Tech Platforms Feel the Heat*

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In a move that was expected, the US Justice Department has filed an anti-trust lawsuit against internet search giant Google, alleging that it resorts to anti-competitive practices to ensure its dominance in the search engine space and, through that, over the related online advertising revenues. As a leading example the case cites the successful effort to exclude the competition through a deal, in place since 2005, in which Google pays Apple around $8-12 billion a year in return for pole position as the default search engine in Apple's devices and the Safari browser. Around half of Google's search traffic is reportedly mediated by Apple devices. Such practices, Justice holds, help Google attract users and win a substantial share of the internet advertising revenue pie, a part of which is used to pay off Apple and other browser providers who direct users to Google search, completing the circle.

The Justice Department's move is significant as it has been more than two decades since the institution last moved against a tech major for the misuse of monopoly through its case against Microsoft. Further, signs are that this may be the first in a series of cases against leading firms in the digital economy. In what appears to be a major pushback against the power of the platform companies in their home turf, Amazon, Apple, and Facebook (besides Google) have come under attack. A bipartisan Antitrust Subcommittee of the Committee on the Judiciary of US House of Representatives has recently completed a 450-page report that makes a case for moving against this group of companies. Arguing that over the last decade several sectors of the digital economy, such as social networking, search and online advertising, have come to be dominated by one or two firms, the report holds that the monopolisation has had far-reaching detrimental effects in the form of a reduced pace of innovation, the decline of trustworthy sources of news, the misuse of deftly mined consumer data, and the undermining of economic and political liberties. Meanwhile, on a parallel track, the US Federal Trade Commission is reportedly discussing the launch of an antitrust case against Facebook based on complaints that the social networking major snuffs out competition, including through acquisitions as happened in the case of Instagram.

The range of possible anti-trust violations by the tech majors identified in the House Committee report are far wider than targeted by the Justice department in the case of Google. The report flags the tendency criticised for long for Google to privilege location of pay-by-click search results that are paid ads, over organically generated results of exactly the same kind. Given Google's monopoly over search, firms are forced to opt for paid versions of their listing in search results for fear of otherwise being lost in results pages in which ads proliferate. Moreover, those pages are filled with Google's own content that may be less relevant but helps attract traffic to its own offerings. The report also notes that revenues generated by platforms through their monopoly position are used for multiple acquisitions that neutralise the competition or use its strengths to reinforce pre-existing dominance. Diversification into new areas such as browsers (Chrome) or navigation (google Maps) is also key to dominance over the internet.

Dominance also intensifies power asymmetries. With around 50 per cent of online retail sales in its basket, Amazon has become the sole channel for revenues for close to two-fifths, or 850,000 of 2.3 million, of small and medium businesses. That is a problem because Amazon is also a seller in its own marketplace through related entities. Given that conflict of interest, it is bound to privilege its own sales over that of others in multiple ways. Apple too ties in small and independent developers of apps linked to its operating systems, using its control over the systems to control software distribution by getting them to market them through its app store and charging large commissions for hosting them. Finally, acquisitions by Facebook and its anti-competitive strategy, the Committee held, has reduced the market for social networking to one in which competition is between arms of the dominant group, especially Facebook and Instagram, which has reduced quality of service in the form of poor privacy protection and increasing misinformation.

The material studied by the Congressional committee and the prima facie evidence with the Justice department do appear to make a strong case for allegations of monopolisation and the misuse of monopoly positions in different segments of the digital economy. If established, action to correct the adverse effects of those tendencies would follow. However, even at this early stage doubts are being expressed on how far the drive against dominant firm power would go and how effective action, if any, would be. There are a number of reasons for such scepticism.

The first is the experience with such investigations that they are likely to be prolonged to an extend where the transformation of what is a rapidly changing sector may reduce the relevance of the investigation. This is what happened with the anti-trust case against IBM, for example. The thirteen-year US vs. IBM antitrust battle that began in 1969 ended with the case being withdrawn on the grounds that it was without merit. The second is the difficulty of establishing monopoly and proving its misuse in a sector where the boundaries between segments are difficult to draw (to assess market share and monopoly). The third is that even where dominance over a particular well-defined market can be established, the nature of the sector prompts arguments that competition is not stifled because new technology make pre-existing markets irrelevant. IBM's defence in the anti-trust case against it was built on the argument that a company's share in its designated market at a given point of time is no indication either of its market power or the presence of artificial barriers to entry into the industry. In a technologically dynamic industry, its lawyers argued, a firm with a large market share could be subject to intense competition, because it operates in a market in which superior new technologies rapidly succeed each other.

The fourth cause for scepticism is the difficulty in identifying the nature of the offence when alleging misuse of monopoly. To circumvent that problem, Section 2 of the Sherman Act of 1890 decreed that monopolization in itself or attempted monopolization was an antitrust offense. But in practice the legal process has focused on establishing misuse of monopoly power, through predatory pricing that keeps out competition for example. But as was argued in the IBM case any firm that succeeds in the competition, necessarily takes away business from its competitors. Such "injury" to its competitors cannot be seen as reflective of the undermining of the competitive, since it is the outcome of that process. In Google's case this problem is be compounded by the fact that Google does not even engaged in price setting, to be accused of predatory pricing. It does not charge users of its search services and only

profits from the advertising attracted by the number of free users and the information about its users that it collects. Users choose Google search Alphabet Inc argues only because it is superior to the alternatives available. Finally, even if misuse is established the penalty may not be as severe as a breakup of the monopolist in order to restore competition, and may in fact amount to the imposition of fines that would be small change for these highly profitable platforms. That has been the experience in cases where the European Union has managed to successfully indict tech monopolies of misuse of power. The action that follows would achieve little.

In the case against Microsoft, which began in 1997, the main issue (initially with respect to the Netscape browser), was similar to allegations being made against today's tech majors—that Microsoft was with Windows "leveraging" monopoly in the operating systems market, by bundling new products like Internet Explorer (and later its Media Player) with its operating system for free and forcing vendors to promote its browser at the expense of alternatives. The case which dragged on for four years and threatened to lead to an enforced break up of Microsoft into two companies, finally ended up imposing only "moderate remedies". The law had taken a course which legitimised Microsoft's actions on the grounds that the complexities of software as technology and the speed of technological change in the industry made most conventional anti-trust guidelines irrelevant.

It is inevitable that in the battle to follow the House Committee's report and the action of the Justice Department and potentially the FTC, all these and many other obstacles to establishing misuse of monopoly may subvert the effort to rein in the economic and political power that the tech giants wield. But some hope that this time the result would be different, because of the bipartisan political support for action against these firms. But sceptics argue even that may be reflective of the political mood in an election year, and therefore temporary. The timing of recent actions suggest this may be the case. The turn to so-called "populism" in US politics has required all parties to promise action to reduce indefensible inequality and reverse the tendency in recent decades for development to overwhelmingly benefit a few while leaving the majority behind. Railing against monopoly may be an election year stance that meets that requirement but will not be sustained. Especially because these monopolies are relied on by candidates across the US political spectrum to finance their election effort.

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