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AG Ferguson files lawsuit against Facebook for creating an unlawful monopoly

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Bipartisan, multistate coalition of 48 attorneys general assert Facebook weakened, bought up potential competitors

OLYMPIA — Attorney General Bob Ferguson today filed an antitrust lawsuit against Facebook asserting the company formed an illegal monopoly in the personal social networking market. The company formed this monopoly by buying or constraining potential competitors, usually mobile apps, in their infancy — including rivals Instagram and WhatsApp.

These actions helped Facebook dominate its market. Roughly 70 percent of the U.S. population, including more than 5 million Washingtonians, use Facebook every day. More than 2.25 billion people worldwide use Facebook daily.

Ferguson, in a bipartisan group of 48 state attorneys general, filed the lawsuit today in the U.S. District Court for the District of Columbia. The states' lawsuit asserts Facebook's anticompetitive practices violate federal antitrust laws that have existed in the United States for over a century.

Reduced competition from monopolies drives up prices, inhibits innovation and reduces the quality of products and services. When Facebook created its monopoly, it reduced choices for consumers, increased the number of ads shown to its users and weakened its privacy protections in order to maximize profit from selling its users' data.

"Facebook has become a mainstay in many people's lives," Ferguson said. "The company has done everything it can to keep it that way, from unlawfully swallowing up its potential competitors to walking back its privacy protection promises. Facebook has built a fortress around its power in the market that not even an international data privacy scandal could break. No single company should have that much power."

Facebook's business model

Facebook makes money off its users in two ways: collecting and selling its users' personal data, and selling ad space on its users' newsfeeds. The more time users spend on Facebook, the more profitable this model becomes. Facebook collects personal user data such as demographic information, interests, buying habits and location. Advertisers use this data to predict which users are most likely to purchase an advertised product or service, then place ads on those users' Facebook newsfeeds — an advertising strategy known as targeting.

This model is lucrative for Facebook. The company's businesses earned $70 billion last year, a 27 percent increase from the year before.

How Facebook formed its monopoly

Facebook has dominated the personal social networking market since 2008, after it surpassed the previously ubiquitous platform MySpace in number of users. A personal social networking platform allows users to connect with their network of personal connections, typically friends, family and other people they know in offline life.

For nearly a decade, Facebook has mounted an aggressive "buy or bury" campaign to nip in the bud any new companies seen as potential competitors. Facebook focused its efforts on mobile-based platforms, knowing people were increasingly using their smartphones to communicate and access their social networks.

The company made three major acquisitions that helped Facebook eliminate its competition:

- In 2012, Facebook acquired Instagram, the popular photo and video sharing mobile app and one of Facebook's most viable competitors.
- In 2013, Facebook acquired Onovo, a data analytics company, to help it identify new social networking mobile apps most likely to be successful, and eliminate or weaken these new competitors in their infancy.
- In 2014, Facebook acquired the messaging service WhatsApp.

Facebook's purchase of WhatsApp is a key example of Facebook's anticompetitive strategy. Before Facebook bought the company, WhatsApp's ad-free model stood out among other messaging apps. WhatsApp, in order to avoid selling user data, charged a $1 download fee and a $1 annual subscription — a nominal fee, yet still enough to keep the company operating profitably.

WhatsApp grew quickly, and Facebook took notice. WhatsApp's ad-free, privacy-focused model was popular with its users. When it sought approval from regulators to purchase WhatsApp, Facebook promised to retain this ad-free model and promised not to use WhatsApp user data for its ad-targeting business. Facebook broke both of those promises. Just a few years later, Facebook eliminated WhatsApp's monthly subscription model and sold its user data to advertisers.

Facebook wielded its power and control in the personal social networking market to weaken competitors. Facebook's market power gives it the ability to bury a competitor at practically the flip of a switch. For example, when photo sharing company Phhoto entered the scene, Facebook initially allowed its users to share Phhoto content on their Facebook newsfeeds. Over time, Facebook intentionally restricted this ability and blocked all Phhoto content on public newsfeeds. Blocked from the world's largest social media platform, Phhoto went out of business in 2017.

How Facebook's monopoly harms consumers

After pushing out or purchasing its viable competitors, Facebook now has little in its way to expose user data for profit, and little incentive to improve its users' experience on the platform.

In 2011, Google launched its own version of a personal social network, Google+. Facebook had planned to roll back its privacy protections in 2011 in order to increase profits from selling user data. Facebook put these plans on hold in an attempt to keep its users from switching to Google+.

The competitive pressure from Google+ forced Facebook to develop new products and fix problems it ignored and allowed its users to live with for years. These problems included photos that wouldn't upload, incessant spam friend requests and the inability to filter through and categorize friends.

By the time Google+ launched, Facebook had made enough improvements and developed enough new products to convince consumers that Google+ had nothing more to offer than Facebook was already providing. Google+ folded in 2018.

Emboldened by Google's failure to gain a meaningful foothold in the personal social network market, Facebook revived its plan to roll back privacy protections — a "bait-and-switch" that eliminated the features that kept Facebook users from migrating to Google+. For example, Facebook changed its terms of service so it can track a user's online activity on any device a user is logged in to, even if the user is not actively using Facebook. This means that if a user is logged on to Facebook on both a phone and a laptop, Facebook can track which websites the user visits on both those devices and sell that information to advertisers.

Facebook also ramped up its ad-targeting business, trading a larger slice of users' newsfeeds and user data for more revenue from advertisers. In 2015, 8.2 percent of the posts users saw on their Facebook feeds were advertisements. By 2017, that ad ratio grew to more than 20 percent for some users. In addition, Facebook increased the number of ads shown to Instagram users by 50 percent in 2018. These increases translated to more profit for Facebook and a worse experience for consumers, for whom more advertising means fewer posts from the real-life connections that brought them to Facebook in the first place.

An increasing amount of people rely on Facebook products daily to communicate with the people in their lives, consume news and run or support small businesses. Now that Facebook has bought up or pushed out nearly every viable competitor, many users cannot leave Facebook even if they wanted to. In fact, Facebook's user base continues to increase, even after major data leaks and privacy violations — including the company's biggest scandal, which involved data-collecting company Cambridge Analytica.

Cambridge Analytica exposed millions of Facebook users' data, sparking global outrage and intense public scrutiny on Facebook's data sharing policies. The hashtag #DeleteFacebook began trending on social media. In response, users stopped posting on Facebook as often — but there was no mass exodus from the platform and the number of Facebook users has increased ever since because they have nowhere else to go.

Legal claims

The states' lawsuit asserts Facebook's anticompetitive practices violate longstanding federal antitrust laws: the Sherman Antitrust Act of 1890, which prevents companies from monopolizing or attempting to monopolize a market, and the Clayton Antitrust Act of 1914, which prohibits companies from acquiring other companies in order to substantially reduce competition.

The lawsuit asks the court to order Facebook to sell its stock in Instagram and WhatsApp and stop all its anticompetitive practices, including future anticompetitive acquisitions and mergers.

Assistant Attorney General Amy Hanson is leading the case for Washington.

Holding Facebook accountable

Today's lawsuit is the latest of several actions Ferguson has taken against Facebook.

In 2018, an Attorney General's Office investigation led to nationwide changes to Facebook's advertising platform that prohibit advertisers from excluding ethnic and religious minorities, immigrants, LGBTQ individuals and other protected groups from seeing their ads.

Ferguson has twice taken legal action against Facebook for violations of Washington's laws on political advertising. In April 2020, Ferguson sued Facebook for selling Washington state political ads without maintaining information for the public as required by Washington state campaign finance law. Ferguson filed a similar lawsuit in June 2018, which resulted in Facebook paying $238,000 — a $200,000 penalty and an additional $38,000 to reimburse the state's legal costs and fees.

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