

## Insight



# What Does the Department of Justice Case Against Google Mean for Calls to Break Up Big Tech?

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## Executive Summary

- The Department of Justice and the Republican attorneys general of 11 states filed an antitrust case against Google alleging that it has violated antitrust laws to maintain market dominance in online search and search advertising.
- One of the key disputes is likely to be over market definition: What is the relevant market that Google is accused of dominating?
- This lawsuit indicates that some Republicans as well as Democrats are looking to take antitrust action against large tech companies and raises questions about the impact on innovation and the choices facing both smaller companies and consumers.

## Justice Department Allegations Against Google

On October 20, 2020, the Department of Justice (DoJ) and the attorneys general of 11 states [filed a complaint](#) in the Federal District Court for the District of Columbia alleging that Google violated antitrust laws to maintain its dominance in online search and search advertising.

The complaint alleges violations of Section 2 of the Sherman Act. It claims that Google has engaged in behavior that has anticompetitive effects in “general search services, search advertising, and general search text advertising markets.” This charge follows the DoJ’s [investigation into tech giants](#) Google, Apple, Facebook, and Amazon that began in June 2019. The courts will still apply current antitrust standards, and not any of the proposed legislative changes to those standards, when considering the case against Google, which means the courts will focus on Google’s impact on consumer welfare. The DoJ will need to show that Google is dominant in the market, abusing the power associated with that dominance, and harms consumers. The complaint alleges that Google has engaged in actions through exclusionary agreements in search and also points to the size of its market share in certain types of advertising. The complaint alleges that this success has come not from innovation or a superior product but through anticompetitive behavior.

## Challenges in the Case Ahead: Defining the Market

One key debate in the case will likely be the definition of the market in which Google is alleged to have power. The DoJ will seek to narrowly define the market to show greater dominance and potential abuse of this dominance. But narrow definitions might not accurately reflect the reality. This is particularly true when it comes to advertising, where online companies are not only competing with one another in different elements of the advertising ecosystem, but also with more traditional forms of print, outdoor, radio, and television

advertising. The result of this multifaceted competition has been that advertising that more directly reaches the desired consumers is cheaper than ever before. Many small businesses have also benefitted, as they are able to reach their markets more easily thanks to innovation and competition in the online space.

Even if the DoJ's markets are accepted, in many cases these markets still have many other players competing with Google that consumers are readily familiar with. While we may use "Google" as shorthand for searching for something online, the reality is that Bing is still a default in Microsoft's Edge web browser and DuckDuckGo offers an option for those seeking a more privacy-sensitive option. Default searches on mobile phones or web browsers, often the point of contention, can already be easily changed by consumers in most device settings. All this suggests that Google has become the default through a product most people prefer, not by anti-competitive behavior. Additionally, a [growing number of product searches](#) now start on Amazon, not Google.

While it is notable that the DoJ has decided to pursue this case, the allegations laid out in the complaint when considered in light of the current markets do not clearly support a finding that Google has violated the antitrust laws. A too narrow definition of markets fails to understand the realities consumers experience today. In many cases, consumers already have easily accessible alternatives and a growing number of innovative choices. While this case is likely to involve several disputes over how to define the markets that today's tech giants are involved in, the reality is that technology remains incredibly dynamic and has changed many traditional markets benefiting consumers and increasing overall competition.

### **Lessons from Past Antitrust Cases and Technology**

In considering today's antitrust debates over Big Tech, it is helpful to consider the history of past cases against then tech giants. This perspective illustrates that these cases are far from an easy and quick solution, but instead long and complicated with potential collateral damage to innovation and consumers.

For example, past cases against tech companies such as [IBM](#) and [Microsoft](#) lasted many years and have often been regarded as failures. During these investigations, innovation that had already begun continued to accelerate. As a result, the major changes in the markets of computing and internet access where these companies were accused of dominance were caused by broadening markets thanks to innovation rather than the result of antitrust enforcement. Further, even when cases resulted in a breakup or other significant structural changes, such as with AT&T, antitrust cases and the enforcement of any remedies still took decades. It is likely innovation will have dramatically changed the nature of the market by the time any decision is reached on Google if this case proceeds.

Based on past antitrust cases against companies such as IBM and Microsoft, this case could also result in various impacts on innovation both at Google and in the technology industry more generally.

Often it is innovation that improves competition and provides consumers with more and better alternatives and not government's creative interpretations of antitrust laws. But companies that find themselves under antitrust scrutiny may be deterred from engaging in more beneficial product lines or too busy with such a legal battle to pursue an emerging market. For example, Microsoft is largely absent from the mobile market in part due to its antitrust battles. As Microsoft co-founder [Bill Gates stated in November 2019](#), "There's no doubt that the antitrust lawsuit was bad for Microsoft, and we would have been more focused on creating the phone operating system and so instead of using Android today you would be using Windows Mobile," claimed Gates. "If it hadn't been for the antitrust case...we were so close, I was just too distracted. I screwed that up because of the

distraction.”

As this example shows, it’s not only the companies that miss out on such opportunities, but consumers may wait longer, have fewer choices, or miss out on a superior product as well.

**Implications for the Debate Over Big Tech** This case comes at a time of increasingly vocal complaints from conservatives about the actions of certain online platforms and shortly after the Democrats of the House Judiciary Committee unveiled a report that calls for dramatic changes to antitrust law. While the House report on its investigation into technology and market dominance was signed only by Democrats, the case brought by the DoJ was only supported by Republican attorneys general. While both sides have criticized large technology companies, these criticisms have differed on their rationales and proposed changes, resulting in different implications both for technology and competition policy more generally. The DoJ’s decision to file a case against Google signals that technology companies are under increasing scrutiny from both the left and the right. It also signals that antitrust continues to be considered a tool by both sides to address broader concerns about the impact of technology even when it is ill-fitted to do so.

The decision to file an antitrust case and the increasing scrutiny of tech companies from both sides of aisle may have impacts beyond just Google. The result may be that larger companies are more hesitant to engage in acquisitions or explore certain expansions for fear it may draw the attention of regulators and result in antitrust enforcement action. This hesitancy could harm smaller players and consumers. Like with the deterrent effect on companies involved in an antitrust case, consumers may miss out on the lower prices, improved efficiencies, or new products that might have emerged from such actions. Further, [far from being in a “kill zone”](#) in which large companies acquire small companies before they can grow to be future rivals, some small companies see acquisition as an exit strategy and are seeking to improve existing products to attract such acquisition. In light of greater antitrust scrutiny, both large and small companies may find their choices change or are more limited. The result could be that innovation and improvements that would come from these changes are later coming as well.

The DoJ decision to file an antitrust case against Google is just the latest in continuing debates regarding antitrust and Big Tech. It signals that such debates are likely to continue for some time. As the case continues, the decisions around market definition and consumer harm will likely impact not only the outcome of the DoJ case against Google, but also the debate about other companies and the use of antitrust more generally. Courts, policymakers, and enforcers’ decisions regarding antitrust must not be based on a presumption that big is bad or that antitrust is a tool to go after an unpopular industry, but rather a principled approach that focuses on objective standards and seeks to maintain a free and competitive market to the benefit of consumers.