EXHIBIT D
Dear Tim, Phil, Craig, Matt,

Because of restrictions imposed by Apple, Epic is unable to provide consumers with certain features in our iOS apps. We would like to offer consumers the following features:

1) Competing payment processing options other than Apple payments, without Apple’s fees, in Fortnite and other Epic Games software distributed through the iOS App Store;

2) A competing Epic Games Store app available through the iOS App Store and through direct installation that has equal access to underlying operating system features for software installation and update as the iOS App Store itself has, including the ability to install and update software as seamlessly as the iOS App Store experience.

If Epic were allowed to provide these options to iOS device users, consumers would have an opportunity to pay less for digital products and developers would earn more from their sales. Epic is requesting that Apple agree in principle to permit Epic to roll out these options for the benefit of all iOS customers. We hope that Apple will also make these options equally available to all iOS developers in order to make software sales and distribution on the iOS platform as open and competitive as it is on personal computers.

As you know, Epic was required to accept your standard, non-negotiable contracts, like the Apple Developer Program License Agreement, in order to offer products on iOS devices through the iOS App Store. Epic is also required to comply with Apple’s unilateral standards documents to obtain app approval, like Apple’s App Store Review Guidelines. Apple’s contracts and standards documents contain restrictive provisions that prohibit Epic from offering a competing app store and competing payment processing options to consumers. Apple would need to provide a side letter or alter its contracts and standards documents to remove such restrictions to allow Epic to provide a competing app store and competing payment processing option to iOS customers.

Please confirm within two weeks if Apple agrees in principle to allow Epic to provide a competing app store and competing payment processing, in which case we will meet with your team to work out the details including Epic’s firm commitment to utilize any such features diligently to protect device security, customer privacy, and a high-quality user experience. If we do not receive your confirmation, we will
understand that Apple is not willing to make the changes necessary to allow us to provide Android customers with the option of choosing their app store and payment processing system.

Best Regards,

Tim Sweeney
Founder & CEO
Epic Games
EXHIBIT E
July 10, 2020

Via Email: canon.pence@epicgames.com

Canon Pence
General Counsel
Epic Games, Inc.
620 Crossroads Blvd
Cary, NC 27518

Dear Mr. Pence:

I am counsel in the Apple Legal Department and I am writing in response to Mr. Sweeney’s email to Tim Cook, Phil Schiller, Craig Federighi, and Matt Fischer on June 30, 2020. The email was disappointing and requires a formal response.

The App Store is not simply a marketplace -- it is part of a larger bundle of tools, technologies and services that Apple makes available to developers to develop and create great applications for iPhone, iPad and other Apple products. We know Epic knows this. Epic has been a major beneficiary of this investment and support. Epic has made great use of Apple-provided tools, such as TestFlight, VOIP, Stickers, iCloud document storage, ARKit, Messages Extension, ReplayKit, and Push Notifications. To highlight one example, for years now, Epic has used Apple’s groundbreaking graphics technology, Metal. When Apple launched Metal for Mac at WWDC in 2015, Mr. Sweeney’s colleague Billy Bramer stood on stage and explained how Metal “revolutionized graphic design” and “enable[d] developers like us to create richer 3D worlds.” Apple – WWDC 2015, Youtube (June 15, 2015), https://www.youtube.com/watch?v=p8AsQhaVKI. Epic, like countless developers, continues to use Metal to make its games sharper, faster, and more responsive. Apple doesn’t charge separately for the use of Metal or any of the other tools that Epic has used to develop great games on iOS.

Not only has Apple supplied tools and technologies for Epic to build its apps, but it also provided a marketplace—the App Store—to help make them a success. Because of the App Store, Epic has been able to get Fortnite and other apps into
the hands of millions instantly and at no cost, as Apple charges nothing upfront to distribute apps that are free to download. This exposure has earned Epic hundreds of millions of dollars from sales of in-app content, and brought with it lucrative brand partnerships and paid product placement. See *Fortnite Emerges as a Social Media Platform for Gen Z*, *AdAge* (June 10, 2019), https://adage.com/article/digital/fortnite-emerges-social-media-platform-gen-z/2176301. Of course, Epic could not have achieved this success without great apps, but it nonetheless underscores the value Apple brings to developers like Epic.

Still, Epic has many ways to reach consumers, including through Android stores, PC-based platforms, consoles (Xbox, Nintendo, Play Station) and its very own app marketplace. Public reports indicate that Fortnite alone “generated $1.8 billion in revenue in 2019,” *Fortnite Creator Epic Games Raising $750M at $17B Valuation: Report*, The Street (June 15, 2020), https://www.thestreet.com/investing/fortnite-creator-epic-games-raising-750m-at-17b-valuation, or over seven times the $245 million yielded by App Store receipts for all Epic apps. Epic made its own decision to utilize the App Store as another one of its channels and can hardly be surprised that this entails acceptance of a license agreement and related policies since Epic’s own developers must do the same. See *Epic Online Services Developer Agreement* https://dev.epicgames.com/en-US/services/terms/agreements (“If you do not or cannot agree to the terms of this Agreement, do not download or use the SDK or access any Services.”).

Apple has hundreds of thousands of developers distributing apps on the App Store, and Apple is proud that it offers them all, from the student in her living room to some of the largest companies in the world, the same terms and opportunities.

That brings us to the demands in Mr. Sweeney’s email. Epic requests the right to offer a “competing Epic Games Store app” through the App Store that would seemingly allow iOS device users to install apps from Epic directly. And Epic wants to offer “competing payment processing options” in Fortnite and other Epic apps instead of using Apple’s in-app purchase (IAP) system. As you know, Apple has never allowed this. Not when we launched the App Store in 2008. Not now. We understand this might be in Epic’s financial interests, but Apple
strongly believes these rules are vital to the health of the Apple platform and carry enormous benefits for both consumers and developers. The guiding principle of the App Store is to provide a safe, secure and reliable experience for users and a great opportunity for all developers to be successful but, to be clear, when it comes to striking the balance, Apple errs on the side of the consumer.

**Epic Store Within The App Store.** As for the first request, Apple designed the App Store to be a secure and trusted place for consumers to discover and download software. Central to this is Apple’s requirement that every iOS app undergo rigorous, human-assisted review. Apple invests significant resources to ensure that apps meet high standards for privacy, security, content, and quality; we have reviewers located on three continents, representing 81 languages, and reviewing on average 100,000 submissions per week.

That investment has paid off not just for Apple, but also for app developers large and small, including Epic. Because of Apple's rules and efforts, iOS and the App Store are widely recognized as providing the most secure consumer technology on the planet. And as a result, consumers can download and pay for an app and in-app content without worrying that it might break their device, steal their information, or rip them off. This level of security benefits developers by providing them with an active and engaged marketplace for their apps.

One way Apple helps maintain the confidence of its users is by not approving apps that create “an interface for displaying third-party apps, extensions, or plug-ins similar to the App Store or as a general-interest collection.” App Store Review Guideline § 3.2.2. Absent this guideline, Apple would have no reliable way of delivering on its commitment to consumers that every app available via the App Store meets Apple’s exacting standards for security, privacy, and content. Consumers rightly rely on that commitment in buying Apple devices and in purchasing from the App Store. They will quite properly hold Apple to account for any shortfall in performance. The health of Apple’s ecosystem and the strength of its reputation as a maker of high-quality hardware accordingly depend upon rules like Guideline § 3.2.2.

Although Mr. Sweeney represented that, if Epic offered its own iOS app store, Epic would “protect device security, consumer privacy, and a high-quality user
experience,” we cannot be confident that Epic or any developer would uphold the same rigorous standards of privacy, security, and content as Apple. Indeed, since Apple treats all developers according to the same terms, Epic is essentially asking Apple to outsource the safety and security of Apple’s users to hundreds of thousands of iOS developers. Even if such a model were feasible (and it is not), we are simply unwilling to risk our users’ trust in such a way. Incorporating third party app stores into iOS would undermine Apple’s carefully constructed privacy and security safeguards, and seriously degrade the consumer experience and put Apple’s reputation and business at risk.

**Circumventing IAP.** Epic also requests to offer payment processing options within Epic’s apps other than via IAP. IAP is the App Store’s centralized payment system. It lets users purchase digital goods and services within apps without the inconvenience and security risks of registering their payment information with each developer. As you note, Apple’s App Review Guidelines require that apps use IAP to unlock additional features and functionalities. See App Store Review Guideline § 3.1.1.

Again, this rule is central to the App Store’s business model and successes. IAP supports the seamless consumer experience and is the means by which Apple gets paid for the valuable services and consumer base that it provides. To take advantage of Apple’s App Store, the bargain is simple: if you charge for software purchased through the App Store, Apple takes a percentage of the charge as commission. This business model has remained unchanged since the App Store launched.

Mr. Sweeney does not take issue with that model in his email—perhaps because Epic takes full advantage of it. Apple takes no cut from Epic’s in-app advertising, nor from sales of items, like skins and currency, that iOS app users obtain outside of the App Store. And, as already discussed, Apple charges nothing for enabling millions of iOS users to play Fortnite for free. Without IAP, however, Apple would have no practical or reliable way of collecting its commission on in-app digital sales. Indeed, the IAP requirement applies equally for the very same reason to the Mac App Store, which you regard as “open and competitive.”
Mr. Sweeney recently stated that “[i]t’s up to the creator of a thing to decide whether and how to sell their creation.” Tim Sweeney (@TimSweeneyEpic), Twitter (June 16, 2020, 11:53 PM), https://twitter.com/TimSweeneyEpic/status/1273101468875329537. We agree. It seems, however, that Epic wishes to make an exception for Apple and dictate the way that Apple designs its products, uses its property and serves its customers. Indeed, it appears that Mr. Sweeney wants to transform Apple’s iOS devices and ecosystem into “an open platform… like the first Apple computers, where users had the freedom to write or install any software they wished.” https://twitter.com/TimSweeneyEpic/status/1273090414476738567.

In the first place, this ignores the fundamental reality that the iPhone operates in an entirely different environment than a laptop or desktop computer and meets wholly different user expectations. As Steve Jobs explained in 2007, “[y]ou don’t want your phone to be like a PC. The last thing you want is to have loaded three apps on your phone and then you go to make a call and it doesn’t work anymore. These are more like iPods than they are like computers.” Steve Jobs Walks the Tightrope Again, N.Y. Times (Jan. 12, 2007), https://www.nytimes.com/2007/01/12/technology/12apple.html.

The App Store is not a public utility. Epic appears to want a rent-free store within the trusted App Store that Apple has built. Epic wants “equal access” to Apple’s operating system and “seamless” interaction between your store and iOS, without recognizing that the seamlessness of the Apple experience is built on Apple’s ingenuity, innovation, and investment. Epic wants access to all of the Apple-provided tools like Metal, ARKit and other technologies and features. But you don’t want to pay. In fact you want to take those technologies and then charge others for access. Apple has invested billions of dollars to develop technologies and features that developers like Epic can use to make great apps as well as a safe and secure place for users to download these apps. Apple designs its products and services to make developers successful through the use of custom chips, cameras, operating system features, APIs, libraries, compilers, development tools, testing, interface libraries, simulators, security features, developer services, cloud
services, and payment systems. These innovations are properly protected by intellectual property laws and Epic has no right to use them without a license from Apple. As a signatory to the Apple Developer Agreement and the Apple Developer Program License Agreement, Epic has acknowledged these IP rights (just as Epic’s developers do the same with respect to Epic’s intellectual property). See Apple Developer Program License Agreement § 2.5.

Surely Epic must understand that Apple is entitled to a return on its investment and the use of its property. After all, Epic takes great pains to protect its own investments and intellectual property. Epic rightly demands royalties from games built using its development software. See Unreal Engine End User Agreement § 5, https://www.unrealengine.com/en-US/eula/publishing. And it tightly controls how its games, designs, and content may be used, because, in its own words: “we spend a lot of time, thought, and money creating our intellectual property and need to protect it.” Fan Content Policy, https://www.epicgames.com/site/en-US/fan-art-policy. Plus, Mr. Sweeney recently suggested that it’s reasonable for other industry players, such as console manufacturers, to charge for distributing software. Tim Sweeney (@TimSweeneyEpic), Twitter (June 17, 2020, 11:29 AM), https://twitter.com/TimSweeneyEpic/status/1273276548569841667. And Epic’s major investor, China’s Tencent, also charges developers to take advantage of its platform. See Tencent opens up WeChat Mini-Games Platform to External Devs, Pocket Gamer (Apr. 11, 2018), https://www.pocketgamer.biz/asia/news/67901/tencent-opens-up-wechat-mini-games-platform-to-external-devs/.

Yet somehow, you believe Apple has no right to do the same, and want all the benefits Apple and the App Store provide without having to pay a penny. Apple cannot bow to that unreasonable demand. We must therefore respectfully decline to make the changes you request.

Sincerely,

Douglas G. Vetter
Vice President & Associate General Counsel
EXHIBIT

F
Hi Tim, Phil, Craig, Matt, Douglas,

It’s a sad state of affairs that Apple’s senior executives would hand Epic's sincere request off to Apple's legal team to respond with such a self-righteous and self-serving screed -- only lawyers could pretend that Apple is protecting consumers by denying choice in payments and stores to owners of iOS devices. However, I do thank you for the prompt response and clear answer to my two specific requests.

If Apple someday chooses to return to its roots building open platforms in which consumers have freedom to install software from sources of their choosing, and developers can reach consumers and do business directly without intermediation, then Epic will once again be an ardent supporter of Apple. Until then, Epic is in a state of substantial disagreement with Apple's policy and practices, and we will continue to pursue this, as we have done in the past to address other injustices in our industry.

Tim Sweeney

On Fri, Jul 10, 2020 at 5:02 PM Douglas Vetter <vetter@apple.com> wrote:

Mr. Pence, please find attached Apple’s response to Mr. Sweeney’s email to Apple of June 30, 2020.
EXHIBIT G
From: Tim Sweeney <tim.sweeney@epicgames.com>
Date: August 13, 2020 at 2:08:53 AM PDT
To: Tim Cook <tcook@apple.com>, Phil Schiller <schiller@apple.com>, Craig Federighi <federighi@apple.com>, Matt Fischer <matt.fischer@apple.com>, Douglas <vetter@apple.com>
Subject: Fortnite payments

Dear Tim, Phil, Craig, Matt, Douglas,

I’m writing to tell you that Epic will no longer adhere to Apple’s payment processing restrictions.

Today, Epic is launching Epic direct payments in Fortnite on iOS, offering customers the choice of paying in-app through Epic direct payments or through Apple payments, and passing on the savings of Epic direct payments to customers
in the form of lower prices.

We choose to follow this path in the firm belief that history and law are on our side. Smartphones are essential computing devices that people use to live their lives and conduct their business. Apple's position that its manufacture of a device gives it free rein to control, restrict, and tax commerce by consumers and creative expression by developers is repugnant to the principles of a free society.

Ending these restrictions will benefit consumers in the form of lower prices, increased product selection, and business model innovation.

Henceforth, all versions of Fortnite that Epic submits to the App Store will contain these two payment options, side by side, for customers to choose among.

We hope that Apple will reflect on its platform restrictions and begin to make historic changes that bring to the world’s billion iOS consumers the rights and freedoms enjoyed on the world's leading open computing platforms including Windows and macOS. In support of this path, Epic’s public explanation of our payment service will be neutral and factual to provide Apple with a chance to consider taking a supportive route and communicating it in a way of Apple's choosing.

If Apple chooses instead to take punitive action by blocking consumer access to Fortnite or forthcoming updates, then Epic will, regrettably, be in conflict with Apple on a multitude of fronts - creative, technical, business, and legal - for so long as it takes to bring about change, if necessary for many years.

Tim Sweeney
Epic Games
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EPIC GAMES, INC.,

Plaintiff,

vs.

APPLE INC.,

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF
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Antitrust: Commission sends Statement of Objections to Apple over practices regarding Apple Pay

Brussels, 2 May 2022

The European Commission has informed Apple of its preliminary view that it abused its dominant position in markets for mobile wallets on iOS devices. By limiting access to a standard technology used for contactless payments with mobile devices in stores (‘Near-Field Communication (NFC)’ or ‘tap and go’), Apple restricts competition in the mobile wallets market on iOS.

The Commission takes issue with the decision by Apple to prevent mobile wallets app developers, from accessing the necessary hardware and software (‘NFC input’) on its devices, to the benefit of its own solution, Apple Pay.

Executive Vice-President Margrethe Vestager, in charge of competition policy, said: "Mobile payments play a rapidly growing role in our digital economy. It is important for the integration of European Payments markets that consumers benefit from a competitive and innovative payments landscape. We have indications that Apple restricted third-party access to key technology necessary to develop rival mobile wallet solutions on Apple’s devices. In our Statement of Objections, we preliminarily found that Apple may have restricted competition, to the benefit of its own solution Apple Pay. If confirmed, such a conduct would be illegal under our competition rules."

Statement of Objections on Apple's access restrictions to mobile payment technology

Apple Pay is Apple's own mobile wallet solution on iPhones and iPads, used to enable mobile payments in physical stores and online. Apple's iPhones, iPads and software form a “closed ecosystem”. Apple controls every aspect of the user experience in this ecosystem, including mobile wallet developers’ access to it.

The Commission preliminarily considers that Apple enjoys significant market power in the market for smart mobile devices and a dominant position on mobile wallet markets.

In particular, Apple Pay is the only mobile wallet solution that may access the necessary NFC input on iOS. Apple does not make it available to third-party app developers of mobile wallets. The NFC ‘tap and go’ technology is embedded on Apple mobile devices for payments in stores. This technology enables communication between a mobile phone and payments terminals in stores. NFC is standardised, available in almost all payment terminals in stores and allows for the safest and most seamless mobile payments. Compared to other solutions, NFC offers a more seamless and more secure payment experience and enjoys wider acceptance in Europe.

The Commission's preliminary view is that Apple's dominant position in the market for mobile wallets on its operating system iOS, restricts competition, by reserving access to NFC technology to Apple Pay. This has an exclusionary effect on competitors and leads to less innovation and less choice for consumers for mobile wallets on iPhones. If confirmed, this conduct would infringe Article 102 of the Treaty on the Functioning of the European Union (‘TFEU’) that prohibits the abuse of a dominant market position.

The sending of a Statement of Objections does not prejudge the outcome of an investigation.

Today's Statement of Objections takes issue only with the access to NFC input by third-party developers of mobile wallets for payments in stores. It does not take issue with the online restrictions nor the alleged refusals of access to Apple Pay for specific products of rivals that the Commission announced that it had concerns when it opened the in-depth investigation into Apple's practices regarding Apple Pay on 16 June 2020.

Background

Article 102 of the TFEU prohibits the abuse of a dominant position. The implementation of these provisions is defined in the Antitrust Regulation (Council Regulation No 1/2003), which can also be applied by the national competition authorities.
A Statement of Objections is a formal step in Commission investigations into suspected violations of EU antitrust rules. The Commission informs the parties concerned in writing of the objections raised against them. The addressees can examine the documents in the Commission's investigation file, reply in writing and request an oral hearing to present their comments on the case before representatives of the Commission and national competition authorities. Sending a Statement of Objections and opening of a formal antitrust investigation does not prejudge the outcome of the investigations.

There is no legal deadlines for bringing an antitrust investigation to an end. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertakings concerned cooperate with the Commission and the exercise of the rights of defence.

For More Information

More information on the investigation is available on the Commission's competition website, in the public case register under case number AT.40452. A periodic compilation of antitrust and cartel news is available in the Competition Weekly e-News.

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General public inquiries: Europe Direct by phone 00 800 67 89 10 11 or by email
Calendar No. 301

117TH CONGRESS  
2D Session  

S. 2992

To provide that certain discriminatory conduct by covered platforms shall be unlawful, and for other purposes.

IN THE SENATE OF THE UNITED STATES  

OCTOBER 18, 2021

Ms. KLOBUCHAR (for herself, Mr. GRASSLEY, Mr. DURBIN, Mr. GRAHAM, Mr. BLUMENTHAL, Mr. KENNEDY, Mr. BOOKER, Ms. LUMMIS, Ms. HIRONO, Mr. WARNER, Mr. HAWLEY, and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on the Judiciary  

MARCH 2, 2022

Reported by Mr. DURBIN, with an amendment  

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL  

To provide that certain discriminatory conduct by covered platforms shall be unlawful, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,  

3 SECTION 1. SHORT TITLE.  

4 This Act may be cited as the “American Innovation  

5 and Choice Online Act”. 
SEC. 3. UNLAWFUL CONDUCT.

(a) IN GENERAL.—It shall be unlawful for a person operating a covered platform in or affecting commerce to engage in conduct, as demonstrated by a preponderance of the evidence, that would—

(1) preference the products, services, or lines of business of the covered platform operator over those of another business user on the covered platform in a manner that would materially harm competition;

(2) limit the ability of the products, services, or lines of business of another business user to compete on the covered platform relative to the products, services, or lines of business of the covered platform operator.
ator in a manner that would materially harm competition;

(3) discriminate in the application or enforcement of the terms of service of the covered platform among similarly situated business users in a manner that would materially harm competition;

(4) materially restrict, impede, or unreasonably delay the capacity of a business user to access or interoperate with the same platform, operating system, or hardware or software features that are available to the products, services, or lines of business of the covered platform operator that compete or would compete with products or services offered by business users on the covered platform;

(5) condition access to the covered platform or preferred status or placement on the covered platform on the purchase or use of other products or services offered by the covered platform operator that are not part of or intrinsic to the covered platform;

(6) use nonpublic data that are obtained from or generated on the covered platform by the activities of a business user or by the interaction of a covered platform user with the products or services of a business user to offer, or support the offering of, the products or services of the covered platform operator that
compete or would compete with products or services offered by business users on the covered platform;

(7) materially restrict or impede a business user from accessing data generated on the covered platform by the activities of the business user, or through an interaction of a covered platform user with the products or services of the business user, such as by establishing contractual or technical restrictions that prevent the portability by the business user to other systems or applications of the data of the business user;

(8) materially restrict or impede covered platform users from uninstalling software applications that have been preinstalled on the covered platform or changing default settings that direct or steer covered platform users to products or services offered by the covered platform operator, unless necessary—

(A) for the security or functioning of the covered platform; or

(B) to prevent data from the covered platform operator or another business user from being transferred to the Government of the People’s Republic of China or the government of another foreign adversary;

(9) in connection with any covered platform user interface, including search or ranking functionality
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offered by the covered platform, treat the products,

services, or lines of business of the covered platform

operator more favorably relative to those of another

business user than under standards mandating the

neutral, fair, and nondiscriminatory treatment of all

business users; or

(10) retaliate against any business user or cov-

ered platform user that raises concerns with any law

enforcement authority about actual or potential viola-

tions of State or Federal law.

(b) AFFIRMATIVE DEFENSES.—

(1) IN GENERAL.—It shall be an affirmative de-

fense to an action under paragraph (1), (2), or (3) of

subsection (a) if the defendant establishes by a pre-

ponderance of the evidence that the conduct was nar-

rowly tailored, nonpretextual, and reasonably nec-

essary to—

(A) prevent a violation of, or comply with,

Federal or State law;

(B) protect safety, user privacy, the security

of nonpublic data, or the security of the covered

platform; or

(C) maintain or substantially enhance the

core functionality of the covered platform.
(2) OTHER UNLAWFUL CONDUCT.—It shall be an affirmative defense to an action under paragraph (4), (5), (6), (7), (8), (9), or (10) of subsection (a) if the defendant establishes by a preponderance of the evidence that the conduct—

(A) has not resulted in and would not result in material harm to competition; or

(B) was narrowly tailored, could not be achieved through less discriminatory means, was nonpretextual, and was reasonably necessary to—

(i) prevent a violation of, or comply with, Federal or State law;

(ii) protect safety, user privacy, the security of non-public data, or the security of the covered platform; or

(iii) maintain or substantially enhance the core functionality of the covered platform.

(3) EFFECT OF OTHER LAWS.—Notwithstanding any other provision of law, whether user conduct would constitute a violation of section 1030 of title 18, United States Code, shall have no effect on whether the defendant has established an affirmative defense under this Act.
(7) RULES OF CONSTRUCTION.—

(A) IN GENERAL.—Nothing in subsection (a) may be construed—

(i) to require a covered platform operator to divulge or license any intellectual property, including any trade secrets, business secrets, or other confidential proprietary business processes, owned by or duly licensed to the covered platform operator;

(ii) to prevent a covered platform operator from asserting its preexisting rights under intellectual property law to prevent the unauthorized use of any intellectual property owned by or duly licensed to the covered platform operator;

(iii) to require a covered platform operator to interoperate or share data with persons or business users that are on any list maintained by the Federal Government by which entities—
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(I) are identified as limited or prohibited from engaging in economic transactions as part of United States sanctions or export-control regimes; or

(II) have been identified as national security, intelligence, or law enforcement risks;

(iv) to prohibit a covered platform operator from promptly requesting and obtaining the consent of a covered platform user prior to providing access to the non-public, personally identifiable information of the user to a covered platform user under that subsection;

(v) in a manner that would likely result in data on the covered platform or data from another business user being transferred to the Government of the People’s Republic of China or the government of another foreign adversary; or

(vi) to impose liability on a covered platform operator solely for offering—

(I) full end-to-end encrypted messaging or communication products or
services that allow communication between covered platform users; or

(II) a fee-for-service subscription that provides benefits to covered platform users on the covered platform.

(B) COPYRIGHT AND TRADEMARK VIOLATIONS.—An action taken by a covered platform operator that is reasonably tailored to protect the rights of third parties under section 106, 1101, 1201, or 1401 of title 17, United States Code, or rights actionable under section 32 or 43 of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (commonly known as the “Lanham Act” or the “Trademark Act of 1946”) (15 U.S.C. 1114, 1125), or corollary State law, shall not be considered unlawful conduct under subsection (a).
FOR IMMEDIATE RELEASE

Tuesday, October 20, 2020

Justice Department Sues Monopolist Google For Violating Antitrust Laws

Department Files Complaint Against Google to Restore Competition in Search and Search Advertising Markets

Note: Click for Attorney General Barr's statement and Deputy Attorney General Rosen's remarks.

Today, the Department of Justice — along with eleven state Attorneys General — filed a civil antitrust lawsuit in the U.S. District Court for the District of Columbia to stop Google from unlawfully maintaining monopolies through anticompetitive and exclusionary practices in the search and search advertising markets and to remedy the competitive harms. The participating state Attorneys General offices represent Arkansas, Florida, Georgia, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, South Carolina, and Texas.

“Today, millions of Americans rely on the Internet and online platforms for their daily lives. Competition in this industry is vitally important, which is why today’s challenge against Google — the gatekeeper of the Internet — for violating antitrust laws is a monumental case both for the Department of Justice and for the American people,” said Attorney General William Barr. “Since my confirmation, I have prioritized the Department’s review of online market-leading platforms to ensure that our technology industries remain competitive. This lawsuit strikes at the heart of Google’s grip over the internet for millions of American consumers, advertisers, small businesses and entrepreneurs beholden to an unlawful monopolist.”

“As with its historic antitrust actions against AT&T in 1974 and Microsoft in 1998, the Department is again enforcing the Sherman Act to restore the role of competition and open the door to the next wave of innovation—this time in vital digital markets,” said Deputy Attorney General Jeffrey A. Rosen.

As one of the wealthiest companies on the planet with a market value of $1 trillion, Google is the monopoly gatekeeper to the internet for billions of users and countless advertisers worldwide. For years, Google has accounted for almost 90 percent of all search queries in the United States and has used anticompetitive tactics to maintain and extend its monopolies in search and search advertising.

As alleged in the Complaint, Google has entered into a series of exclusionary agreements that collectively lock up the primary avenues through which users access search engines, and thus the internet, by requiring that Google be set as the preset default general search engine on billions of mobile devices and computers.
Justice Department Sues Monopolist Google For Violating Antitrust Laws | OPA | Department of Justice

The Complaint alleges that Google has unlawfully maintained monopolies in search and search advertising by:

- Entering into exclusivity agreements that forbid preinstallation of any competing search service.
- Entering into tying and other arrangements that force preinstallation of its search applications in prime locations on mobile devices and make them undeletable, regardless of consumer preference.
- Entering into long-term agreements with Apple that require Google to be the default – and de facto exclusive – general search engine on Apple’s popular Safari browser and other Apple search tools.
- Generally using monopoly profits to buy preferential treatment for its search engine on devices, web browsers, and other search access points, creating a continuous and self-reinforcing cycle of monopolization.

These and other anticompetitive practices harm competition and consumers, reducing the ability of innovative new companies to develop, compete, and discipline Google’s behavior.

The antitrust laws protect our free market economy and forbid monopolists from engaging in anticompetitive practices. They also empower the Department of Justice to bring cases like this one to remedy violations and restore competition, as it has done for over a century in notable cases involving monopolists over other critical industries undergirding the American economy like Standard Oil and the AT&T telephone monopoly. Decades ago the Department’s case against Microsoft recognized that the antitrust laws forbid anticompetitive agreements by high-technology monopolists to require preinstalled default status, to shut off distribution channels to rivals, and to make software undeletable. The Complaint alleges that Google is using similar agreements itself to maintain and extend its own dominance.

The Complaint alleges that Google’s anticompetitive practices have had harmful effects on competition and consumers. Google has foreclosed any meaningful search competitor from gaining vital distribution and scale, eliminating competition for a majority of search queries in the United States. By restricting competition in search, Google’s conduct has harmed consumers by reducing the quality of search (including on dimensions such as privacy, data protection, and use of consumer data), lessening choice in search, and impeding innovation. By suppressing competition in advertising, Google has the power to charge advertisers more than it could in a competitive market and to reduce the quality of the services it provides them. Through filing the lawsuit, the Department seeks to stop Google’s anticompetitive conduct and restore competition for American consumers, advertisers, and all companies now reliant on the internet economy.

Google is a limited liability company organized and existing under the laws of the State of Delaware, and is headquartered in Mountain View, California. Google is owned by Alphabet Inc., a publicly traded company incorporated and existing under the laws of the State of Delaware and headquartered in Mountain View, California.

Attachment(s):
Download Google Complaint Filed

Topic(s):
Antitrust

Component(s):
Antitrust Division
Office of the Attorney General

Press Release Number:
Justice Department Sues Google for Monopolizing Digital Advertising Technologies

Through Serial Acquisitions and Anticompetitive Auction Manipulation, Google Subverted Competition in Internet Advertising Technologies

Today, the Justice Department, along with the Attorneys General of California, Colorado, Connecticut, New Jersey, New York, Rhode Island, Tennessee, and Virginia, filed a civil antitrust suit against Google for monopolizing multiple digital advertising technology products in violation of Sections 1 and 2 of the Sherman Act.

Filed in the U.S. District Court for the Eastern District of Virginia, the complaint alleges that Google monopolizes key digital advertising technologies, collectively referred to as the "ad tech stack," that website publishers depend on to sell ads and that advertisers rely on to buy ads and reach potential customers. Website publishers use ad tech tools to generate advertising revenue that supports the creation and maintenance of a vibrant open web, providing the public with unprecedented access to ideas, artistic expression, information, goods, and services. Through this monopolization lawsuit, the Justice Department and state Attorneys General seek to restore competition in these important markets and obtain equitable and monetary relief on behalf of the American public.

As alleged in the complaint, over the past 15 years, Google has engaged in a course of anticompetitive and exclusionary conduct that consisted of neutralizing or eliminating ad tech competitors through acquisitions; wielding its dominance across digital advertising markets to force more publishers and advertisers to use its products; and thwarting the ability to use competing products. In doing so, Google cemented its dominance in tools relied on by website publishers and online advertisers, as well as the digital advertising exchange that runs ad auctions.

“Today’s complaint alleges that Google has used anticompetitive, exclusionary, and unlawful conduct to eliminate or severely diminish any threat to its dominance over digital advertising technologies,” said Attorney General Merrick B. Garland. “No matter the industry and no matter the company, the Justice Department will vigorously enforce our antitrust laws to protect consumers, safeguard competition, and ensure economic fairness and opportunity for all.”

“The complaint filed today alleges a pervasive and systemic pattern of misconduct through which Google sought to consolidate market power and stave off free-market competition,” said Deputy Attorney
General Lisa O. Monaco. “In pursuit of outsized profits, Google has caused great harm to online publishers and advertisers and American consumers. This lawsuit marks an important milestone in the Department’s efforts to hold big technology companies accountable for violations of the antitrust laws.”

“The Department’s landmark action against Google underscores our commitment to fighting the abuse of market power,” said Associate Attorney General Vanita Gupta. “We allege that Google has captured publishers’ revenue for its own profits and punished publishers who sought out alternatives. Those actions have weakened the free and open internet and increased advertising costs for businesses and for the United States government, including for our military.”

“Today’s lawsuit seeks to hold Google to account for its longstanding monopolies in digital advertising technologies that content creators use to sell ads and advertisers use to buy ads on the open internet,” said Assistant Attorney General Jonathan Kanter of the Justice Department’s Antitrust Division. “Our complaint sets forth detailed allegations explaining how Google engaged in 15 years of sustained conduct that had — and continues to have — the effect of driving out rivals, diminishing competition, inflating advertising costs, reducing revenues for news publishers and content creators, snuffing out innovation, and harming the exchange of information and ideas in the public sphere.”

Google now controls the digital tool that nearly every major website publisher uses to sell ads on their websites (publisher ad server); it controls the dominant advertiser tool that helps millions of large and small advertisers buy ad inventory (advertiser ad network); and it controls the largest advertising exchange (ad exchange), a technology that runs real-time auctions to match buyers and sellers of online advertising.

Image description: Graphic of digital advertising market. The digital advertising market is divided into three sections: sell-side inventory on the left, buy-side demand on the right, and an ad exchange in the middle. Sell-side inventory is made up of website publishers that that flow to Google’s “DoubleClick for Publishers” Publisher Ad Server, which has >90% of market share. Google AdExchange, which is greater than or equal to 50% of the ad exchange market share, receives bid requests from the publisher ad server, sends them to the buy-side demand, receives bid responses from the buy side demand and sends them back to the publisher ad server. Buy-side demand is made up of advertisers that flow to either: “Google Ads” Advertiser Ad Network (Small and Large Advertisers) which has +/- 80% market share; or Google’s “Display & Video 360” Demand Side Platform (DSP) Agencies/Large Advertisers which has +/-40% share.

Google’s anticompetitive conduct has included:
• **Acquiring Competitors**: Engaging in a pattern of acquisitions to obtain control over key digital advertising tools used by website publishers to sell advertising space;

• **Forcing Adoption of Google’s Tools**: Locking in website publishers to its newly-acquired tools by restricting its unique, must-have advertiser demand to its ad exchange, and in turn, conditioning effective real-time access to its ad exchange on the use of its publisher ad server;

• **Distorting Auction Competition**: Limiting real-time bidding on publisher inventory to its ad exchange, and impeding rival ad exchanges’ ability to compete on the same terms as Google’s ad exchange; and

• **Auction Manipulation**: Manipulating auction mechanics across several of its products to insulate Google from competition, deprive rivals of scale, and halt the rise of rival technologies.

As a result of its illegal monopoly, and by its own estimates, Google pockets on average more than 30% of the advertising dollars that flow through its digital advertising technology products; for some transactions and for certain publishers and advertisers, it takes far more. Google’s anticompetitive conduct has suppressed alternative technologies, hindering their adoption by publishers, advertisers, and rivals.

The Sherman Act embodies America’s enduring commitment to the competitive process and economic liberty. For over a century, the Department has enforced the antitrust laws against unlawful monopolists to unfetter markets and restore competition. To redress Google’s anticompetitive conduct, the Department seeks both equitable relief on behalf of the American public as well as treble damages for losses sustained by federal government agencies that overpaid for web display advertising. This enforcement action marks the first monopolization case in approximately half a century in which the Department has sought damages for a civil antitrust violation.

In 2020, the Justice Department filed a civil antitrust suit against Google for monopolizing search and search advertising, which are different markets from the digital advertising technology markets at issue in the lawsuit filed today. The Google search litigation is scheduled for trial in September 2023.

Google is a limited liability company organized and existing under the laws of the State of Delaware, with a headquarters in Mountain View, California. Google’s global network business generated approximately $31.7 billion in revenues in 2021. Google is owned by Alphabet Inc., a publicly traded company incorporated and existing under the laws of the State of Delaware and headquartered in Mountain View, California.

**Attachment(s):**
Download Complaint

**Topic(s):**
Antitrust

**Component(s):**
Antitrust Division
Office of the Associate Attorney General
Office of the Attorney General
Office of the Deputy Attorney General

**Press Release Number:**
23-84

*Updated February 2, 2023*
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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and

STATE OF TEXAS  
P.O. Box 12548  
Austin, TX 78711

Plaintiffs,

v.

GOOGLE LLC  
1600 Amphitheatre Parkway  
Mountain View, CA 94043

Defendant.

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, and the States of Arkansas, Florida, Georgia, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, South Carolina, and Texas, acting through their respective Attorneys General, bring this action under Section 2 of the Sherman Act, 15 U.S.C. § 2, to restrain Google LLC (Google) from unlawfully maintaining monopolies in the markets for general search services, search advertising, and general search text advertising in the United States through anticompetitive and exclusionary practices, and to remedy the effects of this conduct.
I. NATURE OF THIS ACTION

1. Two decades ago, Google became the darling of Silicon Valley as a scrappy startup with an innovative way to search the emerging internet. That Google is long gone. The Google of today is a monopoly gatekeeper for the internet, and one of the wealthiest companies on the planet, with a market value of $1 trillion and annual revenue exceeding $160 billion. For many years, Google has used anticompetitive tactics to maintain and extend its monopolies in the markets for general search services, search advertising, and general search text advertising—the cornerstones of its empire.

2. As in many other businesses, a general search engine must find an effective path to consumers for it to be successful. Today, general search engines are distributed primarily on mobile devices (smartphones and tablets) and computers (desktops and laptops). These devices contain web browsers (software applications for accessing information on the internet) and other “search access points” that call on a general search engine to respond to a user’s query. Over the last ten years, internet searches on mobile devices have grown rapidly, eclipsing searches on computers and making mobile devices the most important avenue for search distribution in the United States.

3. For a general search engine, by far the most effective means of distribution is to be the preset default general search engine for mobile and computer search access points. Even where users can change the default, they rarely do. This leaves the preset default general search engine with de facto exclusivity. As Google itself has recognized, this is particularly true on mobile devices, where defaults are especially sticky.

4. For years, Google has entered into exclusionary agreements, including tying arrangements, and engaged in anticompetitive conduct to lock up distribution channels and block rivals. Google pays billions of dollars each year to distributors—including popular-device
manufacturers such as Apple, LG, Motorola, and Samsung; major U.S. wireless carriers such as AT&T, T-Mobile, and Verizon; and browser developers such as Mozilla, Opera, and UCWeb—to secure default status for its general search engine and, in many cases, to specifically prohibit Google’s counterparties from dealing with Google’s competitors. Some of these agreements also require distributors to take a bundle of Google apps, including its search apps, and feature them on devices in prime positions where consumers are most likely to start their internet searches.

5. Google’s exclusionary agreements cover just under 60 percent of all general search queries. Nearly half the remaining queries are funneled through Google owned-and-operated properties (e.g., Google’s browser, Chrome). Between its exclusionary contracts and owned-and-operated properties, Google effectively owns or controls search distribution channels accounting for roughly 80 percent of the general search queries in the United States. Largely as a result of Google’s exclusionary agreements and anticompetitive conduct, Google in recent years has accounted for nearly 90 percent of all general-search-engine queries in the United States, and almost 95 percent of queries on mobile devices.

6. Google has thus foreclosed competition for internet search. General search engine competitors are denied vital distribution, scale, and product recognition—ensuring they have no real chance to challenge Google. Google is so dominant that “Google” is not only a noun to identify the company and the Google search engine but also a verb that means to search the internet.

7. Google monetizes this search monopoly in the markets for search advertising and general search text advertising, both of which Google has also monopolized for many years. Google uses consumer search queries and consumer information to sell advertising. In the United States, advertisers pay about $40 billion annually to place ads on Google’s search engine results
page (SERP). It is these search advertising monopoly revenues that Google “shares” with distributors in return for commitments to favor Google’s search engine. These enormous payments create a strong disincentive for distributors to switch. The payments also raise barriers to entry for rivals—particularly for small, innovative search companies that cannot afford to pay a multi-billion-dollar entry fee. Through these exclusionary payoffs, and the other anticompetitive conduct described below, Google has created continuous and self-reinforcing monopolies in multiple markets.

8. Google’s anticompetitive practices are especially pernicious because they deny rivals scale to compete effectively. General search services, search advertising, and general search text advertising require complex algorithms that are constantly learning which organic results and ads best respond to user queries; the volume, variety, and velocity of data accelerates the automated learning of search and search advertising algorithms. When asked to name Google’s biggest strength in search, Google’s former CEO explained: “Scale is the key. We just have so much scale in terms of the data we can bring to bear.” By using distribution agreements to lock up scale for itself and deny it to others, Google unlawfully maintains its monopolies.

9. Google’s grip over distribution also thwarts potential innovation. For example, one company recently started a subscription-based general search engine that does not rely on advertising profits derived from monetizing user information. Another, DuckDuckGo, differentiates itself from Google through its privacy-protective policies. But Google’s control of search access points means that these new search models are denied the tools to become true rivals: effective paths to market and access, at scale, to consumers, advertisers, or data.

10. Google’s practices are anticompetitive under long-established antitrust law. Almost 20 years ago, the D.C. Circuit in United States v. Microsoft recognized that
anticompetitive agreements by a high-tech monopolist shutting off effective distribution channels for rivals, such as by requiring preset default status (as Google does) and making software undeletable (as Google also does), were exclusionary and unlawful under Section 2 of the Sherman Act.

11. Back then, Google claimed Microsoft’s practices were anticompetitive, and yet, now, Google deploys the same playbook to sustain its own monopolies. But Google did learn one thing from Microsoft—to choose its words carefully to avoid antitrust scrutiny. Referring to a notorious line from the Microsoft case, Google’s Chief Economist wrote: “We should be careful about what we say in both public and private. ‘Cutting off the air supply’ and similar phrases should be avoided.” Moreover, as has been publicly reported, Google’s employees received specific instructions on what language to use (and not use) in emails because “Words matter. Especially in antitrust law.” In particular, Google employees were instructed to avoid using terms such as “bundle,” “tie,” “crush,” “kill,” “hurt,” or “block” competition, and to avoid observing that Google has “market power” in any market.

12. Google has refused to diverge from its anticompetitive path. Earlier this year, while the United States was investigating Google’s anticompetitive conduct, Google entered into agreements with distributors that are even more exclusionary than the agreements they replaced. Also, Google has turned its sights to emerging search access points, such as voice assistants, ensuring that they too are covered by the same anticompetitive scheme. And Google is now positioning itself to dominate search access points on the next generation of search platforms: internet-enabled devices such as smart speakers, home appliances, and automobiles (so-called internet-of-things, or IoT, devices).
13. Absent a court order, Google will continue executing its anticompetitive strategy, crippling the competitive process, reducing consumer choice, and stifling innovation. Google is now the unchallenged gateway to the internet for billions of users worldwide. As a consequence, countless advertisers must pay a toll to Google’s search advertising and general search text advertising monopolies; American consumers are forced to accept Google’s policies, privacy practices, and use of personal data; and new companies with innovative business models cannot emerge from Google’s long shadow. For the sake of American consumers, advertisers, and all companies now reliant on the internet economy, the time has come to stop Google’s anticompetitive conduct and restore competition.

II. JURISDICTION, VENUE, AND COMMERCE


15. Plaintiffs Arkansas, Florida, Georgia, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, South Carolina, and Texas by and through their respective Attorneys General, bring this action in their respective sovereign capacities and as parens patriae on behalf of the citizens, general welfare, and economy of their respective States under their statutory, equitable, or common law powers, and pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Google’s violations of Section 2 of the Sherman Act, 15 U.S.C. § 2.

16. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. § 4, and 28 U.S.C. §§ 1331, 1337(a), and 1345.
17. The Court has personal jurisdiction over Google; venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391 because Google transacts business and is found within this District.

18. Google is a limited liability company organized and existing under the laws of the State of Delaware, and is headquartered in Mountain View, California. Google is owned by Alphabet Inc., a publicly traded company incorporated and existing under the laws of the State of Delaware and headquartered in Mountain View, California. Google engages in, and its activities substantially affect, interstate trade and commerce. Google provides a range of products and services that are marketed, distributed, and offered to consumers throughout the United States, in the plaintiff States, across state lines, and internationally.

III. INDUSTRY BACKGROUND

A. Search Engines, Search Advertising, and General Search Text Advertising

19. In the early 1990s, computer scientists and entrepreneurs explored different ways to search and index the growing number of internet sites. The first computer program or general “search engine” that could perform this task was designed in 1990 by a student at McGill University in Montreal and called “Archie.” Other early general search engines emerged, with different methods of gathering, organizing, and presenting information about internet sites. Google’s founders launched their research project “Backrub” on Stanford University’s network in 1996.

20. Most modern general search engines use software to “crawl” the internet, indexing webpages and the information within them. As Google explains, “The web is like an ever-growing library with billions of books and no central filing system. We use software known as web crawlers to discover publicly available webpages. Crawlers look at webpages and follow
links on those pages, much like you would if you were browsing content on the web. They go from link to link and bring data about those webpages back to Google’s servers.”

21. When a search user enters a query into a general search engine, the software uses algorithms to evaluate the relevance of information on any given webpage to the user’s query. Depending on the query, some general search engines may also search selected proprietary databases for pertinent information to offer additional “specialized” search results. The general search engine then delivers the results on the SERP, with links to, and short descriptions of, webpages the algorithm has curated and ranked. Sometimes, the general search engine will serve ads with the search results.

22. Given the internet’s enormous breadth and constant evolution, establishing and maintaining a commercially viable general search engine is an expensive process. Google’s search index contains hundreds of billions of webpages and is well over 100,000,000 gigabytes in size. Developing a general search index of this scale, as well as viable search algorithms, would require an upfront investment of billions of dollars. The costs for maintaining a scaled general search business can reach hundreds of millions of dollars a year.

23. General search engines are “one-stop shops” consumers can use to search the internet for answers to a wide range of queries. The United States has only three general search engines that crawl the internet: Google, Bing, and, to a lesser extent, privacy-focused search provider DuckDuckGo. DuckDuckGo combines search results from different sources (including Bing) depending on the search query. A fourth general search engine, Yahoo!, does not currently crawl the internet and instead purchases search results from Bing.

24. Consumers can find certain specialized information online using sources other than general search engines. For example, consumers can search retail marketplaces such as
Amazon or eBay to shop for products, or go to Expedia or Priceline to compare airfares. Search sites that offer users a narrower, focused set of answers to queries are “specialized search engines.” Specialized search engines are often able to give users deeper topical results than general search engines by using specialized data or information gathered from users or supplied by third parties.

25. Most general search engines do not charge a cash price to consumers. At least one, Bing, even offers to pay consumers rewards for using its general search engine. That does not mean, however, that these general search engines are free. When a consumer uses Google, the consumer provides personal information and attention in exchange for search results. Google then monetizes the consumer’s information and attention by selling ads.

26. Search advertising first appeared on Google in 2000. During that same year Google launched AdWords, its buying platform for search ads. Two years ago, Google rebranded AdWords as Google Ads.

27. To sell ads on its SERP, in 2002, Google adopted auctions for keywords; advertisers would bid on selected keywords, and when those keywords arose in a query, the winning bidder’s ad was shown. At that time, Google also started using a compensation scheme where advertisers pay only when the user clicks on the ad, known as cost-per-click pricing. Some SERP displayed multiple ads. Eventually, Google discovered that it could increase the number of clicks—and its own profits—by ranking ads to promote those with greater relevance and therefore higher expected click-through rates. To help determine placement of ads, Google still uses a “quality score” based on various factors.

28. Advertisers use various types of ads to achieve different objectives. Marketers and advertisers typically refer to a “purchase funnel” or “customer acquisition funnel” to describe the
average consumer’s various states of mind leading up to a potential purchase, and the type of advertising most effective at each state. The following is an illustration of the purchase funnel:

![The Consumer Purchase Funnel](image)

**Figure 1**

29. Search ads enable advertisers to target potential customers based on keywords entered by these users, at the exact moment users express interest in the topic of the queries. For this reason, search ads are lower in the purchase funnel—closer to the consumer’s ultimate intent to make a purchase—than other types of ads that are primarily intended to drive brand awareness. The ability of search ads to provide advertising based on a consumer’s self-disclosed interests, when the consumer is actively seeking information, makes search ads uniquely valuable to advertisers.

30. Historically, general search engines such as Google sold only general search text ads. General search text ads resemble the organic search results that appear on a SERP—what Google refers to as the “10 blue links”—but with a subtle notation that they are “ads” or “sponsored.” Google describes its text ads as follows:
Text ads on the Search Network show above and below Google search results. It has three parts: headline text, a display URL, and description text.

Comprehensive Insurance | Protect Yourself on a Budget | Get Your Free Quote Today
Ad | www.example.com/insurance
Get affordable & trustworthy insurance. 10% discount on all online quotes. Easily compare insurance plans side-by-side in just a few seconds.

Figure 2

31. Over time, general search engines also began to sell some specialized search ads, which promoted specific categories of goods and services such as retail products, hotel rooms, or local services such as locksmiths and plumbers. Figure 3 shows a Google SERP that includes, from top to bottom, specialized search ads (in this case, Google “Shopping Ads” designed specifically to sell retail products), a general search text ad, and an organic search result.

Figure 3
32. Some specialized search providers also sell search ads. For example, advertisers can buy specialized search ads for goods sold on Amazon, hotels presented on Expedia, and local services listed on Yelp.

33. As the number of users of a general search engine grows, advertisers benefit because they want their marketing campaigns to reach large groups of consumers. But users do not benefit from indirect network effects in an equivalent way. As Google’s Chief Economist has explained, “users do not decide which search engine to use based on the number of advertisers.”

34. Today, the search advertising business in the United States is enormous—over $50 billion per year—and dominated by Google. Because of Google’s user base and scale, the company’s search ads have become a “must have” for many advertisers. Advertising agencies and larger companies often have entire groups that manage search advertising, mostly focused on Google.

B. Importance of Scale

35. Scale is of critical importance to competition among general search engines for consumers and search advertisers. Google has long recognized that without adequate scale its rivals cannot compete. Greater scale improves the quality of a general search engine’s algorithms, expands the audience reach of a search advertising business, and generates greater revenue and profits.

36. The additional data from scale allows improved automated learning for algorithms to deliver more relevant results, particularly on “fresh” queries (queries seeking recent information), location-based queries (queries asking about something in the searcher’s vicinity), and “long-tail” queries (queries used infrequently).

37. Scale is also important for search advertising because advertisers pay more to buy ads from a search provider with a large audience of potentially interested customers. Google can
deliver enormous audiences, especially in mobile, which its competitors cannot. Google’s scale also enables it to better discern which ads are most relevant for which queries.

38. Further, to recoup the large investment in creating and maintaining a general search engine, scale is critical to generating the necessary revenues and profits. Even a competitor that syndicates its search results from other general search engines must make substantial investments to compete. The most effective way to achieve scale is for the general search engine to be the preset default on mobile devices, computers, and other devices, as described in more detail below.

C. General Search Engine Distribution and Default Status

39. Search is like many other businesses in that the owners of general search engines can benefit greatly from a network of distributors to get their products to consumers. Distribution of general search engines takes place primarily through search access points, such as browsers and search apps, typically located on mobile devices and computers. More recently, searches have become available on IoT devices.

40. General search service providers can enter into agreements with various distributors, including computer and mobile-device manufacturers, cell phone carriers, and browser developers, to secure preset default status on computer and mobile-device search access points.

41. New computers and new mobile devices generally come with a number of preinstalled apps and out-of-the-box settings. Computers and mobile devices generally have apps preinstalled that include search access points, such as browsers, search apps and widgets, and voice assistants. Mobile devices may also have hardware features—such as a home button triggering a voice assistant—that a consumer can use to invoke apps with search functionality. Each of these search access points can and almost always does have a preset default general
search engine. Being the preset default general search engine is particularly valuable because consumers rarely change the preset default.

1. **The Mobile Search Distribution Channel**

42. With roughly 60 percent of searches, mobile devices represent the largest and, over the last five years, fastest growing search distribution channel.

43. In the United States, Apple iOS devices—those running on Apple’s proprietary mobile operating system—account for roughly 60 percent of mobile-device usage. Apple’s iOS is a closed ecosystem; Apple does not license iOS to third-party mobile-device manufacturers. Another roughly 40 percent of mobile-device usage comes from devices that use Android, an open-source mobile operating system controlled by Google. Unlike iOS, Android is licensable, which means third-party mobile-device manufacturers can use it as the operating system for their devices. All other mobile operating systems, combined, account for less than one percent of mobile-device usage in the United States.

44. General search services can be delivered to mobile-device users through a variety of search access points, including: (1) a browser, (2) a static search bar (search widget, referred to in Figure 4 as the QSB or quick search box) on the device’s home screen, (3) a search app, (4) artificial intelligence software (voice assistants) accessed by a button or voice command and designed to answer voice-initiated queries, and (5) other apps that link to general search engines, such as smart keyboards. Figure 4, from a 2018 Google strategy deck, provides a more specific breakdown of how Google delivers its general search service on Android devices.
45. In the United States, both cell phone carriers and manufacturers sell mobile devices. As discussed above, these phones or tablets typically have search access points preset with a general search engine as the default. These preset defaults are usually governed by a distribution or licensing agreement. For instance, Google has contracted with Apple for many years to preset Google’s search engine as the default for Apple’s Safari browser and, more recently, other search access points on Apple’s mobile devices. When a consumer takes a new iPhone or iPad out of its box, all the significant access points default to Google as their general search provider. Indeed, Google has preset default status for an overwhelming share of the search access points on mobile devices sold in the United States.

46. For mobile browsers, Google is the default search provider for both Apple Safari (approximately 55 percent share) and Google Chrome (over 35 percent share), which together account for over 90 percent of the browser usage on mobile devices in the United States.
47. Consumers typically do not change their mobile device’s default search functions, making securing preset default status for search access points important for effective distribution of general search engines (and delivery of search ads). As one search competitor noted in 2019, “For the most part, despite the simplicity of changing a default setting to enable customer choice, experience shows us that users accept the default search experience that comes with their device or the browser.” This fact is especially true on mobile devices; as Google observed in a 2018 strategy document, “People are much less likely to change [the] default search engine on mobile.” Alternative methods of obtaining search access points or encouraging general search engine usage—such as direct marketing to consumers—are not nearly as effective as preinstalling search access points on mobile devices and computers.

2. The Computer Search Distribution Channel

48. When using a computer, most consumers access a general search engine through a browser, either by (1) typing a query directly into the address bar at the top of the browser, or (2) visiting a general search engine web page and entering a query. Many browsers default to a general-search-engine web page as the home or start screen each time a user activates the browser; this offers users a convenient way to start their search experience.

49. In the United States, Google Chrome is the leading computer browser, with almost 60 percent market share. Apple’s Safari browser has approximately 16 percent share on computers. Mozilla’s Firefox has approximately 7 percent share, and Microsoft’s Edge and Internet Explorer together have approximately 15 percent share. Other small browsers have a combined share of less than 4 percent. With the exception of Microsoft, most browser developers have agreed with Google to preset its search engine as the default search provider.
50. Preset default settings are important for computers. Consumers may not understand that they can change the browser’s preset default general search engine, or consumers may not bother to invest the time to make such a switch.

51. For both mobile and computer search access points, being preset as the default is the most effective way for general search engines to reach users, develop scale, and become or remain competitive.

**D. Distribution Agreements in Mobile and Computer Channels**

52. General search services providers typically enter into licensing and distribution agreements with manufacturers and carriers that distribute mobile devices with search access points. In the United States, roughly 60 percent of all search queries are covered by Google’s exclusionary agreements. On mobile devices, Google’s exclusionary agreements cover more than 80 percent of all U.S. search queries.

53. Of the remaining search queries not covered by Google’s exclusionary contracts, almost half take place on search access points owned by Google. Google is a vertically integrated search provider and distributes search in part through several of its own properties, including for example its browser (Chrome) and phone (Pixel). Between its exclusionary contracts and owned-and-operated properties, Google effectively owns or controls search distribution channels accounting for roughly 80 percent of the general search queries in the United States.

54. Google’s distribution agreements come in three basic types, with the specific terms of each agreement depending upon the counterparty and the search access points at issue. First, Google requires Android device manufacturers that want to preinstall Google’s proprietary apps to sign an anti-forking agreement; these agreements set strict limits on the manufacturers’ ability to sell Android devices that do not comply with Google’s technical and design standards.
55. Next, for Android device manufacturers that sign an anti-forking agreement, Google provides access to its vital proprietary apps and application program interfaces (APIs) for preinstallation, but only if the manufacturers contractually agree to (1) take a bundle of other Google apps, (2) make certain apps undeletable, and (3) give Google the most valuable and important real estate on the default home screen.

56. Finally, Google provides a share of its search advertising revenue to Android device manufacturers, mobile phone carriers, competing browsers, and Apple; in exchange, Google becomes the preset default general search engine for the most important search access points on a computer or mobile device. As a practical matter, users rarely switch the preset default general search engine. In many cases, the agreements relating to mobile devices go even further, expressly prohibiting (1) the preinstallation of any rival general search services, and (2) the setting of other defaults to rival general search engines. This means that Google is the only preset default search provider preinstalled on the device.

57. These agreements work exactly as Google designed them—to foreclose distribution to Google’s search rivals, weakening them as competitive alternatives for consumers and advertisers by denying them scale.

1. Background on Mobile Strategy and Development of Android Ecosystem

58. Google’s anticompetitive agreements must be understood against the backdrop of Google’s overall business strategy. When Google was formed and achieved initial success in the late 1990s and early 2000s, internet searches were almost exclusively performed through browsers on computers. But as Google told investors in its 2007 Form 10-K: “More individuals are using non-desktop devices to access the internet. If users of these devices do not widely adopt versions of our web search technology, products or operating systems developed for these devices, our business could be adversely affected.”
59. In a mobile world, Google had to deal with mobile device manufacturers (such as LG, Motorola, and Samsung), and carriers (such as AT&T, T-Mobile/Sprint, and Verizon) that would hold sway over distribution of search and search ads. Google thus asked internally, “How can we conquer the world’s major wireless markets simultaneously?”

60. The answer started with Android, a mobile operating system that Google purchased in 2005. In 2007, Google released the Android code for free under an open-source license. Being “open source” means that anyone can access the source code and use it to make their own, modified operating system—a “fork.” This was key to Android’s adoption.

61. First, Google’s apparent lack of control over an open-source operating system attracted skeptical manufacturers and carriers of mobile phones to use Android instead of the other choices then available. As the Android team leader observed to Google’s board of directors, “Google was historically seen as a threat” to these distributors. But an open-source model suggested that they—and not Google—would ultimately retain control over their devices and the app ecosystem on those devices.

62. Second, once enough major distributors agreed to use Android, the operating system attracted developers looking for wide distribution of their apps. As more app developers focused their efforts on designing Android apps, Android became more attractive to consumers, which in turn led even more developers to design for Android. The result was a must-have ecosystem of Android apps.

63. Third, to help the Android ecosystem achieve critical mass and to advance the network effects, Google “shared” its search advertising and app store revenues with distributors as further inducement to give up control. As one senior executive explained about Android Market, an earlier name for Google’s app store, “Android Market is a bitter pill for carriers, and
a generous revenue share is the sugar that makes it go down smoother.” In other words, beginning over ten years ago, Google used revenue sharing to attract partners to Android; as discussed below, Google uses revenue sharing to keep them locked in today.

64. By 2010, the Android team leader noted that “Android is poised for world domination—the success story of the decade.” He was right; the strategy worked. The “Google Play” app store has a massive library of apps, making it essential for Android distributors to have on their devices. As for the operating system itself, it quickly became the dominant licensable mobile operating system in the United States. In the four years between 2009 and 2012, Android’s share of licensable mobile operating systems on smartphones in the United States more than tripled, reaching about 80 percent. Today, Android represents over 95 percent of licensable mobile operating systems for smartphones and tablets in the United States and accounts for over 70 percent of all mobile device usage worldwide. The only other mobile operating system with significant market share in the United States is Apple’s iOS, which is not licensable.

65. Control over Android has always been a critical issue. As Google’s Android team leader asked at the time: “How do we retain control of something we gave away?” Google’s answer is the set of contractual “carrots” and “sticks” discussed below that empower Google to “own the ecosystem” and help thwart any alternative mobile ecosystem from developing that could support a different search provider.
Google’s Exclusionary Android Agreements

Anti-Forking Agreements
- AFA (Anti-Fragmentation Agreement)
  Anti-forking agreements with Android device manufacturers
- CDD (Compatibility Definition Document)
  Technical standards required for both ACC and AFA
- ACC (Android Compatibility Commitment)
  Anti-forking agreements with Android device manufacturers (new as of 2017)

Preinstallation Agreements
- MADA (Mobile Application Distribution Agreement)
  GMS preinstallation agreements with Android device manufacturers
- GMS (Google Mobile Services)
  A bundle of APIs and Google Apps
  - GPS (Google Play Services)
    APIs (application program interfaces) that allow for features not included with open-source Android (e.g., push notifications)
  - Core Apps
    Play Store, Google Search App, Chrome browser, YouTube, Gmail, Google Maps

Revenue Sharing Agreements
- RSA (Revenue Sharing Agreement)
  Search ads revenue sharing agreements with carriers and manufacturers
- MIA (Mobile Incentive Agreement)
  Replacement for some manufacturer revenue sharing agreements

2. Anti-Fragmentation Agreements and Compatibility Commitments (Android Mobile Devices)

66. The Android operating system is open source; Google updates the Android code periodically and makes it publicly available. But Google takes steps to minimize the risk that a developer creates an Android fork to compete with the Android ecosystem controlled by Google. By limiting the existence of devices running Android forks, Google limits possible distribution channels available to its search rivals.

67. One way Google retains control of the Android ecosystem is through anti-forking agreements. These agreements broadly prohibit manufacturers from taking “any actions that may cause or result in the fragmentation of Android.” Notably, “fragmentation” is left undefined, giving Google wide latitude in practice.
68. Google’s anti-forking agreements specifically forbid manufacturers from developing or distributing versions of Android that do not comply with Google-controlled technical standards, as defined in its Android Compatibility Definition Document (CDD).

69. Two types of anti-forking agreements exist. Before 2017, Google required distributors to sign Anti-Fragmentation Agreements (AFAs). In 2017, while being investigated by the European Commission (and long after Google had locked up its monopoly status), Google began shifting its anti-forking restrictions from AFAs to new Android Compatibility Commitments (ACCs). Today, Google has an AFA or ACC with the leading Android device manufacturers, including LG, Motorola, and Samsung.

70. ACCs are marginally less onerous than AFAs because they allow manufacturers to build devices or components for third parties to sell to consumers, even if those devices or components do not comply with Google’s technical standards. But ACCs, like AFAs, prohibit signatories from manufacturing Android forks of their own, distributing devices with Android forks, or using their powerful brands to market forks on behalf of third parties. Most well-known Android manufacturers are bound by AFAs or ACCs.

71. The AFAs and ACCs do not just restrict manufacturers’ ability to build and distribute innovative versions of mobile phones. Over time, Google has extended the Android CDD such that its specifications apply to tablets and emerging technologies such as smart TVs, watches, and automotive devices. Manufacturers that hope to release Android-based versions of these products must comply with Google’s standards as well.

3. **Mobile Application Distribution Agreements (Android Mobile Devices)**

72. Manufacturers agree to anti-forking agreements in part because they are a precondition to receiving a license to distribute devices with must-have proprietary Google apps and APIs (the set of technical specifications that enable software applications to communicate
with each other, operating systems, and hardware). This license is provided only through
preinstallation agreements—called Mobile Application Distribution Agreements, or MADAs.
Leading Android device manufacturers, such as LG, Motorola, and Samsung, are MADA
licensees.

73. Over time, Google has chosen to include important features and functionality in
Google’s own ecosystem of proprietary apps and APIs, rather than the open-source Android
code. Google refers to this proprietary layer as “Google Mobile Services” (GMS). GMS includes
many popular apps, such as Google’s search app, Chrome, YouTube, and Google Maps. GMS
also includes Google Play, Google’s app store. An app store is one of the most valuable features
of a mobile device because it offers access to compatible apps that do not come preinstalled on
the device. Google Play offers about three million apps, more than any other app store (including
Apple’s App Store, which is compatible only with Apple devices). More than 90 percent of apps
on Android devices are downloaded through Google Play. For years, Google Play has been the
only commercially significant app store option for Android manufacturers.

74. Another key part of GMS is the set of APIs that allow developers to access certain
important features. The APIs available within GMS are part of “Google Play Services” (GPS).
GPS allows apps, including third-party apps, to perform functions that are not possible using the
open-source version of Android. For example, using the open-source Android system, third-party
apps cannot provide basic “push notifications,” enable in-app purchases through Google Play, or
use data from Google Maps; to have these functionalities, third-party apps must use GPS.

75. The integration of key functions with GPS makes it more difficult for third-party
Android developers to port their apps to Android forks because the apps are designed to interact
with Google’s proprietary APIs. And as the functionality gap between open-source Android apps and Google’s proprietary apps grows, developers are more dependent on GPS.

76. Signing a preinstallation agreement is the only way for an Android device manufacturer to preinstall any Google app, including Google Play. It is also the only way an Android device manufacturer can gain access to GPS and the APIs many developers need for their apps to work properly, at least without expensive and time-consuming reprogramming. But any manufacturer installing Google Play or GPS must preinstall a full suite of apps identified by Google, including the search access points most frequently used by consumers: Chrome, Google search app, Google search widget, and Google Assistant. Google’s search engine is the default on all these search access points. Indeed, Google uses the MADAs to control the appearance of Android devices, requiring the manufacturer to place the Google search widget on the home screen, and to preinstall Chrome, the Google search app, and other apps in a way that makes them undeletable by the user.

77. Moreover, before 2017, most MADAs also required manufacturers to set Google as the default general search engine for all key search access points on any device with preinstalled Google apps—these requirements are now found in the revenue sharing agreements discussed below.

4. Revenue Sharing Agreements (Android Mobile Devices)

78. Google enters into search revenue sharing agreements (RSAs) with Android manufacturers and carriers. Google generally requires exclusive distribution as the sole preset default general search service on an ever-expanding list of search access points; in exchange, Google remits to these companies a percentage of search advertising revenue. Google offers revenue share to Android device manufacturers only if they are MADA licensees, and Google offers revenue share to carriers only for devices built by manufacturers that are MADA
licensees. The leading U.S. carriers (AT&T, T-Mobile, and Verizon) and the leading Android device manufacturer (Samsung) have RSAs with Google.

79. Some of Google’s revenue sharing agreements require blanket coverage for all Android devices sold by Google’s counterparty. Under this version of the revenue sharing agreements, the distributor receives a payment from Google only if all the distributor’s Android devices comply with the exclusivity requirements. Other revenue sharing agreements provide for a model-by-model choice. Under this version of the agreements, for the distributor to receive a cut of the advertising revenue from any units of a model, every unit of that model must comply with the exclusivity requirements.

80. As innovation has increased the number of search access points on mobile devices—including smart keyboards and voice assistants—Google has expanded its RSAs to close off these avenues to search rivals.

5. Mobile Incentive Agreements (Android Mobile Devices)

81. In Google’s latest round of negotiations with some Android manufacturers, Google has replaced RSAs with mobile incentive agreements (MIAs), under which Google pays manufacturers to (1) forego preinstalling rival general search services on their Android devices and (2) comply with a significant number of “incentive implementation requirements”—including preloading up to fourteen additional Google apps. LG and Motorola have MIAs with Google.

82. To maximize payments under the MIAs, the manufacturers must also set Google as the default for all search access points on nearly all of their devices. Moreover, Google generally retains “sole discretion” to determine what constitutes a “search access point,” and thus controls the coverage of its exclusive contracts. Although the MIAs change the payment
structure for certain manufacturers, the agreements achieve the same end as their predecessors: search exclusivity for Google.

83. Today, Google has revenue sharing agreements (RSAs or MIAs) with all major U.S. carriers and Android device manufacturers, as well as a number of smaller carriers and manufacturers. Google’s revenue sharing agreements (and preinstallation agreements) with Android device manufacturers, together, account for more than 30 percent of mobile device usage in the United States.

6. Revenue Sharing Agreements (Apple and Others)

84. Google’s revenue sharing agreements are not limited to its Android partners. Google has entered into revenue sharing agreements with rival browsers and other device manufacturers, further blocking off search access points from competition.

85. Most significantly, Google has had a series of search distribution agreements with Apple, effectively locking up one of the most significant distribution channels for general search engines. Apple operates a tightly controlled ecosystem and produces both the hardware and the operating system for its popular products. Apple does not license its operating systems to third-party manufacturers and controls preinstallation of all apps on its products. The Safari browser is the preinstalled default browser on Apple computer and mobile devices. Apple devices account for roughly 60 percent of mobile device usage in the United States. Apple’s Mac OS accounts for approximately 25 percent of the computer usage in the United States.

86. In 2005, Apple began using Google as the preset default general search engine for Apple’s Safari browser. In return, Google gave Apple a significant percentage of Google’s advertising revenue derived from the search queries on Apple devices. Two years later, Google extended this agreement to cover Apple’s iPhones. In 2016, the agreement expanded further to cover additional search access points—Siri (Apple’s voice-activated assistant) and Spotlight
(Apple’s system-wide search feature)—making Google the preset default general search engine for both services. Today, Google’s distribution agreement with Apple gives Google the coveted, preset default position on all significant search access points for Apple computers and mobile devices.

87. Today, Google has RSAs with nearly every significant, non-Google browser other than those distributed by Microsoft, including Mozilla’s Firefox, Opera, and UCWeb. These agreements generally require the browsers to make Google the preset default general search engine for each search access point on both their web and mobile versions.

IV. RELEVANT MARKETS

A. General Search Services in the United States

1. General Search Services in the United States Is a Relevant Antitrust Market

88. General search services in the United States is a relevant antitrust market. General search services allow consumers to find responsive information on the internet by entering keyword queries in a general search engine such as Google, Bing, or DuckDuckGo.

89. General search services are unique because they offer consumers the convenience of a “one-stop shop” to access an extremely large and diverse volume of information across the internet. Consumers use general search services to perform several types of searches, including navigational queries (seeking a specific website), informational queries (seeking knowledge or answers to questions), and commercial queries (seeking to make a purchase).

90. Other search tools, platforms, and sources of information are not reasonable substitutes for general search services. Offline and online resources, such as books, publisher websites, social media platforms, and specialized search providers such as Amazon, Expedia, or Yelp, do not offer consumers the same breadth of information or convenience. These resources
are not “one-stop shops” and cannot respond to all types of consumer queries, particularly navigational queries. Few consumers would find alternative sources a suitable substitute for general search services. Thus, there are no reasonable substitutes for general search services, and a general search service monopolist would be able to maintain quality below the level that would prevail in a competitive market.

91. The United States is a relevant geographic market for general search services. Google offers users in the United States a local domain website with search results optimized based on the user’s location in the United States. General search services available in other countries are not reasonable substitutes for general search services offered in the United States. Google analyzes search market shares by country, including the United States. Therefore, the United States is a relevant geographic market.

2. Google Has Monopoly Power in the General Search Services Market in the United States

92. Google has monopoly power in the United States general search services market. There are currently only four meaningful general search providers in this market: Google, Bing, Yahoo!, and DuckDuckGo. According to public data sources, Google today dominates the market with approximately 88 percent market share, followed far behind by Bing with about seven percent, Yahoo! with less than four percent, and DuckDuckGo with less than two percent.
93. Over the years, Google has steadily increased its dominant position in general search services. In July 2007, Google estimated its general search services market share at 68 percent. By June 2013, Google estimated that its share in the United States had already increased to 77 percent on computers. By April 2018, Google estimated that its share was 79 percent on computers and 93.5 percent on mobile. More recently, Google has accounted for almost 90 percent of all general search engine queries in the United States, and almost 95 percent of queries on mobile devices. Recent share estimates are in Figures 7 and 8.
There are significant barriers to entry in general search services. The creation, maintenance, and growth of a general search engine requires a significant capital investment, highly complex technology, access to effective distribution, and adequate scale. For that reason, only two U.S. firms—Google and Microsoft—maintain a comprehensive search index, which is just a single, albeit fundamental, component of a general search engine.

Scale is also a significant barrier to entry. Scale affects a general search engine’s ability to deliver a quality search experience. The scale needed to successfully compete today is greater than ever. Google’s anticompetitive conduct effectively eliminates rivals’ ability to build the scale necessary to compete.

Google’s large and durable market share and the significant barriers to entry in general search services demonstrate Google’s monopoly power in the United States.

### B. Search Advertising in the United States and General Search Text Advertising in the United States Are Relevant Antitrust Markets

1. **Search Advertising Is a Relevant Product Market**

Search advertising in the United States is a relevant antitrust market. The search advertising market consists of all types of ads generated in response to online search queries, including general search text ads (offered by general search engines such as Google and Bing)
and other, specialized search ads (offered by general search engines and specialized search providers such as Amazon, Expedia, or Yelp).

98. Search ads enable advertisers to target marketing messages in real time in response to queries entered by a consumer. Thus, a user’s general search query has the important function to an advertiser of revealing the searcher’s intent. The ability of search ads to respond to consumer inquiries, at the moment the consumer is investigating a subject relevant to an advertiser’s product or service, makes these ads highly valuable to advertisers and distinguishes them from other types of advertising that cannot be similarly targeted, whether online or offline.

99. Other forms of advertising are not reasonably substitutable for search ads. For example, “offline” ads such as newspaper, billboard, TV, and radio ads cannot be targeted at a specific consumer based on the consumer’s real-time, self-disclosed interests. Similarly, other forms of online ads, such as display ads or social media ads, do not enable advertisers to target customers based on specific queries and are generally aimed at consumers who are further from the point of purchase. As Google’s Chief Economist explained: “One way to think about the difference between search and display/brand advertising is to say that ‘search ads help satisfy demand’ while ‘brand advertising helps to create demand,’” and “[d]isplay and search advertising are complementary tools, not competing ones.”

100. Few advertisers would find alternative sources a suitable substitute for search advertising. Thus, there are no reasonable substitutes for search advertising, and a search advertising monopolist would be able to maintain prices above the level that would prevail in a competitive market.

2. **General Search Text Advertising Is a Relevant Product Market**

101. There also is a relevant product market for general search text advertising that is wholly contained within the broader search advertising market. General search text ads are sold
by general search engines, typically placed just above or below the organic search results on a SERP, and resemble the organic results that appear on a general search engine’s SERP, with a subtle notation that they are “ads” or “sponsored.” In contrast, other types of search ads—specifically, specialized search ads—typically are visually different from general search text ads and convey different types of information. For example, a Google Shopping Ad normally includes an image of the product, its price, and star-based ratings (see Figure 3). In 2018, general search text ads accounted for close to 85 percent of Google’s search ad revenue.

102. General search text ads are distinct from specialized search ads in ways that limit their substitutability for most purposes, including their scope of coverage, purpose, format, and sales process. Indeed, for many advertisers that purchase general search text ads, there are no reasonable alternatives for these ads, which renders these advertisers particularly vulnerable to targeted price increases. General search text ads on Google are vitally important for many different types of advertisers, including companies that prefer to sell directly to consumers from their own websites and companies that want to protect their brand names on Google.

103. General search text ads can be delivered in response to search queries related to any subject that users explore on the internet. General search text ads are offered predominantly by the two companies that operate general search engines: Google and Microsoft (Bing); Bing also syndicates general search text ads for Yahoo! and DuckDuckGo. By contrast, other kinds of search ads are provided by specialized search providers in response to narrower and deeper searches in their areas of specialization, such as retail (e.g., Amazon), travel (e.g., Kayak), or local (e.g., Yelp).

104. General search text ads often target consumers further from an actual sale or “conversion” than specialized search ads. Users often rely on a general search engine such as
Google to start a search of the entire web to explore an interest, consider options, and form a preference, often about a purchase. An advertiser often will buy a general search text ad to drive these searchers down the purchase funnel to the advertiser’s website to shop for a product or service. In part for this reason, specialized search providers, such as Amazon, Expedia, and eBay, are among Google’s largest customers for general search text ads—i.e., they buy general search text ads to drive consumers to their specialized search sites, where they then sell specialized search ads to advertisers who want to reach those interested consumers at or near the point of purchase. Because general search text ads and specialized ads serve different functions, advertisers often view these ads as complements.

105. General search text ads link to the advertiser’s website, so the user can “click out” to that site. By contrast, ads by specialized search providers often link to webpages on that specialized search provider’s own website. For example, if a company sells a product on Amazon and buys an ad on Amazon to promote its product, the ad links to the Amazon page on which the advertised product can be purchased—not the seller’s own website. This kind of search ad is called a “click in” ad. Thus, general search text ads can be purchased by advertisers that do not sell their products or services on specialized search sites (such as Amazon) as well as advertisers that prefer to sell their products or services directly to consumers.

106. Few general search text advertisers would find alternative sources a suitable substitute for general search text advertising. Thus, there are no reasonable substitutes for general search text advertising, and a general search text advertising monopolist would be able to maintain prices above the level that would prevail in a competitive market.

3. The United States Is a Relevant Geographic Market

107. The United States is a relevant geographic market for both the search advertising and the general search text advertising markets. Market participants recognize this in the
ordinary course of business. For example, Google offers advertisers the ability to target and deliver ads based on the location of consumers in the United States, and Google search is customized for particular countries. Google also separately tracks revenue for the United States.

4. **Google Has Monopoly Power in the Search Advertising and General Search Text Advertising Markets in the United States**

108. Google has monopoly power in the search advertising market. Based on public estimates of total search advertising spending in the United States, Google’s share of the U.S. search advertising market is over 70 percent. This market share understates Google’s market power in search advertising because many search-advertising competitors offer only specialized search ads and thus compete with Google only in a limited portion of the market.

109. Google also has monopoly power in the general search text advertising market. Google’s market share of the U.S. general search text advertising market also exceeds 70 percent. Google’s share of the general search text advertising market well exceeds its share of the search advertising market.

110. There are barriers to entry in these advertising markets that protect Google’s advertising monopolies. Most critically, search advertising of any kind requires a search engine with sufficient scale to make advertising an efficient proposition for businesses. Specialized search engines require significant investment, including the cost of populating and indexing relevant data, distribution, developing and maintaining a search algorithm, and attracting users. Search advertising of any kind also requires (1) a user interface through which advertisers can buy ads, (2) software to facilitate the sales process, and (3) a sales and technical support staff. The same barriers to entry that apply to general search services also protect Google’s general search text advertising monopoly.
V. ANTICOMPETITIVE CONDUCT

111. Google is a monopolist in the general search services, search advertising, and general search text advertising markets. Google aggressively uses its monopoly positions, and the money that flows from them, to continuously foreclose rivals and protect its monopolies.

112. Google has unlawfully maintained its monopolies by implementing and enforcing a series of exclusionary agreements with distributors over at least the last decade. Particularly when taken together, Google’s exclusionary agreements have denied rivals access to the most important distribution channels. In fact, Google’s exclusionary contracts cover almost 60 percent of U.S. search queries. Almost half the remaining searches are funneled through properties owned and operated directly by Google. As a result, the large majority of searches are covered by Google’s exclusionary contracts and own properties, leaving only a small fraction for competitors.

113. Google’s continued use of the exclusionary agreements over many years, long after there was any real competition in general search, has denied its rivals access to the scale that would allow rivals to increase quality. By depriving them of scale, Google also hinders its rivals’ ability to secure distribution going forward, insulating Google from competition.

114. Google’s exclusionary motives influence its negotiations with distributors. Some of these exclusionary agreements have been described by Google as an “[i]nsurance policy that preserves our search and assistant usage.” To preserve its dominance, Google has developed economic models to measure the “defensive value” of foreclosing search rivals from effective distribution, search access points, and ultimately competition. Google recognized it could pay search distributors to “protect [its] market share from erosion.” Google continues to focus on the exclusionary defensive value of its distribution contracts as it tries to expand its search dominance into new distribution channels, such as smart home speakers. Here, Google’s
defensive value “is attributable to protecting access to Search and other Google services that may otherwise be blocked in a given household” if a user chooses a rival.

115. In sum, Google deprives rivals of the quality, reach, and financial position necessary to mount any meaningful competition to Google’s longstanding monopolies. By foreclosing competition from rivals, Google harms consumers and advertisers.

A. Google’s Agreements Lock Up Mobile Distribution of Search

116. Launched in the infancy of mobile smartphones, Google’s strategy to ward off competition for mobile search distribution had two parts. First, Google expanded its existing search deal with Apple to cover mobile. Second, for other mobile distributors, Google offered its Android operating system for “free” but with a series of interlocking distribution agreements to ensure it search-engine dominance in the Android ecosystem.

117. Google’s strategy worked. Google has almost completely shut out its competitors from mobile distribution. As one executive for a competing search product recognized in frustration last year: “Google essentially [has] locked up ALL DISTRIBUTION” with its Apple deal and restrictive Android licensing terms, leaving the competitor’s product with “no mobile volume.”

1. Distribution on Apple iOS Devices

118. Apple has not developed and does not offer its own general search engine. Under the current agreement between Apple and Google, which has a multi-year term, Apple must make Google’s search engine the default for Safari, and use Google for Siri and Spotlight in response to general search queries. In exchange for this privileged access to Apple’s massive consumer base, Google pays Apple billions of dollars in advertising revenue each year, with public estimates ranging around $8–12 billion. The revenues Google shares with Apple make up approximately 15–20 percent of Apple’s worldwide net income.
119. Although it is possible to change the search default on Safari from Google to a competing general search engine, few people do, making Google the *de facto* exclusive general search engine. That is why Google pays Apple billions on a yearly basis for default status. Indeed, Google’s documents recognize that “Safari default is a significant revenue channel” and that losing the deal would fundamentally harm Google’s bottom line. Thus, Google views the prospect of losing default status on Apple devices as a “Code Red” scenario. In short, Google pays Apple billions to be the default search provider, in part, because Google knows the agreement increases the company’s valuable scale; this simultaneously denies that scale to rivals.

120. Apple’s RSA incentivizes Apple to push more and more search traffic to Google and accommodate Google’s strategy of denying scale to rivals. For example, in 2018, Apple’s and Google’s CEOs met to discuss how the companies could work together to drive search revenue growth. After the 2018 meeting, a senior Apple employee wrote to a Google counterpart: “Our vision is that we work as if we are one company.”

121. The current version of the Google–Apple agreement substantially forecloses Google’s search rivals from an important distribution channel for a significant, multi-year term. This agreement covers roughly 36 percent of all general search queries in the United States, including mobile devices and computers. Google estimates that, in 2019, almost 50 percent of its search traffic originated on Apple devices.

122. Particularly when considered with the other exclusionary distribution agreements discussed below, Google’s hold on Apple’s distribution channel is self-reinforcing, impairing rival general search engines’ ability to offer competitive products and making Google’s monopolies impenetrable to competitive discipline. By paying Apple a portion of the monopoly rents extracted from advertisers, Google has aligned Apple’s financial incentives with its own
and set the price of bidding for distribution extraordinarily high—in the billions. And, even if a rival was willing to make no money from a distribution relationship or could afford to lose money indefinitely, the rival would likely still fall short because the existing distribution agreements have for more than a decade denied rivals the benefits of scale, thus limiting (1) the quality of their general search and search advertising products, as well as (2) the audience to attract advertisers. In other words, because of the longtime deprivation of scale, no other search engine can offer Apple (or any other partner) the mix of quality, brand recognition, and economics that market-dominant Google can.

2. **Distribution on Android Devices**

123. Google controls the Android mobile distribution channel with its distributor agreements and owned-and-operated distribution properties.

124. Even though Android is open source, Google has used Android to protect Google’s lucrative general search and search advertising monopolies. Google sets the rules through anti-forking agreements, preinstallation agreements, and revenue sharing agreements. Notably, each of these agreements builds on the others to preserve control. Thus, Google will not pay a revenue share or financial incentive payment on a mobile device unless it is covered by (1) an anti-forking agreement, (2) a preinstallation agreement ensuring that Google’s search access points are preinstalled and given prominent placement, and (3) a revenue sharing or mobile incentive agreement that entitles Google to preset default status and, in most cases, prohibits preinstallation of search access points with rival general search providers.

125. Through these interlocking, anticompetitive agreements, Google insulates and protects its monopoly profits. One internal Google analysis of these restrictive agreements concluded that only one percent of Google’s worldwide Android search revenue was currently at
risk to competitors. This analysis noted that the growth in Google’s search advertising revenue from Android distribution was “driven by increased platform protection efforts and agreements.”

a) **Anti-Forking Agreements**

126. An alternative operating system could serve as a pathway for distribution of general search services other than Google. However, Google’s anti-forking agreements inhibit the development of an operating system based on an Android fork that could serve as a viable path to market for a search competitor.

127. Developing an operating system from scratch is extremely expensive, but a manufacturer could start with existing Android open-source code for a fraction of the cost. Moreover, the costs to app developers of “porting” GMS-compatible Android apps to an Android fork are substantially less than developing apps for an entirely new operating system.

128. Google’s anti-forking agreements, however, have inhibited operating system innovation through forking, ensuring that manufacturers and distributors are beholden to Google’s version of Android. Distributors know that any violation of an anti-forking agreement could mean excommunication from Google’s Android ecosystem, loss of access to Google’s must-have GPS and Google Play, and millions or even billions of dollars in lost revenue sharing. Thus, distributors avoid anything that Google might deem “fragmentation”—a term that Google “purposely leave[s] . . . very vague” and interprets broadly.

129. Pursuant to the preinstallation agreements discussed below, Google also has final say over whether a device is found to be compatible with the technical specifications Google requires manufacturers to meet before they can preinstall GMS. As a Google engineer noted, it must be “obvious to the [manufacturers] that we are using compatibility as a club to make them do things we want.” Google views its anti-fragmentation mandate, and its final approval of
devices before they launch, as a “poison pill” to prevent deviation from the Google-controlled Android ecosystem.

130. Google’s broad interpretation of the anti-forking agreements, and the reluctance it creates among Android distributors to support alternative versions of Android, presents barriers to entry. These were on display when Amazon developed its Fire OS operating system, a competing fork of Android. Rather than preinstall Google’s search engine, GPS, Google Play, or other Google apps on Fire devices, Amazon preinstalled its own proprietary apps and agreed to make Microsoft’s Bing the preset default general search engine. Amazon originally sold only Fire OS tablets, but in 2014 it launched a phone that ran on Fire OS. The phone was not a commercial success and Amazon quickly exited the phone business. Amazon continues to sell Fire tablets, which account for less than two percent of mobile device usage in the United States.

131. Google’s anti-forking provisions and policies limited the growth of Amazon’s mobile phone, and of Fire OS, because major manufacturers declined to support Amazon’s phone out of fear doing so would risk their lucrative deals with Google. Manufacturers willing to work with Amazon did not have the same marketing and logistics capabilities as top manufacturers. Despite hundreds of millions of dollars in investment over nearly ten years across tablets and phones, Fire OS still has not reached sufficient critical mass to challenge Google’s version of Android and provide a significant alternative path to market for search rivals.

132. No Android fork has made significant inroads to challenge Google for mobile devices, and there is no meaningful operating system alternative for manufacturers and carriers to license. These manufacturers and carriers are beholden to Google’s Android ecosystem, which Google uses to preserve its monopolies in general search, search advertising, and general search text advertising. Google’s anti-forking agreements further inhibit the development of alternative
Android operating systems for the next generation of search distribution channels, such as smart watches, smart speakers, smart TVs, and connected automobiles.

b) Preinstallation Agreements

133. Google uses preinstallation agreements—MADAs—to ensure that its entire suite of search-related products is given premium placement on Android GMS devices. Consumers naturally and regularly turn to these prominently placed search access points to conduct searches. Preinstallation agreements also reinforce Google’s anti-forking requirements, either by including an anti-forking clause of their own or, more commonly, requiring device manufacturers to be signatories to an anti-forking agreement.

134. If a manufacturer wants even one of Google’s key apps and APIs, the device must be preloaded with a bundle of other Google apps selected by Google. The six “core” apps are Google Play, Chrome, Google’s search app, Gmail, Maps, and YouTube. Manufacturers must preinstall the core apps in a manner that prevents the consumer from deleting them, regardless of whether the consumer wants them. These preinstallation agreements cover almost all Android devices sold in the United States.

135. Google’s preinstallation agreements effectuate a tie, that is, they condition the distribution of Google Play and GPS to the distribution of these other apps. This tie reinforces Google’s monopolies. The preinstallation agreements provide Android device manufacturers an all-or-nothing choice: if a manufacturer wants Google Play or GPS, then the manufacturer must also preinstall, and in some cases give premium placement to, an entire suite of Google apps, including Google’s search products. The forced preinstallation of Google’s apps deters manufacturers from preinstalling those of competitors. This forecloses distribution opportunities to rival general search engines, protecting Google’s monopolies.
136. Google recognizes it could “make [the] phone experience better for user[s] by ensuring . . . preloaded apps are deletable.” In large part, this is because “[u]sers can free up space by deleting apps they don’t want.” Consumers desiring to use non-Google search access points thus suffer because they cannot save storage space on their devices by deleting unwanted Google apps. In this way, manufacturers must agree to make their phones less attractive to consumers to accommodate Google’s efforts to lock up search distribution.

137. Once the manufacturer adopts the necessary suite of Google apps, the search access points of those apps are preset to default to Google’s search engine. For example, the preinstalled version of Chrome is preset to default to Google search. A senior executive at Google referred to changing Chrome’s preset search default as “totally off the table” and insisted that if a manufacturer “values their MADA, they cannot modify Chrome’s settings.” The result is that Google locks up the access points to general search on Android phones, as shown in Figure 9:
138. The preinstallation agreements are even more pernicious than basic ties because these agreements force distributors to configure the appearance of their phones to Google’s specifications. For example, they require manufacturers to put the Google search widget on the device’s default home screen. Google considers the search widget “an essential part of the Google brand” and rejects requests by manufacturers to waive the preinstallation agreement’s search-widget requirement. This locks up another search access point, as it would be impractical for a manufacturer to preinstall two search widgets on the same home screen.

139. Google’s preinstallation agreements also impose voice-search preferencing. In addition to requiring the preinstallation of Google Assistant, preinstallation agreements require manufacturers to (1) implement a Google hotword, which activates Google Assistant, and (2) ensure certain touch actions on the device’s home button directly access Google Assistant or Google. Google’s agreements with most manufacturers also (3) set Google Assistant as the default assistant app.

140. Rivals to Google Assistant are deprived of the same opportunities. Most of Google’s preinstallation agreements prevent rival assistants from being the preset default or using a home button. Google also handicaps rival assistants by limiting the APIs that non-Google apps can use, ensuring that the useful features, such as “always on” microphone access that would enable the use of a hotword or the initiation of phone calls, are available only to Google Assistant. Even Google Assistant’s chief rival—Amazon’s Alexa—is unable to navigate these disincentives to get significant preinstallation or functional integration on Android devices.

141. Voice search is an important, emerging access point. Internal Google documents have recognized that the “[v]oice platform will become the future of search” and financial projections for the assistant category recognize “search defensive value.”
142. Partners that depart from the preinstallation agreements risk discipline from Google. For example, in 2011, one major electronics manufacturer considered giving a group of consumers outside the United States a choice between two home screen experiences for their device: one home screen with the Google search widget and a second home screen with a rival search widget. Discussing this proposal with colleagues, one Google employee noted “[a]llowing a mode that does not have Google as the default search provider and completely changes the home screen” would violate Google’s terms and risk breach.

143. In 2015, Google was concerned that a major United States carrier would ask manufacturers to install a search widget powered by the carrier’s in-house search engine. Google’s Vice President of Partnerships wrote to a colleague that Google needed to make clear to manufacturers that “[these] customization requests will not go far” and replacing the Google search widget with a different search box would violate the preinstallation agreement. Termination of this default agreement would, in turn, prohibit access to the entire GMS suite, including Google Play and GPS, and forfeit any potential cut of Google’s search advertising revenue under a revenue sharing agreement. In short, as the above examples illustrate, Google’s documents show its efforts to discipline its counterparties, including major electronics companies and carriers.

c) Revenue Sharing Agreements

144. In exchange for a substantial portion of Google’s search advertising revenues, Android distributors agree to make Google the preset default general search engine for all significant search access points on the device. In addition, these agreements typically contain an exclusivity provision prohibiting the preinstallation of a competing general search service.

145. Google has recognized for some time that its revenue sharing agreements with Android device manufacturers and carriers provide exclusivity for its general search service on
those devices. As stated explicitly in a draft 2014 Google strategy deck in Figures 10 and 11 below, Google’s revenue sharing arrangements with Android manufacturers or OEMs “provide exclusivity of Search” and its deals with carriers similarly “prevent[] the pre-installation of other Search engines or browsers,” thus enabling Google “to protect Search exclusivity on the device as it makes its way to the user.”

Figure 10 (Android manufacturers)

Figure 11 (Android carriers)
146. Similarly, one Google executive acknowledged that exclusivity is “the general philosophy of the RSA or one of the tenets of the value exchanged in the RSA.” Another Google executive noted, “our philosophy is that we are paying revenue share *in return for* exclusivity.” These agreements are, as that executive further explained, “really important” because “otherwise Bing or Yahoo can come and steal away our Android search distribution at any time.”

147. As Google’s documents recognize, the preinstallation agreements and revenue sharing agreements work together as a belt-and-suspenders strategy for driving searches to Google (and therefore away from competitors) on Android devices. As one Google executive explained in 2017, Google uses revenue sharing agreements “as a lever for motivating partner behavior that is consistent with our goals for Google and the ecosystem,” and to “drive incremental revenue (securing search defaults not covered by MADA).” By using its monopoly profits, Google is able to secure even “more stringent requirements” on manufacturers and carriers to obtain the preset default position on search access points not covered by the preinstallation agreements. The combined result of Google’s preinstallation and revenue sharing agreements is to lock up all the main pathways through which consumers access search on Android devices, thus foreclosing rivals and protecting Google’s monopoly positions.

148. The size of Google’s payments to Android distributors demonstrates the enormous value of default status and exclusivity provided by the agreements. Last year, Google paid major U.S. carriers, collectively, more than a billion dollars.

149. Other channels of distribution left for competitors are far inferior to those paid for by Google and protected by its agreements. For example, a consumer can in theory download a competing search app on his or her own. But as one of Google’s executives bluntly put it, “most
users just use what comes on the device” and do not attempt to download or use other general search services.

150. Google’s revenue-sharing partners turn down opportunities to preinstall or otherwise enable innovative, search-related apps because those new partnerships could violate Google’s demand for exclusivity.

151. Google also uses its agreements to ensure that new search access points are not available to competitors. For example, Google developed a smart keyboard—a mobile app that can be used as an alternative for the standard-issued keyboards on smart phones—with the recognition that such keyboards might be “the next big search access point.” Google relies on its preinstallation and default restrictions in its revenue sharing agreements as a “strategic defense” against rival keyboards that might provide a “[b]ridge” to rival general search engines. Thus, search queries cannot leak out to Google’s rivals even in niche areas.

152. Google likewise structures its agreements to penalize any distributor that might walk away, tying them to Google. The typical term of the carrier and manufacturer revenue sharing agreement is two to three years. If a carrier or manufacturer does not renew its revenue sharing agreement with Google, the distributor loses out on revenue share not only for new mobile devices but also for the phones and tablets previously sold and in the hands of consumers. This provision is punitive to the carrier or manufacturer and helps to ensure that carriers and manufacturers will not stray from Google.

153. To be attractive to a carrier or manufacturer, a rival search provider’s offer for preset default status would need to cover not only the revenue the carrier or manufacturer would have earned from Google for new devices, but also the revenue that the carrier or manufacturer would have earned on all the devices that are currently in the hands of consumers. Google will
continue to benefit from those devices with defaults previously set to Google. A rival search provider is left with no practical way to ensure that it will generate revenues from those devices, regardless of how competitive its general search service might otherwise be.

154. In roughly a decade, no other general search provider has secured preset default search status on any preinstalled search access point on GMS Android devices. As with the Apple distribution agreements, the Android distribution agreements—taken together—are self-reinforcing, depriving rivals of the quality, audience, and financial benefits of scale that would allow them to mount an effective challenge to Google.

155. Particularly for newer entrants, the revenue sharing agreements present a substantial barrier to entry. These entrants cannot pay the billions of dollars that Google does for the most effective forms of distribution—premium placement and default status. Instead, they are relegated to inferior forms of distribution that do not allow them to build scale, gain brand recognition, and generate momentum to challenge Google.

B. Google Agreements Lock Up Browser Distribution

156. Beyond its agreements locking up distribution on Android and Apple devices, Google also has entered into exclusive revenue sharing agreements with browsers. Google has recognized it is “crucial to retain web browser partnerships.” Google’s agreements with browsers generally require the browsers to make Google the preset default general search engine for search access points in both the browser’s computer and mobile versions.

157. In exchange for being the preset default general search engine, Google shares up to 40 percent of the advertising revenue it generates from these search access points with Google’s browser rivals. Browser revenue sharing agreements typically last at least two years and are routinely extended.
158. Browsers are one of the most important distribution channels for general search services because they are the gateway to the internet for most consumers. Many search queries on mobile devices and computers are performed through the device’s browser. Today, Google has revenue sharing agreements with the most widely used browsers in the United States, such as Apple’s Safari browser and Mozilla’s Firefox browser; Microsoft’s browsers are the only notable exceptions. Over 85 percent of all browser usage in the United States occurs on Google’s own Chrome browser or on one of the browsers covered by these revenue sharing agreements.

159. In a competitive market, rivals could compete to be the preset default general search engine on a browser. The general search services market has not, however, been competitive for many years. When considered with Google’s other exclusionary agreements and its monopoly power, Google’s conduct forecloses a critical avenue for search competitors to enter the market or increase distribution. In the absence of these agreements, rival browsers would have the ability to consider making other general search engines the preset default for some or all search access points, spurring greater competition in the general search services market and offering additional choices to consumers. As a Google employee once noted, Google’s browser agreements can be “a good way to keep [a browser] away from Bing.”

C. Google Is Positioning Itself to Control the Next Generation of Search Distribution Channels

160. Although mobile phones and computers account for the vast majority of general searches on the internet today, in the future, an increasing number of searches will likely be conducted on next generation devices such as smart watches, smart speakers, smart TVs, and connected automobiles. Google is positioning itself to control these emerging channels for search distribution, excluding new and established rivals.
161. As noted above, Google has interpreted its anti-forking agreements (AFAs and ACCs) with Android mobile partners to cover next generation devices. Additionally, Google uses other points of leverage in the mobile channel to discourage mobile partners from working with rival operating systems on next generation devices. The result is that Google is positioned to retain control over the operating systems that power next generation devices manufactured by mobile partners and to inhibit adoption of alternative search services on those devices.

162. Google also requires connected-device manufacturers that do not sell Android mobile phones to agree to restrictive contract terms that mirror the effects of the mobile distribution agreements. For instance, Google partners with automobile manufacturers on the condition that they not preinstall rival search-related apps. Google has similarly restrictive agreements with smart watch manufacturers: its agreements to license Google’s “free” smart watch operating system (Wear OS) prohibit manufacturers from preinstalling any third-party software, including any rival search services.

163. Additionally, Google refuses to license its Google Assistant to IoT device manufacturers that would host another voice assistant simultaneously—a feature commonly known as “concurrency.” Through concurrency, a rival voice assistant could grow in popularity to challenge Google for control over the way that consumers access the internet generally, even on more established devices such as mobile phones. Google recognizes that concurrency is a feature that consumers would value, but it sees too great a competitive risk from allowing consumers to decide which voice assistant to use on a case-by-case basis.

164. Finally, Google uses its control over hardware products—including smart speakers and Google Nest smart home products—to protect its general search monopoly. Google recognizes that its “[h]ardware products also have **HUGE** defensive value in virtual assistant
space AND combatting query erosion in core Search business.” Looking ahead to the future of search, Google sees that “Alexa and others may increasingly be a substitute for Search and browsers with additional sophistication and push into screen devices.”

165. Google therefore aims to control emerging search access points to protect its monopolies in the general search services, search advertising, and general search text advertising markets in the present and the future. Google is poised to ensure that history repeats itself, and that all search access points funnel users in one direction: toward Google.

VI. ANTICOMPETITIVE EFFECTS

166. Google has maintained unlawful monopolies in the general search services, search advertising, and general search text advertising markets through its many exclusionary agreements and other conduct that have separately and collectively harmed competition by:

a. Substantially foreclosing competition in general search services and protecting a large majority of search queries in the United States against any meaningful competition;

b. Excluding general search services rivals from effective distribution channels, thereby denying rivals the necessary scale to compete effectively in the general search services, search advertising, and general search text advertising markets;

c. Impeding other potential distribution paths for general search services rivals;

d. Increasing barriers to entry and excluding competition at emerging search access points from nascent competitors on both computers and mobile devices;
e. Stunting innovation in new products that could serve as alternative search access points or disruptors to the traditional Google search model; and

f. Insulating Google from significant competitive pressure to improve its general search, search advertising, and general search text advertising products and services.

167. By restricting competition in general search services, Google’s conduct has harmed consumers by reducing the quality of general search services (including dimensions such as privacy, data protection, and use of consumer data), lessening choice in general search services, and impeding innovation.

168. Google’s exclusionary conduct also substantially forecloses competition in the search advertising and general search text advertising markets, harming advertisers. By suppressing competition, Google has more power to manipulate the quantity of ad inventory and auction dynamics in ways that allow it to charge advertisers more than it could in a competitive market. Google can also reduce the quality of the services it provides to advertisers, including by restricting the information it offers to advertisers about their marketing campaigns.

169. Google’s conduct also has harmed competition by impeding the distribution of innovative apps that offer search features that would otherwise challenge Google. Google has also harmed competition by raising rivals’ costs and foreclosing them from effective distribution channels, such as distribution through voice assistant providers, preventing them from meaningfully challenging Google’s monopoly in general search services.

170. Google’s monopoly in general search services also has given the company extraordinary power as the gateway to the internet, which it uses to promote its own web content and increase its profits. Google originally prided itself as being the “turnstile” to the internet,
sending users off its results pages through organic links designed to connect the user with a third-party website that would best “answer” a user query. Over time, however, Google has pushed the organic links further and further down the results page and featured more search advertising results and Google’s own vertical or specialized search offerings. This, in turn, has demoted organic links of third-party verticals, pushing these links “below-the-fold” (i.e., on the portion of the SERP that is visible only if the user scrolls down) and requiring them to buy more search advertising from Google to remain relevant. This raises their costs, reduces their competitiveness, and limits their incentive and ability to invest in innovations that could be attractive to users. Not surprisingly, investors also report being unwilling to provide funding to vertical startups with business models similar to or potentially competitive with Google’s search advertising monopoly.

171. Absent Google’s exclusionary agreements and other conduct, dynamic competition for general search services would lead to higher quality search, increased consumer choice, and a more beneficial user experience. In addition, more competitive search advertising and general search text advertising markets would allow advertisers to purchase ads at more attractive terms, with better quality and service. Finally, the incentives and abilities for companies to develop and distribute innovative search products would be restored, resulting in more options, better products, and higher consumer welfare overall.

172. The anticompetitive effects flowing from Google’s distribution agreements, particularly when considered collectively, have allowed Google to develop and maintain monopolies in the markets for general search services, search advertising, and general search text advertising; these anticompetitive effects outweigh any benefits from those agreements, or those benefits could be accomplished by less restrictive means.
VII. VIOLATIONS ALLEGED

First Claim for Relief: Maintaining Monopoly of General Search Services in Violation of Sherman Act § 2

173. Plaintiffs incorporate the allegations of paragraphs 1 through 172 above.

174. General search services in the United States is a relevant antitrust market and Google has monopoly power in that market.

175. Google has willfully maintained and abused its monopoly power in general search services through anticompetitive and exclusionary distribution agreements that lock up the preset default positions for search access points on browsers, mobile devices, computers, and other devices; require preinstallation and prominent placement of Google’s apps; tie Google’s search access points to Google Play and Google APIs; and other restrictions that drive queries to Google at the expense of search rivals.

176. Google’s exclusionary conduct has foreclosed a substantial share of the general search services market.

177. Google’s anticompetitive acts have had harmful effects on competition and consumers.

178. The anticompetitive effects of Google’s exclusionary agreements outweigh any procompetitive benefits in this market, or can be achieved through less restrictive means.


Second Claim for Relief: Maintaining Monopoly of Search Advertising in Violation of Sherman Act § 2

180. Plaintiffs incorporate the allegations of paragraphs 1 through 172 above.

181. Search advertising in the United States is a relevant antitrust market and Google has monopoly power in that market.
182. Google has willfully maintained and abused its monopoly power in search advertising through anticompetitive and exclusionary distribution agreements that lock up the preset default positions for search access points on browsers, mobile devices, computers, and other devices; require preinstallation and prominent placement of Google’s apps; tie Google’s search access points to Google Play and Google APIs; and other restrictions that benefit Google at the expense of search advertising rivals.

183. Google’s exclusionary conduct has foreclosed a substantial share of the search advertising market.

184. Google’s anticompetitive acts have had harmful effects on competition, advertisers, and consumers.

185. The anticompetitive effects of Google’s exclusionary agreements outweigh any procompetitive benefits in this market, or can be achieved through less restrictive means.


Third Claim for Relief: Maintaining Monopoly of General Search Text Advertising in Violation of Sherman Act § 2

187. Plaintiffs incorporate the allegations of paragraphs 1 through 172 above.

188. General search text advertising in the United States is a relevant antitrust market, and Google has monopoly power in that market.

189. Google has willfully maintained and abused its monopoly power in general search text advertising through anticompetitive and exclusionary distribution agreements that lock up the preset default positions for search access points on browsers, mobile devices, computers, and other devices; require preinstallation and prominent placement of Google’s apps; tie Google’s
search access points to Google Play and Google APIs; and other restrictions that benefit Google at the expense of general search text advertising rivals.

190. Google’s exclusionary conduct has foreclosed a substantial share of the general search text advertising market.

191. Google’s anticompetitive acts have had harmful effects on competition, advertisers, and consumers.

192. The anticompetitive effects of Google’s exclusionary agreements outweigh any procompetitive benefits in this market, or can be achieved through less restrictive means.


VIII. REQUEST FOR RELIEF

194. To remedy these illegal acts, Plaintiffs request that the Court:

a. Adjudge and decree that Google acted unlawfully to maintain general search services, search advertising, and general search text advertising monopolies in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2;

b. Enter structural relief as needed to cure any anticompetitive harm;

c. Enjoin Google from continuing to engage in the anticompetitive practices described herein and from engaging in any other practices with the same purpose and effect as the challenged practices;

d. Enter any other preliminary or permanent relief necessary and appropriate to restore competitive conditions in the markets affected by Google’s unlawful conduct;

e. Enter any additional relief the Court finds just and proper; and
f. Award each Plaintiff an amount equal to its costs incurred in bringing this action on behalf of its citizens.
Respectfully submitted,

October 20, 2020

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Antitrust: Commission opens investigation into possible anti-competitive conduct of Amazon

Brussels, 17 July 2019

The European Commission has opened a formal antitrust investigation to assess whether Amazon’s use of sensitive data from independent retailers who sell on its marketplace is in breach of EU competition rules.

Commissioner Margrethe Vestager, in charge of competition policy, said: “European consumers are increasingly shopping online. E-commerce has boosted retail competition and brought more choice and better prices. We need to ensure that large online platforms don’t eliminate these benefits through anti-competitive behaviour. I have therefore decided to take a very close look at Amazon’s business practices and its dual role as marketplace and retailer, to assess its compliance with EU competition rules.”

Amazon has a dual role as a platform: (i) it sells products on its website as a retailer; and (ii) it provides a marketplace where independent sellers can sell products directly to consumers.

When providing a marketplace for independent sellers, Amazon continuously collects data about the activity on its platform. Based on the Commission's preliminary fact-finding, Amazon appears to use competitively sensitive information – about marketplace sellers, their products and transactions on the marketplace.

As part of its in-depth investigation the Commission will look into:

- the **standard agreements between Amazon and marketplace sellers**, which allow Amazon’s retail business to analyse and use third party seller data. In particular, the Commission will focus on whether and how the use of accumulated marketplace seller data by Amazon as a retailer affects competition.

- the role of data in the **selection of the winners of the “Buy Box”** and the impact of Amazon's potential use of competitively sensitive marketplace seller information on that selection. The “Buy Box” is displayed prominently on Amazon and allows customers to add items from a specific retailer directly into their shopping carts. Winning the “Buy Box” seems key for marketplace sellers as a vast majority of transactions are done through it.

If proven, the practices under investigation may breach EU competition rules on anticompetitive agreements between companies (Article 101 of the Treaty on the Functioning of the European Union (TFEU)) and/or on the abuse of a dominant position (Articles 102 TFEU).

The Commission will now carry out its in-depth investigation as a matter of priority. The opening of a formal investigation does not prejudge its outcome.

**Background**

Article 101 of the TFEU prohibits anticompetitive agreements and decisions of associations of undertakings that prevent, restrict or distort competition within the EU's Single Market. Article 102 of the TFEU prohibits the abuse of a dominant position. The implementation of these provisions is defined in the Antitrust Regulation (Council Regulation No 1/2003), which can also be applied by the national competition authorities.

Article 11(6) of the Antitrust Regulation provides that the opening of proceedings by the Commission relieves the competition authorities of the Member States of their competence to apply EU competition rules to the practices concerned. Article 16(1) further provides that national courts must avoid adopting decisions that would conflict with a decision contemplated by the Commission in proceedings it has initiated.

The Commission has informed Amazon and the competition authorities of the Member States that it has opened proceedings in this case.
There is no legal deadline for bringing an antitrust investigation to an end. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertakings concerned cooperate with the Commission and the exercise of the rights of defence.

More information on the investigation will be available on the Commission's competition website, in the public case register under case number AT.40462.

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Antitrust: Commission sends Statement of Objections to Amazon for the use of non-public independent seller data and opens second investigation into its e-commerce business practices

Brussels, 10 November 2020

The European Commission has informed Amazon of its preliminary view that it has breached EU antitrust rules by distorting competition in online retail markets. The Commission takes issue with Amazon systematically relying on non-public business data of independent sellers who sell on its marketplace, to the benefit of Amazon's own retail business, which directly competes with those third party sellers.

The Commission also opened a second formal antitrust investigation into the possible preferential treatment of Amazon's own retail offers and those of marketplace sellers that use Amazon's logistics and delivery services.

Executive Vice-President Margrethe Vestager, in charge of competition policy, said: “We must ensure that dual role platforms with market power, such as Amazon, do not distort competition. Data on the activity of third party sellers should not be used to the benefit of Amazon when it acts as a competitor to these sellers. The conditions of competition on the Amazon platform must also be fair. Its rules should not artificially favour Amazon’s own retail offers or advantage the offers of retailers using Amazon’s logistics and delivery services. With e-commerce booming, and Amazon being the leading e-commerce platform, a fair and undistorted access to consumers online is important for all sellers.”

Statement of Objections on Amazon's use of marketplace seller data

Amazon has a dual role as a platform: (i) it provides a marketplace where independent sellers can sell products directly to consumers; and (ii) it sells products as a retailer on the same marketplace, in competition with those sellers.

As a marketplace service provider, Amazon has access to non-public business data of third party sellers such as the number of ordered and shipped units of products, the sellers' revenues on the marketplace, the number of visits to sellers' offers, data relating to shipping, to sellers' past performance, and other consumer claims on products, including the activated guarantees.

The Commission's preliminary findings show that very large quantities of non-public seller data are available to employees of Amazon's retail business and flow directly into the automated systems of that business, which aggregate these data and use them to calibrate Amazon's retail offers and strategic business decisions to the detriment of the other marketplace sellers. For example, it allows Amazon to focus its offers in the best-selling products across product categories and to adjust its offers in view of non-public data of competing sellers.

The Commission's preliminary view, outlined in its Statement of Objections, is that the use of non-public marketplace seller data allows Amazon to avoid the normal risks of retail competition and to leverage its dominance in the market for the provision of marketplace services in France and Germany- the biggest markets for Amazon in the EU. If confirmed, this would infringe Article 102 of the Treaty on the Functioning of the European Union (TFEU) that prohibits the abuse of a dominant market position.

The sending of a Statement of Objections does not prejudge the outcome of an investigation.

Investigation into Amazon practices regarding its “Buy Box” and Prime label

In addition, the Commission opened a second antitrust investigation into Amazon’s business practices that might artificially favour its own retail offers and offers of marketplace sellers that use Amazon's logistics and delivery services (the so-called “fulfilment by Amazon or FBA sellers”).
In particular, the Commission will investigate whether the criteria that Amazon sets to select the winner of the “Buy Box” and to enable sellers to offer products to Prime users, under Amazon’s Prime loyalty programme, lead to preferential treatment of Amazon’s retail business or of the sellers that use Amazon’s logistics and delivery services.

The “Buy Box” is displayed prominently on Amazon’s websites and allows customers to add items from a specific retailer directly into their shopping carts. Winning the “Buy Box” (i.e., being chosen as the offer that features in this box) is crucial to marketplace sellers as the Buy Box prominently shows the offer of one single seller for a chosen product on Amazon’s marketplaces, and generates the vast majority of all sales. The other aspect of the investigation focuses on the possibility for marketplace sellers to effectively reach Prime users. Reaching these consumers is important to sellers because the number of Prime users is continuously growing and because they tend to generate more sales on Amazon’s marketplaces than non-Prime users.

If proven, the practice under investigation may breach Article 102 of the Treaty on the Functioning of the European Union (TFEU) that prohibits the abuse of a dominant market position.

The Commission will now carry out its in-depth investigation as a matter of priority. The opening of a formal investigation does not prejudge its outcome.

Background and procedure

Article 102 of the TFEU prohibits the abuse of a dominant position. The implementation of these provisions is defined in the Antitrust Regulation (Council Regulation No 1/2003), which can also be applied by the national competition authorities.

The Commission opened the in-depth investigation into Amazon’s use of marketplace seller data on 17 July 2019.

A Statement of Objections is a formal step in Commission investigations into suspected violations of EU antitrust rules. The Commission informs the parties concerned in writing of the objections raised against them. The addressees can examine the documents in the Commission’s investigation file, reply in writing and request an oral hearing to present their comments on the case before representatives of the Commission and national competition authorities. Sending a Statement of Objections and opening of a formal antitrust investigation does not prejudge the outcome of the investigations.

More information on the investigation is available on the Commission’s competition website, in the public case register under case number AT.40462.

The Commission has informed Amazon and the competition authorities of the Member States that it has opened a second in-depth investigation into Amazon’s business practices.

This investigation will cover the European Economic Area, with the exception of Italy. The Italian Competition Authority started to investigate partially similar concerns last year, with a particular focus on the Italian market. The Commission will continue the close cooperation with the Italian Competition Authority throughout the investigation.

More information on the investigation will be available on the Commission’s competition website, in the public case register under case number AT.40703.

There is no legal deadlines for bringing an antitrust investigation to an end. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertakings concerned cooperate with the Commission and the exercise of the rights of defence.

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Antitrust: Commission accepts commitments by Amazon barring it from using marketplace seller data, and ensuring equal access to Buy Box and Prime

Brussels, 20 December 2022

The European Commission has made commitments offered by Amazon legally binding under EU antitrust rules. Amazon's commitments address the Commission's competition concerns over Amazon's use of non-public marketplace seller data and over a possible bias in granting to sellers access to its Buy Box and its Prime programme.

The Commission's concerns

In July 2019, the Commission opened a formal investigation into Amazon's use of non-public data of its marketplace sellers. On 10 November 2020, the Commission adopted a Statement of Objections in which it preliminarily found Amazon dominant on the French and German markets, for the provision of online marketplace services to third-party sellers. It also found that that Amazon's reliance on marketplace sellers' non-public business data to calibrate its retail decisions, distorted fair competition on its platform and prevented effective competition.

In parallel, on 10 November 2020, the Commission opened a second investigation to assess whether the criteria that Amazon sets to select the winner of the Buy Box and to enable sellers to offer products under its Prime Programme, lead to preferential treatment of Amazon's retail business or of the sellers that use Amazon's logistics and delivery services.

In the second investigation, the Commission preliminarily concluded that Amazon abused its dominance on the French, German and Spanish markets for the provision of online marketplace services to third-party sellers.

It also preliminarily concluded that Amazon's rules and criteria for the Buy Box and Prime unduly favour its own retail business, as well as marketplace sellers that use Amazon's logistics and delivery services.

The commitments

To address the Commission's competition concerns in relation to both investigations, Amazon initially offered the following commitments:

- To address the data use concern, Amazon proposed to commit:
  - not to use non-public data relating to, or derived from, the independent sellers' activities on its marketplace, for its retail business. This applies to both Amazon's automated tools and employees that could cross-use the data from Amazon Marketplace, for retail decisions;
  - not to use such data for the purposes of selling branded goods as well as its private label products.

- To address the Buy Box concern, Amazon proposed to commit to:
  - treat all sellers equally when ranking the offers for the purposes of the selection of the Buy Box winner;
  - display a second competing offer to the Buy Box winner if there is a second offer from a different seller that is sufficiently differentiated from the first one on price and/or delivery. Both offers will display the same descriptive information and provide the same purchasing experience.

- To address the Prime concerns Amazon proposed to commit to:
  - set non-discriminatory conditions and criteria for the qualification of marketplace sellers and offers to Prime;
  - allow Prime sellers to freely choose any carrier for their logistics and delivery services and
negotiate terms directly with the carrier of their choice;
- not use any information obtained through Prime about the terms and performance of third-party carriers, for its own logistics services.

Between 14 July 2022 and 9 September 2022, the Commission market tested Amazon’s commitments and consulted all interested third parties to verify whether they would remove its competition concerns. In light of the outcome of this market test, Amazon amended the initial proposal and committed to:

- **Improve the presentation** of the second competing Buy Box offer by making it more prominent and to include a **review mechanism** in case the presentation is not attracting adequate consumer attention;
- **Increase the transparency** and early information flows to sellers and carriers about the commitments and their newly acquired rights, enabling, amongst others, early switching of sellers to independent carriers;
- Lay out the means for **independent carriers to directly contact their Amazon customers**, in line with data-protection rules, enabling them to provide equivalent delivery services to those offered by Amazon;
- **Improve carrier data protection** from use by Amazon’s competing logistics services, in particular concerning cargo profile information;
- **Increase the powers** of the **monitoring trustee** by introducing further notification obligations;
- Introduce a **centralised complaint mechanism**, open to all sellers and carriers in case of suspected non-compliance with the commitments.
- **Increase to seven years**, instead of the initially proposed five years, the **duration** of the commitments relating to Prime and the second competing Buy Box offer.

The Commission found that Amazon’s final commitments will ensure that Amazon does not use marketplace seller data for its own retail operations and that it grants non-discriminatory access to Buy Box and Prime. The Commission decided to make them legally binding on Amazon.

The offered commitments cover all Amazon's current and future marketplaces in the European Economic Area. They exclude Italy for the commitments relating to the Buy Box and Prime in view of the decision of 30 November 2021 of the Italian competition authority imposing remedies on Amazon with regard to the Italian market.

The final commitments will remain in force for seven years in relation to Prime and the display of the second competing Buy Box offer, and five years for the remaining parts of the commitments. Under supervision of the Commission, an independent trustee will be in charge of monitoring the implementation and compliance with the commitments.

If Amazon were to breach the commitments, the Commission could impose a fine of up to 10% of Amazon's total annual turnover, without having to find an infringement of EU antitrust rules or a periodic penalty payment of 5% per day of Amazon's daily turnover for every day of non-compliance.
Background

Amazon has a dual role as a platform. It runs a marketplace where independent sellers can sell products directly to consumers and at the same time, it sells products on its platform as a retailer, in competition with those independent sellers. As a result of this dual position, Amazon has access to large data sets about the independent sellers' activities on its platform, including non-public business data.

Amazon's **Buy Box**, prominently displays the offer of one single seller and allows products to be swiftly purchased by directly clicking on a buy button. Amazon's **Prime programme**, offers premium services to customers for a fee and allows independent sellers to sell to Prime customers under certain conditions.

**Article 102** of the Treaty on the Functioning of the European Union prohibits the abuse of a dominant position that may affect trade within the EU and prevent or restrict competition. The implementation of this provision is defined in the EU Antitrust Regulation (**Regulation No 1/2003**), which can also be applied by the national competition authorities.

Article 9 (1) of the EU Antitrust Regulation (**Regulation 1/2003**) allows the Commission to conclude antitrust proceedings by accepting commitments offered by a company. Such a decision does not reach a conclusion as to whether there is an infringement of EU antitrust rules but legally binds the company to respect the commitments. A policy brief on commitment decisions under Article 9 is available [here](#).

More information, including the full text of today's Article 9 Commission decision and the full version of the commitments will be available on the Commission's competition website in the public case register under the case numbers **AT.40462** and **AT.40703**.

### Quotes:

Today's decision sets new rules for how Amazon operates its business in Europe. Amazon can no longer abuse its dual role and will have to change several business practices. They cover the use of data, the selection of sellers in the Buy Box and the conditions of access to the Amazon Prime Programme. Competing independent retailers and carriers as well as consumers will benefit from these changes opening up new opportunities and choice.

Margrethe Vestager, Executive Vice-President in charge of competition policy - 20/12/2022

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REGULATIONS

REGULATION (EU) 2022/1925 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 14 September 2022
on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee (1),

Having regard to the opinion of the Committee of the Regions (2),

Acting in accordance with the ordinary legislative procedure (3),

Whereas:

(1) Digital services in general and online platforms in particular play an increasingly important role in the economy, in particular in the internal market, by enabling businesses to reach users throughout the Union, by facilitating cross-border trade and by opening entirely new business opportunities to a large number of companies in the Union to the benefit of consumers in the Union.

(2) At the same time, among those digital services, core platform services feature a number of characteristics that can be exploited by the undertakings providing them. An example of such characteristics of core platform services is extreme scale economies, which often result from nearly zero marginal costs to add business users or end users. Other such characteristics of core platform services are very strong network effects, an ability to connect many business users with many end users through the multisidedness of these services, a significant degree of dependence

(1) OJ C 286, 16.7.2021, p. 64.
HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying down harmonised rules ensuring for all businesses, contestable and fair markets in the digital sector across the Union where gatekeepers are present, to the benefit of business users and end users.

2. This Regulation shall apply to core platform services provided or offered by gatekeepers to business users established in the Union or end users established or located in the Union, irrespective of the place of establishment or residence of the gatekeepers and irrespective of the law otherwise applicable to the provision of service.

3. This Regulation shall not apply to markets related to:

(a) electronic communications networks as defined in Article 2, point (1), of Directive (EU) 2018/1972;

(b) electronic communications services as defined in Article 2, point (4), of Directive (EU) 2018/1972, other than those related to number-independent interpersonal communications services.

4. With regard to interpersonal communications services as defined in Article 2, point (5) of Directive (EU) 2018/1972, this Regulation is without prejudice to the powers and responsibilities granted to the national regulatory and other competent authorities by virtue of Article 61 of that Directive.

5. In order to avoid the fragmentation of the internal market, Member States shall not impose further obligations on gatekeepers by way of laws, regulations or administrative measures for the purpose of ensuring contestable and fair markets. Nothing in this Regulation precludes Member States from imposing obligations on undertakings, including undertakings providing core platform services, for matters falling outside the scope of this Regulation, provided that those obligations are compatible with Union law and do not result from the fact that the relevant undertakings have the status of a gatekeeper within the meaning of this Regulation.

6. This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of:

(a) national competition rules prohibiting anti-competitive agreements, decisions by associations of undertakings, concerted practices and abuses of dominant positions;

(b) national competition rules prohibiting other forms of unilateral conduct insofar as they are applied to undertakings other than gatekeepers or amount to the imposition of further obligations on gatekeepers; and

(c) Council Regulation (EC) No 139/2004 (23) and national rules concerning merger control.

7. National authorities shall not take decisions which run counter to a decision adopted by the Commission under this Regulation. The Commission and Member States shall work in close cooperation and coordinate their enforcement actions on the basis of the principles established in Articles 37 and 38.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) ‘gatekeeper’ means an undertaking providing core platform services, designated pursuant to Article 3;

(2) ‘core platform service’ means any of the following:
   (a) online intermediation services;
   (b) online search engines;
   (c) online social networking services;
   (d) video-sharing platform services;
   (e) number-independent interpersonal communications services;
   (f) operating systems;
   (g) web browsers;
   (h) virtual assistants;
   (i) cloud computing services;
   (j) online advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by an undertaking that provides any of the core platform services listed in points (a) to (i);

(3) ‘information society service’ means any service as defined in Article 1(1), point (b), of Directive (EU) 2015/1535;

(4) ‘digital sector’ means the sector of products and services provided by means of, or through, information society services;

(5) ‘online intermediation services’ means online intermediation services as defined in Article 2, point (2), of Regulation (EU) 2019/1150;

(6) ‘online search engine’ means an online search engine as defined in Article 2, point (5), of Regulation (EU) 2019/1150;

(7) ‘online social networking service’ means a platform that enables end users to connect and communicate with each other, share content and discover other users and content across multiple devices and, in particular, via chats, posts, videos and recommendations;

(8) ‘video-sharing platform service’ means a video-sharing platform service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;

(9) ‘number-independent interpersonal communications service’ means a number-independent interpersonal communications service as defined in Article 2, point (7), of Directive (EU) 2018/1972;

(10) ‘operating system’ means a system software that controls the basic functions of the hardware or software and enables software applications to run on it;

(11) ‘web browser’ means a software application that enables end users to access and interact with web content hosted on servers that are connected to networks such as the Internet, including standalone web browsers as well as web browsers integrated or embedded in software or similar;
(12) ‘virtual assistant’ means a software that can process demands, tasks or questions, including those based on audio, visual, written input, gestures or motions, and that, based on those demands, tasks or questions, provides access to other services or controls connected physical devices;

(13) ‘cloud computing service’ means a cloud computing service as defined in Article 4, point (19), of Directive (EU) 2016/1148 of the European Parliament and of the Council (24);

(14) ‘software application stores’ means a type of online intermediation services, which is focused on software applications as the intermediated product or service;

(15) ‘software application’ means any digital product or service that runs on an operating system;

(16) ‘payment service’ means a payment service as defined in Article 4, point (3) of Directive (EU) 2015/2366;

(17) ‘technical service supporting payment service’ means a service within the meaning of Article 3, point (j), of Directive (EU) 2015/2366;

(18) ‘payment system for in-app purchases’ means a software application, service or user interface which facilitates purchases of digital content or digital services within a software application, including content, subscriptions, features or functionality, and the payments for such purchases;

(19) ‘identification service’ means a type of service provided together with or in support of core platform services that enables any type of verification of the identity of end users or business users, regardless of the technology used;

(20) ‘end user’ means any natural or legal person using core platform services other than as a business user;

(21) ‘business user’ means any natural or legal person acting in a commercial or professional capacity using core platform services for the purpose of or in the course of providing goods or services to end users;

(22) ‘ranking’ means the relative prominence given to goods or services offered through online intermediation services, online social networking services, video-sharing platform services or virtual assistants, or the relevance given to search results by online search engines, as presented, organised or communicated by the undertakings providing online intermediation services, online social networking services, video-sharing platform services, virtual assistants or online search engines, irrespective of the technological means used for such presentation, organisation or communication and irrespective of whether only one result is presented or communicated;

(23) ‘search results’ means any information in any format, including textual, graphic, vocal or other outputs, returned in response to, and related to, a search query, irrespective of whether the information returned is a paid or an unpaid result, a direct answer or any product, service or information offered in connection with the organic results, or displayed along with or partly or entirely embedded in them;

(24) ‘data’ means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audiovisual recording;

(25) ‘personal data’ means personal data as defined in Article 4, point (1), of Regulation (EU) 2016/679;

(26) ‘non-personal data’ means data other than personal data;

(27) ‘undertaking’ means an entity engaged in an economic activity, regardless of its legal status and the way in which it is financed, including all linked enterprises or connected undertakings that form a group through the direct or indirect control of an enterprise or undertaking by another;

(28) ‘control’ means the possibility of exercising decisive influence on an undertaking, within the meaning of Article 3(2) of Regulation (EC) No 139/2004;

(29) ‘interoperability’ means the ability to exchange information and mutually use the information which has been exchanged through interfaces or other solutions, so that all elements of hardware or software work with other hardware and software and with users in all the ways in which they are intended to function;

(30) ‘turnover’ means the amount derived by an undertaking within the meaning of Article 5(1) of Regulation (EC) No 139/2004;

(31) ‘profiling’ means profiling as defined in Article 4, point (4), of Regulation (EU) 2016/679;

(32) ‘consent’ means consent as defined in Article 4, point (11), of Regulation (EU) 2016/679;

(33) ‘national court’ means a court or tribunal of a Member State within the meaning of Article 267 TFEU.

CHAPTER II

GATEKEEPERS

Article 3

Designation of gatekeepers

1. An undertaking shall be designated as a gatekeeper if:

(a) it has a significant impact on the internal market;

(b) it provides a core platform service which is an important gateway for business users to reach end users; and

(c) it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future.

2. An undertaking shall be presumed to satisfy the respective requirements in paragraph 1:

(a) as regards paragraph 1, point (a), where it achieves an annual Union turnover equal to or above EUR 7,5 billion in each of the last three financial years, or where its average market capitalisation or its equivalent fair market value amounted to at least EUR 75 billion in the last financial year, and it provides the same core platform service in at least three Member States;

(b) as regards paragraph 1, point (b), where it provides a core platform service that in the last financial year has at least 45 million monthly active end users established or located in the Union and at least 10 000 yearly active business users established in the Union, identified and calculated in accordance with the methodology and indicators set out in the Annex;

(c) as regards paragraph 1, point (c), where the thresholds in point (b) of this paragraph were met in each of the last three financial years.

3. Where an undertaking providing core platform services meets all of the thresholds in paragraph 2, it shall notify the Commission thereof without delay and in any event within 2 months after those thresholds are met and provide it with the relevant information identified in paragraph 2. That notification shall include the relevant information identified in paragraph 2 for each of the core platform services of the undertaking that meets the thresholds in paragraph 2, point (b). Whenever a further core platform service provided by the undertaking that has previously been designated as a gatekeeper meets the thresholds in paragraph 2, points (b) and (c), such undertaking shall notify the Commission thereof within 2 months after those thresholds are satisfied.
Where the undertaking providing the core platform service fails to notify the Commission pursuant to the first subparagraph of this paragraph and fails to provide within the deadline set by the Commission in the request for information pursuant to Article 21 all the relevant information that is required for the Commission to designate the undertaking concerned as gatekeeper pursuant to paragraph 4 of this Article, the Commission shall still be entitled to designate that undertaking as a gatekeeper, based on information available to the Commission.

Where the undertaking providing core platform services complies with the request for information pursuant to the second subparagraph of this paragraph or where the information is provided after the expiration of the deadline referred to in that subparagraph, the Commission shall apply the procedure set out in paragraph 4.

4. The Commission shall designate as a gatekeeper, without undue delay and at the latest within 45 working days after receiving the complete information referred to in paragraph 3, an undertaking providing core platform services that meets all the thresholds in paragraph 2.

5. The undertaking providing core platform services may present, with its notification, sufficiently substantiated arguments to demonstrate that, exceptionally, although it meets all the thresholds in paragraph 2, due to the circumstances in which the relevant core platform service operates, it does not satisfy the requirements listed in paragraph 1.

Where the Commission considers that the arguments submitted pursuant to the first subparagraph by the undertaking providing core platform services are not sufficiently substantiated because they do not manifestly call into question the presumptions set out in paragraph 2 of this Article, it may reject those arguments within the time limit referred to in paragraph 4, without applying the procedure laid down in Article 17(3).

Where the undertaking providing core platform services does present such sufficiently substantiated arguments manifestly calling into question the presumptions in paragraph 2 of this Article, the Commission may, notwithstanding the first subparagraph of this paragraph, within the time limit referred to in paragraph 4 of this Article, open the procedure laid down in Article 17(3).

If the Commission concludes that the undertaking providing core platform services was not able to demonstrate that the relevant core platform services that it provides do not satisfy the requirements of paragraph 1 of this Article, it shall designate that undertaking as a gatekeeper in accordance with the procedure laid down in Article 17(3).

6. The Commission is empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation by specifying the methodology for determining whether the quantitative thresholds laid down in paragraph 2 of this Article are met, and to regularly adjust that methodology to market and technological developments, where necessary.

7. The Commission is empowered to adopt delegated acts in accordance with Article 49 to amend this Regulation by updating the methodology and the list of indicators set out in the Annex.

8. The Commission shall designate as a gatekeeper, in accordance with the procedure laid down in Article 17, any undertaking providing core platform services that meets each of the requirements of paragraph 1 of this Article, but does not satisfy each of the thresholds in paragraph 2 of this Article.

For that purpose, the Commission shall take into account some or all of the following elements, insofar as they are relevant for the undertaking providing core platform services under consideration:

(a) the size, including turnover and market capitalisation, operations and position of that undertaking;

(b) the number of business users using the core platform service to reach end users and the number of end users;
(c) network effects and data driven advantages, in particular in relation to that undertaking's access to, and collection of, personal data and non-personal data or analytics capabilities;

(d) any scale and scope effects from which the undertaking benefits, including with regard to data, and, where relevant, to its activities outside the Union;

(e) business user or end user lock-in, including switching costs and behavioural bias reducing the ability of business users and end users to switch or multi-home;

(f) a conglomerate corporate structure or vertical integration of that undertaking, for instance enabling that undertaking to cross subsidise, to combine data from different sources or to leverage its position; or

(g) other structural business or service characteristics.

In carrying out its assessment under this paragraph, the Commission shall take into account foreseeable developments in relation to the elements listed in the second subparagraph, including any planned concentrations involving another undertaking providing core platform services or providing any other services in the digital sector or enabling the collection of data.

Where an undertaking providing a core platform service that does not satisfy the quantitative thresholds of paragraph 2 fails to comply with the investigative measures ordered by the Commission in a significant manner, and that failure persists after that undertaking has been invited to comply within a reasonable time limit and to submit observations, the Commission may designate that undertaking as a gatekeeper on the basis of the facts available to the Commission.

9. For each undertaking designated as a gatekeeper pursuant to paragraph 4 or 8, the Commission shall list in the designation decision the relevant core platform services that are provided within that undertaking and which individually are an important gateway for business users to reach end users as referred to in paragraph 1, point (b).

10. The gatekeeper shall comply with the obligations laid down in Articles 5, 6 and 7 within 6 months after a core platform service has been listed in the designation decision pursuant to paragraph 9 of this Article.

Article 4

Review of the status of gatekeeper

1. The Commission may, upon request or on its own initiative, reconsider, amend or repeal at any moment a designation decision adopted pursuant to Article 3 for one of the following reasons:

(a) there has been a substantial change in any of the facts on which the designation decision was based;

(b) the designation decision was based on incomplete, incorrect or misleading information.

2. The Commission shall regularly, and at least every 3 years, review whether the gatekeepers continue to satisfy the requirements laid down in Article 3(1). That review shall also examine whether the list of core platform services of the gatekeeper which are individually an important gateway for business users to reach end users, as referred to in Article 3(1), point (b), needs to be amended. Those reviews shall have no suspending effect on the gatekeeper's obligations.

The Commission shall also examine at least every year whether new undertakings providing core platform services satisfy those requirements.
Where the Commission, on the basis of the reviews pursuant to the first subparagraph, finds that the facts on which the designation of the undertakings providing core platform services as gatekeepers was based, have changed, it shall adopt a decision confirming, amending or repealing the designation decision.

3. The Commission shall publish and update a list of gatekeepers and the list of the core platform services for which they need to comply with the obligations laid down in Chapter III on an on-going basis.

CHAPTER III

PRACTICES OF GATEKEEPERS THAT LIMIT CONTESTABILITY OR ARE UNFAIR

Article 5

Obligations for gatekeepers

1. The gatekeeper shall comply with all obligations set out in this Article with respect to each of its core platform services listed in the designation decision pursuant to Article 3(9).

2. The gatekeeper shall not do any of the following:

   (a) process, for the purpose of providing online advertising services, personal data of end users using services of third parties that make use of core platform services of the gatekeeper;

   (b) combine personal data from the relevant core platform service with personal data from any further core platform services or from any other services provided by the gatekeeper or with personal data from third-party services;

   (c) cross-use personal data from the relevant core platform service in other services provided separately by the gatekeeper, including other core platform services, and vice versa; and

   (d) sign in end users to other services of the gatekeeper in order to combine personal data,

unless the end user has been presented with the specific choice and has given consent within the meaning of Article 4, point (11), and Article 7 of Regulation (EU) 2016/679.

Where the consent given for the purposes of the first subparagraph has been refused or withdrawn by the end user, the gatekeeper shall not repeat its request for consent for the same purpose more than once within a period of one year.

This paragraph is without prejudice to the possibility for the gatekeeper to rely on Article 6(1), points (c), (d) and (e) of Regulation (EU) 2016/679, where applicable.

3. The gatekeeper shall not prevent business users from offering the same products or services to end users through third-party online intermediation services or through their own direct online sales channel at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper.

4. The gatekeeper shall allow business users, free of charge, to communicate and promote offers, including under different conditions, to end users acquired via its core platform service or through other channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the core platform services of the gatekeeper.

5. The gatekeeper shall allow end users to access and use, through its core platform services, content, subscriptions, features or other items, by using the software application of a business user, including where those end users acquired such items from the relevant business user without using the core platform services of the gatekeeper.
6. The gatekeeper shall not directly or indirectly prevent or restrict business users or end users from raising any issue of non-compliance with the relevant Union or national law by the gatekeeper with any relevant public authority, including national courts, related to any practice of the gatekeeper. This is without prejudice to the right of business users and gatekeepers to lay down in their agreements the terms of use of lawful complaints-handling mechanisms.

7. The gatekeeper shall not require end users to use, or business users to use, to offer, or to interoperate with, an identification service, a web browser engine or a payment service, or technical services that support the provision of payment services, such as payment systems for in-app purchases, of that gatekeeper in the context of services provided by the business users using that gatekeeper's core platform services.

8. The gatekeeper shall not require business users or end users to subscribe to, or register with, any further core platform services listed in the designation decision pursuant to Article 3(9) or which meet the thresholds in Article 3(2), point (b), as a condition for being able to use, access, sign up for or registering with any of that gatekeeper's core platform services listed pursuant to that Article.

9. The gatekeeper shall provide each advertiser to which it supplies online advertising services, or third parties authorised by advertisers, upon the advertiser's request, with information on a daily basis free of charge, concerning each advertisement placed by the advertiser, regarding:

   (a) the price and fees paid by that advertiser, including any deductions and surcharges, for each of the relevant online advertising services provided by the gatekeeper,

   (b) the remuneration received by the publisher, including any deductions and surcharges, subject to the publisher's consent; and

   (c) the metrics on which each of the prices, fees and remunerations are calculated.

In the event that a publisher does not consent to the sharing of information regarding the remuneration received, as referred to in point (b) of the first subparagraph, the gatekeeper shall provide each advertiser free of charge with information concerning the daily average remuneration received by that publisher, including any deductions and surcharges, for the relevant advertisements.

10. The gatekeeper shall provide each publisher to which it supplies online advertising services, or third parties authorised by publishers, upon the publisher's request, with free of charge information on a daily basis, concerning each advertisement displayed on the publisher's inventory, regarding:

   (a) the remuneration received and the fees paid by that publisher, including any deductions and surcharges, for each of the relevant online advertising services provided by the gatekeeper;

   (b) the price paid by the advertiser, including any deductions and surcharges, subject to the advertiser's consent; and

   (c) the metrics on which each of the prices and remunerations are calculated.

In the event an advertiser does not consent to the sharing of information, the gatekeeper shall provide each publisher free of charge with information concerning the daily average price paid by that advertiser, including any deductions and surcharges, for the relevant advertisements.

Article 6

Obligations for gatekeepers susceptible of being further specified under Article 8

1. The Gatekeeper shall comply with all obligations set out in this Article with respect to each of its core platform services listed in the designation decision pursuant to Article 3(9).
2. The gatekeeper shall not use, in competition with business users, any data that is not publicly available that is generated or provided by those business users in the context of their use of the relevant core platform services or of the services provided together with, or in support of, the relevant core platform services, including data generated or provided by the customers of those business users.

For the purposes of the first subparagraph, the data that is not publicly available shall include any aggregated and non-aggregated data generated by business users that can be inferred from, or collected through, the commercial activities of business users or their customers, including click, search, view and voice data, on the relevant core platform services or on services provided together with, or in support of, the relevant core platform services of the gatekeeper.

3. The gatekeeper shall allow and technically enable end users to easily un-install any software applications on the operating system of the gatekeeper, without prejudice to the possibility for that gatekeeper to restrict such un-installation in relation to software applications that are essential for the functioning of the operating system or of the device and which cannot technically be offered on a standalone basis by third parties.

The gatekeeper shall allow and technically enable end users to easily change default settings on the operating system, virtual assistant and web browser of the gatekeeper that direct or steer end users to products or services provided by the gatekeeper. That includes prompting end users, at the moment of the end users’ first use of an online search engine, virtual assistant or web browser of the gatekeeper listed in the designation decision pursuant to Article 3(9), to choose, from a list of the main available service providers, the online search engine, virtual assistant or web browser to which the operating system of the gatekeeper directs or steers users by default, and the online search engine to which the virtual assistant and the web browser of the gatekeeper directs or steers users by default.

4. The gatekeeper shall allow and technically enable the installation and effective use of third-party software applications or software application stores using, or interoperating with, its operating system and allow those software applications or software application stores to be accessed by means other than the relevant core platform services of that gatekeeper. The gatekeeper shall, where applicable, not prevent the downloaded third-party software applications or software application stores from prompting end users to decide whether they want to set that downloaded software application or software application store as their default. The gatekeeper shall technically enable end users who decide to set that downloaded software application or software application store as their default to carry out that change easily.

The gatekeeper shall not be prevented from taking, to the extent that they are strictly necessary and proportionate, measures to ensure that third-party software applications or software application stores do not endanger the integrity of the hardware or operating system provided by the gatekeeper, provided that such measures are duly justified by the gatekeeper.

Furthermore, the gatekeeper shall not be prevented from applying, to the extent that they are strictly necessary and proportionate, measures and settings other than default settings, enabling end users to effectively protect security in relation to third-party software applications or software application stores, provided that such measures and settings other than default settings are duly justified by the gatekeeper.

5. The gatekeeper shall not treat more favourably, in ranking and related indexing and crawling, services and products offered by the gatekeeper itself than similar services or products of a third party. The gatekeeper shall apply transparent, fair and non-discriminatory conditions to such ranking.

6. The gatekeeper shall not restrict technically or otherwise the ability of end users to switch between, and subscribe to, different software applications and services that are accessed using the core platform services of the gatekeeper, including as regards the choice of Internet access services for end users.
7. The gatekeeper shall allow providers of services and providers of hardware, free of charge, effective interoperability with, and access for the purposes of interoperability to, the same hardware and software features accessed or controlled via the operating system or virtual assistant listed in the designation decision pursuant to Article 3(9) as are available to services or hardware provided by the gatekeeper. Furthermore, the gatekeeper shall allow business users and alternative providers of services provided together with, or in support of, core platform services, free of charge, effective interoperability with, and access for the purposes of interoperability to, the same operating system, hardware or software features, regardless of whether those features are part of the operating system, as are available to, or used by, that gatekeeper when providing such services.

The gatekeeper shall not be prevented from taking strictly necessary and proportionate measures to ensure that interoperability does not compromise the integrity of the operating system, virtual assistant, hardware or software features provided by the gatekeeper, provided that such measures are duly justified by the gatekeeper.

8. The gatekeeper shall provide advertisers and publishers, as well as third parties authorised by advertisers and publishers, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the data necessary for advertisers and publishers to carry out their own independent verification of the advertisements inventory, including aggregated and non-aggregated data. Such data shall be provided in a manner that enables advertisers and publishers to run their own verification and measurement tools to assess the performance of the core platform services provided for by the gatekeepers.

9. The gatekeeper shall provide end users and third parties authorised by an end user, at their request and free of charge, with effective portability of data provided by the end user or generated through the activity of the end user in the context of the use of the relevant core platform service, including by providing, free of charge, tools to facilitate the effective exercise of such data portability, and including by the provision of continuous and real-time access to such data.

10. The gatekeeper shall provide business users and third parties authorised by a business user, at their request, free of charge, with effective, high-quality, continuous and real-time access to, and use of, aggregated and non-aggregated data, including personal data, that is provided for or generated in the context of the use of the relevant core platform services or services provided together with, or in support of, the relevant core platform services by those business users and the end users engaging with the products or services provided by those business users. With regard to personal data, the gatekeeper shall provide for such access to, and use of, personal data only where the data are directly connected with the use effectuated by the end users in respect of the products or services offered by the relevant business user through the relevant core platform service, and when the end users opt in to such sharing by giving their consent.

11. The gatekeeper shall provide to any third-party undertaking providing online search engines, at its request, with access on fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on its online search engines. Any such query, click and view data that constitutes personal data shall be anonymised.

12. The gatekeeper shall apply fair, reasonable, and non-discriminatory general conditions of access for business users to its software application stores, online search engines and online social networking services listed in the designation decision pursuant to Article 3(9).

For that purpose, the gatekeeper shall publish general conditions of access, including an alternative dispute settlement mechanism.

The Commission shall assess whether the published general conditions of access comply with this paragraph.

13. The gatekeeper shall not have general conditions for terminating the provision of a core platform service that are disproportionate. The gatekeeper shall ensure that the conditions of termination can be exercised without undue difficulty.