

Tech industry braces for more antitrust scrutiny

Editor's Note: Sound off in the comments! Is this sorely needed, or the last thing we need right now?

(AP) -- After eight years of light antitrust scrutiny under a Republican White House, the technology and telecommunications industries are bracing for stepped up oversight by the Obama administration's Justice Department.

Christine Varney, the head of the department's antitrust division, vowed in a May speech that her office will take a tough look at potential abuses of market power across some of the nation's biggest industries, including high tech and telecom.

Now the government is putting out feelers to determine whether one industry giant, IBM Corp., has exploited its dominant position in the market for massive data-processing computers known as mainframes. The probe, which the Justice Department has not yet publicly acknowledged but has been confirmed by IBM and an industry trade group, is still in a very preliminary stage and will not necessarily lead to a formal investigation.

But it is part of a broader fact-gathering effort by the feds, who are seeking to get their arms around a rapidly changing sector that is a major engine for U.S. economic growth. No matter where the IBM review leads, the entire industry is on notice that the current Justice Department is likely to take a much more active approach to antitrust enforcement than the previous one.

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"The last administration was not focused on competition, but with the Obama administration there is a recognition that overconcentration in the economy can have unhealthy consequences," said Ed Black, head of the Computer and Communications Industry Association, a trade group that helped bring concerns about IBM's behavior in the mainframe business to the attention of the Justice Department. "They recognize that there is value in having multiple players in a market."

In scrutinizing the technology and telecom industries, antitrust enforcers have a huge market to examine. They are expected to look at everything from consolidation in the wireless sector - including handset exclusivity deals, such as AT&T Inc.'s contract with Apple Inc. making it the sole U.S. carrier for the iPhone - to Google Inc.'s ever-expanding clout on the Internet.

"Antitrust enforcers tend to look at companies with the most significant market share," said David Turetsky, co-chair of the antitrust practice group at Dewey LeBoeuf and a former deputy assistant attorney general in the antitrust division under the Clinton White House. "Wherever you have market power, there are just more possibilities for anticompetitive issues."

John Briggs, co-chairman of the antitrust group with Axinn, Veltrop & Harkrider LLP, said he would not be surprised to see the Justice Department also turn its sights back to Microsoft Corp.

Although the Bush administration settled a landmark antitrust case brought against the software giant during the Clinton years, the company still dominates the enormous market for PC operating systems and is going head-to-head with Google in the Internet search market. The

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Justice Department is reviewing a proposed partnership between Microsoft and Yahoo Inc., which want to team up to better compete with Google.

In the case of IBM, the Justice Department is looking into complaints by the company's competitors that the Armonk, N.Y.-based computer giant has frozen them out of the mainframe market by refusing to license its mainframe operating software. Last week, a federal judge in New York dismissed a lawsuit brought by one of those competitors, T3 Technologies Inc. But the Justice Department has requested information from T3 and other IBM rivals.

Mergers and acquisitions are also certain to be subject to much closer review. The Bush administration gave the green light to substantial consolidation in the tech and telecom industries. It approved Google's acquisition of the Internet advertising network DoubleClick Inc., for instance, as well as a wave of mergers in the telecommunications sector that has left just three big local phone companies.

But future deals could face more resistance.

Black, for one, said he believes the Justice Department has its work cut out for it since "there are so many holdover problems from the last administration."

"A lot of companies probably started pushing the envelope and maybe some went over the line because they realized that the cop was on vacation," Black said.

The challenge now facing the Justice Department is to figure out how to apply antitrust principles to an industry that is evolving so quickly, with companies constantly moving into each other's territory, said Melissa Maxman, head of the antitrust practice group at Baker &

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Hostetler LLP.

"The information technology market is so fluid," she said. "They will be scrambling to come up with a new way to look at it because it changes so fast and has so many powerful players."

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