As Potential Federal Probes Loom, Google Faces Smaller Antitrust Suits

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Key insight:

- Comparatively minor lawsuits point to potential key arguments of a bigger clash to come.

A suit filed this week in a San Jose district court alleges Google violated the Clayton Act by leveraging its market power to charge inflated prices for digital ads.

The plaintiffs are three small-business owners who allege they had to overpay for ads and are seeking relief for all advertisers and publishers using Google's ad-tech services. The suit, Devaney v. Google, comes less than a month after a similar class-action complaint, Grand Atlas Tours v. Google, was lodged in the same San Jose court.

Like the Devaney case, Grand Atlas Tours alleges that Google, through years of acquisitions, has amassed a digital-advertising monopoly that forces advertisers and publishers alike to overpay for its services.

Meanwhile, a separate suit filed in Atlanta last year by a YouTube competitor Inform Inc. makes similar allegations and asks for Google's assorted enterprises—from search advertising and ad servers to Android and Chrome—to be separated.

These smaller suits may fizzle out, however. In 2015, two class-action antitrust cases accusing Google of using Android

to peddle its own software were thrown out for insufficient evidence of “antitrust injury.” In other words, the plaintiffs couldn’t show that Google’s allegedly anticompetitive practices left consumers worse off.

But the recent lawsuits could still foreshadow troubled waters ahead as the potential of federal antitrust probes loom.

Similar to the reported Justice Department and state AG probes, the smaller antitrust suits focus on Google’s ad business, rather than its mass-market products. That narrows the meaning of “consumer” to just advertisers and publishers, potentially creating sturdier ground for establishing antitrust injury.

On Tuesday, a day after the Devaney case was filed, Google separately published two blog posts detailing how its ad-tech infrastructure works. One post claims how publishers retain “over 69% of revenue” in Google Ad Manager. The blog posts follow previous attempts by Google to refute claims that it crimps competition. Still, the Mountain View, Calif.-based company pockets approximately 30% of all U.S. digital ad spend, according to eMarketer.

Plaintiffs in the Devaney case argue Google’s aggregate market share matters less than its information advantage throughout the ad-tech stack. Google can funnel advertisers to its display and video products because of the firm’s deep pool of user data and offering on both the demand and supply side, the complaint notes. Moreover, ads on Google-owned properties like YouTube can only run via Google’s ad infrastructure.

The Devaney complaint goes on to cite a recent paper from the Omidyar Network, a nonprofit backed by prominent technologists, laying out the antitrust case against Google. “Google now performs every function that connects advertisers to publishers,” the report argues.

While early indications suggest the Justice Department is

focusing on Google’s ad business, the public-facing rationale has emphasized the alleged role of Big Tech firms in curbing speech.

On Sunday, Attorney General William Barr told Fox News that tech companies are able to “quickly galvanize people’s views because they’re only presenting one viewpoint,” Barr argued. “One way this can be addressed is through the antitrust laws and challenging companies that engage in monopolistic practices,” he added.

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