These Are the Five Most Interesting Moments From Google's Adtech Remedies Hearings

The future of Google's adtech business is being decided in a federal court in Virginia.

In April, a federal judge ruled that Google violated U.S. competition law by maintaining an illegal monopoly of two key adtech markets: ad servers (represented by Google DFP, or DoubleClick for Publishers) and ad exchanges (represented by Google AdX).

Over the last two weeks, more than a dozen witnesses gave testimony to help determine how Google will be required to remedy this monopoly, the last stage of a landmark antitrust trial against the search giant.

Judge Leonie Brinkema of the U.S. District Court for the Eastern District of Virginia heard from expert witnesses produced by both Google and the U.S. Department of Justice. In the coming months, she is expected to determine what behavioral and possible structural changes Google will need to make to dissolve its monopoly in ad servers and ad exchanges. These hearings ended Monday.

The DOJ has urged the judge to require a divestiture of AdX and wants to require Google to open-source its auction logic—the algorithms that determine where ads are served. If this isn't a viable option, the DOJ is calling for the ad server, DFP, to also be spun out.

Google believes the DOJ's proposals go too far. Instead, the Alphabet-owned company has suggested a handful of simpler changes to its business practices, like making real-time bids from AdX visible to all rival ad servers, allowing publishers to set different price floors for different bidders in Google Ad Manager, and agreeing not to engage in 'first look' and 'last look' practices that may give it an advantage in open web auctions.

Here are the five topline takeaways from the hearings.

Google declined to comment for this story.

1. Google admitted that an AdX spin-off is doable

After arguing in its initial defense that the forced separation of AdX from the Google adtech stack would be too technically complicated, would take up too much time and resources, and would come at the detriment of advertisers and publishers, the general manager of Google Advertising, Tim Craycroft, admitted in testimony that the company had determined that a spin-off is in fact technically feasible.

Craycroft revealed on Sept. 25 that Google conducted a series of internal tests to evaluate the possibility of an AdX divestiture. An initiative dubbed Project Sunday was undertaken to assess the possibility of a spin-off of AdX as well as DFP. The subsequent Project Monday sought to evaluate the possibility of an AdX axing. Google ultimately concluded that divestiture was possible.

The DOJ has argued that a forced divestiture of AdX is technically possible and that it is a necessary move to inhibit Google from coming up with other ways to disadvantage publishers.

2. Google left everyone scratching their heads

over first-party data

Multiple Google witnesses, including Craycroft and senior director of engineering Nirmal Jayaram, said the company doesn't use first-party data from products like Search or YouTube for ad targeting on open web display. Google's attorneys also asked a buy-side witness, Jay Friedman of Goodway Group, if he had evidence that Google uses its first-party data for ad targeting, and he also said he does not.

Instead, the company said, it relies on cookies and third-party exchange match rates for targeting. The claim aimed to prop up Google's argument that it doesn't use its vast stores of data to maintain an unfair advantage in the adtech space.

The assertion, however, baffled some industry experts, who've suggested that the argument appears to be contradictory or simply a semantic twist, given how heavily Google markets its first-party data and targeting capabilities to advertisers. The skepticism centers on how Google defines "using first-party data" and how it defines "open web"—whether media transacted on AdX and then DFP is considered "open web," for example, was unclear to some.

There are "two plausible, non-mutually-exclusive possibilities: One, Google has been overselling the benefits of its robust first-party data trove to advertisers, and two, Google is playing gold-medal-level semantics to be able to deny its use of first-party data to the court with a straight face," Arielle Garcia, chief operating officer at adtech watchdog Check My Ads, told ADWEEK. "It could be that Google is drawing disingenuous distinctions, for example, around the definition of first-party data or between 'targeting' and 'personalization.'"

Goodway Group's Friedman, who served as a DOJ witness in the case, told ADWEEK: "The more extraordinary the claim, the more extraordinary the evidence required is. It falls on Google to

prove [this claim], given the vast evidence of other improper actions and behavior that were shown throughout this and other trials.”

3. Oracle, Adobe, and The Trade Desk were named as potential AdX buyers

An assessment by investment bank Lazard identified a handful of possible AdX buyers, according to testimony last week.

Lazard was tapped by the tech giant in 2020 to help map a potential sale of AdX. The bank named a handful of organizations that might be interested in acquiring the platform, including Oracle, Adobe, Salesforce, SAP, and The Trade Desk. It also suggested that some private equity firms might be open to the deal.

Top execs at Google acknowledged that the tech giant had considered selling or possibly shuttering AdX for a number of years.

4. Google tried and failed to block a key DOJ witness from testifying

On Oct. 2, the night before Stephanie Layser, a former News Corp exec and programmatic expert who was in the header bidding vanguard of the 2010s, was set to take the stand, Google filed a motion to block her from testifying.

The company argued in court filings that Layser wasn’t technically savvy enough, writing that she “has no personal knowledge of the technical feasibility of any of the proposed remedies in this case, as she has never examined Google’s source code and has no knowledge of Google’s technical infrastructure.”

Google also objected because they expected Layser’s testimony to go beyond the legal scope of a rebuttal, which must be limited to responding to issues that have already been

raised.

Judge Brinkema threw out the motion and allowed Layser to testify. On the stand, Layser argued that AdX needed to be divested.

In an early testimony in the case last year, Layser said she felt that Google's adtech business was "holding [her] hostage."

5. The judge asked Google and DOJ to settle out of court

As the process came to a close on Monday, Judge Brinkema suggested to both parties they might consider a settlement. "My favorite phrase is 'Let's settle this case,'" she said, according to a report from The Verge. "This is the kind of case that ought to settle."

If a settlement is reached, a court-ordered monitor might still be assigned to make sure Google adheres to agreed-upon behavioral changes.

In the case that the two parties don't settle, closing arguments will take place in November.

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