

# The Google antitrust lawsuit: Five key takeaways

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The lawsuit filed by the Justice Department against Google on Tuesday marks the first major antitrust enforcement case against a technology company since a case against Microsoft began in 1998 and ended in a settlement with the government in 2002. The Justice Department is accusing Google of using anti-competitive business practices to maintain monopolies over its competitors in the online search and advertising industry, and Google is vowing to fight back, arguing that its success does not mean it did anything wrong.

Here are five key takeaways from the action:

## 1. The Justice Department lawsuit has bipartisan support in Congress

Unlike so many high-profile actions undertaken by President Donald Trump's Justice Department in the past four years, the Google lawsuit quickly won the support of Republican and Democratic lawmakers alike, including key antitrust hawks.

Some of the loudest praise came from Republican Sen. Josh Hawley of Missouri, who investigated

Google when he was the Show-Me State's attorney general. Hawley said the case could be the most significant antitrust suit "in a generation" and that if the government wins, it would be even more significant than the Microsoft case "because Google is really a more powerful company than Microsoft was even at the height of Microsoft's power."

Rep. David Cicilline, D-R.I., the chairman of the House Judiciary antitrust subcommittee, called the lawsuit "long overdue." Cicilline recently wrapped up a 16-month investigation of Google and other large technology companies and has leveled accusations similar to the Justice Department's. He urged the department to probe other areas of Google's business empire, including its Maps service, Chrome browser and YouTube video platform.

Both lawmakers have said they plan to pursue antitrust legislation targeting Big Tech companies and believe Congress has an ongoing role to play on antitrust issues while the Justice Department proceeds with its case against Google.

## 2. There's disagreement over the strength of the Justice Department's case

Depending who you ask, the Justice Department's lawsuit is either a thin case that fails to prove that Google's market dominance hurts consumers, or it's a strong one that demonstrates that Google stifles competition and innovation by using exclusionary business tactics to ensure that its search engine is the default feature on millions of mobile devices in the United States.

Mark Jamison, a visiting antitrust scholar at the conservative American Enterprise Institute, believes the Justice Department faces an uphill battle to prove that Google's business practices hurt consumers "because everyone who participates with Google—the advertisers, the

people who use search—is doing that willingly, they're doing that voluntarily."

"It's hard to argue that they are choosing to make themselves worse off," Jamison said of users and advertisers. "Absent being able to show that Google has, in some untoward way, gained control of a system, and is therefore able to force people to do things they would not want to do, I think it's going to be really hard to make an antitrust case that makes good economic sense."

But Sarah Miller, executive director of the American Economic Liberties Project, which favors greater antitrust enforcement, called the consumer welfare standard "largely discredited" and said the Justice Department has clear authorization under the Sherman Antitrust Act of 1890 to take measures that would seek to ensure competition in the marketplace.

"Google maintains a 90 to 95% market share in online search," Miller said. "It isn't able to do that through designing a better product, it's doing it by controlling the distribution channels and using monopoly profits to do so. So from a common sense perspective, if you want competition in a market, the easiest way to do that is create more competitors."

### 3. Google is standing firm

No one expected Google to roll over and play dead, but the extent of the defense it mounted Tuesday morning was nonetheless impressive. The company's initial response to DOJ's "deeply flawed" lawsuit was simple: "People use Google because they choose to, not because they're forced to or because they can't find alternatives."

On Tuesday, Google executives argued the government lacks evidence of any harm to consumers at Google's hands. They invoked statements from [government officials](#) who investigated the company in the past and said they found no evidence of anti-competitive conduct. And they provided a laundry list of competitors in the advertising and search markets.

The company also defended its contracts with

Apple and other companies and noted that while Google is the default search engine in Apple's Safari browser, it is not the only option, as users can also choose to use Bing or Yahoo. It demonstrated the ease with which users can switch their default search engines on Android and in the Chrome browser app.

"We understand that with our success comes scrutiny, but we stand by our position," wrote Kent Walker, the company's chief legal officer, in a blog post. "American antitrust law is designed to promote innovation and help consumers, not tilt the playing field in favor of particular competitors or make it harder for people to get the services they want."

### 4. State attorneys general are still on the hunt

More interesting than the 11 state attorneys general who signed onto the Justice Department's case were those who didn't: Democrats. A bipartisan coalition of state law enforcement officials had been investigating Google for antitrust violations and coordinating with Justice since last year, but only Republican states were co-plaintiffs when the case was filed.

That led to questions about whether politics, specifically Attorney General William Barr's reported desire to announce the case prior to the Nov. 3 presidential election, had cost the Justice Department a shot at a bipartisan case. But DOJ officials dismissed those concerns, calling the case "a matter of bipartisan, nonpartisan, across-the-board interest."

Soon after, New York Attorney General Letitia James, a Democrat, issued a statement that she and a bipartisan group of attorneys general from Colorado, Iowa, Nebraska, North Carolina, Tennessee and Utah would be concluding aspects of their own investigation of Google in the coming weeks and would continue coordinating with the federal government.

"If we decide to file a complaint, we would file a motion to consolidate our case with the Justice Department's," James said. "We would then litigate the consolidated case cooperatively, much as we

did in the Microsoft case."

## 5. What would a President Joe Biden do?

The timing of the case, filed exactly two weeks prior to the presidential election, means that should Trump be defeated by former Vice President Joe Biden, the Democratic nominee, the case would become the jurisdiction of Biden's new attorney general. Whether Biden's Justice Department would continue pursuing the case is unclear.

Biden has called for greater scrutiny of Big Tech companies but declined to call for them to be broken up, distancing himself from more liberal members of his party, such as Sen. Elizabeth Warren, D-Mass. Silicon Valley also has a longtime ally in California Sen. Kamala Harris, Biden's running mate, who has taken campaign donations from technology executives.

The Biden campaign did not respond to questions about the Justice Department's lawsuit and whether the former vice president agrees with the findings of Cicilline and other Democrats who have investigated market dominance in Silicon Valley.

There is perhaps no better demonstration of the tough spot in which Biden finds himself than a pair of fundraisers scheduled by his campaign. The first, which took place last month, was hosted by Eric Schmidt, Google's former chief executive. The second, scheduled for Oct. 27, will be hosted by Warren and will feature Cicilline, James and other prominent Big Tech critics.

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