

How Each Big Tech Company May Be Targeted by Regulators

By Jack Nicas, Karen Weise and Mike Isaac

Sept. 8, 2019

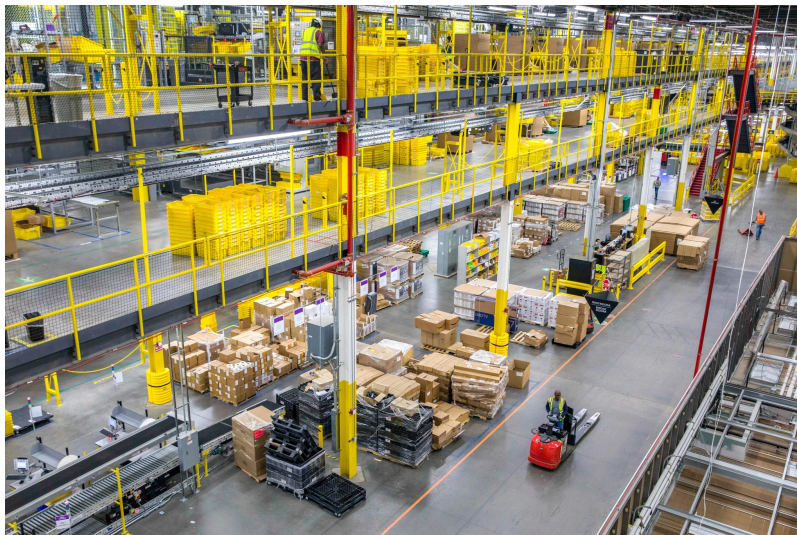
Amazon, Apple, Facebook and Google have been the envy of corporate America, admired for their size, influence and remarkable growth. Now that success is attracting a different kind of spotlight. In Washington, Brussels and beyond, regulators and lawmakers are investigating whether the four technology companies have used their size and wealth to quash competition and expand their dominance. The four firms are lumped together so often that they have become known as Big Tech. Their business models differ, as do the antitrust arguments against them. But those grievances have one thing in common: fear that too much power is in the hands of too few companies. The attorney general of New York, Letitia James, said Friday that the attorneys general in eight states — she and three other Democrats, plus four Republicans — and the District of Columbia had begun an antitrust investigation of Facebook.

On Monday, a separate bipartisan group led by eight attorneys general is expected to announce an investigation of Google, according to two people familiar with the plan, who spoke on the condition of anonymity before the official announcement.

And in Washington on Thursday, the House antitrust subcommittee is scheduled to hold its third hearing on the impact of competition on data and privacy.

Here is the case against Big Tech — and what Big Tech has said in response.

Amazon: Favoring its own products?



Antitrust scrutiny of Amazon centers on whether the company improperly favors its own products over those of third-party sellers. Hiroko Masuike/The New York Times

Over the years, politicians and regulators have floated the idea of breaking up of Amazon. That included spinning off its hugely profitable cloud computing business or rolling back its acquisition of Whole Foods.

But much of the recent scrutiny of Amazon in Europe and Washington centers on whether the company improperly favors its own products over those of third-party sellers, which depend on sales from the e-commerce giant. Regulators are also looking at whether sellers need to use certain Amazon services, like ads and its fulfillment network, to sell their products.

When Amazon began, it was mostly structured like a traditional retailer, buying products from brands and manufacturers at a wholesale price and selling the items to consumers.

Amazon has expanded what's available on its site by having third-party merchants sell products directly to customers. By 2015, more than half the sales on Amazon — 51 percent — were made by these outside sellers. Last year, that grew to 58 percent.

One line of antitrust questioning looks at the products that Amazon sells under its own brands, like AmazonBasics for batteries or Mama Bear for diapers and wipes. Amazon has more than 140 private labels, according to TJI Research.

Lawmakers have asked if Amazon takes advantage of data it collects from sellers to develop its own offerings. They have also questioned whether Amazon's products get preferential promotion on its site.

Amazon has told Congress that it uses aggregated data like overall sales, not information “related specifically to individual sellers,” and that private-label products make up about 1 percent of total sales.

Italy's antitrust authority is looking into whether Amazon gives better visibility and search rankings to sellers that ship products through its vast fulfillment network, which sellers pay to use. Lawmakers in Washington have asked similar questions.

Amazon counters that products sold via its logistics network do well in its algorithms because it provides a better and more reliable shipping experience for customers.

Amazon also faces questions about its growing advertising business, which had more than \$10 billion in revenue this past year. Much of that came from product ads that show up high as sponsored listings in search results.

At a House hearing in July, Representative Val B. Demings, a Democrat from Florida, asked a lawyer for Amazon what prevented it “from using ads as another way to charge a toll for using its platforms.”

The lawyer, Nate Sutton, who used to work at the antitrust division of the Justice Department, responded that the ads were “an optional service” and that the large majority of products sold on Amazon were not sold through advertisements.

Apple: The power of the App Store

Scrutiny of Apple focuses on how the company controls its App Store.
Emma Howells/The New York Times

Apple's critics have homed in on its control of the App Store, the digital marketplace for apps on iPhones, iPads and Mac computers. The App Store has become a crucial way for digital businesses to reach customers, and Apple exerts strict control over which companies can appear in the store and how.

Apple says it has the right to “curate” the App Store to ensure high quality and to rid the store of fraud. As a result, Apple's store generally includes fewer fraudulent apps than Google's.

But while Apple is the App Store's sole referee, it is also one of the biggest competitors on it. Apple has bet its future on getting customers to spend more on its apps and services, and that relies in part on people opting for them over the apps of rivals.

Some app developers have accused Apple of abusing its control of the App Store to harm competitors and benefit itself. Spotify has filed such a complaint with European regulators, and makers of parental-control apps have complained to regulators in Europe, Russia and the United States about Apple's restriction of their apps after the release of its own competing service.

Apple has said that it faces fierce competition and that it doesn't favor its own products in the App Store; and that it isn't a monopoly because it doesn't have a majority share in most markets.

Facebook: Consolidation of social media

Jessica Chou for The New York Times

For years, venture capitalists and tech strategists across Silicon Valley have admired Mark Zuckerberg's foresight.

While many industry experts wondered during Facebook's early years whether it would turn out to be the next MySpace, Mr. Zuckerberg was always searching for an edge to stave off any threats of digital irrelevance for his company.

His efforts have worked — perhaps too well. The Federal Trade Commission is investigating what some have called Facebook's "program of serial defensive acquisitions," a method of maintaining the company's dominance in social networking.

Regulators could claim the acquisitions were a violation of the Sherman and Clayton Antitrust Acts — two laws that have been foundational in the past century of federal antitrust prosecutions.

That could include some of Facebook's largest acquisitions, like Instagram, the photo-sharing network that it bought for \$1 billion in 2012. At the time, it was an enormous sum for a smartphone app. Just two years later, Facebook spent \$19 billion for WhatsApp, the global messaging application used by more than a billion people.

Competitors believe that long before Facebook bought either of those companies, Mr. Zuckerberg kept a close eye on start-ups that could pose a threat to his company. Facebook has acquired more than 70 companies over roughly 15 years.

For investigators, one other eyebrow-raising acquisition was Facebook's purchase of Onavo, a mobile analytics company, in 2013.

Onavo's apps were marketed as free products that allowed consumers to manage and compress their data and download rates, a cost savings for people who live in countries where unlimited data plans aren't common. But the service also gave Facebook insight into what new competitors were doing.

Facebook walked away from at least one acquisition late last year, the social video app Houseparty, for fear of attracting antitrust scrutiny from regulators in Washington, according to two people familiar with the matter.

It has also taken steps to improve its user data policies as a result of a previous Federal Trade Commission investigation into Facebook's privacy practices. The social network reached a settlement with the agency in July, paying \$5 billion in fines and agreeing to some concessions involving improved oversight of the company.

Facebook has made the case that it faces stiff competition both at home and abroad, pointing to fast-rising competitors like Apple in the United States and WeChat in China. Further, as it testified before Congress in the summer, the company claims that the barriers to starting a would-be challenger to its business are lower than ever. Start-ups like Snapchat, TikTok and others have sprung up quickly over the past 10 years, snapping up early adopters and teenagers, a youthful demographic that Facebook — and its advertisers — value immensely.

Google: What appears in search results

How Google, which sells everything from smartphones to business services, presents search results could be an area of interest for regulators.
Damien Maloney for The New York Times

Google is dominant in several different markets and could face antitrust claims in multiple jurisdictions.

One battle is likely to be in search. When Google debuted in 1996, its search results were a simple list of 10 blue links to websites it believed could answer the user's query. "We want to get you out of Google and to the right place as fast as possible," Larry Page, Google's co-founder, said in an interview with Playboy in 2004.

Years later, Google has changed from sending users elsewhere to answering their questions itself. It has crowded its search results with its own products and services, such as Google Maps, Google Images and Google Flights. Google has gotten so good at answering users' questions, more than half of Google searches now end on Google, without a click to another site, according to a recent analysis by Rand Fishkin, an online-search analyst.

Google's new approach has given users quicker answers. But some competitors argue that Google is abusing its dominance in search and inducing internet users to not click beyond Google, which starves those competitors of customers for their products or users to see ads on their sites.

How Google presents its search results could be subject to antitrust laws because it has an effective monopoly, handling more than 90 percent of searches worldwide, according to some estimates. Because Google has become the primary way customers find businesses, steering users to its own products could be considered anticompetitive behavior under some laws.

The Federal Trade Commission investigated Google for such a practice. They settled, and the agency did not conclude there was harm to consumers. In 2017, the European Union fined Google \$2.7 billion for favoring its shopping service over rivals in search results.

Google has said that it faces ample competition and that its search engine is designed to give users the most relevant results, not favor itself.

While Google is predominantly known for search, it makes most of its money on digital ads. It dominates that market, too.

Over two decades, Google has built a complex web of services that underpin the sale of most ads on the internet. Google is the biggest seller of digital ad space. It is among the biggest providers of digital-ad analytics. And it is, in effect, the broker in most digital-ad transactions.

Competitors say Google has leveraged that control of the internet's ad ecosystem to push companies to use its advertising technology and buy its ads.

Brian O'Kelley, the former chief executive of the ad-technology firm AppNexus, said Google had undercut his business. He argued that Google forced advertisers to use Google's competing ad technology if they wanted to work with other Google-owned services. And this year, the European Union fined Google \$1.7 billion for imposing unfair terms on companies that used its search bar on their websites in Europe.

Google said in response to the fine that it had made several product changes to increase the visibility of competitors. "We've always agreed on one thing — that healthy, thriving markets are in everyone's interest," the company said.

Google's Android software backs at least three of every four of the world's smartphones, according to analyst's estimates. Google has achieved such scale by giving Android away for free — almost. In return for handset makers' use of its version of Android, Google has required them to place its search engine front and center on their phones and preinstall a series of other Google apps.

The strategy has helped Google broaden its dominance in online search, reach more than a billion monthly users across nine separate services and continue to expand its advertising business.

Regulators are considering whether Google unfairly leverages Android's dominance. Handset makers are effectively locked into Android because it is the only available smartphone software that hosts the apps that users demand, like Instagram and Uber. (Apple's software also hosts the apps but is exclusively for iPhones.) With that leverage, Google imposes unfair terms on the handset makers, critics have argued.

The European Union agreed, fining Google \$5.1 billion last year.

Google has argued that Android has increased competition in the smartphone market by enabling phone makers to compete with Apple.

Interested in All Things Tech? Get the Bits newsletter for the latest from Silicon Valley. And sign up for the personal tech newsletter for advice and tips on the technology changing how you live.

A version of this article appears in print on Sept. 9, 2019, Section B, Page 1 of the New York edition with the headline: 4 Tech Giants, One Issue: Power