

Attorney General Ellison sues to end Facebook's illegal monopoly

Joins bipartisan coalition of 48 AGs in charging anticompetitive conduct — Facebook thwarted competition, reduced consumer privacy in pursuit of profits

December 9, 2020 (SAINT PAUL) — Minnesota Attorney General Keith Ellison today joined a broad, bipartisan coalition of 48 attorneys general in filing a [lawsuit against Facebook, Inc.](#), alleging that the company has illegally stifled and continues to illegally stifle competition to protect its monopoly power. The lawsuit alleges that, over the last decade, the social networking giant illegally acquired competitors in a predatory manner and cut services to smaller threats, depriving users from the benefits of competition and reducing privacy protections and services along the way — all in an effort to boost its bottom line through increased advertising revenue.

“Online social networks have the potential to improve our lives, especially during the pandemic — but it cannot come at the cost of breaking laws designed to keep our economy fairer for everyone,” Attorney General Ellison said. “Facebook’s dominance in social networking is no accident: they illegally used their market power to buy or crush any other companies that dared challenge them, all the while building obstacles to make it impossible for any viable competitor to rise up — all in the pursuit of profit, not better serving consumers. I joined this broad, bipartisan group holding Facebook accountable because Minnesotans and all Americans deserve better.”

Since 2004, Facebook has operated as a personal social networking service that facilitates sharing content online without charging users a monetary fee, instead providing these services in exchange for a user’s time, attention, and personal data. Facebook then monetizes its business by selling advertising to firms that attach immense value to the user engagement and highly targeted advertising that Facebook can deliver due to the vast trove of data it collects on users, their friends, and their interests.

In an effort 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. The two most utilized 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 utilize 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 (app) encroached on Facebook’s turf or did not consider selling, Zuckerberg would go into “destroy mode,” subjecting small businesses to the “wrath of Mark.”

Allegations against Facebook and remedies sought

The complaint, filed in the U.S. District Court for the District of Columbia, alleges that Facebook violated Section 2 of the Sherman Antitrust Act of 1890, which makes it illegal to “monopolize, or attempt to monopolize...any part of the trade or commerce among the several states.” Facebook, which began as an innovative company, fended off early competitors by offering a superior product. Once it gained market power, though, it actively sought monopoly status, and once it achieved it, took steps to ensure no other company could ever challenge it, described in detail below. Facebook began trying to avoid competing on its merits, burying competitors through sheer weight of its market power rather than superior features. Being a monopolist allowed Facebook to innovate less, treat consumer data with far less respect, and still make tremendous profits.

The complaint also alleges that Facebook violated Section 7 of the Clayton Act, which prohibits mergers and acquisitions that would “substantially...lessen competition, or tend to create a monopoly.” Facebook bought two major, fast-growing competitors: Instagram and WhatsApp. Each acquisition violated the Clayton Act, because they cemented Facebook’s status as a monopoly and eliminated major competitive threats. Instead of creating efficiencies and helping consumers, these acquisitions gave Facebook the breathing room to ignore consumer welfare and yet still make ever-higher profits.

Attorney General Ellison and the bipartisan coalition are asking the court to halt Facebook’s illegal, anticompetitive conduct and block the company from continuing this behavior in the future. Additionally, the coalition is asking the court to restrain Facebook from making further acquisitions valued at or in excess of \$10 million without advance notice to the 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.

Reduced privacy and fewer options for consumers

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.

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 — Facebook’s “secret sauce” — many of those protections are now gone.

Acquisition of competitive threats

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 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, Zuckerberg and Facebook offer the heads of these companies vast amounts of money — that greatly inflate the values of the apps — all in hopes of avoiding any competition for 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 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 in an effort 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.”

Purchase of WhatsApp

The mobile messaging app WhatsApp also posed a unique threat to Facebook’s growth, as it gave users the ability to send messages on their mobile devices both one-to-one and to 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 could potentially provide the greatest threat.

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 — namely 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 two years earlier.

Cutting competitors off from Facebook overnight

As laid out in today’s complaint, the coalition — led by New York Attorney General Letitia James — 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, 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.

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 the site 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 drop-off in user engagement and downloads, and their growth stalled.

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, 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 revenues through advertising — reaping the company billions every month.

Broad bipartisan coalition

The lawsuit that Attorney General Ellison joined is headed by New York Attorney General Letitia James and an executive committee made up of the attorneys general of California, Colorado, the District of Columbia, Florida, Iowa, Nebraska, North Carolina, Ohio, Tennessee, and the District of Columbia. They are joined by the attorneys general of Alaska, Arizona, Arkansas, Connecticut, Delaware, Guam, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, 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, and Wyoming.

A [copy of the lawsuit](#) is available on the website of New York Attorney General Letitia James.