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## Reining in Big Tech a two-way battle

As regulators work to limit power, companies' secretive practices make investigations harder

Tara Deschamps The Canadian Press

It's been 20 years since Marc Poirier co-founded search management platform Acquisio, but he's never forgotten how Google kick-started its decline.

It was 2015. The tech giant had just reorganized its subsidiaries under the Alphabet banner and was evaluating whether recent forays into riskier ventures like self-driving cars, internet-beaming balloons and smart city infrastructure could replicate the success of its search engine business. As advertising revenue and growth slowed, the company felt pressure to boost profit, leaving Poirier's Brossard, Que., company caught up in a no-win scenario.

"I experienced first-hand Google going from partner to fierce competitor," Poirier said. "They started selling the same stuff that we built."

Revenue growth at Acquisio, which sold software helping marketers manage bids and budgets for Google, Yahoo and Microsoft search campaigns, almost immediately stopped and then began to tumble. Poirier started thinking about selling, which he eventually did with a

Web.com deal in 2017.

Experiences like Poirier's along with growing concerns around the globe about the sheer size and power tech companies have over users and their privacy, communications and data have made reining in Big Tech a top priority for regulators across the globe.

Google did not address Poirier's specific case, but spokesperson Shay Purdy noted Alphabet underwent significant changes in the period between 2015 and 2017, including its multi-faceted restructuring and said that external factors at play then included an economic downturn after a plunge in oil prices.

While Canada is edging toward new legislation that will redistribute some revenue from social media companies to news publishers and better protect privacy around consumer data, many are also hoping an ongoing review of the country's Competition Act will level the tech playing field.

However, investigating and unravelling monopolies in a constantly evolving industry that once operated under Silicon Valley's "move fast and break things"

Marc Poirier says he experienced "first-hand Google going from partner to fierce competitor" when he was forced to sell his company, Acquisio, after Google "started selling the same stuff that we built." Graham Hughes THE CANADIAN PRESS

ethos is no easy task and tech companies, who know regulators are hot on their tails, are making the feat even tougher.

Much of the work has fallen to the Competition Bureau, Canada's monopoly watchdog, which has investigated concerns ranging from Amazon's dominance, private equity firm Thoma Bravo's purchase of oil and gas software company Aucerna and Ticketmaster's misleading price advertising. But the bureau and tech observers say the federal government must hand the regulator more power, if meaningful change is to happen.

The challenge for the bureau often begins with collecting proof of anti-competitive behaviour. Technology businesses are famously secretive, relying on strict nondisclosure agreements and limited staff access to keep their products from leaking ahead of their buzzy

launches or competitors getting to the market first.

Krista McWhinnie sees companies getting even more intentional about how they document their decision making or make any move that has a whiff of anti-competitive sentiment, making it harder to find a paper trail.

"That alone can stop us from being able to remedy conduct that is having potentially quite a big impact in the market," said the deputy commissioner of the bureau's Monopolistic Practices Directorate.

Even if the bureau has proof that a company's practices are causing substantial harm to competition, it's not enough to warrant action under Canada's competition laws. The bureau must also prove that a company intended to engage in anti-competitive behaviour too - "a very high bar" and "relatively unusual" requirement in other countries. "Often that's an incredibly resource-intensive, challenging task," McWhinnie said. "It's very, very time consuming and it's one of the reasons why we see difficulty being able to bring these cases in a timely way."

The bureau has faced criticism in recent months over how slow it has been to advance an October 2021 probe into whether Google has engaged in practices that harm competition in the online display advertising industry.

The investigation is based on the notion that Google's dominance in online advertising may be impeding the success of competitors, resulting in higher prices, reduced choice and innovation and harmed advertisers, news publishers and consumers.

"Every day that Google is allowed to monopolize ad revenue, more harm is inflicted on the Canadian news industry," Lana Payne, Unifor's national president, said in a press release.

Jim Balsillie, former chief executive of BlackBerry and chair of the Council of Canadian Innovators, believes Canada's competition woes stem from the country doing a poor job of protecting consumer rights in the digital age and lacking the tools it needs to address monopolies.

Many large tech companies derive their power and dominance from the sheer volume and specificity of the consumer data they collect and the way they can combine it with artificial intelligence to uncover intimate insights and influence people.

Data collection isn't just a Big Tech tactic.

Balsillie points to pharmacies, which have reams of health data on consumers, wireless carriers, which know your location within 10 metres, and banks, which know what you're buying.

Measuring the potential value of all that data - a key part of determining whether companies are being anti-competitive - is not easy, added Jennifer Quaid.

It's hard to capture quantitatively what impacts a merger or tech company's policies have on innovation, creativity and consumer behaviour, especially when the company deals in data "that isn't necessarily valuable at the time but ends up becoming valuable when it's aggregated with other information," said the competition law professor at the University of Ottawa's Civil Law Section.

Quaid and Balsillie agree the task would be easier if the Competition Bureau had a more expansive tool kit that allows it to levy more meaningful penalties and reworks some policy frameworks that have allowed some monopolies to go unchallenged.

Among Balsillie's top asks is for the efficiencies defence, which he said the Competition Bureau is "shackled" by, to be dumped because it often keeps the watchdog from taking action.

The defence is a provision allowing anti-competitive mergers to move forward as long as they produce gains in efficiency that are greater than and offset by the deal's anti-competitive effects.

The Canadian Press