

AG Brnovich Joins Multistate Lawsuit Seeking to End Facebook's Alleged Illegal Monopoly

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Facebook is Accused of Thwarting Competition, Reduced Consumer Privacy for Profits

WASHINGTON, D.C. - Attorney General Mark Brnovich today joined a bipartisan coalition of 48 attorneys general in filing an antitrust lawsuit against Facebook Inc., alleging that the company has and continues to stifle competition to protect its monopoly power illegally. The lawsuit alleges that Facebook violated Section 2 of the Sherman Act and Section 7 of the Clayton Act by illegally acquiring competitors in a predatory manner and cutting services to smaller threats, depriving users of the benefits of competition and reducing privacy protections along the way — all to boost its bottom line through increased advertising revenue.

“Facebook’s dominant market power has been illegally achieved at the cost of consumer choice, market innovation, and consumer privacy,” said General Mark Brnovich. “Our bipartisan coalition of Attorneys General is committed to standing up for all of the consumers and hardworking small businesses that have been harmed along the way.”

In an effort to “build a competitive moat” around the company and maintain its market dominance, Facebook employs a variety of methods to impede competition. The two most utilized strategies have been to (i) acquire smaller rivals and potential rivals before they could threaten Facebook’s dominance and (ii) suffocate and squash third-party developers that Facebook invited to utilize its platform. These illegal tactics enable Facebook to maintain its monopoly over the social networking market.

Reduced Privacy and Fewer Options

Facebook’s unlawful monopoly gives it broad discretion to set the terms for how its users’ private information is collected and used to further its business interests. When Facebook cuts off integration to third-party developers, users cannot easily move their own information — such as their lists of friends — to other social networking services. This decision forces users to either stay put or start their online lives from scratch if they want to try an alternative.

The volume, velocity, and variety of Facebook’s user data give it an unprecedented, virtually 360-degree view of users and their contacts, interests, preferences, and activities. The more users Facebook can acquire and convince to spend additional time on its platforms, the more data Facebook can accumulate by surveilling the activities of its users and thereby increase its monopolistic revenues through advertising.

Because Facebook users have nowhere else to go, the company is able to make decisions about

how to curate content on the platform and use the personal information it collects from users to further its business interests, even if those choices conflict with the interests and preferences of Facebook users.

Since taking office, General Brnovich has prioritized consumer data privacy. In March 2018, General Brnovich sent a letter (</sites/default/files/docs/press-releases/2020/letters/Letter%20to%20Facebook%20-%203.27.18.pdf>) to Facebook discussing his obligation as Attorney General to help “ensure that the privacy of the people of Arizona is respected and preserved.” He also raised concerns about Facebook allowing third-party application developers to not only access personal data from Facebook users but also acquire comprehensive data about friends of those Facebook users.

Acquisition of Competitive Threats

Facebook employs unique data-gathering tools to monitor new apps all in an effort to see what is gaining traction with users. That data helps Facebook select acquisition targets that pose the greatest threats to Facebook’s dominance. Once selected, Facebook offers the heads of these companies vast amounts of money — that greatly inflate the values of the apps to avoid any competition for Facebook in the future.

The two most obvious examples of this successful strategy were Instagram and WhatsApp — of which posed a unique and direct threat to Facebook’s monopoly.

Purchase of Instagram

After initially trying to build its own version of Instagram with relatively low traction, Facebook acquired Instagram for \$1 billion, despite the company not having a single cent of revenue and valuing itself at only \$500 million. Facebook offered double the purported valuation of Instagram even though Mark Zuckerberg previously described the \$500 million value as “crazy.”

Purchase of WhatsApp

While Facebook initially focused on several emerging mobile messaging services, WhatsApp was viewed as the “category leader” with over 400 million active users worldwide in 2014. Accordingly, WhatsApp, provided the greatest threat.

Facebook feared WhatsApp eroding its monopoly power, and also was concerned that WhatsApp could ultimately be bought by a competing behemoth, Google, that had previously shown interest in social networking.

This led Facebook, in February 2014, to acquire WhatsApp for nearly \$19 billion — wildly more than the extravagant price CEO Zuckerberg had recommended paying a few months earlier and the \$100 million another competitor offered to buy the company two years earlier.

Cutting Competitors Off from Facebook Overnight

The multistate complaint further alleges that Facebook targets competitors with a ‘buy or bury’ approach. If they refuse to be bought out, Facebook used an “open first–closed later” strategy to stop competitive threats, or deter them from competing at the inception. Facebook opened its platform to apps created by third-party developers in an effort to increase functionality on the site and,

subsequently, increase the number of users on Facebook. Facebook also drove traffic to third-party sites by making it easier for users to sign in, so that Facebook could capture valuable data about its users' off-Facebook activity and enhance its ability to target advertising.

After years of promoting open access to its platform, in 2011, Facebook began to rescind and block access to the site to apps that Facebook viewed as actual or potential competitive threats. Facebook understood that an abrupt termination of established access to the site can be devastating to an app — especially one still relatively new to the market. Some of these companies experienced almost overnight drop-off in user engagement and downloads, and their growth stalled.

Remedies

The bipartisan coalition of states requests that the court halt Facebook's illegal, anticompetitive conduct and block the company from continuing this behavior in the future. Additionally, the coalition asks the court to restrain Facebook from making further acquisitions valued at or in excess of \$10 million without advance notice. The court is also asked to require divestiture or restructuring of illegally acquired companies, or other current Facebook assets along with any additional, appropriate relief.

The complaint was filed in the U.S. District Court for the District of Columbia.

Separately, but in coordination with the multistate coalition, the Federal Trade Commission (FTC) today filed a complaint against Facebook in the U.S. District Court for the District of Columbia.

This case is being handled by Unit Chief Dana Vogel and Assistant Attorney General Christina Grey from the Civil Litigation Division.

Copy of the complaint (</sites/default/files/docs/press-releases/2020/complaints/Facebook%20Complaint.pdf>).

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