



The Daily Dish

The DOJ v. Google

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Tomorrow the lawsuit by the Department of Justice (DOJ) and attorneys general from 38 states and territories against Google will begin. The DOJ will argue that Google violated antitrust law by illegally monopolizing the markets for search and search advertising. AAF's Jeff Westling has a good [analysis](#). This is the CliffsNotes version.

To succeed, the DOJ must accomplish two things. First, it must establish that Google has monopoly power. Second, it must show that it achieved and retained that power through anticompetitive, exclusionary actions.

On the monopoly charge, Westling writes:

“The plaintiffs assert that [general search services in the United States is a relevant market](#), and for the purpose of their argument, propose to limit the market to services that allow consumers to ‘find responsive information on the internet by entering keyword queries in a general search engine such as Google, Bing, and DuckDuckGo.’ To support this assertion, the plaintiffs argue that these services are unique because they offer a ‘one-stop shop’ to access an extremely large and diverse volume of information. Under this market definition, Google enjoys an 88 percent market share, with no other general search engine possessing more than 7 percent of the market. Further, other factors such as barriers to entry (the creation, maintenance, and growth of general search engine require significant capital investment) may support the finding that Google has monopoly power in this market because consumers have no meaningful alternatives.”

The counterargument will be that there are substitutes for Google and other search engines, ranging from specialized information search (Wayfair or Amazon) or alternative platforms such as [TikTok and Reddit](#), to quickly find information that could also be found through a general search engine that scrapes the web, such as Google. The key is that even if those alternatives don't produce exactly the same information, they are effective enough to prevent Google from collecting monopoly rents.

The key to the charge of anticompetitive, exclusionary practices are the agreements with browsers and mobile-device manufacturers to promote Google's search engine. In short, the DOJ will argue that restrictive access precludes other search engines from getting enough customers to undertake improvements in the quality of search. The defense will take the same facts – Google has superior search, a large market share, and exclusionary agreements – and argue that the causality is very different. By offering a better search experience, Google attracts a large number of customers. That makes Google an attractive partner for agreements with browsers and mobile devices.

The case is one of the most high-profile competition policy cases on the horizon (and is often compared to the Microsoft case launched in 1998). Be ready for an avalanche of coverage.