

Why the Supreme Court's FTC ruling could undercut US antitrust efforts

Article



In a unanimous **decision**, the US Supreme Court ruled the Federal Trade Commission (FTC) does not have the authority to issue penalties or seek monetary resolutions for companies that engage in deceptive practices. The ruling, which comes at a moment of **increased** antitrust interest within the Biden administration, will constrict the FTC's ability to penalize Big Tech firms, with **immediate implications** for the agency's current antitrust suit against

Facebook. In a **statement**, FTC acting chair Rebecca Slaughter said the Court's decision "has deprived the FTC of the strongest tool we had to help consumers when they need it most."

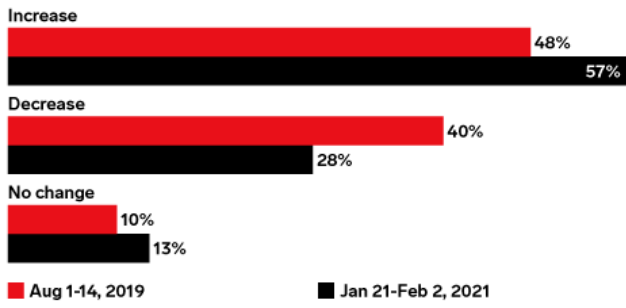
Though the FTC has imposed financial penalties against companies for decades, the agency must now rely on other avenues for future enforcement actions. The Supreme Court's decision centers on **Section 13(b)** of the Federal Trade Commission Act, the 1914 law that established the FTC. The Court's unanimous opinion, delivered by Justice Stephen Breyer, held that Section 13(b) gives the agency power to seek injunctions against fraudulent or deceptive businesses but stops short of authorizing it to obtain "retrospective monetary relief." Instead, the Court said the FTC must undertake a detailed administrative process to seek financial recoveries, which the agency **claims** would take too long to be effective. In March, Facebook **invoked** Section 13(b) to argue the FTC lacked the authority to bring forward its ongoing antitrust case.

The Supreme Court ruling poses a roadblock to the FTC's authority just as the Biden administration is signaling a renewed commitment to antitrust enforcement. In addition to nominating Slaughter—who was involved in the FTC's **record** \$5 billion Facebook fine in 2019 and has **called** for more civil penalty authority—President Biden also **appointed** tech critic Tim Wu to the National Economic Council. Last week, the Senate **narrowly** confirmed **pro-antitrust** attorney Vanita Gupta's appointment to the DOJ as an associate attorney general, and it **appears poised** to confirm Biden's other nominee to the FTC, law professor and leading Big Tech critic Lina Khan.

The decision marks a significant win for Big Tech and other companies that will come at the expense of consumers. The ruling significantly constricts the FTC's ability to seek monetary penalties for companies...at least for now. **According to** Politico, the House Energy and Commerce Committee is meeting next week to consider introducing legislation granting the FTC authority to issue monetary penalties.

How Do US Adults Think the Government Should Change Its Regulation of Big Technology Companies?

% of respondents, Aug 2019 & Feb 2021



Note: ages 18+; e.g., Amazon, Facebook, Google; responses of "no opinion" not shown
Source: Gallup as cited in company blog, Feb 18, 2020

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