

# ‘It’s not illegal to be a monopoly’

Why this manager believes the US government ‘doesn’t have a case to stand on’ in its action against its tech giants, but the situation in China is quite different.

By PATRICK CAIRNS / 5 July, 2021

Lead manager of the Artisan Global Value Fund, Dan O’Keefe (pictured) believes the current antitrust action against the US’s tech giants won’t succeed.

His fund currently holds both Alphabet and Facebook in its top 10 holdings.

He is, however, more wary of the regulatory threat faced by China’s leading technology firms. The fund recently added Alibaba to its portfolio, following the sell-off in the stock.

These big tech companies face growing regulatory scrutiny in both the US and China, but O’Keefe believes the threat is much lower in the US.

‘If you break down the United States government’s criticism of the internet companies, it’s actually not company-specific,’ O’Keefe said. ‘It’s about the internet. The problems that Google and Facebook are accused of, are essentially problems of the internet.’

‘If Google and Facebook didn’t exist, some other internet companies would exist and you would have the same problems – namely privacy, the proliferation of what is true data, what is opinion, what is censorship, and what is hate on social media.’

## Antitrust action

Secondly, O’Keefe believes that antitrust action against these companies is unfounded.

‘In the United States, it’s not illegal to be a monopoly,’ he said. ‘Are Google and Facebook monopolies? Yes. Is that illegal? No.’

‘It’s only illegal if you abuse that power,



or if you acquire that power illegally. Google and Facebook have acquired their power organically, and they have done it by providing services to their customers that are largely free.

‘So, in my opinion, it’s impossible to accuse them of violations of the Sherman Antitrust Act, which is the dominant legal framework.’

## Dismissal

He added that he and his team came to this conclusion after studying the government’s documentation on its antitrust actions against Google and Facebook.

‘This is the beauty of operating in a jurisdiction where you have the rule of law and precedent, which is very different from China,’ O’Keefe said. ‘We studied those documents and feel pretty confident that the government doesn’t have a case to stand on.’

‘It’s easy for them to make political hay because the internet does have

some negative derivative implications. But, when you dive into the specifics, what Google and Facebook are doing is perfectly legal. And I don’t see that the government has a case.’

This view appears to be supported by a US judge’s decision last week to dismiss two antitrust lawsuits against Facebook.

## Antitrust framework

The regulatory risk to these companies is therefore low, in O’Keefe’s opinion, unless something substantial changes.

‘They could change the law and create new antitrust law and a new antitrust framework. If they did that, and it was geared towards negatively impacting the large technology companies, that is a risk. But in the United States getting the executive branch and 60% of the US Senate and 51% of the US Congress to agree on something is just about impossible.’

This makes the threat to the US tech companies significantly different to what

has already been seen in China. Alibaba was recently forced to halt the IPO of Alipay, and authorities have issued fines to 11 companies including Alibaba and Tencent in the past seven months for regulatory violations.

The biggest fine was issued to Alibaba, which had to pay \$2.8bn after an anti-monopoly investigation.

## Pricing the risk

'It's fascinating to study that case in China versus the case in the United States,' O'Keefe said. 'In China, there is limited rule of law. There is no antitrust

statute. The rules can change at any time, so there is no set framework you can refer to and say these are the rules, I know what my risks are, and I know whether Alibaba or Tencent is violating the regulations and the laws.

'The government can do whatever it wants. If the government says Alibaba is being anti-competitive, by them saying it, it is true, because there is no other standard.'

O'Keefe added that these are 'important comparisons to make when thinking about the regulatory risks to technology businesses across the world'.

'We consider the US companies to be better businesses, and the legal and regulatory environment to be better in the US than in China. That doesn't make China uninvestable for us, but we do have to price the risk accordingly.'

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