

CONSUMER AND CITIZEN GROUPS HAVE SERIOUS CONCERNS ABOUT GOOGLE FITBIT TAKEOVER

Common Statement

Consumer and citizen groups have significant concerns that Google's proposed takeover of wearables manufacturer Fitbit would be a game-changer not only for how people interact with the online world but also for digital and related health markets. Regulators around the world – in particular those concerned with antitrust compliance and data privacy – must therefore give it their utmost attention. This will be a test case for how regulators address the immense power the tech giants exert over the digital economy and their ability to expand their ecosystems unchecked.

More specifically, this merger is a test of regulators' resolve to analyse the effects on competition of a tech giant acquiring a vast amount of highly valuable data through a takeover. Google could exploit Fitbit's exceptionally valuable health and location datasets, and data collection capabilities, to strengthen its already dominant position in digital markets such as online advertising. Google could also use Fitbit's data to establish a commanding position in digital and related health markets, depriving competitors of the ability to compete effectively. This would reduce consumer welfare (including degrading data privacy options), limit innovation and raise prices.

Past experience shows that regulators must be very wary of any promises made by merging parties about restricting the use of the acquisition target's data. Regulators must assume that Google will in practice utilise the entirety of Fitbit's currently independent unique, highly sensitive data set in combination with its own, particularly as this could increase its profits, or they must impose strict and enforceable limitations on data use.

Wearable devices could replace smartphones as the main gateway to the internet, just as smartphones replaced personal computers. Google's expansion into this market, edging out other competitors would thus be significant. Wearables like Fitbit's could in future give companies details of essentially everything consumers do 24/7 and allow them to feed digital services back to consumers. The way wearables are being used to track COVID-19 infections and give access to doctors and health information is a timely illustration of this. Although, perhaps justified, subject to strong safeguards, in a public health emergency, the exploitation of such data in a commercial context is an important concern that demands close scrutiny by regulators both for its anticompetitive effects (where huge bundles make it near-impossible for entrants to compete against incumbents) and anti-consumer effects (creating ever bigger bundles that undermine consumer choice).

The acquisition of Fitbit could expand Google's immense power in digital markets into the \$8.7 trillion global healthcare market¹ through its strength in data and data analytics. Google has already made significant inroads into healthcare. Regulators must carefully assess the proposed deal's implications for innovation and its potential to undermine the ability of companies to bring new products to consumers in the area of digital healthcare.

The results of unfortunate merger control decisions in the past have likely contributed to the rise of tech giants. Subsequent concerns now have to be addressed through more costly and lengthy ex-post antitrust enforcement proceedings and other competition interventions. Such harms to consumers are

¹ Financial Times, "Can we ever trust Google with our health data?", 20 January 2020, <https://www.ft.com/content/4ade8884-1b40-11ea-97df-cc63de1d73f4>

far better prevented than cured. Therefore, before deciding whether this takeover can proceed or not, regulators must carefully analyse its full implications for consumers and consider its potential for far-reaching and dynamic effects on digital and health markets.

SIGNATORY ORGANISATIONS:

Access Now

EU

Australian Privacy Foundation

Australia

BEUC – The European Consumer Organisation

EU

Center for Digital Democracy

US

Centre for Responsible Technology

Australia

Color of Change

US

Consumer Federation of America

US

Derechos Digitales

Latin America

EDRi (European Digital Rights)

EU

Idec – Brazilian Institute of Consumer Defense.

Brazil

New America's Open Technology Institute

US

Omidyar Network

US

Open Markets Institute

US

Open Society European Policy Institute

EU

Privacy International (PI)

Global

Public Citizen

US

Public Interest Advocacy Centre

Canada

Public Knowledge

US

Red en Defensa de los Derechos Digitales (R3D)

Mexico

Trans-Atlantic Consumer Dialogue

EU-US