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

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*Bipartisan Coalition of 48 Attorneys General Charge Anticompetitive Conduct Facebook Thwarted Competition, Reduced Consumer Privacy for Profits.*

**Carson City, NV** – Today, Nevada Attorney General Aaron D. Ford joined a bipartisan coalition of 48 attorneys general in filing a lawsuit against Facebook Inc., alleging that the company has 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 competitors. These actions deprived users of the benefits of competition and reduced privacy protections and services. All of these actions were taken in an effort to boost Facebook's bottom line through increased advertising revenue.

AG Ford and the coalition of attorneys general 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 plaintiff states for review. 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.

"Facebook is the most popular social networking platform in the world, with nearly 1.82 billion hits daily," **said AG Ford**. "While it is a great tool to connect with people around the world and advertise products and businesses, Facebook's conduct has violated antitrust laws and gained too much power in the market through legally improper tactics. One aspect of the law is to protect against the restraint of trade by individuals and businesses in the marketplace, and that's exactly what my office is doing today—

protecting Nevadans from legally improper actions that unlawfully restrict trade in this arena.”

Since 2004, Facebook has operated as a personal social networking service that facilitates sharing content online without charging users a monetary fee. Instead, provides these services in exchange for a user’s time, attention and personal data. Facebook then monetizes user engagement and data regarding users, their friends, family and interests by selling advertising to firms which are then able to deliver targeted advertising to users based on their data characteristics. As Chairman and controlling shareholder Mark Zuckerberg has stated, Facebook builds a “competitive moat” around the company. This is accomplished through a buy or bury strategy where Facebook will crush or purchase smaller rivals before they can become large enough to threaten Facebook’s dominance and to stifle third-party developers that Facebook invites to utilize its platform. These tactics have allowed 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 space or would not consider selling, Zuckerberg would go into “destroy mode,” subjecting small businesses to the “wrath of Mark.” Facebook’s unlawful monopoly gives it broad discretion to set the terms for how 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.

When Facebook users have limited options, 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. 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.

### **Facebook’s “Buy” Strategy**

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 comes to startups, Zuckerberg has observed that these companies would “have to consider it” if Facebook offered a “high enough price.” The elimination of competitive alternatives fuels Facebook’s unfettered growth without competition and further entrenches 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 soon 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 giving 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 over 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 — far 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.

### **Facebook’s “Bury Strategy” Cutting Competitors Off from Facebook Overnight**

As laid out in today’s complaint, the coalition alleges that Facebook competitors who refused to be bought out would be competitively squashed by other means. 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.

In 2011, after years of promoting open access to its platform, Facebook began to rescind and block access to apps that Facebook viewed as actual or potential competitive threats. Facebook understood that an abrupt termination of established

access can be devastating to an app, especially one still relatively new to the market. In the past, some of these companies experienced almost overnight drop-off in user engagement and downloads, and their growth stalled. This strategy also served as a warning to other apps that if they encroached on Facebook's territory, Facebook would 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.

As a consequence of Facebook's expansive user base and the vast trove of data it collects from its users and users' connections, Facebook has 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.

**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.

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 against Facebook today 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.

In addition to Nevada, other states participating in this lawsuit include: California, Colorado, Florida, Iowa, Nebraska, North Carolina, Ohio, Tennessee, and the District of Columbia. The executive committee is joined by the attorneys general of Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, 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. California, Colorado, Florida, Iowa, Nebraska, New York, North Carolina, Ohio, Tennessee and the District of Columbia.

The filed lawsuit is attached.

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