The Daily Dish

Fallout from the Facebook Fine

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Eakinomics: Fallout from the Facebook Fine
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No one seems satisfied with the Federal Trade Commission's (FTC) record-setting $5 billion settlement with Facebook. Senator and presidential candidate Elizabeth Warren called the fine a "drop-in-the-bucket" and pressed the FTC to "break Facebook up, plain and simple." Senator Josh Hawley wrote, "To say this was a slap on the wrist for Facebook is too generous," while Senator Marsha Blackburn said the fine should have been 10 times larger.

The settlement, however, sets an important precedent—not because of what it failed to accomplish, but because of what it accomplished with so little legal backing. Some parts of the case against Facebook weren't especially strong, yet the agency still was able to extract a significant sum from the company. In securing this win, the FTC will be able to pursue and likely win similar concessions in the future.

The inciting incident for the FTC investigation came from revelations in *The New York Times* that Facebook had improperly dealt with data obtained by Cambridge Analytica. Yet the FTC didn't rely on the Cambridge Analytica problem in its case because that particular issue wasn't a legal slam dunk, as I explained in a recent op-ed in Morning Consult. Instead, the FTC alleged that Facebook misrepresented the extent to which consumers knew about and could control the privacy of their data, leading to five separate violations of a 2012 agreement between the FTC and the social-media giant. Although the FTC never explained how many users were affected by these violations or the amount of money Facebook might have made unjustly, the Commission claimed that $5 billion was the right settlement amount.

Indeed, the settlement was probably a good deal for the FTC. Testing this case by going to trial against Facebook could have diminished the FTC's broad authority. While the FTC wins

about 80 percent of its cases at the appellate level, it has only been challenged once on its privacy enforcement—and the agency lost. Since there isn't much established law in this area, a $5 billion fine demonstrates the agency is capable of extracting huge fines even on flimsy legal grounds. For those who care about the rule of law, that should be a worrisome result.

Settling allowed the FTC to preserve its power. But agency power is not the best metric for success. Perhaps we should be more concerned about agencies working within established legal lines for the benefit of the public.