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As Federal Antitrust Regulators Try to Rein in Big Tech, One Court Finds Google Is a Monopolist

By Neil C. Schur
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On Aug. 6, following a nine-week bench trial, a federal court found in *United States v. Google* and *Colorado v. Google* that Google has monopolized the market for "general search services" on the internet.

Significantly, the court further found that Google maintained that monopoly in violation of Section 2 of the Sherman Act by agreeing to pay billions of dollars each year to make its search engine the default on devices made by Apple, Samsung and others. Moreover, the court found that Google exercised its monopoly power by charging higher than competitive prices for general search text ads, which resulted in Section 2 damages.

Latest Development in Antitrust Enforcers' Ongoing Efforts to Harness the Dominance of Big Tech

The long-term impact of the ruling is unclear, as the court has not yet decided on a remedy, and Google will appeal.

Absent the default agreements, device manufacturers may opt to make no search engine the default, and the increased access to consumers may lead to new entrants in the search engine market and increased competition. But even without the default agreements, Google still dominates the marketplace, and major change will not likely occur overnight. In addition, the prices of general search text ads are likely to decrease.

For years, antitrust enforcers have been trying to rein in the power of "Big Tech," which generally refers to Alphabet (Google's parent company), Amazon, Apple, Meta, and Microsoft; or sometimes to the Magnificent Seven, which includes Nvidia and Tesla.

Courtesy photo

Neil C. Schur of Anderson Kill.

If the ruling stands on appeal or is largely incorporated into a settlement, this case marks a major win for the enforcers and a stunning loss for Google.

Assistant Attorney General Jonathan Kanter, who leads the U.S. Department of Justice's Antitrust Division said in a statement: "This landmark decision holds Google accountable. It paves the path for innovation for generations to come and protects access to information for all Americans." Lina Khan, the FTC chair, does not get credit for this victory, though the FTC under her leadership has filed multiple cases against Big Tech. While Khan has proposed revising U.S. antitrust law to address the dominance of Big Tech, it is worth noting that the Google case was brought using a traditional approach to Section 2 law.

For those of you keeping score at home, at least the following major enforcement actions are pending against Big Tech:

The bottom line—stay tuned to this space.

Case	Court	Status
U.S. v. Google	U.S.D.C., E.D. Va.	Trial scheduled for September 2024
F.T.C. v. Meta Platforms, Inc.	U.S.D.C., D.C.	Cross Motions for Summary Judgment pending
F.T.C. v. Amazon.com Inc. et al.	U.S.D.C. W.D. Wash.	Trial scheduled for June 2025
U.S. v. Apple	U.S.D.C., D.N.J.	Motion to Dismiss First Amended Complaint pending

Unpacking the 'Google' Decision

In a 286-page opinion, District Judge Amit P. Mehta found that Google paid "huge sums" annually (amounting to more than $26 billion in 2021) to get those lucrative default placements. In return, Google received "default placement at the key search access points" and "its partners also agree[d] not to preload any other general search engine on the device."

The opinion noted that many users do not realize there is a default search engine or that it can be changed and therefore do not make an active, deliberate choice of a search engine—making the default a valuable position to hold. The default position is lucrative, the opinion further explained, because the number of searches on an engine drives the accompanying advertising revenue, which can be extremely profitable. As noted, the court found that Google exercised its monopoly power by charging higher than competitive prices for general search text ads.

Google had hotly disputed the alleged relevant product market and argued there is no market for general search. The court rejected those arguments and distinguished general search engines from specialized search engines such as Booking.com or social media networks.

The court further found that Google's dominance of the market "has gone unchallenged for well over a decade." It noted that by 2020, nearly 90% of all search queries in the United States went through Google and almost 95% of search queries on mobile devices in the United States went through Google. The second-place search engine, Microsoft's Bing sees roughly 6% of all search queries, the court noted.

The court acknowledged that Google "has hired thousands of highly skilled engineers, innovated consistently, and made shrewd business decisions, resulting in "the industry's highest quality search engine." But, the court emphasized, Google "has a major, largely unseen advantage over its rivals"—the default distribution agreements.

The court relied heavily on the 2001 Microsoft decision (addressing the dominance of Microsoft's Internet Explorer browser), in particular with regard to the proper interpretation of Section 2 and market definition, and concluded the framework used by the court in that case applies here.

The court rejected arguments that Google has monopoly power in the search advertising market, finding such power only in the market for text advertisements shown on a search engine's response page.

As noted, the court has not yet imposed a remedy, which will be an equally interesting and contentious battle, and could ultimately be more important than the rulings to date.

The court also denied the enforcers' requests for sanctions on Google for its policy of deleting most internal chats after 24 hours, which has been an issue in separate litigation also. The court stated that it is "taken aback by the lengths to which Google goes to avoid creating a paper trail for regulators and litigants. It is no wonder then that this case has lacked the kind of nakedly anticompetitive communications seen in Microsoft and other Section 2 cases." This ruling may be cross appealed by the enforcers.

There is, of course, a possibility of a settlement, and the upcoming U.S. presidential election may impact a resolution. Notably, the case was filed during the Trump administration and pursued during the Biden administration.

The case was filed by the U.S. Department of Justice, and a group of state antitrust enforcers simultaneously tried similar claims. The trial began in September 2023 and culminated in closing arguments in May.

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