



Insight

The Antitrust Agencies' Big Tech Cases: An Update

JEFFREY WESTLING | JUNE 11, 2024

Executive Summary

- The Department of Justice (DOJ) and Federal Trade Commission (FTC) are bringing illegal monopolization claims against four major U.S. tech companies, highlighting an increasing skepticism about concentration in technology markets.
- To succeed at trial, the DOJ and the FTC must show that these firms have monopoly power in a relevant market and obtained or maintained that monopoly power through anticompetitive means.
- This primer provides a summary of the cases against Google, Apple, Amazon, and Meta, as well as an update on their status and when to expect some form of resolution.

Introduction

As the November elections draw closer, the prospects for major antitrust legislation this Congress continue to dwindle, but that doesn't mean all is quiet. Currently, the Department of Justice (DOJ) and Federal Trade Commission (FTC) are bringing major illegal monopolization cases against several of America's big tech firms. As such, the courts may be where major competition policy developments happen.

To succeed on an illegal monopolization claim, the DOJ and FTC first need to show that a firm has monopoly power in a relevant market, meaning it has the power to control prices or exclude competition. Second, they must show this monopoly power was attained or maintained through anticompetitive conduct.

This primer provides an update on the cases against Google, Apple, Amazon, and Meta, highlighting both the legal arguments and the status of each.

Google Search

The DOJ brought its first major antitrust case against Google in 2020 for [monopolizing online search](#). The case largely revolves around exclusive dealing arrangements whereby Google pays mobile device manufacturers, system operators, and web browsers to make Google the [default search engine](#) when a consumer purchases those devices.

The DOJ's case will likely depend on the definition of the market the court adopts. The DOJ asserts that Google has monopoly power in a "[general search services](#)" market, which includes search engines such as Google, Microsoft's Bing, and DuckDuckGo, a search engine competing by offering [additional privacy protections](#) for users. In that general search market, Google has an 88 percent market share, and no other search engine has more than a 7 percent market share. As Google has argued, however, there are many other alternatives to a general search engine. Specific search engines such as Amazon for products or Booking.com for travel plans give consumers and advertisers an alternative to Google, limiting Google's ability to extract monopoly rents.

Further, Google has many procompetitive justifications for its conduct – potentially derailing the DOJ’s case even if the court adopts the agency’s proposed market definition – such as that its dominance in search stems from its superior product.

In May, lawyers made their closing arguments before the U.S. District Court for the District of Columbia, meaning a verdict should be delivered within the next few months. Interestingly, the rapid development of advanced, large-language models that can offer similar services to a general search engine could add additional complexity to the analysis that did not exist in 2020. If Judge Amit Mehta, the district judge for the case, finds Google violated antitrust laws, the attention will turn to remedies.

Google Ad Technology

In January 2023, the DOJ filed an antitrust case against Google for monopolizing [digital advertising technologies](#). Google currently competes in three separate sectors of online advertising. First, for websites trying to sell advertising space and viewer impressions, Google offers its publisher ad server through DoubleClick, which issues requests for advertiser bids for publisher ad space. Second, for advertisers, Google offers both Google Ads and Display & Video 360, which provide bids on a website’s advertising space. In between it all, Google Ad Exchange connects publishers and advertisers, including Google’s own services.

The DOJ has argued that Google has monopoly power in all three markets, largely relying on the relative market share of each of Google’s platforms. It also alleges that Google engaged in a wide range of conduct designed to harm competition. For example, Google restricted advertiser demands to its ad exchange, and its ad exchange to its ad servers. And when Google introduced its open bidding option in response to a competitive threat in header bidding (a system of bidding that bypassed its ad exchange entirely), it would subsidize competitive bids to beat rivals, while raising costs on uncompetitive bids to offset the losses (known as Project Bernanke, as it resembled “quantitative easing on the Ad Exchange”). At the same time, Google can argue that changes to its products were designed to improve the product in some respect, and at a minimum Google will have the opportunity to show that the procompetitive benefits of its practices outweigh anti-competitive harms.

The trial is scheduled to begin [September 9 in the Eastern District of Virginia](#), a court known for its relatively rapid decisions. Further, due to an agreement to pay \$2.3 million to enforcers if the DOJ prevails, the case will proceed to a bench trial rather than a jury trial. In addition, a similar case brought by the Ad Tech Collective Action seeking [£13.6 billion in the United Kingdom](#) has been allowed by the UK’s Competition Appeal Tribunal to proceed to trial, though no date has been set.

Apple Smartphone

In March 2024, the DOJ brought an illegal monopolization case alleging Apple had illegally [monopolized the smartphone market by limiting cross-platform functionality of Apple products](#). The DOJ’s case focuses primarily on Apple’s practices that make it more difficult for users to switch to another smartphone. For example, the DOJ asserts that Apple significantly degrades the experience for iPhone users communicating with non-iOS devices through text messaging, thus reinforcing the iPhone’s appeal among its user base through network effects and social pressures, sometimes referred to as [green bubble shaming](#). Perhaps more significant, Apple restricts the usage of so called “super apps,” apps that act as a hub for mini apps, because they would allow users to continue to use the app seamlessly if they switch to an android device.

Apple will likely push back on the DOJ’s market definition and attempt to expand it to a global market, both of

which make it difficult for the DOJ to assert the firm has monopoly power in the smartphone market. Even if the court accepts the DOJ's market definition, it may be difficult to show that Apple actually has monopoly power, even with relatively large market share.

Unlike the Google cases, the Apple case will likely not be settled for three to five years, [according to experts](#). In that time, many of the practices that the DOJ alleges are anticompetitive may be altered or altogether removed in response to the Digital Markets Act (DMA), a European law designed to increase open competition online. While the DMA doesn't require Apple to change practices in the United States, it could incentivize the company to make changes globally to simplify processes. If so, some of the arguments made by the DOJ could become moot.

Amazon Marketplace

In September 2023, the FTC and 17 state attorneys general filed an antitrust case against Amazon, arguing that the firm violated Section 5 of the FTC Act and Section 2 of the Sherman Act by [illegally maintaining a monopoly in online retail](#). The FTC proposes a marketplace of online superstores that offer an extensive breadth and depth of product selection through an online storefront, excluding from the market a wide range of alternatives such as physical stores, specialty retailers, and online consumers. Under the FTC's definition, Amazon likely has a share of over 60 percent of the market. When widening the definition to include alternatives such as physical stores and specialty retailers, Amazon only has a 37.6 percent market share in online retail and a 3.5 percent share of all retail.

The practices at issue revolve primarily around the buy box, a feature on Amazon that displays the highest-ranked seller when consumers land on a product page. As the FTC alleges, Amazon can punish sellers who offer a lower price on rival marketplaces, meaning their products would not be the one displayed in the buy box. There are also concerns about Amazon driving sellers to use Amazon's fulfillment services to obtain better placement on the marketplace.

The case is currently in the U.S. District Court for the Western District of Washington, with a trial date set [for October 2026](#). In potentially the most significant development in the case, the FTC opposed a motion from the American Bookstore Association (ABA) to join the case because the [ABA's argument would harm the FTC's case](#). According to the ABA, Amazon artificially keeps prices too low for consumers, making it difficult for retailers to make a profit as they cannot charge more for their goods. This, however, contradicts the agency's arguments that Amazon keeps prices high by not allowing sellers to offer the goods at a lower price elsewhere.

FTC vs. Facebook/Meta

In August 2021, the FTC [refiled an antitrust complaint against Facebook](#), rebranded as Meta Platforms in October 2021, alleging the company illegally maintained a monopoly in violation of Section 2 of the Sherman Act by acquiring Instagram, a photo sharing social media service, and WhatsApp, a messaging app. The complaint alleges Facebook has a monopoly in "personal social networking" services, which consist of online services that enable users to maintain personal relationships and share experiences on a social media platform. Further, the FTC argues that by acquiring Instagram and WhatsApp, Facebook illegally maintained a monopoly in the market by purchasing its potential rivals.

This case presents some major issues for the FTC, however. First, the market definition is extremely vague, and in fact the market definition question derailed the FTC's first attempt to bring this case. Second, the FTC

refused to challenge the mergers when they happened, making it difficult to convince a court that the acquisitions are anticompetitive and not a procompetitive purchase to improve its own service.

In April, Meta filed a motion for summary judgment, which would essentially mean that no genuine dispute of fact exists, and Meta is entitled to a judgment as a matter of law. The FTC filed a motion for a partial summary judgment as well, and the parties are currently waiting for a decision on these motions. If neither is granted, the case will move forward and likely take additional years to finalize.