# The FTC is investigating Facebook. Again

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Facebook’s legion of lawyers is certainly earning its keep this year: the company disclosed to investors Tuesday that it is under antitrust investigation by the Federal Trade Commission.

This is a completely different investigation than the $5 billion settlement, also made public yesterday, that Facebook and the FTC reached over Facebook’s privacy practices. Nor is it the same antitrust probe of big tech the Justice Department launched earlier this week.

## Why antitrust?

Antitrust investigations focus on behavior regulators deem anticompetitive. The best-known kind of example is when two companies that compete directly against each other want to merge, drastically reducing or eliminating competition in their market. If there are only two companies in the entire US that make a certain kind of nail, for example, the FTC or DOJ would likely sue to block an acquisition between them from happening, because it would pose harm to competition and likely raise prices for nail-buyers everywhere, also affecting suppliers that need nails to build things like houses.

Anticompetitive behavior also includes collusion or price-fixing, as well as good old-fashioned strong-arming and other unfair tactics that prevent competitors from entering the marketplace.

Usually the determination of potential harm focuses on pricing. If you can't take your business to a competitor, the monopoly business can charge you whatever they want, and you can't do anything about it.

But focusing on pricing alone doesn't help when regulators look at companies like Facebook or Google, because the financial cost to the individual user is $0. Instead, we pay in different ways—primarily with our personal data.

In a June speech, DOJ Antitrust Division chief Makan Delrahim laid out his thinking for a way that privacy considerations could be an offshoot of a business' outsized market power and therefore of concern to antitrust regulators.

"Price effects alone do not provide a complete picture of market dynamics," Delrahim said. "Diminished quality is also a type of harm to competition. As an example, privacy can be an important dimension of quality. By protecting competition, we can have an impact on privacy and data protection."

What's more, he added, "Two companies can compete to expand privacy protections for products or services, or for greater openness and free speech on platforms. Where competition pushes companies to develop quality elements that better satisfy consumer preferences, our enforcement can protect that sort of competition, too."

## Will Facebook care?

The winds of largely hands-off regulation have blown Facebook to smashing international success. But if those winds change, so might the company's fortunes.

In addition to the FTC and DOJ probes, Facebook and other big tech firms also face scrutiny from Congress, which last month launched a bipartisan investigation into the companies' reach and behavior.

And in the US, of course, regulatory cycles follow political cycles. Sen. Elizabeth Warren (D-Mass.) in March called for breaking up Amazon, Facebook, and Google as one of her many policy proposals in her campaign to be the Democratic nominee in the 2020 presidential race.

Regulation is one of the biggest risks for Facebook, the company said in its quarterly financial filing. The company warned it could have stalled growth or could outright lose some of its 2.4 billion users if "there are changes mandated by legislation, regulatory authorities, or litigation that adversely affect our products or users," or if it sees decreased engagement as part of changes it implemented in response to the GDPR in Europe and similar changes it made in the US.

"We have been subject to regulatory and other government investigations, enforcement actions, and settlements, and we expect to continue to be subject to such," Facebook added, which could "incur substantial costs or require us to change our business practices in a matter materially adverse to our business."

If it seems like all the regulators are suddenly piling on… well, they kind of are, and it's a global movement for a global company.

Germany's competition regulator, the Bundeskartellamt, said in February it was placing sweeping restrictions on how Facebook and its subsidiaries gathered and used user data.

Facebook is appealing the German order as well as a similar ruling from Belgium. It is also under investigation in Ireland.

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