Colorado Attorney General Phil Weiser plays lead role in multistate lawsuit seeking to end Facebook's illegal monopoly

Bipartisan coalition of 48 attorneys general charge Facebook with anticompetitive conduct that thwarted competition, reduced consumer privacy

Dec. 9, 2020 (DENVER, Colo.)—Colorado Attorney General Phil Weiser and a bipartisan coalition of state attorneys general **filed a major antitrust lawsuit** today against Facebook Inc. This action challenges a range of Facebook's conduct over the last decade as illegal under the antitrust laws, explaining that it served to stifle competition and protect its monopoly power.

In particular, the lawsuit alleges that the social networking giant illegally acquired rapidly growing firms to avoid competition and engaged in anticompetitive conduct to undermine the effectiveness of upstart rivals. In so doing, Facebook deprived users of the benefits of competition, thereby reducing choice and privacy protections, deterring investment, and undermining innovative service offerings to protect its ever-growing advertising revenue.

Weiser, who is a member of the bipartisan eight-member executive committee of state attorneys general that led the multistate investigation of Facebook, said that the company's dominance in the marketplace has harmed consumers and blocked innovation.

"The American way is to allow all companies to compete fairly and to provide consumers with the promise of new, innovative, and better products and services spurred by competition. A bipartisan group of state attorneys general have filed this action against Facebook because its campaign of promising to either 'buy or bury' competitive threats has undermined competition, harmed consumers, and thwarted innovation," explained Weiser. "Facebook's dominance in the social network marketplace can only be challenged once its anticompetitive actions have been addressed and remedied, thereby enabling both consumers and innovators to benefit from competition."

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 personal data. Facebook monetizes its business by selling advertising to firms that attach immense value to its 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.

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 used strategies have been to acquire smaller companies 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. As one market participant noted: if an application (app) encroached on Facebook's turf or didn't consider selling when approached by Facebook, Zuckerberg would go into "destroy mode," subjecting small businesses to the "wrath of Mark."

Reduced Privacy and Fewer Options

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 — often without their knowledge — to further its business interests, even if those terms conflict with the interests and preferences of Facebook users. When Facebook cuts off integration to third-party developers — a common tactic employed by Facebook when it perceives a competitive threat — users cannot easily move their own information, such as their lists of friends, to other social networking services. Facebook's conduct forces users who may want to try an alternative to either stay put or start their online lives from scratch.

Acquisition of Competitive Threats

The harm to consumers over the last decade largely results from Facebook's acquisition of smaller firms that posed competitive threats. Facebook employs unique data-gathering tools to monitor new apps all to see what is gaining traction with users and where users are spending their time. Facebook relies on that data to select acquisition targets that pose the greatest threats to Facebook's dominance. Once selected, Facebook approached those targets, offering the heads of these companies vast amounts of money so Facebook could avoid any competition in the future. Facebook relied on a strategy of acquisitions over competition on the merits.

When it came to startups, Zuckerberg observed, if these companies were not inclined to sell, "they'd have to consider it" if Facebook offered a "high enough price." By eliminating competitive threats, users have no alternative to Facebook, thereby further entrenching its position. The two most obvious examples of this successful strategy were its decisions to purchase 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 what Instagram offered, which 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. Despite Instagram's internal valuation of only $500 million, Zuckerberg doubled its offer to Instagram's owners, 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 and the one that could potentially provide the greatest threat because of its huge network and availability on all the major mobile operating systems.

Facebook feared WhatsApp as a threat to erode 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.

The threat that WhatsApp could erode its monopoly power by facilitating the emergence of a rival social networking platform led Facebook, in February 2014, to acquire WhatsApp for nearly $19 billion. This steep price wildly exceeded the extravagant price Zuckerberg had recommended paying just a few months earlier and the $100 million another competitor offered only two years earlier.

Cutting Competitors Off 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 works to squeeze every bit of oxygen out of the room so these companies cannot survive. 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.

Initially, 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. In return, Facebook 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 Facebook for those apps that Facebook viewed as actual or potential competitive threats. Facebook understood how 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 — suggesting to users that an app is unstable. Some of these companies experienced almost overnight drop-off in user engagement and downloads, Facebook's aggressive response to competitors also serves as a warning that if other apps encroached on Facebook's territory, Facebook would end their access to crucial integrations. Facebook's actions also sent a clear message to the investment community, deterring venture capitalists from investing in companies that Facebook might one day see as competitors.

Advertising

Because of its expansive user base and the vast trove of data it collects from its users and their 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 of dollars every month.

Specific Violations

The coalition has specifically charged Facebook with illegally maintaining its monopoly in violation of Section 2 of the Sherman Act, and with multiple violations of Section 7 of the Clayton Act, which prohibits anticompetitive mergers and acquisitions.

Remedies

To prevent future harm and unwind the effects of Facebook's past conduct, 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 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 today filed a complaint 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 the members of the executive committee which includes Weiser and the attorneys general of California, 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, 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.

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