

Firing a Warning Shot across Big Tech's Bows*

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It was a long time coming, but the day of reckoning for the big digital companies may finally have arrived. Despite the growing monopoly power of big tech and their use of anti-competitive practices, earlier attempts to regulate them (such as an attempt by the U.S. Department of Justice in 1998 to rein in Microsoft) had only limited success. The novel coronavirus pandemic further enhanced the monopoly power of the big tech giants.

Timeline and actions

But now, a rash of lawsuits and regulatory moves in the United States and Europe against the big non-Chinese digital companies (particularly Facebook, Amazon, Apple and Google) suggest that the days of their easy expansion in an unregulated environment may be coming to an end. In October 2020, the U.S. Department of Justice brought a lawsuit against Google for misusing its dominant position as search engine by undermining competitors; favouring its own content in search results; doing deals with other companies to become the default search engine in many browsers and devices; and then using data on its users and competitors to reinforce its dominance and get even more revenue from advertising.

Then, in early December, the U.S. Federal Trade Commission (FTC) and 48 states, the District of Columbia, and Guam, sued Facebook, accusing it of abusing its market power in social networking to crush smaller competitors. The specific instances of Facebook's acquisitions of WhatsApp and Instagram were cited, which apparently resulted from concerns that the growing popularity of these platforms could break the company's hold on social media. The FTC complaint cites a Mark Zuckerberg email of June 2008: "It is better to buy than compete"; in another internal communication, he noted that Facebook "can likely always just buy any competitive startups".

By 2012, just before buying Instagram, he said the photo and video sharing app "could be very disruptive to us", if allowed to grow independently. The purchase of WhatsApp two years later similarly reflected concerns that the instant messaging service could become the favoured social media over Facebook.

The 'wrath of Mark'

Why did these companies agree to be bought up? It was not the price at which they were sold (\$19 billion for WhatsApp and \$1 billion for Instagram) so much as Facebook's ability to make an offer they could not refuse, Mafioso-style, by destroying their ability to expand and attract new users. "Will he go into destroy mode if I say no?" Instagram founder Kevin Systrom is cited as having asked an investor when considering Facebook's offer. "Bottom line I don't think we'll ever escape the wrath of Mark ... it just depends how long we avoid it."

This wrath was expressed by using Facebook's huge user base in a bait-and-switch, offering newer app or website developers various incentives (such as allowing them to use "like" buttons) that promoted their sites or apps to Facebook users, which also meant that Facebook could then gather more data on the online activities of those

users. When the new app grew and emerged as a possible threat, Facebook would stop this access and thereby destroy its ability to attract a new user base.

Google and Facebook are hardly the only transgressors. A U.S. House Committee Report that led up to the lawsuits has major indictments of Amazon and Apple as well. Amazon “functions as a gatekeeper for e-commerce”, reducing competition and thereby also harming consumers. It has exploitative relationships with other sellers on the platform, which “live in fear of the company” and which Amazon refers to as “internal competitors”. Sellers are not allowed to contact shoppers directly, often limited in their ability to sell on other platforms, face “strong-arm tactics in negotiations” and have to choose between getting “atrocious levels of customer service” or better service for a fee. Like the other companies, Amazon profits from ideas and products developed by others, and simply buys up start-ups or even open-source cloud-software developers when it wants.

Apple also favours its own apps and seeks to put rivals at a disadvantage on its products and leaves developers with little choice for reaching consumers. Like Google, it levies high commission fees (of 30%) that end up being charged on consumers. The two companies are voracious purchasers of companies: over the past few years, Google has bought at least one firm a month; Apple buys one every two or so.

The European Union has separately filed cases against Amazon and Google. In November, it filed charges against Amazon (<https://bit.ly/37htcwd>), accusing the company of using its access to data from companies selling on its platform to gain unfair advantage over them.

Earlier this summer it opened two antitrust cases against Google. It is planning to change the regulatory regime to prevent the anti-competitive practices exhibited, for example, in its Android mobile operating system and its search engine.

Impact on users

The dangers of these aggressive monopolies are not confined to the competitors — users also suffer because of fewer options and weaker privacy controls. Both WhatsApp and Facebook have eroded the privacy protections that they earlier promised, by changing the terms of service communicated through long and complicated messages that most users simply do not read. All these companies hoard the data they collect, which increasingly covers all aspects of their users’ lives. For many of them, data are now the biggest source of revenues and profits. All sorts of use can be made of data: marketing and targeted advertising, influencing and manipulating political outcomes, targeting individuals based on particular criteria, enabling surveillance by both governments and private agencies.

The idea in both the U.S. and the EU is to break up these companies — for example, by forcing Facebook to divest both WhatsApp and Instagram, much as the telecom giant AT&T was forced to break up in the early 1980s. Anti-trust lawsuits are notoriously difficult to win, but many legal experts agree that these cases are very solid.

But this is only one step in the required regulatory control of these digital behemoths, which are now exercising unprecedented market power as well as other kinds of power.

More regulation is clearly required, in addition to the lawsuits.

The Indian angle is relevant

All this has direct relevance for India, and not only because these companies are so important in India. More than 400 million of WhatsApp's estimated 2 billion users are in India; Amazon has around one-third of the share of online retail in India, neck and neck with Flipkart that was recently acquired by Walmart; India is Facebook's largest single market, with around 270 million accounts; Google completely dominates the search engine space in India, and most smartphones in India are Android-based. And now Facebook and Google are collaborating with India's largest telecom company — Reliance Jio owned by Mukesh Ambani — to create a single gateway for Indians providing everything from information, news media and entertainment to daily purchases of groceries and sundry other services. Apart from their market dominance, another concern is the cosy relationship these companies have established with the ruling party in the country, and the willingness to adopt different standards of fact-checking and privacy in India, so as to benefit the powerful. Reports suggest that Facebook has been unwilling to remove incendiary and violent content for fear of backlash from Hindu nationalist politicians and stormtroopers. This is not helped by the fact that India still does not have a privacy law, even though the Supreme Court declared privacy to be a fundamental right some time ago. Even the proposed Bill is extremely weak without adequate safeguards. It is time for Indians to wake up and realise that anti-trust regulation and public control over digital companies—including home-grown ones — have become critical for them.

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