



Targeting Big Tech in the US, EU

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Context : European Union issued two draft digital-services laws that could launch an overarching supervisory apparatus covering tech companies.



Background : The laws could

potentially render Big Tech liable to face multibillion-dollar fines in Europe and even the prospect of being broken up, if they failed to comply with the sweeping new regulations.

Around the same time in the United States, the federal government initiated antitrust cases against Google and Facebook, and a large number of US states collectively launched action on the two companies and others for a range of alleged infractions.

The seemingly concerted onslaught from regulators and administrators on both sides of the Atlantic is seen as a culmination of several mini-steps over the years to curb the growing influence of Big Tech, but is now seen as marking a decisive shift in competition policy governing the sector.

EU Regulations:

There are two laws — the Digital Services Act, and the Digital Markets Act.

- The Digital Services Act is intended to create a single set of rules for the EU to keep users safe online, protect their freedom of expression, and help hold tech companies to account. An innovative idea is to introduce a sliding scale, under which tech majors, the larger and more influential they are, need to take on bigger obligations.
- They could also face annual scrutiny of their dealings with illegal and harmful content under new rules of the European Commission, the EU's top policy making body. Fresh restrictions are also likely to supervise their use of customers' data, and to prevent the firms from promoting their own services above those of competitors' in search results and app stores.
- Large fines – up to 6 per cent of a company's annual turnover – and break-ups are threatened for non-compliance. This fine, if levied on Facebook, would amount to over \$3 billion. Also, “recurrent infringers” could be made to divest “certain businesses, where no other equally effective alternative measure is available to ensure compliance”.
- The second law, Digital Markets Act, focuses on the regulation of “gatekeepers”, including the operators of search engines, social networks, chat apps, cloud computing services, and operating systems. This could cover Google, Facebook, Apple, Amazon and Microsoft.

US Acted

In the last week, Texas and nine other states sued Google, accusing it of working with Facebook in “an unlawful manner” that violated antitrust law “to boost its already-dominant online advertising business”. The states have asked that Google, which controls a third of the global online advertising industry, compensate them for “damages”, and sought “structural relief” – which could potentially force the company to divest some of its assets. The Texas lawsuit is the second major complaint from regulators against Google and the fourth in a series of federal and state legal suits aimed at controlling alleged infractions by Big Tech platforms. Google has called the Texas lawsuit “meritless.”

Difference between the EU and the US Actions

As per the sources, the US broadly seeks punitive action for infractions of the past, whereas the action by the EU has a wider scope, and is clearly forward-looking. Vestager described the two laws as “milestones in our journey to make Europe fit for the digital age... We need to make rules that put order into chaos”. The EU's Internal Market Commissioner Thierry Breton has said that the laws had been designed to be applied “very quickly” once they came into effect. But it will be some time before the new regulations come on stream.

Success of the initiative

Both the proposed EU laws still need to undergo a consultation process and can only then be passed by European lawmakers, a process that could take years. The UK regulator — Competition and Markets Authority — simultaneously announced its own plans to place limits on the tech majors this month. In any case, the EU laws would only come into force only after the Brexit transition period has ended.

- In the US, chances of new laws being brought in are slim, given that Congress could well stay gridlocked. Most experts believe the impetus for sweeping action on Big Tech is far lower in the US than in the EU, given that almost all of the firms m American.
- Also, there is an increasing view within policy circles in Washington in recent months that a dominant US tech sector is a strategic advantage in the slugfest with China. This view, according to some, is now overshadowing the previous bipartisan antagonism against Big Tech’s control of digital commerce and its ability to manipulate what users read or watch.
- There is also a difference being made out in the actions, depending on the company in question. For instance, the antitrust case against Google is being seen as having greater chance of succeeding, given that the alleged infringement relates to some \$10 billion in annual payments made by the Alphabet Inc company to Apple and other device manufacturing companies to ensure that its services got prominence on device screens. The charges are seen to have the potential to stick.
- The case against Facebook is less potent: that it illegally acquired WhatsApp and Instagram to thwart competition. But Facebook had sought regulatory clearances for both acquisitions, and the two firms were small when they were bought. In 2012, when Facebook offered \$1 billion for Instagram, the latter had only 25 million users and practically no revenue stream. Facebook acquired WhatsApp in 2014 for \$19 billion, when the latter was already the mobile messaging leader, but revenue monetisation was still a work-in-progress.
- Also, antitrust action takes years. Microsoft’s antitrust case commenced in 1998, and reached a resolution only in 2004. The last time that Google faced legal action for allegedly abusing its dominance in the search market was nearly a decade ago, when the US competition regulator Federal Trade Commission, in 2011, acted on a complaint filed by a Washington-based non-profit, Electronic Privacy Information Center.
- The markets have shrugged off the impact of the regulatory tightening. Share prices of the so-called FAANG companies – Facebook, Apple, Amazon, Netflix, and Google – surged by over 45 per cent in 2020, on top of a 75 per cent surge in the last three years.

Repercussion in India

What is clear is that the new rules in the EU could force tech companies to revamp some of their practices across geographies, thereby potentially impacting more than the EU's 27 countries and 450 million people. There could be a ripple effect, at least in the long term.

Already, in India, there is increasing regulatory scrutiny of these firms

- In November, the Competition Commission of India (CCI) initiated an investigation into alleged abuse of dominant position by the company to promote its payments app, Google Pay – the third major antitrust probe ordered by the regulator against the company.
- Earlier in October, the CCI had received reports of Google abusing its dominant position in the Android-television market by creating barriers for companies that wanted to use or modify its Android operating systems for their smart TVs.
- And in June 2019, the CCI had said that Google had “abused” its dominant position in the domestic smartphone market by reducing the ability of original equipment and mobile phone makers to opt for alternate versions of its Android mobile operating system. It had then asked for a detailed investigation.
- In 2018, CCI had launched a probe and fined Google Rs 136 crore for “search bias” and giving “undue” space to its flights option on its search homepage, over and above other rivals in the market. The regulator’s order was, however, stayed by the National Company Law Appellate Tribunal, where the case is being heard.

Connecting the Article

Prelims Questions : Consider the following statements regarding targeting Big Tech in the West:

1. Facebook acquired WhatsApp in 2014 for \$19 billion.
2. In 2012, Facebook offered \$1 billion for Instagram.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Mains Questions : The new rules in the EU could force tech companies to revamp some of their practices across geographies. Explain.

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