

# Instagram 2.0? Microsoft offer for social media start-up Discord would present an early challenge for Biden's trustbusters

Blog post by Erin Caddell, President, Global Counsel USA, 30 March 2021

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The headline is so common in the supercharged market for emerging technology firms that it seems almost commonplace, though still amazing in the grand arc of history: A five-year old Silicon Valley social media start-up, having doubled its active monthly user base to more than 100m global users in just a year, is in exclusive talks to be acquired by a well-established, moneyed technology firm for some \$10 bn, an eye-popping multiple of the start-up's \$130m in revenue.

The next phase of the story also seems predictable given the times: The rumoured deal goes through, resulting in a big win for its venture-capital backers, and making its young founders fabulously wealthy. The start-up is subsumed over time into the tech behemoth.

But here it is worth pausing to consider the potential seller as well as the buyer, as well as another feature of the current moment: a shifting view toward antitrust policy in the Biden administration, and rising distrust of Big Tech in both major US political parties. The start-up is Discord, a text and voice messaging app that started as a forum for video-game players but has elbowed its way into the mainstream, especially with teens. Discord offers public discussion groups on a range of topics as well as the opportunity for users to invite others to exclusive chat groups. The rumoured [buyer](#) is Microsoft, a charter member of the Big Tech club, with a market cap of \$1.8 trn, and a huge gaming business.

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## Discord - By the Numbers

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Founded	2015
Monthly active users	100 million+
Active "servers" [discussion groups] per week	13.5 million
Server conversation minutes daily	4 billion

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Source: Discord

The Microsoft-Discord deal could be more than just another tale from the pandemic-era tech Gold Rush, but also a test case for a new crop of antitrust regulators in the Biden administration to attempt to implement new legal theories designed to limit the power of large companies and foster innovation. During the presidential election last year, Biden and some of his Democratic rivals

vowed to rein in the power of Big Tech, in part through tougher scrutiny of proposed acquisitions. Would Biden's regulators flex their new muscle if Microsoft tries to buy Discord?

Importantly, Discord's business model is not supported by advertising. Discord offers a free version of its group messaging-app platform, and then incentivises users to sign up for a premium product that allows for sharing of larger files, higher-resolution video, even a wider selection of emojis. Thus, Discord addresses one of the key criticisms of advertising-driven social media platforms: that because they do not charge subscription fees, Facebook and the like are incentivised to deliver sensationalistic content to users to hold their attention and make them more valuable to advertisers.

This is not to say that Discord does not present its own problems for policymakers. The app has been used as a medium for extremist groups - some of the leaders of the far-right demonstrations in Charlottesville, VA, in 2017 used Discord to organise the demonstration. Similarly, there have been examples of sexual predators who have used the site. In response to these incidents, Discord has tightened the rules for users and enhanced its monitoring of improper content. Discord says its users must be at least 13 years old but does not require proof of age to sign up, just an e-mail address. As Discord grows, it would seem inevitable that the company will have to do more to restrict bad actors who will make their way to the app, from those trying to make a buck, to those with darker motives.

As a potential buyer, Microsoft would seem less controversial than Facebook or Google, the current locus of DC policymakers' ire. But there is likely a defensive as well as an offensive element to Microsoft's thinking. Microsoft owns LinkedIn, the largest business-focused social network, with 310 million monthly users. As Discord's teenage user base goes to college and gets jobs, would they remain on a "grown-up" Discord instead of gravitating toward LinkedIn? Similarly, Microsoft's strength as a creator of online games depends on its reputation among gamers, a reputation formed in discussion boards and private chat rooms such as those managed by Discord. Last, Microsoft is the OG of Big Tech concerns, having been sued unsuccessfully in the 1990s by the US government for alleged abuses of its Windows operating platform.

Assuming regulators have the will, could they block a Microsoft-Discord deal? Traditional merger reviews are based on the *current* market shares of the buyer and seller, and the merger's prospective effect on consumer prices. By any snapshot of the current social-media landscape, Discord is a small player. Facebook alone has 2.8 bn monthly users worldwide. And it's difficult to argue the deal would raise price of social media for consumers because, again, the price is already zero.

But US antitrust philosophy is evolving in ways that could make regulatory reviews of Microsoft-Discord or deals like it much different than in the past. This new thinking suggests regulators should look more holistically and prospectively at how industry structure can be affected by mergers. For example, Lina Khan, whom Biden nominated last week to the Federal Trade Commission, wrote a well-known legal [paper](#) in 2017 outlining an antitrust case against Amazon that could easily be translated to Microsoft-Discord:

*The current approach to antitrust does not sufficiently account for how vertical integration may give rise to anticompetitive conflicts of interest.... A stricter approach would place prophylactic limits on vertical integration by platforms that have reached a certain level of dominance. This would recognize that a platform's involvement across multiple related lines of business can give rise to conflicts of interest by creating circumstances in which a platform has an incentive to privilege its own business and disadvantage other companies.*

Like many new technologies, Discord's future is by no means assured. But the company has hit a critical mass with a business model that could shift the dynamics of an advertising-dependent social-media space that many argue is deeply flawed. If announced, Microsoft-Discord will be a telling barometer of the Biden Administration's willingness to try new strategies to check the power of Big Tech.