

Federal Big Tech Litigation

Hyper consolidation in the tech industry harms businesses, consumers, and innovation. 60% of Americans across the political spectrum [agree](#) that Big Tech has “too much power.” Starting in the first Trump administration, and continued in Biden’s, federal enforcers brought a wave of antitrust litigation to rein in Big Tech. Below is a quick overview of these cases, including a summary of the remedies considered to resolve and prevent future harms stemming from monopolies. These remedies can be structural or behavioral. Structural remedies seek to eliminate incentives that make anticompetitive conduct possible, commonly through separating a firm’s organizational structure; while behavioral remedies prevent certain a business from partaking in certain business conduct.

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United States v. Google (Internet Search)

Background:

- Search engines are an essential resource in our economy and society.
- Google processes [1.2 trillion](#) searches per year. It controls roughly [88%](#) of the overall search market, and [94%](#) of searches on mobile devices.
- Competing search engines, like [Neeva](#) with cutting edge generative AI features, have exited the market due to Google’s dominance.
- Consumers are less likely to switch from Google to other search engines with better features, such as increased privacy, due to Google’s dominance.

Case:

- In 2020, President Trump’s Department of Justice (DOJ), and eventually 49 bipartisan attorneys general, [sued](#) Google for illegally monopolizing the search market in violation of the [Sherman Act](#).
- The DOJ’s case detailed how Google paid corporations providing search distribution, such as [Apple](#), [Samsung](#), and Verizon, collectively tens of billions annually in contract agreements to ensure Google would be the default search provider, and Google’s contracts stipulated that no other search engine would be pre-downloaded on a user’s device.

- The case also alleged that the lack of competitive pressure on Google to respect user privacy and improve search results has harmed consumers.

Ruling

- On August 5, 2024, U.S. D.C. District Court Judge Amit Mehta [ruled](#) that Google “is a monopolist, and it has acted as one to maintain its monopoly.”
- The ruling found Google’s exclusive distribution agreements in general search and general search text ad markets violated [Section 2](#) of the [Sherman Act](#).
- Google stated that it plans to [appeal](#) this liability finding. The median time to [appeal](#), from filing notice to a decision, in the DC Circuit Court of Appeals is 12 months. The court, however, is proceeding with determining remedies to address the Google Search monopoly (see below.)

Remedies:

- Both [DOJ](#) and [Google](#) have proposed remedies to the court.
- DOJ’s proposal included both structural and behavioral remedies.
 - DOJ’s proposed behavioral relief includes:
 - Prohibiting Google from entering exclusive contracts that make it the default search provider on devices.
 - Preventing Google from making future acquisitions that foreclose competition.
 - Giving rivals access to data, within restrictions, to remove barriers to entering and growing within the search market.
 - DOJ’s proposed structural relief includes:
 - Mandating Google divest from Chrome to prevent Google from self-preferencing its related products in search.
 - Mandating Google divest from Android if Google fails to restore competition to the search market within five years.
- Although the Trump administration kept most aspects of the preliminary remedy proposal— including structural remedies— it rescinded a proposal that would have required Google to divest AI-related acquisitions and investments, and ban future AI transactions. Instead, Trump’s DOJ requires Google to notify the DOJ of future AI investments or acquisitions.
- Google’s proposed remedies outline *temporary* behavioral relief, such as a ban from entering exclusive contracts to be the default search provider for three years.
- For more information about potential Google Search remedies and why structural remedies are necessary, see *Economic Liberties’ [brief](#)*.

Next Step:

- On April 22, 2025, the judge will hold an evidentiary [hearing](#) to get more information about remedies before issuing an order.
- Apple attempted to intervene halfway through fact discovery in the remedies proceeding because Apple prefers to be paid not to develop a competing search engine; the judge rightly [denied](#) this belated gambit, but Apple has [moved](#) to stay the remedies proceedings while appealing denial of its intervention motion.

United States v. Google (Ad Tech)

Background:

- The online advertising [ecosystem](#) consists of three distinct markets:
 - Sell Side - where website owners post space available for advertisements.
 - Buy Side - where advertisers place bids on that space.
 - Exchange - where advertisers and websites/publishers use live auctions to finalize advertisement placements.
- Google has market [dominance](#) across the advertising ecosystem. It controls 80% of the buy side, 91% of the sell side, and 56% of the exchange market.
- Google advertising provides 80% of its annual revenue, roughly [\\$150 billion](#).
- Google takes at least a [30% cut](#) of advertising revenues from websites/publishers. This carves into critical revenues for businesses, like online news outlets offering advertising space, and hikes prices for advertisers. Since 2009, more than 2,900 [news outlets](#) have closed, in part due to these revenue reductions.

Case:

- On January 24, 2023, DOJ filed a [complaint](#) against Google for monopolizing the three online advertising markets.
- DOJ alleges:
 - Google took advantage of its market and data power to charge publishers and advertisers supracompetitive fees and violate users' privacy.
 - Google engaged in strategic acquisitions in the advertising market to solidify its dominance.
 - Google illegally tied its products together by forcing publishers to use its ad servers and ad exchange to reach the millions of advertisers on its ad network, and by restricting advertisers from using other ad exchanges.
- DOJ also alleges Google abused its market dominance to advantage its products in unfair ways, including:

- “First look,” which allowed Google to buy an advertisement before the advertisement is offered to rival ad exchanges, despite Google offering a less competitive price.
- “Last look,” which allowed Google to see the highest bid on advertisements, and decide whether to outbid the other buyer.
- Secret deals with Meta to block “[header bidding](#),” which would have allowed publishers to make their advertising inventories available for auction on multiple exchanges to reduce their reliance on Google.

Ruling:

- DOJ and Google made closing arguments on November 25, 2024. The judge has not made a final ruling.

Remedies:

- Though the case is not yet at the remedies phase, the DOJ has stated in its [complaint](#) they would likely seek structural remedies, including possibly forcing Google to divest its Ad Manager suite (including its publisher ad server, DFP, and its ad exchange, AdX).

Next Steps:

- The judge could rule at any time. If Google is found guilty, Google and DOJ will each propose remedies for the court to impose.

Epic Games Cases

- Epic Games is an entertainment software developer and makes games that are household names such as *Fortnite*, which [hosts](#) 350 million players.
- *Fortnite* is available on multiple operating systems, including Apple’s App Store and Google’s Play Store on Android.
- In order to access Apple’s and Google’s mobile app platforms, app developers are expected to comply with Google’s and Apple’s terms and conditions, including [mandatory](#) 15%-30% commission fees.
- On August 13, 2020, Epic Games launched “[Project Liberty](#).” Epic provided *Fortnite* players with a code to purchase add-on features for the game outside of the Play Store and the App Store to circumvent the platforms’ commission fees. In response, the big tech firms kicked *Fortnite* out of their mobile app stores, prompting Epic to sue both brands.
- *Fortnite* generated \$1.1 billion in mobile app [revenue](#) in 2020, before being deleted from the App Store and the Play Store.

Epic v. Google

Background:

- [Over 95%](#) of apps on Android mobile devices are downloaded via Google's Play Store.
- Google maintains dominance on Android and its operating system (OS) due to exclusive contracts that mandated it be the default provider on Android (see above, *U.S. v. Google* internet search.)
- Google takes a 15% - 30% [cut](#) from app developers for all digital purchases made through an app downloaded from their store.

Case:

- Epic's suit claimed [Google](#) illegally blocked developers from using alternative platforms to reach consumers by preventing devices from carrying other app stores and threatening to remove app developers from the Play Store if they distributed apps on alternative app stores.
- The lawsuit alleged Google spent hundreds of millions of dollars to contractually prevent potential competitors from releasing their own app stores, in a scheme known as "[Project Hug](#)."
- Epic's suit also claimed Google illegally blocked developers from using internal app messages, such as Epic's messages in Project Liberty, to communicate with consumers about making payments outside of the Play Store, by threatening to remove developers from the Play Store altogether.
- Epic's lawsuit claimed Google block third-party payment and app stores to charge developers, and consumers, such high fees.

Ruling:

- On December 11, 2023, a jury [unanimously](#) found Google guilty of monopolization, unlawful restraint of trade, and tying in violation of sections 1 and 2 of the Sherman Act and California's Unfair Competition Law.

Remedies:

- After the jury's decision, a judge heard from both Google and Epic about their proposed remedies.
- Epic never sought financial damages, but instead sought only to stop Google from blocking third-party payment platforms and open the market to competition.

- On October 7, 2024, a judge decided what remedies to impose through a [Permanent Injunction](#) against Google. The judge's orders were supposed to take effect November 1, 2024, but most remedies have been stayed on appeal (see below.)
- The judge's orders specified a range of temporary behavioral remedies for three years.
 - Specifically, Google cannot:
 - Contract to block other app stores on Android devices.
 - Contract with a developer to release apps exclusively on the Play Store.
 - Pre-install the Play Store on an Android device or prevent the preinstallation of a non-Google affiliated Play Store.
 - Require the use of the Play Store billing on its app store, or prohibit a developer from communicating with users about alternative payment systems.
 - Prevent developers from communicating with users about alternative pricing available on platforms other than the Play Store.
 - Prohibit the distribution of other, third-party app stores in the Play Store.
- Google must affirmatively:
 - Allow third-party app stores access to Play Store's catalog of apps, and permit users of other app stores to download apps through the Play Store for three years to jumpstart competition.
- Epic did not propose structural remedies, and the judge did not impose any.
- Epic and Google must also appoint a three-person technical committee to review disputes for the preceding provisions. Google and Epic will each choose one member, and those two members will select a third.

Next Steps:

- Google [appealed](#) both the jury verdict on liability and the court's permanent injunction remedy . Oral [arguments](#) on Google's request to appeal will be held February 3, 2025. See Economic Liberties' [amicus brief](#) on why Google's appeal of the injunction should be rejected because any purported gaps in evidence justifying the remedies were likely caused by Google's own destruction of evidence.
- Most of these remedies are currently [stayed](#) pending Google's appeal, [except](#) the remedy barring Google from conditioning payments on partners refusing preinstallation of competing app stores.

Epic v. Apple

Background:

- Apple's App Store is the sole store for iOS users to access mobile applications.
- Apple takes a 15% - 30% [cut](#) from app developers for all purchases made through an app downloaded from their store.

Case:

- On August 13, 2020, Epic sued [Apple](#) claiming it illegally blocked app developers from reaching consumers via internal app messages to inform them about cheaper alternative payment options.
- Epic claimed that by preventing users from accessing third-party payment platforms, Apple could overcharge app developers.

Ruling:

- Apple's case was decided by a judge in a bench trial. On September 10, 2021, a judge [found](#) Apple guilty under California law of anti-competitive steering for inhibiting users from making digital purchases on third-party payment platforms. The judge presiding over the case ruled to dismiss all other claims, including that Apple has a monopoly on app stores.

Remedies:

- The liability and remedy phases were combined and decided simultaneously.
- On September 10, 2021, the court [ordered](#) behavioral remedies, requiring Apple to:
 - Stop blocking app developers from including buttons and external links that guide users to outside purchasing platforms.
 - Stop blocking app developers from communicating with customers through the developers' apps.
- The judge ordered no structural remedies, nor did Epic identify any structural remedies in its original complaint.
- Epic brought Apple back to court for malicious compliance after it began charging app developers 27% commissions on sales outside of Apple's payment system and disincentivizing users from using third party payment sites. Epic is seeking [sanctions against Apple](#), which could lead to additional remedial relief.
- Separately, Apple has [asked](#) the court to vacate or narrow the injunction based on newer case law.

Next Steps:

- The court will determine whether and how to change its original orders in response to Apple's malicious compliance.
- The court will determine whether to make changes to the injunction at Apple's request.

Federal Trade Commission v. Amazon (eCommerce):

Background:

- In 2024, Amazon fulfilled 5 billion orders across the United States. Estimates suggest Amazon accounted for 37% of all e-commerce sales in 2022, while the next leading competitor, Walmart, accounts for 6% of the market.
- Amazon sold over \$700 billion worth of merchandise in 2023, ranging from electronics, personal and health care, produce, and more.
- Due to Amazon's scale, it is critical for merchants to sell their products on Amazon.

Case:

- On September 26, 2023, the Federal Trade Commission and 17 bipartisan state attorneys general sued Amazon for violating Section 5 of the FTC Act, Section 2 of the Sherman Act, and various state antitrust laws.
- The FTC claimed becoming "Prime" eligible is critical for most sellers because of Amazon's consumer subscription program. In order to obtain Prime status, sellers must use Amazon's fulfillment service, "Fulfillment by Amazon (FBA,)" and must pay various fees that often accumulate to 50% of sellers' sales.
- The FTC alleges Amazon illegally tied sellers' eligibility for Prime (a crucial gateway for reaching Amazon's enormous base of shoppers) to using FBA, thereby dampening businesses' profits and suppressing potential fulfillment rivals.
- The FTC claimed Amazon scraped the web for sellers listing products on Amazon who offer better prices on other e-commerce websites. If sellers were found to offer a better price on another online retail site, Amazon would bury sellers in search results. The case alleges this effectively eliminated merchants opportunity to sell products, prevented other online marketplaces from competing, and raised consumer prices while reducing the quality of the shopping experience.

Ruling:

- The case is still in its preliminary stages. Most recently, the FTC withstood an attempted dismissal. U.S. District Judge John Chun did however dismiss a few allegations of breaches of state law.

Remedies:

- If Amazon is found guilty, the complaint asks the courts to impose both structural and behavioral remedies.

Next Steps:

- A bench trial will begin [October 13, 2026](#).

Federal Trade Commission v. Facebook (Social Media)

Background:

- In 2012, Facebook (Meta) acquired the social media platform Instagram.
- In 2014, Meta acquired the mobile messaging app WhatsApp.
- At the time of the acquisitions, users were transitioning to smartphones and a new form of social media based primarily on photo-sharing.

Case:

- On December 9, 2020, Donald Trump's FTC and 48 attorneys general [sued](#) Facebook for violating Section 2 of the Sherman Act.
- FTC alleged Meta identified Instagram and WhatsApp as emerging competitors.
- FTC alleged Meta acquired Instagram and WhatsApp to suppress competition to maintain its monopoly over a distinct social media market, personal social networking (a network focused on relationships with personal connections, rather than for example, a network focused on professional connections, such as LinkedIn).
- FTC also identified anti-competitive policy agreements with third-party app developers. When Facebook granted developers access to its platform, it required developers to not compete with Facebook or partner with potential competitors of Facebook.

Ruling:

- A judge [denied](#) Meta's request for summary judgment, so the case will proceed to trial.

Remedies:

- If Meta is found guilty, the FTC outlined both behavioral and structural remedies in its complaint, including the divestiture of WhatsApp and Instagram.

Next Step:

- Trial will [begin](#) on April 14, 2025.