

## Social Media & Antitrust Laws

*Social media companies often utilize personal information and collect data from their users. Antitrust laws are designed to protect consumers and encourage free enterprise. Have these companies become too intrusive, and do they now fall under antitrust law considerations?*

For over 100 years, federal antitrust laws have protected consumers from predatory business practices by promoting and enforcing fair competition in the marketplace. Congress passed the first antitrust law, the Sherman Act, in 1890 as a response to abuses of power by oil and railroad companies, which were charging high prices to transport goods. The act banned monopolies, which arise when a company has complete or near complete control of a market, and prohibited price-fixing (competitors agreeing to raise or lower prices as a group, instead of individually), market division (competitors dividing sales territories or splitting customer groups), and group boycotts (multiple competitors refusing to do business with others, especially if the group holds market power).

In 1914, Congress went several steps further with the Federal Trade Commission Act, which prohibits unfair competition and deceptive business practices. This act also created the Federal Trade Commission (FTC), which, along with the United States Department of Justice (DOJ), enforces antitrust laws. The FTC's mission is twofold: It exists to encourage competition and to protect consumers. Free, open markets serve as the base of a thriving economy, and the FTC's ultimate goal is to cultivate aggressive, fair competition that provides a range of innovative and high-quality products at low prices, which benefits both consumers and businesses.

While companies may sometimes need to collaborate to be successful in a specific market, antitrust issues can often arise when this collaboration gives competitors undue or unreasonable market power. As a result, the Clayton Antitrust Act was also passed in 1914 to clarify and expand upon the language used in the Sherman Act, regulating mergers and acquisitions and barring operations that may lead to monopolies. Mergers, or the combination of multiple companies, can improve product quality and efficiency, but they can also alter market forces, resulting in increased prices or fewer options. This is especially true of horizontal mergers, or the combination of direct competitors, which can decrease competition and hurt consumers by allowing the merged business to raise prices with fewer available alternatives.

Over the past century, the FTC and the DOJ have brought antitrust cases against companies like AT&T, Kodak, and most recently Microsoft. In 1998, a group of states and the DOJ sued Microsoft for attempting to monopolize the market by bundling programs and browser software in its operating system, making it unreasonably difficult for customers to install and use competing browsers instead of Microsoft's Internet Explorer. Microsoft eventually settled, agreeing to share its computing interfaces with third-party companies and promising to work better with developers.

Antitrust laws aren't just for brick and mortar stores: They also apply to social media companies. Companies like Twitter, Instagram, and Facebook offer their platforms to customers for free, but they still need to operate as profitable businesses. As a result, most social media companies collect revenue from advertisements displayed on their sites. The social media companies' unique opportunity to gather valuable data about their users and their online habits makes for a highly sought-after advertising medium – and increases the potential for privacy violations and data breaches. As these social media

companies devour their competitors, increase their market power, and gain access to increasingly valuable user data, antitrust laws exist to hold these companies accountable for protecting consumers.

Currently, four high-tech companies are in the midst of preliminary antitrust investigation hearings: Apple, Google, Amazon, and Facebook. Over the summer, the CEOs of these tech giants each faced allegations of unfairly dominating the market and restricting competition, as well as scrutiny over recent acquisitions of smaller tech firms. These cases are ongoing as the government gathers further evidence to build potential legal cases against the four companies—if the cases are successful, this could mean a complete restructuring of big tech antitrust/monopolization enforcement. Even if they don't result in formal lawsuits, these investigations could make it much more difficult for tech corporations to continue business as usual or purchase their competitors. Facebook in particular is facing notable pushback for its behavior in terms of rival acquisition, market dominance, privacy violations, and consumer surveillance.

The social media giant is no stranger to federal investigations: Last year, the United States Securities and Exchange Commission (SEC) brought charges against Facebook for making misleading disclosures concerning the risk of mismanagement of user data. This comes after the infamous Cambridge Analytica scandal, in which a data analytics firm collected Facebook data from an online personality quiz, then violated Facebook's policies by transferring the user data of up to 87 million Facebook users without consent and utilized this information for political advertising. Facebook discovered this misuse of information in 2015, but continued to disclose the risk to investors as merely a hypothetical for two years, stating that "users' data *may* be improperly accessed, used or disclosed." Facebook agreed to pay \$100 million to settle the charges.

In addition, the FTC slapped Facebook with a \$5 billion fine for deceiving users and misrepresenting its privacy practices. Despite promising consumers they could control the ways in which their personal information was shared, Facebook ignored their information disclosure decisions and violated consumers' privacy. This regulatory action, which was one of the largest fines in history, was designed to prompt widespread privacy policy reform at the company, as well as communicate to other businesses that mishandling user information can result in hefty consequences.

Scandals of this magnitude are not limited to legal consequences: They have ethical implications, too. What follows is a further examination of the ways that Facebook's potential antitrust violations have impacted modern consumers, who are reliant on a platform that increasingly seems to prioritize the business needs of its advertising revenue-streams over the privacy needs of its users.

### **Case Study:**

Since its creation in the early 2000s, Facebook has emerged as a leading online social media and social networking service known around the world. Originally developed by American Mark Zuckerberg for his fellow college students at Harvard University, Facebook has grown exponentially, now with over 2 billion active users. On Facebook, users create a profile by adding information about themselves, such as their birthday, schools attended, place of employment, and items or activities they like. From there, users can engage with other users in a variety of ways: by posting text or photographs, joining common-interest groups, selling items on Facebook's Marketplace, and more.

Because Facebook offers its platform free to users, it relies on advertisement revenue to remain profitable. But Facebook doesn't just sell ad space – it also sells its unique ability to follow the digital

activity of its users on both its site and across the internet. Using tracking cookies and “like” buttons on a huge number of websites, Facebook is able to follow and surveil both users’ and nonusers’ online activities and behavior. This information is highly coveted by advertising companies, for whom user data is currency. However, it’s not an ideal situation for Facebook users, who often don’t realize the extent of the data collected or for what purposes.

At first, it may seem that boycotting Facebook is the solution to safeguarding your privacy – but it isn’t so easy. Given modern society’s digital reliance, today’s consumers are dependent on social media sites for both personal and professional uses, which makes simply “walking away” difficult. Plus, users who decide to use a third-party site instead of Facebook will find that there are few, if any, alternative options. In terms of monopolies, Facebook continues to gain power as it acquires its competitors, like Instagram and WhatsApp, and has dominated the market. In addition, Facebook’s ability and willingness to sell user data to advertisers gives it overwhelming market power, and this power makes it exceedingly difficult for alternative platforms to emerge and be competitive.

Unfortunately, this leaves users with a dilemma: to engage with an aggressively-surveillant platform that uses and sells their personal information to the highest bidder, or to reject the platform altogether and risk missing out on the benefits that come with being a participant in the digital world. To what extent is Facebook responsible for putting consumers in this precarious situation? While Facebook, like all businesses, has a right to seek profit through its business operations, it’s clear that its current business model is problematic for its platform users.

Suggested Questions:

- How can Facebook best demonstrate **integrity** in its operations?
- Does Facebook’s current model of business demonstrate **respect** for its users and their information?
- Do Facebook’s business operations present antitrust concerns? In what ways have Facebook’s actions impacted other businesses in the social media market?
- To what extent should Facebook be held **accountable** for the potential privacy invasion of users who opt to use its site? What about nonusers?
- Is it **fair** to expect Facebook to prioritize consumer privacy by sacrificing potential profits? How does this affect the **viability** of Facebook?
- What role should **transparency** play in the operations of Facebook, especially regarding data use for advertising? How does this affect public **trust** in the company?
- Are invasive business practices simply the cost of existing online in the 21<sup>st</sup> century?
- Should antitrust legislation change to address evolving social media concerns in an increasingly digital world? If so, how should it change?