



Update from the Federal Trade Commission

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*The views expressed in this presentation do not necessarily represent the views of the
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Digital Markets Enforcement

Meta monopolization case

- FTC alleges Meta monopolized personal social networking through acquisitions of Instagram and WhatsApp and other conduct
- Amended complaint highlights degradation of privacy as among competitive harms
- Court rejected Meta's motion to dismiss
- Trial expected in 2024

Digital Markets Enforcement

Meta/Within merger

- Challenge to acquisition of Within, a company that makes a leading virtual reality fitness app, by Meta
- Court denied FTC's request for a preliminary injunction to stop merger; FTC decided not to appeal
- Recognized key points, however:
 - Potential competition – both actual and perceived - a viable antitrust ground on which to find a merger anticompetitive
 - Recent entry does not show a market is not concentrated
 - Market definition does not require a hypothetical monopolist test, and practical indicia may also be used to show a submarket
- FTC hadn't shown facts sufficient to support injunction

Digital Markets Enforcement

Microsoft/Activision-Blizzard merger

- FTC filed a complaint in its administrative court challenging this acquisition of a leading videogame producer
- FTC alleges that if merger occurs, Microsoft will have incentive and ability to foreclose rivals by withholding Activision games, such as Call of Duty
 - Could do this to affect markets in consoles, multigame subscriptions, and the developing cloud gaming market
- Trial in August 2023

Section 5 Enforcement

- Section 5 of the FTC Act (5 U.S.C. § 45) prohibits (1) unfair methods of competition and (2) unfair and deceptive acts and practices
 - Covers unlawful agreements and monopolization under Sherman Act
 - Also covers additional unfair conduct that harms competition
- Commission issued Statement on Section 5 in November 2022
 - Conduct must be unfair: not competition on the merits, but coercive, exploitative, collusive, abusive, deceptive, predatory, or involves similar uses of economic power
 - Adversely affects market conditions: reduces competition between rivals, impairs opportunities for market participants, limits choice or otherwise harms consumers

Section 5 Enforcement

- Statement lists various forms of conduct that may violate spirit of antitrust laws and thus Section 5
 - invitations to collude, incipient violations, including series of mergers that tend towards monopoly or acquisitions of nascent competitors
 - conduct violations such as loyalty rebates or tying that may tend towards monopoly
 - practices that facilitate tacit collusion or parallel exclusionary conduct
- Applies equally to digital markets, and provides important tool for enforcement efforts

Digital Markets Legislation

- President Biden in State of the Union address called for Congress to pass legislation enhancing antitrust laws
 - First President to mention antitrust in 40+ years in this speech
 - Also touted in opinion article in Wall Street Journal
- Mentioned limits on self-preferencing
 - Also, limitations on collection of personal data, such as web browsing, location, and health information
- Pending bills must be reintroduced
 - Control of the House shifted to Republican party, with leadership less enthusiastic about antitrust reform bills
 - May be some alignment that could allow targeted reform



Thank you!

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