

## Assessing Potential Ad Tech Remedies Ahead Of Google Trial

By **Lauren Weinstein and Zakary Kadish** (September 18, 2025, 5:16 PM EDT)

This April, U.S. District Judge Leonie Brinkema of the U.S. District Court for the Eastern District of Virginia declared Google a monopolist in digital advertising.

In U.S. v. Google, Judge Brinkema found that Google had a 91% market share in the market for publishing digital advertisements and faulted Google for charging higher prices for digital advertising and degrading the market's technology. That decision resolved the question of Google's liability under the antitrust laws, leaving the question of the appropriate remedy for another day.

The remedies trial is now upon us and will begin Sept. 22. This article summarizes the court's findings at the liability phase and explores the available remedies.

### The Market for Digital Advertising and Google's Technology

The market for digital advertising, like every other market, obeys simple supply and demand mechanics. Owners of websites, also known as publishers, want to earn revenue, so they sell space on their domains to advertisers. Advertisers want to display their ads to consumers, so they purchase the ad space the website owners supply.

But the sheer size of the market adds complexity: There are millions and millions of websites, millions and millions of advertisements, and billions of people who browse the internet. The amount that advertisers are willing to pay for space to publish an individual ad is measured in fractions of a penny.

In light of those dynamics, it would be wildly inefficient — not to mention practically impossible — for publishers to negotiate individual deals with individual advertisers. So how do the right ads get placed on the right websites to be seen by the right people, all in a way that is commercially viable?

Enter programmatic advertising, a process that identifies the amount of ad space available on any given website, offers that space to advertisers and conducts an auction to choose the advertisement that will be displayed — all in the amount of time it takes for the page to load.

This process is accomplished by several technologies, vastly oversimplified as follows: Publisher ad servers allow publishers to identify advertising space on their websites. Demand ad servers allow advertisers to specify what kind of ad space they want to purchase. And ad exchanges interface



Lauren Weinstein



Zakary Kadish

between the publisher and demand servers.

Google is involved in all of those technologies. The court's description of that involvement spans almost 18 pages. For present purposes, its primary technologies are its publisher ad server, DFP; its demand ad servers, DV360 and AdWords; and its ad exchange, AdX.

### **The Court's Ruling on Liability**

In 2023, the U.S. and a coalition of states sued Google for illegally exercising monopoly power in digital advertising in violation of Section 2 of the Sherman Antitrust Act, which prohibits obtaining or maintaining a monopoly through anticompetitive means. The plaintiffs claimed that Google had monopolized three different markets: the publisher ad server market, the ad exchange market and the advertiser ad network market. The three-week-long trial occurred in the fall of 2024, and the court issued its opinion on April 17.

The court agreed with the plaintiffs that Google unlawfully exercised monopoly power in the publisher ad server market, finding that Google held at least a 91% market share between 2018 and 2022.

The court found that the technological complexity of the market meant that barriers to entry were high and that Google was able to exercise its monopoly power to make it even harder for potential new entrants to compete. Additionally, the court found that Google had changed its publisher ad server, DFP, in ways that harmed publishers without fear of Google losing market share. Those facts showed that Google held and exercised monopoly power in the publisher ad server market.

The court also agreed that Google was a monopolist in the ad exchange market. It noted that Google charged supracompetitive prices — 20% of ad sales on its platform — without being concerned that a new entrant would entice customers away from AdX. And it faulted Google for tying its publisher ad server, DFP, to AdX by prohibiting publishers that used an ad server other than DFP from accessing certain essential features of the AdX platform, such as real-time bidding from advertisers. Those acts showed that Google held monopoly power and used it to the detriment of consumers.

The court, however, found that the plaintiffs failed to show that the advertiser ad network market even existed. The court noted that the term is not used by industry players, and it faulted the plaintiffs for not including different kinds of sources of digital ads, like social media, in their proposed definition of the advertiser ad network market. Because the court found this market did not exist, it was impossible for Google to have unlawfully exercised monopoly power in it.

### **Available Remedies**

In this next phase of the case, the court will determine how to remedy Google's monopolization of the publisher ad server and ad exchange markets.

The court is charged with prying open the monopolized markets and fostering competition without dampening technological innovation. As U.S. District Judge Amit P. Mehta observed in his Sept. 2 opinion on the U.S. v. Google search antitrust litigation, where the U.S. District Court for the District of Columbia faced the same task of prying open different technology markets it had determined Google monopolized, courts have no expertise in the business of buying and selling of digital advertisements. Simply put, trying to inject competition into these highly complex — and important — markets will be no easy feat.

The government has proposed a variety of different fixes to the court. In fashioning an appropriate remedy, we expect the court to impose some, but not all, of the government's proposals. And, of those it adopts, it may significantly limit or modify the relief requested.

### ***Divestiture***

Most drastically, the government is seeking an order that would require Google to immediately divest its digital advertisement exchange, AdX.

Divestiture requires the monopolist to sell assets — either to an existing business or to create a new company — that would create another competitor in the affected market or prevent the monopolist from exercising monopoly power. It was recognized by the U.S. Supreme Court in *U.S. v. E. I. du Pont de Nemours* in 1961 as "the most important of antitrust remedies." Divestiture is also strong medicine, as Judge Mehta recently recognized in the Google search case in his order rejecting the government's gambit to require Google to divest the Chrome browser.

However, given the sheer size of Google's market share, a natural solution might be to divest one or more of Google's technologies.

Focusing on the court's finding that AdX was Google's primary source of monopoly power, the government seeks divestiture of AdX. And, beyond that, it is asking the court to give them the power to approve or reject any potential buyers that might seek to purchase AdX.

Going further still, the plaintiffs have proposed that the court should require Google to gradually divest its publisher ad server, DFP. The plaintiffs envision a three-phase divestment, where Google first enables DFP to solicit bids with other ad exchanges, then later modifies and publishes DFP's code that conducts the ad auction, and finally completely divests DFP to another entity.

The plaintiffs similarly reason that Google's retention of DFP would allow Google to benefit from its monopolistic conduct and ask the court to give plaintiffs authority to approve or reject the ultimate purchaser of the publisher ad server.

At first glance, the plaintiffs' proposed divestitures appear administratively burdensome and would consolidate power in the hands of the federal and state governments. In addition to the difficulty of finding a buyer that can both afford Google's technology and employ it, the court might be concerned that ordering such severe structural remedies will give the plaintiffs significant leverage over Google that they could exercise for purposes unrelated to opening the market for digital advertising.

These factors might caution the court against ordering such significant remedies, or, at least, giving the plaintiffs the power to reject a buyer.

### ***Behavioral Remedies***

The plaintiffs' behavioral remedies seek to prevent Google from acquiring monopoly power in digital advertising in the future, even with their proposed divestments. The remedies include prohibiting Google from giving preferential treatment to its own ad technology tools over third parties with respect to purchasing digital advertisements, prohibiting Google from preferentially routing purchasers of digital advertising to any ad exchange and other injunctive relief. The plaintiffs ask the court to impose these

injunctions for 10 years.

Compared to the plaintiffs' structural remedies, their proposed behavioral remedies would be much easier to implement. Instituting and enforcing injunctions is the bread and butter of a district court, which could be assisted in its compliance monitoring by the formation of a technical committee. (The court in the Google search case recently created such a committee to help it administer its behavioral remedies.) And ordering only behavioral remedies will remove the need to find a capable buyer for Google's technology and will not concentrate so much power in the plaintiffs' hands.

### ***Google's Proposed Remedies***

Unsurprisingly, Google's proposed remedies are much less onerous. Google argues that the divestitures the plaintiffs seek are inappropriate because they do not relate to the court's specific monopolization findings. Google also claims that the proposed divestitures are unworkable because of how integrated AdX and DFP are with Google's software: The platforms simply won't work without years of investment in alternative code and hundreds of software engineers devoted to the task.

Instead, Google proposes a series of limited behavioral remedies that, it argues, will remedy the specific issues the court identified in its opinion.

These remedies include making bidding for certain ads available to all publisher ad servers instead of just DFP and eliminating policies that restrict AdX from sharing certain information with rival publisher ad servers. Additionally, Google would allow ad publishers to set different price floors for different bidders and commit to not rebuilding certain defunct software capabilities that Google says it terminated in 2019. Finally, Google would consent to trustee oversight for a three-year period.

### **What to Expect**

Faced with these competing extremes, the court may reach a compromise.

The Google search remedies opinion from earlier this month is instructive. There, the D.C. District rejected the more extreme divestiture remedy and imposed some — but not all — of the proposed behavioral and structural remedies, significantly modifying the government's proposals.

The court in this case might reach a similar compromise. For example, it could order the plaintiffs' behavioral remedies, but impose them for a shorter time period than the plaintiffs' 10-year request. Or, it might accept Google's remedies, as the Google search court did, and fashion further relief of its own design, borrowing from elements of the plaintiffs' proposed structural and behavioral remedies without fully adopting any of them.

In truth, no one — not even the court — knows what the end result will be just yet.

Whatever remedies the court selects from the smorgasbord available to it — and whatever their impact on Google, digital advertising and our internet experience — will depend on the evidence the plaintiffs and Google muster in Judge Brinkema's courtroom next week.

In a world where technology allows businesses to tremendously benefit from economies of scale and network effects, finding a way to force those businesses to leave space for competition and consumer benefit is of paramount importance. Regardless of whether the court takes a harsher or more lenient

approach to remedies, the decision will break new ground in how the law deals with tech behemoths like Google.

---

*Lauren M. Weinstein is a partner and Zakary Kadish is an associate at MoloLamken LLP.*

***Disclosure: Lauren Weinstein was appointed a special state attorney general to prosecute antitrust and consumer protection claims in In re: Google Play Store Antitrust Litigation, which is unrelated to the case discussed in this article.***

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*