

US Federal Trade Commission sues Facebook over monopolistic acquisitions and anticompetitive practices

By Kevin Reed
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The Federal Trade Commission (FTC), with the support of 48 US states and districts, sued the social media monopoly Facebook on Wednesday, charging it with suppressing competition and violating antitrust laws.

In a 53-page “complaint for injunctive and other equitable relief,” the FTC brought the lawsuit in the US District Court for Washington, DC against Facebook with the backing of 46 states and the District of Columbia and Guam.

The lawsuit says that Facebook has “maintained its monopoly position by buying up companies that present competitive threats and by imposing restrictive policies that unjustifiably hinder actual or potential rivals that Facebook does not or cannot acquire.”

The aim of the lawsuit is to seek a permanent injunction by the court that would require Facebook to “unwind” its asset acquisitions by means of alleged monopolistic practices—including Instagram and WhatsApp—and to both prohibit Facebook from imposing anticompetitive conditions on software developers in the future and require the company to seek government approval for any future mergers or acquisitions.

Facebook responded to the antitrust action with a lengthy Newsroom statement by Jennifer Newstead, Vice President and General Counsel. Newstead points out that both acquisitions of Instagram and WhatsApp were reviewed and approved by US regulatory bodies at the time. “The FTC conducted an in-depth ‘Second Request’ of the Instagram transaction in 2012 before voting unanimously to clear it. The European Commission reviewed the WhatsApp transaction in 2014 and found no risk of harm to competition in any potential market,” she writes.

Newstead adds defiantly, “Now, many years later, with seemingly no regard for settled law or the consequences to innovation and investment, the agency is saying it got it wrong and wants a do-over. In addition to being revisionist history, this is simply not how the antitrust laws are supposed to work.”

The FTC action against Facebook comes seven weeks after the US Department of Justice (DoJ) launched an antitrust lawsuit against Google in the same district court. The DoJ complaint stated that Google (and its parent organization Alphabet, Inc.) engaged in “unlawfully maintaining monopolies in the markets for general search services, search advertising, and general search text advertising in the United States through anticompetitive and exclusionary practices.”

The suit also follows by eight weeks the publication of a House of Representatives antitrust subcommittee report on the business practices of Apple, Amazon, Facebook and Google. This report stated that the big tech companies “that once were scrappy, underdog startups that challenged the status quo have become the kinds of monopolies we last saw in the era of oil barons and railroad tycoons.”

The FTC issued a press release and a video statement by Ian Conner, Director of the Bureau of Competition, along with its legal brief. The press release says that the lawsuit followed a lengthy investigation “in cooperation with a coalition of attorneys general” that found Facebook has engaged in a systematic strategy “to eliminate threats to its monopoly.”

The press statement says further, “This course of conduct harms competition, leaves consumers with few choices for personal social networking, and deprives advertisers of the benefits of competition.”

In his video statement, Conner said that the lawsuit is the product of 18 months of work by the “recently formed Technology Enforcement Division” of the FTC. Conner made the claim that the case against Facebook has been brought because “the American public deserves a competitive and vibrant personal social networking market” and to “restore the competitive vigor necessary to foster innovation and consumer choice.”

The document quotes a 2008 email from Facebook CEO Mark Zuckerberg, where he wrote, “it is better to buy than compete,” as evidence that the social media company has engaged “in a course of anticompetitive conduct with the aim of suppressing, neutralizing, and deterring serious competitive threats.”

The lawsuit alleges that Facebook had already emerged as a monopoly in the “personal social networking market” when it acquired Instagram in April 2012 for \$1 billion and WhatsApp in February 2014 for \$19 billion. The brief states, “Since toppling early rival Myspace and achieving monopoly power, Facebook has turned to playing defense through anticompetitive means.”

Known internally as Facebook Blue, the corporation’s primary social media product is the number one platform in the world, with over 3 billion users. The lawsuit states, “Facebook’s unmatched position has provided it with staggering profits. Facebook monetizes its personal social networking monopoly principally by selling advertising, which exploits a rich set of data about users’

activities, interests, and affiliations to target advertisements to users. Last year alone, Facebook generated revenues of more than \$70 billion and profits of more than \$18.5 billion.”

Instagram was founded in 2010 as a mobile-first photo and video sharing platform. Instagram began to threaten Facebook’s social media monopoly as it rode the wave of technology innovation associated with the rise of smartphones. As the FTC lawsuit explains, “Facebook initially tried to compete with Instagram on the merits by improving its own mobile photo-sharing features.”

However, Zuckerberg saw that Facebook had fallen far behind and he concluded in an internal email, “One thing about startups though is you can often acquire them.” The brief then states, “The Instagram acquisition has given Facebook control over its most significant personal social networking competitor, which both neutralizes the direct threat that Instagram posed by itself, and, additionally, makes it more difficult for other firms to use photo-sharing via smartphones to gain traction in personal social networking.”

WhatsApp was first launched in January 2009, became the world’s most successful texting app and had 500 million users as of 2014 when Facebook acquired it. The lawsuit states that WhatsApp was viewed as “the next biggest consumer risk” at Facebook. An app offering mobile messaging services could “enter the personal social networking market, either by adding personal social networking features or by launching a spinoff personal social networking app.”

As with Instagram, WhatsApp was seen as a threat because it was mobile-first whereas many Facebook users’ activity remained desktop-based. Although Facebook was attempting to enable its platform for the growing number of smartphone users, it was having trouble catching up. As one of the Facebook executives wrote in an email, WhatsApp’s mobile messaging “is a wedge into broader social activity/sharing on mobile we have historically led in web.”

Lastly, the lawsuit focuses on other anticompetitive practices related to third-party partners and its application programming interfaces (APIs). APIs are “adapters” that allow software developers to plug their applications into each other for interoperability.

The lawsuit says, “For many years—and continuously until a recent suspension under the glare of international antitrust and regulatory scrutiny—Facebook has made key APIs available to third-party apps only on the condition that they refrain from providing the same core functions that Facebook offers, including through Facebook Blue and Facebook Messenger, and from connecting with or promoting other social networks.”

In concluding their brief, the FTC states that these acquisitions and anticompetitive practices combined constitute a violation of Section 2 of the Sherman Act and “constitute unfair methods of competition” The lawsuit argues that the FTC Act empowers the court to “issue a permanent injunction” and “order equitable relief to remedy the injury caused by Facebook’s violations.”

Passed in 1890, the Sherman Antitrust Act was adopted during an era of significant industrial expansion, the emergence of huge monopolistic enterprises and the domination of the economy by finance capital associated with the emergence of the United States

as a major global power. The law prohibited anticompetitive agreements and restricted monopolies, considering them a barrier to innovation and economic development. At that time, a section of the American ruling establishment identified monopolies with tendencies towards authoritarian and undemocratic forms of political rule.

It is safe to say that virtually none of those considerations are at work in the FTC lawsuit against Facebook. After the break-up of AT&T in 1982, there has been little in the way of major enforcement actions involving the Sherman Act for nearly four decades.

The timing of the government’s case—coming after the electoral victory of Democrat Joseph Biden in the 2020 presidential election and amid the ongoing coup plotting and refusal of President Donald Trump to acknowledge the results of the vote—is an indication that, regardless of the occupant of the White House in the coming weeks, there is a consensus developing within the ruling political establishment that big tech must be brought under control so that it can be wielded more effectively as an instrument of class rule.

The bipartisan offensive against Facebook was acknowledged by the *New York Times* in its initial report: “President Trump has argued repeatedly that the tech giants have too much power and influence, and allies of President-elect Joseph R. Biden Jr. make similar complaints. The federal case against Facebook is widely expected to continue under Mr. Biden’s administration.”

While the two parties are approaching the offensive against Facebook from slightly different standpoints—the Democrats demanding the suppression of speech on the platform and the Republicans falsely claiming that right-wing views are the sole target of Facebook censorship—their class political objectives are the same.

There is no doubt that Apple, Amazon, Facebook and Google are monopolies. These colossal conglomerates have functioned as a law unto themselves over a long period, trampling on the rights of users while contributing to the colossal wealth accumulation of the financial oligarchy. Indeed, as Facebook’s lawyers will doubtless argue in court, the conglomerate’s major acquisitions were ratified at every step along the way by the FTC itself.

However, the crisis of capitalism—intensified by the response of the Democrats and Republicans to the coronavirus pandemic—threatens to ignite mass struggles. The ubiquity of the mobile-wireless social media platforms in the hands of masses of people poses an existential threat to the entire capitalist system.

By pursuing antitrust actions against big tech, the ruling elite is seeking to tighten the reins on key technological infrastructure, with the aim of anticipating and obstructing its use by the working class to organize its struggles and restricting the circulation of material of a left-wing, anti-capitalist and socialist character.



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