

New York Antitrust Law Reform Bill Fails to Clear Assembly

Article By:

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If enacted, bill would have redefined “monopoly.”

Saying big technology companies have reached dangerous levels of monopoly power, a New York State senator was optimistic that his proposed a solution would become law and make the state the toughest on anti-competitive conduct in the nation. But his hopes were dashed yesterday, June 10, the last day of the legislative session, when the state Assembly rejected the measure.

Jacob Kaye, who has been following New York's reform effort closely, said “it's going back to the drawing board.” Kaye, Managing Editor of the *Queens Daily Eagle* newspaper, said he was surprised the bill failed. “It seemed like it had a decent amount of support both in the legislature and outside of it. The bill met a similar fate last year and I assume it will be up for discussion again when they return in January.”

Senate Deputy Leader Michael Gianaris co-sponsored the 21st Century Antitrust Act (S.933-A), approved by the Senate on June 7, which he said would have modernized the state's anticompetition law, the Donnelly Act, make it easier for the state to pursue monopolies, and lower the threshold of what constitutes a monopoly.

“Our antitrust laws were written a century ago for a radically different economy and they are in desperate need of reform,” Gianaris said. “Corporate power has reached unprecedented and dangerous levels, and we need powerful new laws to protect the public and our economy.”

The bill passed in the state Senate by a straight party-line vote, with 43 Democrats voting in favor of the bill and 20 Republicans voting against. New York Democrats enjoy supermajorities in both houses of the Legislature, as well as a Democratic governor, Andrew Cuomo. While Cuomo hadn't issued a public statement on the measure, his chief law enforcement officer, Attorney General Letitia James, is one of the leaders nationally in the pursuit of big technology companies for alleged anticompetitive conduct. James launched an antitrust case against Facebook in December 2020, heading up a 45-state coalition.

However, the proposed 21st Century Antitrust Reform Act died in the Assembly, despite Assemblyman Jeffrey Dinowitz's argument that big companies currently use their dominance to circumvent antitrust regulations. The bill would have modernized the law to “reflect the new reality that there are new anti-competitive strategies that corporations are using to stifle other companies,”

Dinowitz said.

The state's antitrust law requires two parties to conspire to manipulate the economy before enforcement actions can occur. "In the current economy, however, major commercial players (particularly Big Tech) successfully manipulate the market unilaterally – by exerting dominance. Examples include manipulating search results to favor their own products and punish competitors as well as undercutting competitors' prices at a loss to drive them out of business or pressure them to sell to the larger companies," according to Senator Gianaris's office, continuing that the bill would have created an "abuse of dominance" standard to empower regulators to bring enforcement actions more successfully.

Critics of the bill argued that smaller companies would have been open to antitrust enforcement actions since they need to control just 40% of a market, rather than 70%, to be considered monopolies. They also said the bill didn't contain enough specific language to stop companies from using the bill to sue smaller companies. Further, the bill would have made New York an unwelcome place for new companies and investors, critics said.

According to the *Queens Daily Eagle*, a Yelp spokesman praised the bill. Antitrust law enforcers need the tools to confront companies like Google from abusing its dominance by "self-dealing while throttling smaller competitors and the expense of consumers," the spokesman said.

This was one of many antitrust law reform efforts taking place. Opposed by big tech powerhouses, any measure faces significant headwinds. However, both Democrats and Republicans have expressed frustrations with these corporate giants, albeit for different reasons, and have proposed separate measures. At the federal level, for example, Sen. Amy Klobuchar (D-MN), now head of the Senate Antitrust Subcommittee, has proposed a number of bills to modernize these laws. A fresh batch of bills with bipartisan sponsors were just proposed today. On the other side of the aisle, Sen. Josh Hawley (R-MO) introduced a bill inspired by his belief that big tech platforms, like Facebook and Twitter, hold what he considered to be an anti-conservative bias. Google, Facebook, Amazon and Apple are all facing litigation alleging they are wielding their respective market dominance unfairly to the detriment of competition and consumers.

New York antitrust law is obviously important in part because 54 Fortune 500 companies are headquartered there, more than any other state, with California and Texas close behind. For the time being, New York's anticompetition regulations will remain the same. Sights now turn to reform efforts at the federal level, which was a key issue during the race for the Democratic presidential nomination, with Senators Klobuchar, Elizabeth Warren, and Bernie Sanders making it a key pillar in their campaigns, and new measures just announced.

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National Law Review, Volume XI, Number 162

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