

The Big Read **Google LLC**

Google lawsuit: the opening salvo in a battle to restrain Big Tech

With broad political support, antitrust action could lay the groundwork for more cases against tech

Richard Waters in San Francisco and **Kiran Stacey** and **Kadhim Shubber** in Washington
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After months of political grandstanding in Washington, the opening shot has finally been fired in the [battle to restrain Big Tech](#).

In a complaint against Google this week, backed by the Republican attorneys-general of 11 US states, the Department of Justice ended years of inaction on the part of US antitrust authorities.

The [complaint](#) received resounding support from the company's opponents. It has landed at a time when there is [rare bipartisan political support](#) for action. And it reflects a careful legal strategy designed to maximise the odds of success, while also acting as the first part of a broader legal campaign against both Google and the rest of Big Tech.

The willingness of the authorities in Washington to really take on Big Tech will only become apparent after the election battle between Donald Trump and Joe Biden. But the broad political support in Washington for this week's action helped

broken. But the broad political support in Washington for this week's action helped to set the stage for [other cases against large technology companies](#). The Federal Trade Commission has been [investigating Facebook](#) alongside several states, and people involved in that case expect it to be filed before the end of the year. Federal investigators have also opened probes into both Amazon and Apple.

“We are looking at a once in a century opportunity to realign what the political economy of the United States should look like,” says Barry Lynn, founder of the Washington-based Open Markets Institute.

The Google lawsuit is not quite the ambitious attempt to stretch the boundaries of antitrust law that some critics of the digital giants had hoped for. Instead, the DoJ has opted for a more limited and traditional antitrust action that many lawyers believe has a better chance of winning.



Senator Josh Hawley questions witnesses at a hearing into Google's online advertising. The Department of Justice complaint acts as the first part of a broader legal campaign against both Google and the rest of Big Tech © Chip Somodevilla/Getty Images

Sridhar Ramaswamy, a former head of advertising at [Google](#) who is launching a new search engine, was among those to welcome the limited nature of the case. “One of the real fears I have is, how do we get the word out there is an option, so that people can ever consider us?” he says. The US action is “straight and narrow, and a really important case. It gives me heart.”

Network effects

Much of the criticism from politicians of both Google and for other big tech companies has centred on the way they wield their platform power. In a sweeping report from a House of Representatives subcommittee last month, the companies were accused of channelling users from their dominant search engines, app stores and ecommerce sites to their other services, deliberately cutting out competitors.

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By contrast, the DoJ's opening salvo is aimed at a far more limited issue: the contracts Google employs to ensure its search engine stays prominently in front of users. These include paying billions of dollars to Apple and others to make it the default search engine on most smartphones. It also stands accused of using a series of contractual arrangements to make sure it keeps pole position on phones running its [own Android operating system](#).

Coming years after Google turned its search engine into the centrepiece of an array of widely used and self-reinforcing services, from Maps to Gmail, there are also serious questions about how any single legal case could loosen its grip. An official at one Google rival summed up the frustration: "It's too damned late." The case is unlikely to get to court before 2022. With possible appeals, relief could be years away, even if the US were to win.



Sridhar Ramaswamy, a former head of advertising at Google, says the US action against the group is 'straight and narrow, and a really important case' © Noam Galai/Getty

By limiting itself to the company's contracts, it could be the closest thing to an open-and-shut case, says Gary Reback, a US antitrust lawyer who spent years representing American companies fighting Google in Brussels and Washington.

"If they had gone after other parts of Google's business, they would have got caught up in questions like how they should define the market Google operates in," says Gene Kimmelman, a former senior antitrust official at the Department of Justice. "For example, with advertising, there would have been questions on whether Facebook should be counted as a competitor, or whether the part of the business dealing with advertisers should be counted as separate from that dealing with publishers."

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Google, for its part, claims the lawsuit is "deeply flawed" and that the case is modelled closely on the agency's successful antitrust action against Microsoft two decades ago. But Google rejects the comparison.

Today's users can switch between search engines far more easily than users of Microsoft's Windows software could pick a web browser other than Internet Explorer, the company argues. It adds that, unlike Microsoft, it had not imposed exclusive contracts that forced distributors to shut out its rivals.

Kent Walker, Google's senior vice-president of global affairs, compares the huge sums it pays to search distributors — amounting to \$30bn globally last year — to the money that makers of breakfast cereals pay to get the best shelf space in a supermarket.

According to opponents, that fails to reflect the reality of how people use modern digital services, and switching a search engine is not like reaching for a different brand of cornflakes on a lower shelf. "The reality is that 99 per cent of people are not going to change their defaults," says Mr Ramaswamy.



Google has turned its search engine into the centrepiece of an array of widely used and self-reinforcing services, from Maps to Gmail, raising serious questions about how any single legal case could loosen its grip © Olivier Douliery/AFP via Getty

Rather than occupying only a slice of prime shelf space, Google has guaranteed its search engine almost ubiquitous exposure. "It's like they bought every store in the neighbourhood," says Mr Reback. The combined effect of all its contracts is a textbook case of trying to block opponents, he says, adding that if consumers could switch so easily but chose to use Google anyway, then why would it pay such huge amounts for the best placement?

However, some antitrust experts say it is unlikely that a court would try to block what look like open commercial arrangements. Apple and other companies seem to have a perfect right to auction off the default positions in their devices to the

highest bidder, says Randal Picker, a law professor at the University of Chicago, adding that it would not be “an easy case to win” for the DoJ.

Political moves

Further lawsuits against Google look almost certain to follow. A group of state AGs, who have had a parallel investigation and who did not join the DoJ’s case, said on Tuesday they were planning to file their own suit in the coming weeks, and that this would probably be appended to that of the federal government.

Most observers expect the case to broaden out further as the pre-trial period continues. Advertising technology might yet come under scrutiny, as might Google’s practice of putting its own products — such as Google travel and shopping — at the top of search results.

“It would not be surprising to see additional suits filed by the state AGs or by the DoJ that are broader,” says Michael Kades, director for competition policy at the Washington Center for Equitable Growth.



Facebook's Mark Zuckerberg speaks via video to the House judiciary subcommittee hearing on antitrust. The Federal Trade Commission has been investigating the group alongside several states © Graeme Jennings/AP

If Washington’s legal strategy for taking on Big Tech is starting to come into focus, the timing of the first legal action has confounded many. Coming only two weeks before [a presidential election](#), it has left many questioning whether the case was rushed through for maximum political impact. By pre-empting the results of the separate investigation by the states, it has also robbed regulators of a chance to present a more united front.

Some involved in the state AGs' case still felt they had work to do. "They were only weeks away from being ready," said the person. "The only reason to push the button now was to get it out before the election."

The progress of the case may now turn on the outcome of the election. Compared with other senior Democrats, Mr Biden has said relatively little about what he thinks about corporate power in the technology industry; and some on the left worry that he will continue Barack Obama's friendly stance towards Silicon Valley.

Others, however, believe Mr Biden will not want to look weak in tackling corporate power in comparison with Republicans, and will push ahead with the case.

"I would expect a new administration to want their own people to be in charge to tackle such a high-profile and important lawsuit," says Mr Kimmelman. "That will take time, but there is no reason it shouldn't continue."

For Mr Reback, the most important question is whether future leaders push aggressively for serious sanctions against the tech companies, or if they settle in return for relatively minor behavioural changes, as the George W Bush White House did with Microsoft in 2001.



Amazon employees work at a distribution station in New York. Federal investigators have also opened probes into both Amazon and Apple © Johannes Eisele/AFP via Getty

Ryan Shores, associate deputy attorney-general, would not say what outcome he wanted, but this week insisted: "Nothing is off the table."

The [betting on Wall Street](#) was that any action would be limited, and shares in Google's parent, Alphabet, did not lose value. A similar case in Europe, launched in 2016, led to relatively minor contract changes, along with a move to give users a choice of search engines. Neither measure has done anything to weaken Google's grip on search.

A more draconian step would be to bar Google from buying up the best shelf space. But given the huge payments it currently makes, that could provoke widespread opposition. As a Google official says, it would not go down well with the many companies that benefit from the current arrangements — starting with Apple, but including other handset makers, browser companies and mobile network operators that share in Google's advertising revenues in return for promoting its service.

According to some of Google's foes, that leaves a break-up as the surest way to create a more open search market. Europe's failure to rein in Google after fighting the same battle shows that this is the only sanction that will work, says [Thomas Vinje](#), the lawyer whose complaint prodded Brussels to take on Android's arrangements.

"The only really effective remedy would be forcing Google to divest Android," he says. "The separate company wouldn't have the incentive to leverage Android to benefit search."

For now, it is simply "too early to know" whether there will be political backing in Washington for breaking up Google or other tech companies, says Roger McNamee, a Silicon Valley investor and former ally of Facebook who has since become one of Big Tech's harshest critics.

But while the endgame may still be years away, this week's lawsuit shows that something profound has changed in US antitrust. "The laissez-faire, low-touch policy that has existed for the last 40 years is giving way," Mr McNamee says. "The question is, how far will they go?"

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