IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *et al.*, Plaintiffs, v. GOOGLE LLC, Defendant.	Case No. 1:20-cv-03010-APM HON. AMIT P. MEHTA
STATE OF COLORADO, *et al.*, Plaintiffs, v. GOOGLE LLC, Defendant.	Case No. 1:20-cv-03715-APM HON. AMIT P. MEHTA

PLAINTIFFS' PROPOSED REMEDY FRAMEWORK

I. Introduction

Google's anticompetitive conduct resulted in interlocking and pernicious harms that present unprecedented complexities in a highly evolving set of markets. These markets are indispensable to the lives of all Americans, whether as individuals or as business owners, and the importance of effectively unfettering these markets and restoring competition cannot be overstated. Plaintiffs intend to use the Court-ordered schedule to conduct vital discovery and a thoughtful evaluation of facts adduced from that discovery in addition to the significant evidentiary record that already exists. This careful, methodical approach is calibrated to ensure that the specific remedies Plaintiffs ultimately include within a Proposed Final Judgment meaningfully address and remedy Google's violations of the antitrust laws in these vital markets.

* * *

On August 5, 2024, the Court found Google liable under Section 2 of the Sherman Act for maintaining monopolies in U.S. general search services and U.S. general search text advertising. *United States v. Google LLC*, 20-cv-3010 (APM), ECF No. 1032, at 276 ("Mem. Op."). Specifically, the Court found two violations of Section 2 as a result of Google's illegal maintenance of monopolies in those two separate markets. Plaintiffs have a duty to seek—and the Court has the authority to impose—an order that not only addresses the harms that already exist as a result of Google's illegal conduct, but also prevents and restrains recurrence of the same offense of illegal monopoly maintenance going forward. *See Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 395 U.S. 100, 133 (1969) ("'[W]hen one has been found to have committed acts in violation of a law he may be restrained from committing other related unlawful acts.'" (quoting *N.L.R.B. v. Express Pub. Co.*, 312 U.S. 426, 436 (1941))); *see also* 15 U.S.C. § 4 (statutory authority to "prevent and restrain violations").

Indeed, the Court has broad power to fashion a remedy that "prevent[s] future violations and eradicate[s] existing evils." *United States v. Microsoft Corp.*, 253 F.3d 34, 101 (D.C. Cir. 2001) (quoting *United States v. Ward Baking Co.*, 376 U.S. 327, 330–31 (1964)). Any remedy requires a "comprehensive" "unitary framework" to restore competition and prevent future monopolization with provisions "intended to complement and reinforce each other." *See New York v. Microsoft Corp.*, 531 F. Supp. 2d 141, 170 (D.D.C. 2008).

In its Memorandum Opinion, the Court cited a rich factual record that reflected the following market conditions, among others: (1) Google's illegal maintenance of monopolies in these two markets has been sustained and reinforced for over ten years; (2) Google's illegal conduct generated a significant scale gap in both markets—a gap that unlawfully enriches Google while simultaneously exacerbating the decade-long deprivation of scale to rival innovators; and (3) network effects and significant barriers to entry exist such that for a new entrant to meaningfully enter in these markets (and do so at the scale necessary), it must be able to do so at multiple levels (e.g., an index of the web, a distribution network, user data, integrated artificial intelligence, an advertiser network). *See In re Google Play Store Antitrust Litig.*, Case No. 20-cv-05671-JD (N.D. Cal. Oct. 7, 2024), ECF No. 701, at 11 (explaining how a remedy for Google's anticompetitive conduct needed to "bridge the moat" created by network effects and other entry barriers in the market). These conditions, among the other market realities identified by the Court, necessarily inform the contours and details of an effective remedy. The interlocking, mutually reinforcing nature of these conditions also underscores the importance of developing solutions that accomplish the goals of antitrust remedies.

Under the law, once Google has been found to violate—here, twice—Section 2 for the offense of illegal monopoly maintenance, a remedy for those offenses should (1) unfetter these

markets from Google's exclusionary conduct, (2) remove barriers to competition, (3) deny Google the fruits of its statutory violations, and (4) prevent Google from monopolizing these markets and related markets in the future. *See Microsoft*, 253 F.3d at 103. This remedy should address as well as prevent and restrain *the offense* of illegal monopoly maintenance in the relevant markets, and the scope of the remedy need not be limited to the specific means or methods of how Google achieved that illegal monopoly maintenance. *See Ford Motor Co. v. United States*, 405 U.S. 562, 573 n.8 (1972) ("[R]elief . . . is not limited to the restoration of the status quo ante. There is no power to turn back the clock. Rather, the relief must be directed to that which is 'necessary and appropriate in the public interest to eliminate the effects . . . ,' or which will 'cure the ill effects of the illegal conduct, and assure the public freedom from its continuance.'" (quoting *United States v. E. I. Du Pont De Nemours & Co.*, 353 U.S. 586, 607 (1957) and *N. Sec. Co. v. United States*, 193 U.S. 197, 357 (1950))).

In order to address Google's offenses, the remedies here should account for alternative and future forms of monopoly maintenance in the affected markets and reasonably related markets in addition to the specific conduct to date. *Nat'l Soc. of Pro. Engineers v. United States*, 435 U.S. 679, 698 (1978) ("[I]t is not necessary that all of the untraveled roads to [a similar] end be left open and that only the worn one be closed." (quoting *Int'l Salt Co. v. United States*, 332 U.S. 392, 400 (1947) (abrogated on other grounds by *Ill. Tool Works Inc. v. Indep. Ink, Inc.*, 547 U.S. 28 (2006))); *Int'l Boxing Club of N.Y., Inc. v. United States*, 358 U.S. 242, 262 (1959) (noting that "sometimes 'relief, to be effective, must go beyond the narrow limits of the proven violation.'" (quoting *United States v. U.S. Gypsum Co.*, 340 U.S. 76 at 90 (1950))).

Further complicating matters, artificial intelligence—while not a substitute for general search—will likely become an important feature of the evolving search industry. It is, therefore,

critical that any remedy carefully consider both past, present, and emerging market realities to ensure that robust competition, not Google's past monopolization, will govern the evolution of general search and text advertising. To attain these goals, remedies and laws related to similar conduct in other jurisdictions must also be considered to determine what measures this Court should impose to prevent Google from maintaining its monopolies in the future through conduct that evades or circumvents the Court's final remedy order.

II. Remedies Proposal Framework

With the governing legal framework and complex market dynamics in mind, and consistent with the Court's September 18 Order, Plaintiffs are currently considering remedies to address four categories of harms related to Google's (1) search distribution and revenue sharing, (2) generation and display of search results, (3) advertising scale and monetization, and (4) accumulation and use of data. For each area, the remedies necessary to prevent and restrain monopoly maintenance could include contract requirements and prohibitions; non-discrimination product requirements; data and interoperability requirements; and structural requirements.

As noted above, Plaintiffs have commenced discovery to ensure that its Proposed Final Judgment—including any specific remedies sought—appropriately and meaningfully addresses the harms resulting from Google's unlawful conduct in the context of current market realities. Plaintiffs will continue to engage with interested parties—in conjunction with available formal discovery tools and expert analysis—to learn not just about the relevant markets themselves but also about adjacent markets as well as remedies from other jurisdictions that could affect or inform the optimal remedies in this action. *E.g.*, *In re Google Play Store Antitrust Litig.*, Case No. 20-cv-05671-JD (N.D. Cal. Oct. 7, 2024), ECF No. 702 (enjoining Google for Play Store practices that violated various antitrust laws, including Section 2).

Plaintiffs have described the forms of remedies under consideration in good faith but this description, of course, reflects the state of the record at this phase of the remedy proceedings. As discovery proceeds, Plaintiffs reserve the right to add or remove potential proposed remedies identified in this high-level framework. Considering governing precedent aimed at providing a comprehensive and unitary framework, Plaintiffs anticipate that its Proposed Final Judgment will include a number of mutually reinforcing remedies from most, if not all, of the categories under consideration, with an aim of making the remedy effective and administrable. Plaintiffs provide these categories to illustrate the different bottlenecks that Google presently controls that must be freed from the continuing effects of anticompetitive conduct, and where Google must be barred from new actions creating new obstacles to competition in general search services and general search text ads.

A. Search Distribution And Revenue Sharing

The starting point for addressing Google's unlawful conduct is undoing its effects on search distribution. *See* Mem. Op. at 3 ("[M]ost devices in the United States come preloaded exclusively with Google. These distribution deals have forced Google's rivals to find other ways to reach users."). For more than a decade, Google has controlled the most popular distribution channels, leaving rivals with little-to-no incentive to compete for users. *Id*. at 25, 226, 236–42. Similarly, rivals cannot compete for these distribution channels because Google's monopoly-funded revenue share payments disincentivize its partners from diverting queries to Google's rivals. *Id*. at 233. Fully remedying these harms requires not only ending Google's control of distribution today, but also ensuring Google cannot control the distribution of tomorrow.

Accordingly, Plaintiffs are considering remedies that would limit or end Google's use of contracts, monopoly profits, and other tools to control or influence longstanding and emerging distribution channels and search-related products (e.g., browsers, search apps, artificial

intelligence summaries and agents). For example, Plaintiffs are evaluating remedies that would, among other things, limit or prohibit default agreements, preinstallation agreements, and other revenue-sharing arrangements related to search and search-related products, potentially with or without the use of a choice screen.

Similarly, Plaintiffs are considering behavioral and structural remedies that would prevent Google from using products such as Chrome, Play, and Android to advantage Google search and Google search-related products and features—including emerging search access points and features, such as artificial intelligence—over rivals or new entrants. Such consideration is faithful to the Court's findings. As the Court recognized, Google's longstanding control of the Chrome browser, with its preinstalled Google search default, "significantly narrows the available channels of distribution and thus disincentivizes the emergence of new competition." Mem. Op. at 159. "[T]he Google Play Store is a must-have on all Android devices," *id*. at 210; and the Android Agreements are, of course, a critical tool for Google's anticompetitive limitations on distribution.

Lastly, Plaintiffs seek to explore remedies that will address the practices and impacts related to user behavior consistent with the evidence adduced at trial. *See, e.g.*, Mem. Op. at 24–28 ("[T]he vast majority of individual searches, or queries, are carried out [by] habit."). Plaintiff States are also considering remedies that would require Google to provide support for educational-awareness campaigns that would enhance the ability of users to choose the general search engine that suits them best.

B. Accumulation And Use Of Data

Virtually every component and process of a general search engine benefits from data. Mem. Op. at 226 ("Scale is the essential raw material for building, improving, and sustaining a GSE."). Google's unlawful behavior has enabled it to accumulate and use data at the expense of

rivals. *Id*. Accordingly, Plaintiffs are considering remedies that will offset this advantage and strengthen competition by requiring, among other things, Google to make available, in whole or through an API, (1) the indexes, data, feeds, and models used for Google search, including those used in AI-assisted search features, and (2) Google search results, features, and ads, including the underlying ranking signals, especially on mobile. Plaintiffs are mindful of potential user privacy concerns in the context of data sharing; however, genuine privacy concerns must be distinguished from pretextual arguments to maintain market position or deny scale to rivals. As a result, Plaintiffs are considering remedies that would prohibit Google from using or retaining data that cannot be effectively shared with others on the basis of privacy concerns. Plaintiffs are also considering other remedies that would reduce the cost and complexity of indexing or retaining data for rival general search engines.

C. Generation And Display Of Search Results

The harms of Google's conduct also extend to the generation and display of new and developing features of general search, such as generative artificial intelligence (including on-device artificial-intelligence functionality) and retrieval-augmented-generation-based tools.[1] These results and features often rely on websites and other content created by third parties, who have little-to-no bargaining power against Google's monopoly and who cannot risk retaliation or exclusion from Google. Google's ability to leverage its monopoly power to feed artificial intelligence features is an emerging barrier to competition and risks further entrenching Google's dominance. Accordingly, Plaintiffs are considering remedies that would, for example, prohibit

[1] Retrieval-augmented generation "is an AI framework that combines the strengths of traditional information retrieval systems (such as search and databases) with the capabilities of generative large language models." *What is Retrieval-Augmented Generation (RAG)?*, Google, https://cloud.google.com/use-cases/retrieval-augmented-generation (last visited Oct. 8, 2024).

Google from using contracts or other practices to undermine rivals' access to web content and level the playing field by requiring Google to allow websites crawled for Google search to opt out of training or appearing in any Google-owned artificial-intelligence product or feature on Google search such as retrieval-augmented-generation-sourced summaries.

D. Advertising Scale And Monetization

Google's unlawful maintenance of its general search text advertising monopoly has undermined advertisers' choice of search providers as well as rivals' ability to monetize search advertising. Mem. Op. at 226, 264–65. This conduct has also enabled Google to profitably charge supracompetitive prices for text ads while degrading the quality of those ads and the related services and reporting. *Id*. at 259–64. Correcting these harms to advertisers is critical to spurring investment and opportunity. *Id*. at 23 ("As result of the extraordinary resources required to build, operate, and monetize a GSE, venture capitalists and other investors have stayed away from funding new search ventures.").

Accordingly, Plaintiffs are considering remedies for general search text advertising that will create more competition and lower the barriers to entry, which currently require rivals to enter multiple markets at scale. These remedies may address Google's use of scale, including new advertising technologies such as artificial intelligence (e.g., Performance Max), in enhancing and protecting its general search text ad monopoly. Plaintiffs are also evaluating remedies that would involve licensing or syndication of Google's ad feed independent of its search results. Similarly, Plaintiffs are considering remedies that would allow Google search advertisers to receive transparent and detailed information (e.g., Search Query Reports and other information related to its search text ads auction and ad monetization) consistent with user privacy and to opt out of Google search features (e.g., keyword-expansion, broad match).

III. Administration, Anti-circumvention, and Anti-retaliation

An effective remedy requires administration as well as protections against circumvention and retaliation, including through novel paths to preserving dominance in the monopolized markets. This is especially true in dynamic industries like the markets at issue here. Accordingly, Plaintiffs are considering additional remedies aimed to achieve these goals. These remedies could, among other things, require Google to (1) finance and report to a Court-appointed technical committee that helps administer the remedies in this action, including by monitoring any circumventive or retaliatory behavior; (2) designate a senior Google executive to be made regularly available to the Court to report on Google's compliance with the remedies in this action; (3) continue to retain relevant documents (including chat messages) and submit to inspection as requested by the Court, the technical committee, or the Plaintiffs; (4) train employees routinely on compliance with the remedies in this action; (5) prohibit Google from owning or otherwise holding a stake in the success of its search competitors; and (6) refrain from retaliating against a rival or anyone who cooperates with a rival or with the implementation, monitoring, or enforcement of the remedies in this action. In addition, should Google engage in willful or systemic violations of what is ultimately the final judgment, Plaintiffs are considering a range of provisions that would correct such non-compliance and promote the remedial objectives of the final judgment. Such provisions could include use of the full range of tools previously identified such as structural and additional behavioral remedies as well as term extensions. To be effective, these remedies, as well as others, must include some degree of flexibility because market developments are not always easy to predict and the mechanisms and incentives for circumvention are endless.

* * *

Google's unlawful conduct persisted for over a decade and involved a number of self-reinforcing tactics. Unwinding that illegal behavior and achieving the goals of an effective antitrust remedy takes time, information (particularly given the informational asymmetries between Plaintiffs and Google), and careful consideration. Plaintiffs are working to investigate and evaluate the particulars of the remedies that will be necessary to resolve the serious competition issues that have plagued the relevant markets for more than a decade. In service of its obligations to the American people, Plaintiffs will continue to engage with market participants, conduct discovery, and ultimately, provide the Court with a further refined Proposed Final Judgement in November 2024 and then, in accordance with the Court's Order, a Revised Proposed Final Judgment in March 2025.

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