Apple, Amazon, Google and Facebook set to preview antitrust defenses before Congress

At a time of unprecedent political polarization, there's a rare bi-partisan consensus in Congress that the major U.S. tech companies have too much power. That proposition and its implications for the economy will be at the heart of a hearing tomorrow before the House Judiciary Antitrust Subcommittee.

Socially distanced video testimony. The CEOs of Google, Facebook, Amazon and Apple will all give socially distanced video testimony, starting at noon Eastern, and be questioned by committee members, which should make for a marathon hearing. Originally scheduled for Monday, the hearing was postponed because of the memorial service for Congressman John Lewis.

This will be the first time that Amazon CEO Jeff Bezos, the world's wealthiest individual, will be testifying before Congress. Apple CEO Tim Cook, Google CEO Sundar Pichai and Facebook's Mark Zuckerberg have all appeared before.

Better prepared this time. The committee has spent more than a year investigating these companies and conducting "field hearings" on digital competition. Members should be well prepared to ask questions – a far cry from the days when Alaska Senator Ted Stevens infamously described the internet as "a series of tubes" in a net neutrality hearing nearly 15 years ago.

The potential antitrust issues facing each company are distinct and the questions will be tailored accordingly. Apple will be questioned about its control of the App Store and the

30% commission it takes on sales and in-app purchases. Amazon will face questions about whether it uses its pricing and data to undermine competitors and even some of its own sellers. Facebook will be asked about its content moderation, acquisitions of competitors and privacy policies. Finally, Google will confront queries about its dominance of the search market, digital advertising and favoring its own content and services at the expense of third parties and rivals.

Mostly theater. The companies for their part will argue that they're each in fiercely competitive markets, merely complying with industry norms and aren't abusing their size or market power to dominate or undermine competitors. To some degree it's theater. But we'll also get a preview of the various defenses these companies will raise in response to any legal actions against them. This is some ways will be the most interesting aspect of the hearings, as well as learning exactly how prepared the government is.

The findings and testimony coming out of tomorrow's hearings won't directly lead to action but could form the basis for new antitrust legislation next year. But this is also happening against the backdrop of ongoing antitrust investigations by the Federal Trade Commission and Department of Justice, as well as State Attorneys General.

Antitrust actions almost guaranteed. Given the many investigations and their intensity – motivated partly by politics and partly by concern over competition – it's highly likely that antitrust actions will be brought against some if not all four companies. Google, in particular, but also Facebook are almost certain face the legal wrath of the FTC and DOJ.

Why we care. Some critics are calling for Google and Facebook to be broken up or have recent acquisitions "unwound" to promote competition and reduce the concentration of power. However, bringing an antitrust case is not the same as

winning.

Microsoft was legally found to be a monopoly 20 years ago, in violation of the Sherman Antitrust Act, and ordered broken into two companies. Microsoft appealed and partly succeeded in overturning the lower court decision to break the company up. Later the Justice Department under President George W. Bush decided to settle the case.

While it’s probable that fines and other punitive measures are in store for some or all of these companies, it’s much less likely that any of them will be carved up.

About The Author



Greg Sterling is a Contributing Editor to Search Engine Land, a member of the programming team for SMX events and the VP, Market Insights at Uberall.

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