The Daily Dish

The FTC v. Meta

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Eakinomics is concerned with the legislative and administrative moves away from the consumer welfare standard in evaluating mergers and acquisitions, and competition policy more generally. A concrete example of this phenomenon is reviewed in Jeffrey Westling's recent paper on the Federal Trade Commission's (FTC) case against Meta (the parent of Facebook). The FTC challenged the merger of Meta and virtual reality (VR) app developer Within, primarily by arguing that the result would substantially lessen competition in the VR fitness market. Westling does a deep dive on some of the subtleties of the case, but three issues stand out.

First, the FTC simply punts on assessing the impact on consumers: "To determine whether these pressures exist, courts generally use the small but significant non-transitory increase in price test, which looks whether a firm could impose a price increase of about 5 percent for at least a year without competitive repercussions. If a firm can't make such an increase in price, it usually means there are alternative products that consumers could choose to buy. If that is the case, the firm cannot act like a monopolist: The market is keeping its behavior in check." Skipping the analysis of impacts on consumers allows the FTC to avoid as well the hard work of identifying whether some firms enter the market in the hopes of being acquired (for example, much like many biopharma startups), whether mergers can result in a stronger firm and better competition, and a host of other tough analyses.

The second is the definition of the market itself – always a key part of competition analysis. In this case, "the FTC wants to define the relevant market solely within the scope of dedicated fitness VR apps (or in the alternative all VR fitness apps) on the grounds that Meta is leading in VR tech and purchasing a VR fitness app would leave consumers with almost no alternatives. Yet Meta is by no means monopolizing the fitness industry. There are plenty of substitutes: fitness apps for a smart phone, gyms, treadmills, sports, and even taking the dog for a walk. The FTC, so focused on Meta's VR investments and overall size, ignores these alternatives."

Finally, there is the stunning fact that Meta does not have a fitness app, so the acquisition would not change the number of competitors in this market. Nevertheless, the FTC objects to the fact that a "big" company would now own the app instead of the smaller Within. This is literally everything that is wrong with recent, trendy competition policy thinking.

The direction of competition policy is a paramount policy issue *du jour* and the FTC versus Meta case is a prime example why.