

U.S. et al. v. Google LLC: Key Takeaways from Advertising Technology Antitrust Decision

News

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Google again made antitrust headlines last week when a federal judge issued a 115-page decision finding that Google violated federal antitrust law by unlawfully establishing a monopoly in digital advertising markets relied upon by website publishers and advertisers. In this client alert, we highlight the key issues and takeaways from the decision, and what to expect in the upcoming remedies proceeding.

Claims and Holding

In January 2023, the Department of Justice's Antitrust Division, along with 17 state attorneys general, brought a civil antitrust suit against Google in the federal district court for the Eastern District of Virginia, alleging monopolization in digital advertising markets (“Ad Tech”). Digital advertising occurs through a complex system involving several key technologies:

- **Publisher Ad Servers:** Tools used by website publishers to manage ad inventory and monetize web ad inventory. Google’s publisher ad server is known as DoubleClick for Publishers, or DFP.
- **Ad Exchanges:** Digital marketplaces where advertisers and publishers buy and sell ad inventory in real-time auctions, and can collect and rank bids from multiple buying tools nearly instantaneously. AdX is Google’s publisher side ad exchange product.
- **Advertiser Ad Networks:** Platforms used as marketplaces to facilitate ad sales by aggregating publisher ad space opportunities and matching them with advertisers. Google Content Network is the Google ad network, which publishers can access via Google’s AdSense product.

Plaintiffs alleged that Google engaged in unlawful conduct to maintain monopolies in these three markets (limiting the publisher ad servers market to large publishers) and engaged in unlawful tying (requiring publishers who wanted access to AdX to use DFP).

After a three-week bench trial, Judge Leonie M. Brinkema found on April 17, 2025 that Google had engaged in illegal monopolization of the Publisher Ad Servers and Ad Exchange markets through exclusionary conduct, including by requiring publishers using DFP to also route their inventory

through AdX, providing AdX with preferential access to publisher inventory and data, and implementing strategies that disadvantaged rival exchanges and reduced transparency. The Court also found Google unlawfully tied DFP and AdX in violation of both Sections 1 and 2 of the Sherman Act, finding Google shut out publishers from AdX's core capabilities unless they agreed to use DFP; imposing that agreement on publishers unlawfully restrained trade in violation of Section 1 in addition to being monopolistic in violation of Section 2. But the court held that DOJ failed to properly define the Advertiser Ad Networks market and thus rejected DOJ's claim in that market.

This decision builds upon and diverges from a 2024 ruling by Judge Amit Mehta in the U.S. District Court for the District of Columbia, which found that Google unlawfully maintained a monopoly in general search services and text search advertising by paying billions to ensure its default placement on browsers and mobile devices. While both decisions involved monopolization claims under Section 2 of the Sherman Act, they targeted distinct market structures: the 2024 case focused on search distribution agreements and platform access, whereas the 2025 case examined technical integrations and exclusionary design within the digital advertising stack.

Judge Brinkema's ruling reflects and reinforces the Fourth Circuit's modern approach to monopolization claims, particularly as articulated in cases like *Duke Energy v. NTE Carolinas*. In that case, the Fourth Circuit emphasized the need to examine the cumulative impact of a monopolist's alleged anticompetitive conduct, rather than assessing each act in isolation. Similarly, the Google Ad Tech decision examined Google's entire exclusionary strategy and its effect on competition in a holistic manner.

In addition, the court found that the refusal to deal doctrine articulated in *Verizon Communications v. Law Offices of Curtis V. Trinko, LLP* does not protect Google from antitrust liability. Google raised a *Trinko* defense, arguing that it had a right under the antitrust laws to refuse to deal with its competitors. The court rejected this defense for several reasons. First, the court distinguished the limited doctrine protecting "refusals to deal with rivals" from anticompetitive restraints that a monopolist places on its customers. The court found that Google's tying of DFP to AdX was not a simple refusal to deal with rivals, but rather a coercive policy that effectively compelled its publisher customers to use DFP if they wanted to use AdX's core real-time bidding feature. While it is possible to characterize such conduct as a conditional refusal to deal, the court held "that does not mean it should be assessed as a 'simple refusal to deal' with rivals, which was the harm alleged in *Trinko*." Second, the court noted that *Trinko* dealt with a highly regulated industry, whereas Google's ad tech products operate in markets without such industry-specific regulation. And lastly, like in *Aspen Skiing*, the court noted that Google sacrificed "short run benefits because it was more interested in reducing competition . . . over the long run by harming its smaller competitor[s]."

Remedies

The court bifurcated liability and remedies phases of the Ad Tech proceedings, and the parties are expected to submit briefing on remedies issues in the coming months. Several options are under

consideration:

- **Structural Remedies:** Given the Antitrust Division's clear preference for structural remedies, it is virtually certain that the DOJ will seek a structural remedy to break apart the tie between DFP and AdX. The DOJ has signaled that it may seek the divestiture of key Google assets, such as the separation of AdX from DFP, or even spinning off the entire Google ad tech business into standalone entities.
- **Behavioral Remedies:** The court may also impose behavioral restrictions, including prohibitions on self-preferencing, mandated access to Google-owned ad inventory by rival exchanges, or requirements for interoperability and transparency.
- **Ongoing Monitoring:** Any remedy is likely to involve judicial oversight or the appointment of an external monitor to ensure compliance, particularly in a fast-moving technological landscape.

The parties and the court will likely be monitoring the parallel remedies proceedings in the District of Columbia Google case, which was likewise bifurcated and began its remedies trial on April 21. DOJ has argued in that case that structural remedies, including the divestiture of Google's Chrome browser, are appropriate.

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