



State of Michigan
Attorney General Dana Nessel

Media Contacts:

[Ryan Jarvi](#)
(c) 517-599-2746

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Attorney General Nessel Joins Multistate Lawsuit Seeking to End Facebook's Illegal Monopoly

Bipartisan Coalition of 48 Attorneys General Charge Anticompetitive Conduct

Facebook Thwarted Competition, Reduced Consumer Privacy for Profits

LANSING – Michigan Attorney General Dana Nessel today joined a bipartisan coalition of 48 attorneys general in [filing a lawsuit against Facebook Inc., alleging that the company illegally stifles competition to protect its monopoly power](#). The lawsuit alleges that, over the last decade, the social networking giant illegally acquired threatening competitors and cut services to smaller competitors, depriving users from the benefits of competition, such as new innovations and more quality services, and reducing privacy protections along the way. Facebook's pervasive assault against antitrust law was ruthlessly conducted to boost its profits through increased advertising revenue.

"Facebook's power as a monopoly has been solidified through its methodical erosion of any and all viable competition in this arena," Nessel said. "My colleagues and I seek to protect consumers and their data by ending Facebook's illegal, anticompetitive conduct and prevent this type of predatory behavior in the future."

Since 2004, Facebook has operated as a personal social networking service that facilitates sharing content online without charging users a monetary fee, but, instead, provides these services in exchange for a user's time, attention, and – most critically – personal data. Facebook then monetizes its business by selling the vast treasure trove of personal data collected from unwitting users to companies seeking to advertise to Facebook's massive userbase with personalized messaging.

To maintain its market dominance in social networking, Facebook employs a variety of methods to impede competing services and — as Chairman, Chief Executive Officer, and controlling shareholder Mark Zuckerberg has stated — to "build a competitive moat" around the company and "neutralize a competitor." The two most used strategies have been to acquire smaller rivals and potential rivals before they could threaten Facebook's dominance and to suffocate and squash third-party developers that Facebook invited to use its platform — allowing

Facebook to maintain its monopoly over the social networking market and make billions from advertising. As one market participant noted, if an application (mobile app) encroached on Facebook's turf and didn't consider selling, Zuckerberg would go into "destroy mode," subjecting small businesses to the "wrath of Mark."

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 applications or 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.

Because Facebook users have nowhere else to go, the company is now 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.

Additionally, while consumers initially turned to Facebook and other apps now owned by the company seeking privacy protection and control over their data, many of those protections are now gone.

Acquisition of Competitive Threats

Much of the harm to consumers over the last decade comes as a direct result of Facebook's acquisition of smaller firms that pose competitive threats. Facebook employs unique data-gathering tools, including one illegally acquired — Onavo, to monitor new apps 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, Zuckerberg and Facebook offer the heads of these companies vast amounts of money — that greatly inflate the values of the apps — in the hope of avoiding substantive competition to Facebook in the future.

When it came to startups, Zuckerberg has observed, that if these companies were not inclined to sell, "they'd have to consider it" if Facebook offered a "high enough price."

The elimination of competitive alternatives means users have no alternative to Facebook, fueling its unfettered growth without competition and further entrenching its position. The two most obvious examples of this successful strategy were Instagram and WhatsApp, both which posed a unique and dire threat to Facebook's monopoly.

Purchase of Instagram

Facebook and Zuckerberg saw Instagram as a direct threat quickly after the streamlined photo-sharing social media company launched. After initially trying to build its own version of Instagram that gained no traction, Zuckerberg admitted, in early 2012, that Facebook was "very behind" Instagram and a better strategy would be "to consider paying a lot of money" for the photo-sharing app to "neutralize a potential competitor."

A few months later, in April 2012, Facebook acquired Instagram for \$1 billion, despite the company not having a single cent of revenue and valuing itself at only \$500 million. Zuckerberg offered Instagram's owners double the valuation Instagram came up with even though Zuckerberg previously described the initial \$500 million value as

“crazy.” The market and consumers then lost an independent social media company driving substantial innovations and improvements to quality.

Purchase of WhatsApp

The mobile messaging app WhatsApp also posed a unique threat to Facebook’s growth giving users the ability to send messages on their mobile devices both one-on-one and in groups. While Facebook focused on several emerging mobile messaging services, WhatsApp was viewed as the “category leader” with more than 400 million active users worldwide in 2014 and the one that would be the greatest threat.

As social media innovated to include chatting features, Facebook feared WhatsApp eroding its monopoly power, stating WhatsApp or similar products posed “the biggest competitive threat we face as a business.” Facebook was also concerned that WhatsApp could ultimately be bought by a competing behemoth that had previously shown interest in social networking — Google.

This led Facebook, in February 2014, to acquire WhatsApp for nearly \$19 billion — wildly more than the extravagant price Zuckerberg had recommended paying a few months earlier and the \$100 million another competitor offered to buy the company only two years earlier. The market and consumers then lost another independent social media company offering unique and innovative messaging services and privacy.

Cutting Off Competitors from Facebook Overnight

As laid out in today’s complaint, the coalition argues that Facebook targets competitors with a “buy or bury” approach: if they refuse to be bought out, Facebook tries to squeeze every bit of oxygen out of the room for these companies. To facilitate this goal, Facebook has used an “open first–closed later” strategy to stop competitive threats, or deter them from competing, once they begin to gain steam.

Facebook opened its platform to apps created by third-party developers 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.

Not only did Facebook benefit monetarily through the third-party developers’ revenue, but Facebook’s services were expanded as Facebook did not have the capacity to create and develop all the useful social features offered through third-party developers.

After years of promoting open access to its platform, in 2011 Facebook began to rescind and block access to its platform to apps that Facebook viewed as actual or potential competitive threats. Facebook understands that an abrupt termination of established access to the site can be devastating to an app — especially one still relatively new to the market. An app that suddenly loses access to Facebook is hurt not only because its users can no longer bring their friend list to the new app, but also because a sudden loss of functionality — which creates broken or buggy features — suggests to users that an app is unstable. In the past, some of these companies experienced almost overnight and substantial drop-off in user engagement and downloads. As a result, their growth stalled and scale could not be achieved, forcing them out of the market.

Facebook's response to competitors also serves as a warning to other apps that if they encroach on Facebook's territory, Facebook will end their access to crucial integrations. Facebook's actions also deter venture capitalists from investing in companies that Facebook might in the future see as competitors.

Advertising

As a consequence of Facebook's expansive user base and the vast trove of data it collects from its users and users' connections, Facebook is able to sell highly targeted advertising that firms greatly value.

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, political leanings, activities and secrets. 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 revenues through advertising — reaping billions of dollars every month.

Specific Violations

Facebook is specifically charged with violating Section 2 of the Sherman Act, in addition to multiple violations of Section 7 of the Clayton Act.

Remedies

The coalition asks the court to 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 to the state of New York and other plaintiff states. Finally, the court is asked to provide any additional relief it determines is appropriate, including the divestiture or restructuring of illegally acquired companies, or current Facebook assets or business lines.

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) also filed a complaint today against Facebook in the U.S. District Court for the District of Columbia. The coalition wishes to thank the FTC for its close working relationship and collaboration during this investigation.

The lawsuit is headed by New York Attorney General Letitia James and an executive committee comprised of the attorneys general of California, Colorado, Florida, Iowa, Nebraska, North Carolina, Ohio, Tennessee, and the District of Columbia. The executive committee is joined by Michigan Attorney General Nessel and the attorneys general of Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the territory of Guam.

[Click here to view a copy of the lawsuit.](#)

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