

In the Google antitrust trial, defaults are everything and nobody likes Bing



Google is one of the biggest tech companies in existence, but its empire is built on one little white search bar, and the US Justice Department has just launched what might be one of the biggest challenges it's ever faced. In one of the largest antitrust trials in recent memory, the government argues that Google owes its dominance not simply to a good design but to a series of coercive deals that have let the search engine market stagnate – while Google complains it's being punished for success.

For all that, the trial began quietly. I got to the courthouse around sunrise for the start of *US v. Google*, worried I'd find a line around the corner. Instead, the sidewalk was nearly empty, populated by a handful of similarly cautious early arrivals. "I thought there'd be more people," one said while we waited in the muggy DC air. In the hours that followed, a

small crowd emerged – filling the courtroom and spilling into an overflow room and two dedicated media rooms for journalists. A man in an Uncle Pennybags-style top hat, fake mustache, and monocle wandered the halls of the courtroom; “I’m here to highlight Google’s monopoly and provide moral support as a fellow billionaire,” he told me between mustache twirls. He admitted he might not be there to keep up the joke every day – it’s a 10-week trial, he conceded, and “I have a job.”

The case against Google is relatively straightforward and also potentially explosive. The Justice Department argues that around 2010, Google began using anti-competitive tactics to maintain an overwhelming search engine monopoly. Already dominant over alternatives like Bing and Yahoo, it cemented its position with the “power of defaults,” striking deals that put Google’s product front and center. That included paying Apple and Mozilla to make Google the default engine in Safari and Firefox and requiring that Android manufacturers prominently display a Google search widget on phones. (That agreement is called the Mobile Application Distribution Agreement or MADA, and it’s been legally contentious in Europe for years.) As it grew, it used vast quantities of search data to improve its engine, creating a feedback loop that – the Justice Department alleges – has made it almost impossible to beat. “This case is about the future of the internet and whether Google Search will ever face meaningful competition,” said attorney Kenneth Dintzer in opening statements.

“This is a monopolist flexing.”

US v. Google follows a series of abortive legal attempts to limit the power and growth of America’s biggest tech companies. It’s the Justice Department’s most aggressive action since its 1990s antitrust lawsuit against Microsoft, which established it had shut down competition for web browsers on its dominant Windows system. But this trial kicks off two years after a district judge found Apple could

maintain its locked-down iOS ecosystem and two months after Microsoft won a ruling letting it buy Activision Blizzard, continuing a rapid consolidation of the games industry. In both battles, the companies convinced a judge that they weren't simply trying to lock up a market – they were making decisions that helped consumers, too. They also painted the allegations as disingenuous complaints from fellow tech companies who couldn't compete fairly: in Apple's case, the *Fortnite* publisher Epic, and in Microsoft's, the rival console maker Sony.

Google has taken a similar approach. "If Google is prevented from competing, that won't make Yahoo or DuckDuckGo run faster," attorney John Schmidtlein said in the company's opening statement. While the Justice Department has drawn parallels between '90s Microsoft and modern-day Google, Schmidtlein said that the facts in *US v. Google* and the antitrust fight over Microsoft's unloved Internet Explorer browser "could not be more opposite and different," arguing that people overwhelmingly and proactively choose Google even when they're given alternatives. Separately, he argued that Google's default search deals give web browsers much-needed revenue and that its Android agreements help create a viable mobile competitor to iOS.

So far, the Justice Department is combating this argument by focusing on reams of internal communications it obtained during its investigations. It's zeroed in on memos and emails where Google nakedly lays out the value it gets from being a default search option, as well as messages that allegedly dictate precise terms for how Apple and others could use any non-Google Search-adjacent service. ("Your honor, this is a monopolist flexing," intoned Dintzer.) Schmidtlein has derided the excerpts as cherry-picked and "out of context." But whatever they ultimately reveal, the Justice Department's goal so far is clear: keep the focus on executives talking about how Google's actions benefit *Google*, not the consumers it says

it's trying to serve.

The Justice Department is also drawing direct parallels to the Microsoft antitrust case but in a complicated way. Some of the most damning allegations included Microsoft making unvarnished and rhetorically violent statements about “cut[ting] off Netscape’s air supply” in the browser wars. This time around, government attorneys are pointing to communications in which Google employees carefully *avoid* terms that could raise antitrust watchdogs’ ire.

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With Varian and other witnesses, the Justice Department returned again and again to the importance Google has placed on default settings. It called up former Google employee and Shazam founder Chris Barton to discuss the importance of striking deals with mobile phone makers and carriers. “We need to incentivize carriers to ship Google,” Barton said in a 2011 email. “Without an exclusive search deal, a large carrier can and will ship alternatives to Google ... You can bet that Microsoft and Yahoo will enter contracts for search on Android through carrier deals if we do not.”

Google’s consistent counterpoint is that this indicates a kind of entirely legal competition that other companies like Microsoft engage in regularly. Among other things, its attorneys have pointed out that Microsoft sets Bing as the default search option on Windows computers, which have a billion-plus users – and that this hasn’t stopped Google Search from dominating the market anyway. In opening arguments, Schmidtlein showed instructions for switching from

Google to another search engine, comparing it to the days of slotting in software floppy disks or downloading programs over dial-up internet.

So far, the Justice Department has fought this argument with an early expert witness: CalTech behavioral economics professor Antonio Rangel. Rangel was one of the few non-Google employees to make an appearance on the witness stand in the first week, arguing in a presentation that search engine defaults produce a “sizable and robust bias” toward the preselected option. Rangel cited other cases where a default option has dramatically shifted how people make choices, like opt-in organ donor programs and instances where Google has acknowledged the importance of being the default option – including cases like Apple Podcasts where it doesn’t occupy that space.

In cross-examination, Google called Rangel’s conclusions into question, pointing out that Bing’s default placements, for instance, don’t seem to have helped Microsoft nearly as much. Google obviously can’t argue that defaults don’t matter at all – given how much money it’s spent on them – but it contends that they’re not *enough* to tip the scales in favor of an inferior product. Google getting more antitrust scrutiny is a good thing for Microsoft, but it’s almost impressive what a punching bag Bing has become in this trial.

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next?**

The Justice Department is expected to make its case over the rest of September and early October, and we’ll likely hear from a bevy of current and former Google employees, including

CEO Sundar Pichai. We're also expecting testimony from Eddy Cue and other Apple executives, as well as Neeva co-founder Sridhar Ramaswamy, whose doomed search engine was mentioned in opening arguments. Google will get a chance to cross-examine the witnesses and poke holes in the department's arguments, but we likely won't see its side of the story laid out in full until late October, following arguments from the state attorneys general. All the companies involved here have done their best to limit sensitive information leaking, so it's hard to say whether we'll see revelations around things like just how much Google is paying Apple – but it's always possible.

The question that matters most, though, is whether Judge Mehta can be convinced that consumer harm applies to free products like search engines. In recent years, it's seemed almost impossible to pin a tech company down on antitrust allegations, and Google has plenty of defenses on hand. Where Microsoft won its recent Activision Blizzard case by arguing that it was being left in the dust by competitor Sony, Google is saying that it's simply the best option on the market. Does that mean it's good or – as the Justice Department has argued – barely good enough? We'll be watching that fight play out for months to come.

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