Simpson Thacher

Memorandum

District Court Rules Google Is a Monopolist in Ad Tech

April 25, 2025

On April 17, 2025, U.S. District Judge Leonie Brinkema of the U.S. District Court for the Eastern District of Virginia issued a decision in the liability phase of the Google ad tech monopolization case brought by the Department of Justice ("DOJ") and 17 states (collectively "Plaintiffs"). In an opinion that chronicled the history and evolution of web display advertising technology, the court found Google liable for monopolizing both the market for open-web display ad exchanges, which conduct the real-time auctions to place display advertisements on websites, and the market for ad servers used by website publishers, which manage the sale and display of advertisements on the publisher's website. It also found Google liable for tying its products in the two markets together. The case will now move on to the remedy phase, with the parties due to submit their proposed schedules this week. Notably, the prayer for relief in the DOJ's complaint indicates they planned to seek the divestiture of both DoubleClick and AdX.

The decision is another major victory for DOJ, which also prevailed against Google last year in a separate antitrust case in which the government alleged that Google unlawfully maintained a monopoly over general search services and general text advertising. It comes amid a broader push by the DOJ and FTC to revitalize Section 2 enforcement, with the agencies also currently litigating cases against Apple, Amazon, Live Nation/Ticketmaster, and others. In the aftermath of the decision, DOJ officials praised the ruling and indicated that they planned to continue the previous administration's aggressive approach, particularly with respect to big tech.

"In sum," the court explained, "Plaintiffs have shown that Google engaged in 'willful acquisition or maintenance of [its monopoly] power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident' by tying [DoubleClick For Publishers ("DFP")] to AdX and committing a series of exclusionary and anticompetitive acts to entrench its monopoly power in two adjacent product markets." The court ruled in favor of Google on the remaining count that Google monopolized the market for "advertiser-side ad network" services with its Google AdWords product, after finding that Plaintiffs had failed to prove that advertiser-side ad network services constituted a distinct antitrust market.

The case, *United States v. Google LLC*, No. 23-cv-108, was originally filed by the DOJ and eight states in January 2023. The complaint was amended in April 2023 to add nine additional states as plaintiffs. The decision followed a three-week trial in September 2024 that included 39 live witnesses, deposition testimony of 20 others, and hundreds of exhibits. It also follows last year's victory by DOJ in a parallel action against Google for monopolization of the markets for general search services and general text advertising.[1] Assistant Attorney General Gail Slater, who leads the DOJ's antitrust division, said that the two decisions together represent "resounding wins for our century old antitrust enforcement regime and mark key milestones in our ongoing work to revive Section 2 of the Sherman Act." Attorney General Pam Bondi called it a "landmark victory in the ongoing fight to stop Google from monopolizing the digital public square." A spokesperson for Google indicated that the company planned to appeal the ruling.

Monopoly Power

Judge Brinkema held that Google violated Section 2 by monopolizing the markets for publisher ad servers and ad exchanges for open-web display advertising (*i.e.*, image-based ads on public websites), and that it violated Section 1 by tying together its products in each market. In the first step of its analysis, the Court held that: (1) there are relevant antitrust markets for publisher ad servers and for ad exchanges, and (2) Google has monopoly power in each of those markets.

With respect to market definition and market power, the court found that there is a distinct worldwide market for publisher ad servers, which the court determined are uniquely suited to managing advertising inventory for large publishers due to advanced features that distinguish them from more primitive ad networks (*i.e.,* "software products that sign up advertisers and publishers as their customers, and then match their advertisers' ads with their publishers' inventory"). Within that market, the court found that Google's DoubleClick service had monopoly power given its 91% worldwide share and that the existence of significant barriers to entry and high customer switching costs had thwarted even sophisticated tech companies from breaking into the market.

The court also found there is a distinct antitrust market for ad exchanges—*i.e.*, digital marketplaces for users to buy and sell online ad space in real time—because such exchanges are uniquely capable of collecting and ranking bids from multiple sources in milliseconds as required by sophisticated publishers and advertisers. Within that market, the court found that Google was a monopolist because, despite its estimated market share of 55-65% falling around the lower bounds of the standard in monopolization cases, its AdX product has long had a share many times larger than its next closest competitor. Moreover, the court noted that AdX's durably high pricing had remained fairly insulated from competitive pressures in a way that would be "difficult to explain unless Google had monopoly power."

[1] *See* here.

The court rejected Google's argument that all products existed as a part of one larger "omnibus" online advertising market (including traditional ad networks), where Google's share would have been significantly lower. The court found that, in practice, each product represents a different component of the online advertising ecosystem, with each serving distinct sets of users and not reasonably interchangeable with one another.

Anticompetitive Conduct

In the next step of its analysis, the court found that Google had obtained and preserved its monopolies in both markets through a series of actions that made it more difficult for competing products to gain scale. In particular, the court focused on a series of technical and policy restrictions that Google implemented for its AdX and DoubleClick products that prevented publishers from receiving real-time bids from AdX unless they also used DoubleClick, and concluded that those restrictions helped each product become and remain dominant. These changes included (i) the "First Look" policy that gave bids on AdX an opportunity to win the auction before bids from other exchanges were even seen (despite sometimes having lower prices than rival exchanges), (ii) the "Last Look" policy that gave AdX a "unique opportunity to adjust [bids] in response to the highest bid from a rival ad exchange" in an otherwise sealed auction, and (iii) "Unified Pricing" rules, which prohibited publishers using DoubleClick from setting higher prices for AdX than for other exchanges.

Together, the court found that these restrictions had the effect of locking users of one platform into the others and constituted unlawful tying in violation of Section 1 of the Sherman Act. And because the changes largely degraded functionality and otherwise would have rendered Google's products less desirable to customers (but for the fact that they made competing products more difficult to integrate), the court concluded that the only reasonable explanation for the decisions was Google's intent to deprive competitors of the scale necessary to compete. As the court explained, "[i]f Google did not have monopoly power in the ad exchange or publisher ad server markets, then running a fundamentally unfair auction process to preference its own ad exchange over third-party ad exchanges might have been a permissible design choice. But Google's use of its monopoly power to impose artificial technical limitations that made it harder for customers to do business with rivals, instead of competing on the merits by making its ad exchange more attractive to customers, constituted anticompetitive conduct."

Google had argued that there were legitimate procompetitive justifications for the challenged restrictions; for example, the company explained that the tie between AdX and DoubleClick helped to "reduce[] spam, fraud, malware, latency, and other quality issues." However, the court determined that those justifications were pretextual and ultimately did not credit them.

Google did convince the court that its prior acquisitions of DoubleClick and Admeld, which Google used as entry points into the ad tech stack, were not anticompetitive themselves. The court explained that, at the time of the acquisitions, the ad server and ad exchange markets were much more fragmented than they are today and that Google was not a key competitor to either one. The argument ultimately did not affect Google's liability, however.

DOJ's Motion for Sanctions

DOJ had simultaneously sought sanctions of Google for allegedly acting in bad faith during the discovery process, including by abusing attorney-client privilege and using disappearing chat functions to keep communications off the record even after receiving a litigation hold. The court suggested that the conduct may be sanctionable (with sanctions potentially including an adverse inference), but held that sanctions were unnecessary because Google already lost based on admissible evidence.

Implications

DOJ's lawsuit against Google is one of numerous recent monopolization cases against large technology companies and is part of a broader trend of revitalizing aggressive enforcement of Section 2 of the Sherman Act. The DOJ already prevailed against Google last year in the liability phase of a parallel search monopolization lawsuit, and the remedy phase of that case began on April 21st with DOJ seeking an array of remedies including the divestiture of Google's Chrome browser (*United States v. Google LLC*, 747 F. Supp. 3d 1 (D.D.C. 2024)). Other current Section 2 enforcement actions include pending litigation brought by DOJ against Apple for monopolizing the smartphone market (*United States v. Apple Inc.*, No. 2:24-cv-04055, filed Mar. 21, 2024 (D.N.J.)), a case brought by the FTC against Amazon for monopolizing the markets for "online superstores" and certain online market place services (*Federal Trade Commission v. Amazon, Inc.*, No. 2:23-cv-01495, filed Sept. 25, 2023 (W.D. Wash.)), and a case brought by the DOJ against Live Nation and Ticketmaster for monopolizing the market for primary ticketing services (*United States v. Live Nation Entertainment, Inc.*, No. 24:cv-3973, filed May 23, 2024 (S.D.N.Y.)). The DOJ has already submitted the latest opinion to the court in the Apple case, highlighting it as supplemental authority for their opposition to Apple's pending motion to dismiss.

Judge Brinkema's ruling represents a significant win for DOJ at a time of revitalized Section 2 enforcement activity. Public support by DOJ leadership for the lawsuit, which was initially brought under the Biden administration, suggests that antitrust enforcement is a rare area of bipartisan agreement today. It is likely that the Trump administration will continue the previous administration's aggressive approach, particularly with respect to large technology companies.

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