating monopolies and promoting fair competition, emerged as the easiest solution; many of the largest tech

companies had a monopoly over digital space, and the companies had so much capital that they bought their competitors to maintain these monopolies.

Thus began the coordinated strategy: in only one year, Congress held several [hearings](#) during which the CEOs of the largest tech firms testified about their business practices. Nearly [all 2020 Democratic Presidential candidates](#) vowed to “break up Big Tech.” Joe Biden [appointed Lina Khan](#), a known adversary of Big Tech, to be the chairwoman of the agency responsible for enforcing antitrust law, the Federal Trade Commission (FTC). Soon after, the FTC developed a set of [guidelines for Truth, Fairness and Accountability](#) in the tech industry which urged companies to “hold yourself accountable—or be ready for the FTC to do it for you.” Following this series of developments, these five antitrust bills represent one of the first legislative attacks on the industry.

Looming in the background of these legislative conversations was the fact that these companies perpetuate racial inequality by [making technologies that harm marginalized groups, vastly under-hiring people of color](#), and allowing [racist and misogynistic workplace cultures](#) to proliferate. While conversations about racial equity in the tech space are seemingly far removed from conversations about anti-competitive behavior, these two issues are more closely aligned than it may appear. In fact, the industry’s problem with racial inequity persists *because* of anti-competitive practices: customers continue to support companies that make discriminatory technologies because there are no reliable alternatives; tech talent interested in advancing their careers have little choice but to work in an actively microaggressive and antagonistic environment because their careers depend on it. Yet, despite these links between discriminatory practices and anti-competitive practices, the proposed legislation did little to address the discrimination occurring in Big Tech. In the next section, we detail these five bills and their benefits and detriments with respect to racial equity, focusing first on those that aim to curb anti-competitive behavior, and second on those that build infrastructure for a competitive market. We argue that opportunity hoarding—concept sociologists use to explain how systems of oppression like racial inequality remain durable—is in itself an anti-competitive practice which the proposed legislation does not address.

## Bills Addressing Anti-Competitive Behavior

In a direct attack on anti-competitive practices, Congress proposed a suite of three bills taking aim at the anti-competitive practices of tech companies. These bills punish companies for certain anti-competitive behaviors, but does not directly address how opportunity hoarding and similar processes contribute to anti-competitive behavior.

[The American Choice and Innovation Online Act](#) prevents platforms from upranking their own products and services. Google, for example, cannot promote its own products when someone searches for all products. Relatedly, [The Ending Platform Monopolies Act](#) prevents platform companies from being tempted to violate the American Choice and Innovation act. It prevents tech companies from upranking the products and services of other companies that they might stand to profit from through investments. Finally, [The Platform Competition and Opportunity Act](#) prevents large platform companies from acquiring smaller firms that are—or could be—competition in the future.

In a vacuum, these laws are facially neutral: they prevent companies from participating in anti-competitive practices in ways that are seemingly removed from any conversation about racial equity. Yet, when analyzed within their social context, these laws fail to prevent anti-competitive practices in one key area: the development of *future* companies.

We argue that racist and microaggressive workplace cultures discourage BIPOC workers so much that they are incentivized to leave the industry altogether. As a result, these bills do not address a key mechanism of *future* anti-competitive behavior, despite attempting to prevent such behavior.

# Opportunity Hoarding as Anti-Competitive Behavior

There is growing documentation that tech companies are [less than hospitable to BIPOC employees](#). Not only do BIPOC workers face daily microaggressions and blatant racism, but they are often prompted by their managers to teach white coworkers about diversity, equity, and inclusion (DEI). Notably, Black Americans make up about 14 percent of the country's workforce, but only 5 percent of the tech industry.

While workers in Silicon Valley are known to have access to many companies, such that they can rapidly transfer between companies and even start their own businesses, many BIPOC employees experience *predatory inclusion*, defined by McMillan Cottom (2020) as the inclusion of marginalized individuals into “democratizing mobility schemes on extractive terms.” While DEI goals prompt tech to hire more BIPOC talent, those who join are often barred from succeeding because they face gendered racism and an overall lack of support. Discouraged by the work environment, some opt to drop out of the industry altogether.

Such predatory inclusion discourages—and often creates roadblocks for—BIPOC employees hoping to pursue a career in tech as employees at other firms or as entrepreneurs themselves. In so doing, the workplace culture of Big Tech robs them of future opportunities and thereby perpetuates anti-competitive behavior.

The concept of *opportunity hoarding* emerged, in part, to explain how inequality makes workplace organizations more efficient. [Coined by Charles Tilley in the 1990s](#), opportunity hoarding denotes the process whereby categorically bounded groups concentrate opportunity within their own networks. As similar groups of people are shuttled into new work environments, they replicate routine habits and workplace models that have worked in the past rather than trying new ones. As time goes on, and those who are a part of the organization recognize these patterns as the keys to success, workers—even those who are exploited—come to replicate the practices. Together, these processes create *durable inequality*, long standing inequality among social groups which, on its surface, can seem static or immutable.

The idea that the [Tech Bro culture of Silicon Valley negatively impacts BIPOC employees](#) is becoming common knowledge: racist, misogynistic, and otherwise toxic workplace culture in Silicon Valley are both product and consequence of opportunity hoarding. As those in high-ranking tech leadership positions use their own networks to fill roles in existing and new companies, BIPOC employees are systematically excluded or pushed out. As new companies emerge, these toxic workplace environments are replicated and become widely accepted as essential to success in Silicon Valley among those in positions of power. Over time, employees in even the newest

companies come to understand toxic workplace environments as a necessary evil at best. Following Tilly's conception of opportunity hoarding, [Roberts and Noble](#) describe how the culture of Big Tech ignores and downplays racism in order to maintain a veneer of complete meritocracy in the industry.

While many recognize that the predominately BIPOC contractors often face [unfair](#) and [exploitative](#) conditions during their work, many full-time BIPOC employees also face similar challenges despite being better paid. [Sociologists have documented](#) how workplace cultures and policies that fail to address racism combine to create organizational arrangements that perpetuate the status quo. As "isolated incidents" these structures may be easy to dismiss, but as part of a broader process of opportunity hoarding, racism in the workplace reproduces social hierarchies and stifles BIPOC technologists' ability to contribute to tech development. Despite laudable DEI goals that encourage BIPOC talent to join large tech firms in managerial positions, their encounters with hostile or indifferent co-workers and managers [often force them out of the industry](#), leaving more opportunities for those who are not pushed out.

Overall, this negative feedback loop can result in fewer future job opportunities for BIPOC talent and, for those who venture to create tech startups of their own, greater difficulty attracting seed funding from investors. It is well-documented that venture capital firms are trained to see patterns that might lead to the success of a company, and one of those indicators is [previous experience](#). When workplace culture characterized by opportunity hoarding forces BIPOC workers out of the industry, the tech industry is effectively quashing future competition.

As we will show, the second group of antitrust bills only reinforces this cycle by making not only the discriminatory design practices of the largest firms portable to other smaller companies.



## Bills for Building Infrastructure

The second group in this suite of bills provides the infrastructure for competition. The widely accepted [Merger Filing Fee Modernization Act](#) increases fines and fees associated with filing a merger or acquisition in order to generate money for the enforcement of new antitrust laws. The more contentious [Augmenting Compatibility and Competition by Enabling Service Switching Act of 2021 \(ACCESS Act\)](#), requires that companies be responsible for providing customers with a secure and reliable way for transferring their data between platforms. More than a feature to facilitate ease of use, this act is specifically designed to prevent companies from hoarding user data. Data hoarding has been deemed anti-competitive because it disincentivizes customers from using other platforms by making it difficult for users to maintain their friends, photos, likes, and more when they switch. The law not only requires that data be *portable*, but also that it be *interoperable*: companies must make sure that data is not only movable between platforms, but also that it is presented in a format that can be easily adopted by other platforms. While these bills are facially neutral, they are implicated in conversations about discriminatory design practices with a potential for mixed results.

Such bills take aim at the wildly lucrative strategy deployed by the tech industry of [surveillance capitalism](#), a business practice in which companies accumulate unprecedented amounts of user data and sell it to other companies that would like to use it to learn about their customer-base. Such practices have allowed the largest tech companies to accumulate billions in profit while providing services for free.

But many of the discriminatory practices of Big Tech rely on these vast swaths of data. In one particularly egregious example, the Department of [Housing and Urban Development sued Meta \(then Facebook\)](#) for housing discrimination because it systematically excluded Black customers from seeing housing advertisements. While Facebook never used user self-identified race in the algorithms for the ad, the company used a proxy race category which predicted a user's race from data collected about their online activity. Similar stories emerged about data used to predict user religion, political affiliation, and even pregnancy status.

Ensuring that users can download their data in some ways democratizes access to the information that may promote these discriminatory practices. Mandating that companies make information about data easily accessible empowers everyone to take a look at the data about them that Facebook, and others like it, monetize. There is evidence that many would appreciate this practice. After this case, people learned that Facebook could predict certain characteristics. In response, [users began scouring the website](#) to find out what data the company had about them and opting out of certain predictive features.

Yet, this bill falls short of addressing how platforms facilitate racial discrimination. While users are able to see what data companies have about them, they are unable to contest it. If users move to another platform with this data—already tainted by Facebook’s predictions—they may face the same discriminatory issues on another platform. While this bill mandates that we be able to *see* data, it does not mandate that we be able to *contest* data. Instead, the data these companies have about users is treated as an immutable fact. Like the bills meant to address anti-competitive behavior, these bills provide a competitive environment de jure, but reaffirm the power large tech companies have de facto by reaffirming the discriminatory practices of Big Tech.

## Next Steps

We have argued that using a racial equity lens to assess antitrust legislation, and distinguishing between de jure and de facto processes, helps to illuminate the way that workplace culture stifles competition in the tech industry. We find that while the bills have the potential to curb de jure anti-competitive behavior by firms, they do not address de facto opportunity hoarding that prevents BIPOC tech talent from contributing to the industry by ignoring how some of the most discriminatory practices in Big Tech are replicated throughout the industry.

The debates around antitrust legislation for Big Tech is [not the first to avoid](#) deeper engagement with racial equity. As in these neighboring arenas, antitrust legislation must combine with other measures that directly address racism and other forms of discrimination. For example, largely in response to advocacy surrounding Ozoma and Banks’ case, the [Silence No More Act](#) was passed by the California legislature in August 2020. This law allows workers who have experienced any kind of harassment or abuse to speak out. Although it is not an antitrust law in the strict sense, SB331 counters the mandatory silence surrounding racial discrimination, and thereby fosters an environment in which BIPOC tech workers feel safer to demand respect and justice in the workplace. In short, it is a win for those who seek racial equity in tech.

Even more broadly, the civil rights advocacy organization, Color of Change, has issued a [“Beyond the Statement” framework](#) for the tech industry, developed in part by Aerica Shimizu Banks, that includes concrete recommendations that all companies should adopt to move beyond the DEI platitudes and pronouncements. It recognizes that change in the industry is necessary, but difficult to achieve. Some have suggested that a culture change is only possible after the company reaches a [“cultural tipping point”](#), or the point at which a critical mass of employees is aware of the impact of white supremacy on the workplace and can impart change on an organization. As sociological research has shown, [including only a small fraction of minority individuals in an organization as tokens is not enough](#) to create change, and often takes an emotional toll on the employees themselves.

In order to combat these challenges, Color of Change provides several recommendations to directly challenge the widespread practice of opportunity hoarding: alter hiring metrics to attract Black talent; increase recruitment at HBCUs; hire C-suite level civil rights staff; and create anti-discrimination accountability mechanisms that are built into *all* employees' performance reviews. Taken together, we consider this framework to be a vital part of advancing racial equity in the tech industry.

## Additional Works Cited

McMillan Cottom, Tressie (2020.) "The Sociology of Race and Racism in the Digital Society." *Sociology of Race and Ethnicity*, Vol 6, Issue 4: 441-449.

Tilley, Charles (1998). *Durable Inequality*. Berkeley and Los Angeles: University of California Press.