

COMPETITION

When your data depository and platform are the biggest, competition law becomes important or a problematic weapon!

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"...In so doing, Google has engaged in exclusionary conduct that has severely weakened, if not destroyed, competition in the ad tech industry..."[1]

Imagine, you are planning a trip to Namibia. Then, suddenly, after Googling something about Namibia, you get a text message or email advertisement. It is from a nearby travel agency offering you a discount on flights to Namibia. Somehow, the company behind the advertisements knew about your trip, when you'll be travelling and how much you are most likely willing to pay.

This is just one example of how Google uses your personal information, also called personal data, to tailor the advertisements it shows you and is precisely why Google is under investigation by the [United States Justice Department](#) ("DOJ") – again.[2]

The DOJ filed a lawsuit against Alphabet's[3] Google over allegations that the company abused its dominance of the digital advertising business. It is alleged, amongst others, that Google aims to "*neutralize or eliminate*" rivals through acquisitions and to force advertisers to use its products by making it difficult to use competitors' products. The competitors or, rather, smaller rivals given the size of Google, are companies like Amazon, Facebook and Apple.[4]

The Attorney General, Merrick Garland, said in a press conference that –

"for 15 years, Google has pursued a course of anti-competitive conduct that has halted the rise of rival technologies and manipulated the mechanics of online ad auctions to force advertisers and publishers to use its tools".[5]

But how does Google do this?[6] It is alleged that –

- first, Google controls the technology used by nearly every major website publisher to offer advertising space for sale;
- second, Google controls the leading tool used by advertisers to buy that advertising space; and
- third, Google controls the largest ad exchange that matches publishers and advertisers together each time that ad space is sold.

As remedial action to address the anti-competitive conduct of Google, the DOJ has asked the court to compel Google to divest its Google Ad Manager suite, including its ad exchange AdX.[7]

To this end, it is noted that –

- Google's ad manager is an advertisement management platform for large publishers who have significant direct sales. The ad manager provides granular controls and supports multiple ad exchanges and networks. The ad manager performs many functions including, amongst others, managing a significant amount of advertisement revenue from direct sales and creates complex advertisement reports to gain granular insights; and
- Google's ad exchange, on the other hand, is a real-time marketplace to buy and sell online display advertisements.

Alphabet Inc., the parent company of Google, said in a statement that the lawsuit –

"doubles down on a flawed argument that would slow innovation, raise advertising fees, and make it harder for thousands of small businesses and publishers to grow".[8]

The litigation is on-going.

The divestiture order sought against Google is not without precedent. Perhaps most notable is the lawsuit that was instituted against Facebook's parent company Meta who was ordered to sell its GIF platform Giphy. Facebook acquired Giphy for \$400 million in 2020, but was ordered to divest Giphy given that such deal would lead to limited choice for social media users and reduce innovation in display advertising.[9]

The divestiture order sought against Google begs the question of whether it is wrong to become a giant and rule in the big tech industry? But if reigning in big tech is the goal, then competition law seems to be a problematic weapon.

*"Ring-a-ring o' roses,
A pocket full of posies.
A-tishoo! A-tishoo!
We all fall down!"*

Footnotes

- [1] Statement by the Attorney General Merrick Garland speaking at a press brief on 24 January 2023.
- [2] We say again because the lawsuit is the second federal antitrust complaint filed against Google, alleging violations of antitrust law in how the company acquires or maintains its dominance. The DOJ lawsuit filed against Google in 2020 focuses on its monopoly in search and is scheduled to go to trial in September.
- [3] That is, Alphabet Inc.
- [4] See The Guardian article "Justice department alleges Google tried to 'eliminate' ad market rivals in lawsuit", available [here](#), accessed on 27 February 2023.
- [5] See the press brief by Attorney General Merrick Garland available [here](#), accessed on 27 February 2023.
- [6] See page 3 of the 155-page complaint filed by the DOJ available [here](#), accessed on 27 February 2023.
- [7] See the relief sought by the DOJ at page 139 of the complaint available [here](#), accessed on 27 February 2023.
- [8] See the press statement by the Vice President of Google, Dan Taylor, available [here](#), accessed on 27 February 2023.
- [9] See N Lomas "UK's antitrust watchdog orders Facebook to sell Giphy", available [here](#), accessed on 28 February 2023.



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