

Google's 'free' business model put to test in US antitrust suit

21 October 2020, by Rob Lever



Google's antitrust case could break new ground but the government must overcome a longstanding tradition of showing harm to consumers for the tech giant which offers most services for free

Google's long-running business model based on free services and advertising will be put to the test in the landmark antitrust lawsuit filed this week by the US Justice Department.

But the government is likely to face challenges proving monopoly allegations against the tech firm which grew into one of the world's most successful companies by leveraging its powerful search engine for a network of services such as maps, email, shopping and travel that feed its data-driven [digital advertising](#).

Legal experts point to the fact that it may be difficult to show Google's conduct was illegal under the longstanding "consumer welfare" standard in monopoly cases because its services are largely free.

Avery Gardiner, a former US antitrust enforcement lawyer who researches competition for the Center for Democracy & Technology, said the government

appears to be skirting the question of whether Google benefits consumers by offering free services.

The lawsuit "basically ignores price and focuses on quality and innovation," she said.

While not entirely a new strategy, "the antitrust agencies in the past have been reluctant to move forward without evidence of price effects," Gardiner added.

Data provided by the Justice Department showed Google controls 88 percent of US search queries, with the share in the mobile market at 94 percent, and argued that Google reinforces its monopoly with its "exclusionary" deals.

With a market value over \$1 trillion, Google generated \$161 billion in revenue last year, the bulk of which comes from digital advertising including messages linked to people's search queries.

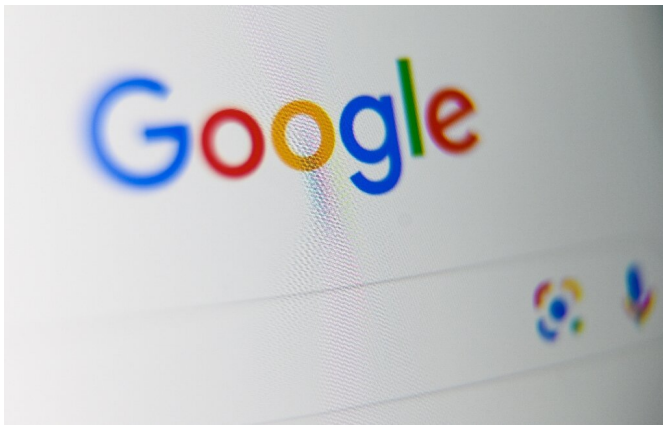
'Not truly free'

Christopher Sagers, a Cleveland State University law professor, said Google's use of free services is unlikely to be a serious hurdle for the government.

Sagers said that Google's search "is arguably not truly free, since every search can be conceived as a transaction in which the consumer gives their attention to advertisements in exchange for [search results](#)."

A key element of the case will be internet advertising which "is a product that Google definitely does not give away for free," Sagers said.

Maurice Stucke, a University of Tennessee law professor specializing in antitrust, said the case appears based not on prices but "the harm to privacy, data protection and the use of consumer data."



Finding alternatives

Google called the lawsuit "deeply flawed."

"People use Google because they choose to—not because they're forced to or because they can't find alternatives," Google general counsel Kent Walker said in a blog post.

Asheesh Agarwal of the activist think tank TechFreedom said it would be wrong to use the Microsoft case as a precedent for the Google probe.

Google has leveraged its powerful search engine to build an array of services which feed its digital advertising

"Today, consumers can easily use a variety of other sites and apps to search generally and especially to search for specific goods and services," said Agarwal. "This isn't the 1990s, when consumers had to go to the store and pay \$100 to try an alternative to Microsoft Office."

This takes a broader view of antitrust by examining the competitive harms to the marketplace and not just prices to consumers, Stucke said.

Independent technology analyst Richard Windsor said the case against Google appears strong but that "the most likely remedy is not a break-up of the company but measures that enforce fairer competition."

He said government lawyers have evoked the Microsoft case from two decades earlier which, despite the failure to break up the company, resulted in a more open technology landscape.

This could include allowing non-Google services and apps more prominence on the Google Play Store.

"The perception is that the Microsoft case unleashed significant innovation, because competitors no longer operated in the shadow of Microsoft," Stucke said.

"To be fair to Google, its digital ecosystem services are the best available in many categories," Windsor said in a blog post. "However, Google forces handset makers to put them front and center on their devices and to set them by default."

The case joined by 11 states, all of which have Republican attorneys general, could take years to play out and comes against a backdrop of a fierce political backlash against Big Tech giants which have extended their dominance in recent years.

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The Justice Department argues that Google has cemented its monopoly position using deals with device makers to ensure its apps and services are prominently displayed, and sometimes can't be deleted.

Any settlement, whether imposed by the court or agreed to by Google, could involve changes to business practices or "a structural" remedy—the code word for a breakup of the California titan.

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