



United States & Co-Plaintiff States v. Google LLC

Plaintiffs' Closing Statement

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Exclusivity And Substantial Foreclosure

“The appellate court found that the [JVM] agreements [were illegal because they] had the effect of ‘foreclos[ing] a substantial portion of the field for JVM distribution’ and were without procompetitive justification.”

* * *

“[T]he appellate court sustained liability for this action only upon a finding that the exclusivity provision in the [JVM] Agreements foreclosed a substantial share of the market and thereby had a substantial effect upon the market.”

New York v. Microsoft Corp., 224 F. Supp. 2d 76, 168, 174 (D.D.C. 2002)

“In the context of exclusive agreements, as the jury was instructed, such agreements are considered unreasonable restraints of trade when a significant fraction of buyers or sellers are foreclosed from the market for a non-transitory period of time.”

In re Lorazepam & Clorazepate Antitrust Litig., 467 F. Supp. 2d 74, 81 (D.D.C. 2006)

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Substantial Foreclosure Is Lost Incentives

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B. Anticompetitive Effects Of Google's Distribution Contracts

1. Prevent Rivals From Obtaining Scale
2. Reduce Incentives To Invest
3. Prevent Expansion Of Safari Suggestions
4. Payments Disincentivize Apple Entry
5. Right Of First Refusal Disincentivizes Apple Entry
6. Blunt Nascent Competition

Questions Can't Answer

- If defaults don't matter, why pay billions for them?
- If scale isn't valuable, why store and use so much data?
- If the ads market is competitive, how can Google can raise prices at will?
- If Google's actions are procompetitive, why systematically hide and destroy significant documents?

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History Repeats: Applying *Microsoft*

“By ensuring that the ‘majority’ of all IAP subscribers are offered IE either as the default browser or as the only browser, Microsoft’s deals with the IAPs clearly have a significant effect in preserving its monopoly; they help keep usage of Navigator below the critical level necessary for Navigator or any other rival to pose a real threat to Microsoft’s monopoly.”

United States v. Microsoft Corp., 253 F.3d 34, 71 (D.C. Cir. 2001)



By ensuring that all of Android, Apple, and Mozilla users are offered Google either as the default general search engine or as the only general search engine, Google’s deals with Android partners, Apple, and Mozilla clearly have a significant effect in preserving its monopoly; they help keep usage of Bing below the critical level necessary for Bing or any other rival to pose a real threat to Google’s monopoly.

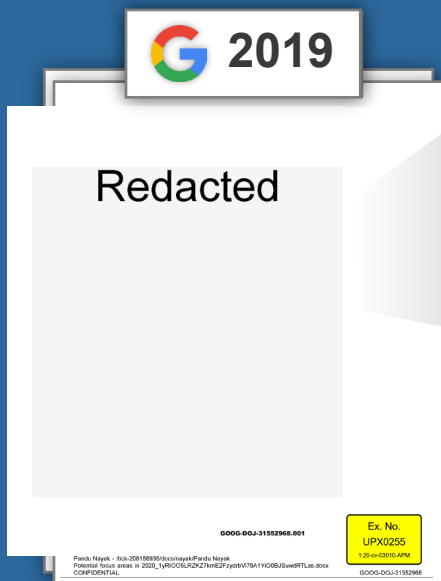
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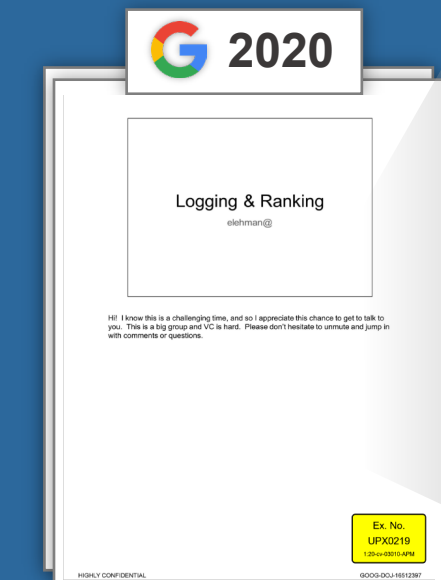
Scale And Quality



“Using more data, even noisy data, is always better than using less data.”

“Can we scale up ML [machine learning] models to be better than NavBoost? We need a more thorough study of this, but as far as I can tell **none of these deep learning models are as powerful as NavBoost.**”

“But most of the knowledge that powers Google, that makes it magical, comes from the minds of users.”



“As people interact with search, they teach us. For example, a click here means the image was better than the web result. A long gaze there means the knowledge card was interesting. **We log these actions, and then scoring teams extract lessons,** small and big.”

“Not just one ranking system learns from search logs. Learning from logs is the main mechanism behind ranking. In addition to traditional systems, all major machine learning systems for ranking rely on logs: RankBrain, RankEmbed, DeepRank. Web ranking is only a part of search, **but many search features use web results to understand what a query is about and trigger accordingly.**”

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Google On “Winner Takes All Results”

“ . . . [W]e are worrying about a couple of different things. The person at the top always winning, and so they now have an incentive to lower their ad quality. They also will, they will start lowering their price. But they will lower their ad quality because they can win, both of those. The other thing that helps is the people below who are also continually bidding in these auctions, they’re never winning. So they lower or don’t work or try to innovate as hard to try to win as well.”

Google Closing Argument

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Balancing

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What Google Did . . .

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“And so that’s the net effect of the -- of the payments. They basically freeze the ecosystem in place effectively.”

- Sridhar Ramaswamy



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Appendix

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Generative AI Models Do Not Eliminate Need For Scale



**Sridhar
Ramaswamy**
*Neeva CEO &
Founder; Former
Google SVP, Ads &
Commerce*



- Q.** Does AI eliminate the importance of behavioral data in trying to figure out what the user is looking for?
- A.** . . . AI let's you do, as I said, things like summarization, presenting a single answer in ways that, honestly, search engines of old could not do. But the middle problem of figuring out what are the most relevant pages for a given query in a given context still benefits enormously from query click information. **And it's absolutely not the case that AI models eliminate or supplant that need.**

Tr. Testimony

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Justification Burdens

- Defendant bears the burden of demonstrating benefits. *FTC v. Meta Platforms, Inc.*, 2023 WL 3092651, at *1 (D.D.C. Apr. 26, 2023).
 - Benefits must be in market. *United States v. Phila. Nat'l Bank*, 374 U.S. 321, 370 (1963); *United States v. Grinnell Corp.*, 384 U.S. 563, 573 (1966).
 - Benefits must be procompetitive and nonpretextual. *United States v. Microsoft Corp.*, 253 F.3d 34, 59 (D.C. Cir. 2001).
- Defendant must demonstrate that the benefits are not attainable through less-restrictive alternatives. *Meta Platforms*, 2023 WL 3092651, at *4.
- Plaintiff must demonstrate that any unrebutted benefits are outweighed by anticompetitive harm. *Microsoft*, 253 F.3d at 59.