

June 10, 2020

Attorney General Letitia James  
Office of the NYS Attorney General  
The Capitol  
Albany, New York 12224

**RE: Roadmap for an Antitrust Case Against Facebook**

Dear Attorney General James:

Public Knowledge urges you to consider a new research paper by Professor Fiona Scott Morton of the Yale School of Management and David Dinielli of the Omidyar Network as you investigate competition in the technology sector. The paper presents a roadmap of what a strong antitrust case against Facebook would look like. Antitrust enforcers must investigate Facebook's market position and conduct to determine whether Facebook may have engaged in anticompetitive behavior that has violated antitrust law.

The paper is based on descriptions of Facebook's market position and conduct in the U.K. from two different reports: the U.K.'s Competition and Markets Authority (CMA) Interim Report on "Online Platforms and Digital Advertising" and the House of Commons Report on "Disinformation and 'Fake News.'" Facebook's U.S. market position and behavior is very likely to be similar, if not the same. If that's true, this paper indicates that Facebook's behavior would likely be anticompetitive and illegal in the U.S.

It seems clear that Facebook has market power in the social network market in the U.S. Facebook has a high market share and benefits from significant barriers to entry. One well-known barrier to entry to the social network market is the very strong network effect that makes it hard for a new social network to gain users. Users will be understandably reluctant to join a new network if few of their connections are on the novel platform and they can't reach connections on the dominant platform.

The anticompetitive conduct Facebook appears to have engaged in is threefold. First, Facebook appears to have engaged in a pattern of conduct to purchase any potential competitor that shows a realistic threat of competing against Facebook. Facebook had special access to usage data from its purchase of Onavo and from its own platform that helped it identify the key potential competitors to purchase. Through this strategy, it was able to prevent what--in markets prone to tipping towards monopoly like this one--is the most important source of competitive pressure: potential competition. Second, Facebook cut off key competitors from access to interoperability with its network. It had previously offered this interoperability to all, which was beneficial to Facebook's revenue and expansion, but then withdrew that access to companies that showed competitive promise. Third, by making its privacy practices opaque, Facebook made it harder for competitors

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that wanted to compete on privacy or data use--the key competitive indicators in this market--to do so.

As a result of this conduct, it appears that consumers, publishers, and advertisers have been harmed. While it is difficult to prove what would have happened if Facebook had not acquired and excluded firms such as Instagram and Twitter respectively, the threat of competition would have forced Facebook and others to innovate and fight to compete, potentially creating more creative products and services for the public. This means users and publishers have been left with a lower quality social network -- for example, users have to give up more data, publishers are paid less -- while advertisers pay more. If the states' investigation finds that facts support the concerns outlined in this paper, we believe such conduct would warrant a monopolization case.

Thank you for your attention to this important new research and analysis. We welcome the opportunity to discuss these issues with you.

Sincerely,

Gene Kimmelman  
Senior Advisor  
Public Knowledge

Charlotte Slaiman  
Competition Policy Director  
Public Knowledge