

Federal court sends FTC's Facebook antitrust suit back to the drawing board

Article

The news: A federal court **threw** out the FTC's **antitrust** complaint into **Facebook**, as well as a connected suit **filed** by 48 state attorneys general, saying the FTC **failed** to prove Facebook

holds monopoly power in the US social network market.

How we got here: The FTC's case, **filed** late last year, claimed Facebook acted as a monopoly power by opting to buy upstart competitors like **Instagram** and **WhatsApp** rather than compete with them.

Though this week's ruling marks a significant blow to the agency, the FTC can still amend its complaint with more clarity and continue its case. Meanwhile, in a separate **ruling**, the court dismissed a suit from 48 state attorneys general, arguing they had waited too long to bring their suit.

Further rubbing salt in the FTC's wound, Facebook's stock price immediately surged following the ruling, and within hours the company surpassed a **market capitalization of \$1 trillion** for the first time in its history, **per** Mashable.

More on this: The FTC's lawsuit was deemed "legally insufficient" because it failed to provide concrete details on what a social media network was, or how dominant Facebook's market share is or was in the past.

In his ruling, the US District Judge pithily wrote, "it is almost as if [the FTC] expects the Court to simply nod to the conventional wisdom that Facebook is a monopolist." Even if the FTC does amend its complaint, the ruling would add "complexity and delay to a case that was already going to be difficult," former FTC Chairman William Kovacic **told** The Wall Street Journal.

The challenge: This week's ruling highlights the limitations of the **consumer welfare standard** when **attempting** to regulate internet companies that often offer free or low-price products to consumers. The ruling similarly showcases the limits of the FTC's enforcement power—but that could act as a catalyst to push through recent **bipartisan** attempts at major legislative antitrust reform.

- Already, **academics** and politicians from **both sides** of the political aisle have said the news may buttress calls for a sweeping reimagining of antitrust laws.
- Even **Lina Khan**, the FTC's new **progressive** chair, has **previously** argued the current antitrust frameworks are too limited.
- All of this comes less than a week after the House Judiciary Committee **approved** a series of antitrust measures directed at reigning in Big Tech. The move by courts to block the FTC's

complaint could come at just the right time for enthusiastic lawmakers to rally support for several of the less controversial bills.

Attitude Toward the Change in WhatsApp's New Privacy and Data Sharing Policy with Facebook According to Internet Users in Brazil, Feb 2021

% of respondents

Believe it will not affect the information they collect about my profile

40.2%

It's an invasion/disrespect of privacy

25.8%

It is wrong to change the rules of use of the application later when I already use it

22.8%

I find it efficient to receive ads, friend suggestions, content more personalized to my profile, etc.

19.1%

None

13.7%

Other

0.6%

Note: n=823 ages 18+

Source: Toluna, "Redes sociais," Feb 23, 2021

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