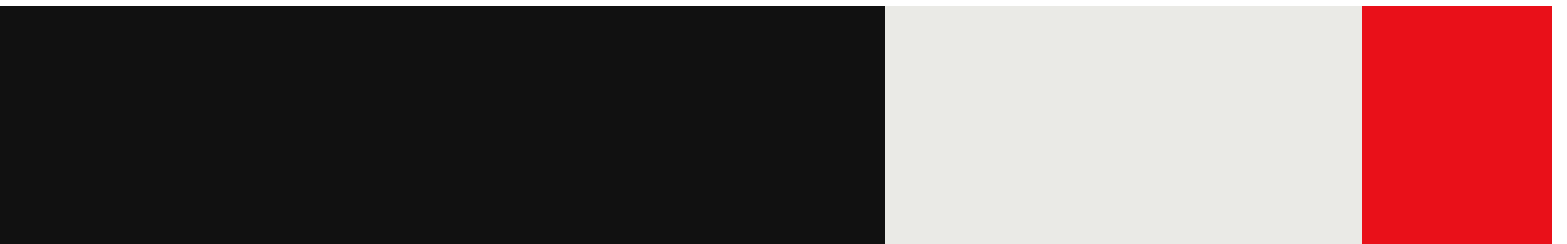


# The Daily: What to make of the Google antitrust ruling, part 1—Why Google lost and the most likely penalties

Audio



In part one of this two-part podcast episode on the Google antitrust ruling, we discuss the reasons US district Judge Amit Mehta decided that Google's search business constitutes an illegal monopoly and what penalties he is likely to dish out at a hearing in September. Tune in to the discussion with host Marcus Johnson, analyst Max Willens and vice president of content Paul Verna.

*Subscribe to the "Behind the Numbers" podcast on [Apple Podcasts](#), [Spotify](#), [Pandora](#), [Stitcher](#), [YouTube](#), Podbean or wherever you listen to podcasts. [Follow us on Instagram](#)*



## Episode Transcript:

Marcus Johnson (00:00):

B2B marketing teams rely on EMARKETER media solutions to elevate their thought leadership and build meaningful relationships through exclusive webinars, guides, infographics

and more. You can head to [emarketer.com/advertise](https://emarketer.com/advertise) to learn more about our proven approach.

Paul Verna (00:17):

So in other words, Google is making the argument that it has gotten to this market position simply because it's better, but the way it has gone about ensuring that it's the default search engine everywhere, it undercuts that argument.

Marcus Johnson (00:38):

Hey, gang, it's Monday, August 12th, Paul, Max and listeners, welcome to the Behind the Numbers daily, an EMARKETER podcast. I'm Marcus, today I'm joined by two gents. We start with our senior analyst who covers everything digital advertising and media based in Philadelphia, it's Max Willens.

Max Willens (00:54):

Yo.

Marcus Johnson (00:55):

Hey, fella. We're also joined by our Vice President of contents, covers everything, digital advertising, media and technology. He's based just above New York City, it's Paul Verna.

Paul Verna (01:06):

Yo, yo.

Marcus Johnson (01:07):

Oh, a double.

Paul Verna (01:08):

I thought that's how it worked. First person does one, the second person does two.

Marcus Johnson (01:12):

It can be.

Paul Verna (01:12):

It's better.

Marcus Johnson (01:13):

Today's fact, the bird with the largest wingspan is-

Max Willens (01:18):

California condor.

Marcus Johnson (01:20):

Oh, a guest's guessing there. I wasn't going to force you guys to guess, but I don't know. I've never heard of that one. Maybe, I don't think so. Hopefully not because otherwise it's wrong. But I think it's the wandering albatross at between eight to 12 feet. So eight feet would be the same wingspan as French basketball player, Victor Wembanyama. So if people watch basketball, it's roughly that big or the smallest size of their wingspan. The wandering albatross fly over the southern oceans and breed on islands just to the north of the Antarctic circle.

Paul Verna (01:53):

So now I guess that makes sense as to where that expression comes from, to have an albatross over your neck or something.

Marcus Johnson (02:00):

Yeah. They're big, but not as big as the flying dinosaur, the pterodactyl. They have a wingspan of up to 36 feet, so it's four times as big, which is just shy of a hang glider. So next time you see it...

Paul Verna (02:00):

No wonder they didn't make it.

Marcus Johnson (02:15):

A hang glider in the sky. That's roughly the size of a pterodactyl, which is terrifying. Also, pterodactyl spelled with a silent P at the beginning.

Paul Verna (02:23):

It's just psychological.

Marcus Johnson (02:24):

Well played. Anyway, today's real topic, what to make of the Google Antitrust ruling, Part one.

(02:37):

All right, folks, in the first episode of our two-parter on the Google Antitrust ruling, we will talk about our initial takes to the ruling and then we'll go through how Google could be penalized. But let's set the table first. Last week, a federal judge found Google's search business constitutes an illegal monopoly, a landmark ruling, and a major victory for the U.S. Government as it seeks to clamp down on big tech, writes Nicole Narea of Vox. The ruling says that the online search giant abused its dominance, stifling competition by paying device makers like Apple and Samsung tens of billions of dollars a year to ensure Google is the default search engine. It also says Google's monopoly has led to higher digital ad prices. The U.S. district, judge Amit Mehta said, "Google is a monopolist and it has acted as one to maintain its monopoly."

(03:23):

Pointing out that Google enjoys a nearly 90% share of the U.S. search market and even higher mobile devices. According to Similarweb, being in Yahoo, for reference have 3% each. Google's 90. Google is appealing the ruling, saying it could now be harder for people to find the search engine they prefer. Meaning themselves, saying, "This decision recognizes that Google offers the best search engine, but concludes that we shouldn't be allowed to make it easily available." An appeal could take years, Google's sentencing, "so to speak, what penalties it might face is set for a hearing in September." Paul, I'll start with you. What's your initial take on this ruling?

Paul Verna (03:58):

Well, I was expecting this decision. I was not surprised by it, and obviously there's going to be an appeals process. It is going to be very drawn out. Definitely worth noting that there is another case pending around Google's ad tech business overall. It's hard for me to envision that if the company was basically declared a monopolist, the judge used that word in the decision, hard to imagine that the other case won't go the same way. So this could be a double whammy.

Max Willens (04:32):



Interesting.

Paul Verna (04:33):

But I think between the fact that there's another case pending and the appeals process and we're going now into an election cycle and a lot of things can happen, so there's definitely going to be drawn out, but I think, ultimately, what's going to happen is Google will have to face some sort of penalty.

Max Willens (04:52):

It's funny, on one hand, this is completely unsurprising to Paul's point in that, when you are spending literally billions of dollars to essentially crowd out any would-be competitors, that certainly looks and smells like anti-competitive behavior. But the reality is that, this is also a fight over a service that is completely free, easily replaced and does have competitors. So in that sense, I was actually a little bit surprised that this ruling came down in this direction.

Marcus Johnson (05:21):

Really quickly, on that point, that's part of the reason that I was surprised as well, Max, because Ashley Gold of Axios said, "The ruling has proved that current US antitrust law can be successfully applied to online companies born in a digital age and factors beyond customer price that can convince a judge the company has acted as a monopolist." Because to your point, these services are, these tech services are by and large, free. That's always been a sticking point or an issue with trying to apply anti-competitive law to these services. It's like, well, they're free. How can we possibly be doing anything?

Max Willens (05:52):

Absolutely. I personally take a dim view of that argument, given that when the service is free, you are the product and Google has made hundreds of billions of dollars, monetizing information that its users have supplied them. I'm not saying that there's anything wrong with it, but the notion that you can use the word free in this context I think is a little bit silly. But I think that this is momentous purely from the standpoint of this is something that has been, I would say, close to a decade in the making. When you think about how hesitant regulators, attorneys-general, lawmakers were to intervene in or pour any cold water on the tech sector, which has been this growth story that has gone on for so long and nobody really wanted to rein it in for a whole host of reasons.

(06:39):

But we have finally arrived at a point where digital media is central enough to the way that media works, the way our lives function, that regulators and attorneys-general are finally have arrived at the point of saying, "Okay, some of these needs to get tightened up a little bit," and it's still more momentous that a judge agreed that some of the behavior that's taken place is monopolistic and anti-competitive.

Marcus Johnson (07:05):

Paul, you weren't surprised. Max, it sounds like you were somewhat surprised. I was very surprised, and part of that's because... So I think Fiona Scott Morton is a professor at Yale School of Management and former chief economist at the Justice Department's Antitrust Division. She was saying, "what is different is a change in the temperature. These firms are not too big. We have applied the law to them, and we have found that, even though they're American, even though they're innovative and spend money on R&D, they can still be found liable."

(07:33):

We've not seen a huge antitrust case since Microsoft 25 years ago, and it did have an air of, I'll use a basketball reference here, an air of the NBA in the sixties, like big tech typically wins against the government or pays very, very small fines and gets away with things. From 1958 to 1966, the Boston Celtics, they won eight straight championships led by Bill Russell and victory felt inevitable, and then Philly won in 67 and people went, huh, so Boston can lose. Now granted, the Celtics went on to win the next two after that, but you get the point. It does feel like a bit of a moment.

Paul Verna (08:05):

I think you're just bitter that it wasn't the Lakers, Marcus.

Marcus Johnson (08:08):

Cut now, and yes.

Max Willens (08:11):

That's true.



Marcus Johnson (08:12):

Go, Max.

Max Willens (08:12):

I was going to say, I agree to an extent, but we should all agree to hold our horses a little. I think it's very possible that we'll get to September and nobody is going to want to show their cards too much, and the Judge, Amit Mehta, may arrive at a solution that he thinks is appropriate that other people will find inadequate or he'll go the other way. But I do think that this is academic until we get to September. Really, even then, we'll talk about this more as the conversation goes on, and Paul has alluded to this already. This is going to take a really long time. Google is going to spare no expense in mounting a legal challenge to what is coming, and that means that this could take literally years to get ironed up.

Paul Verna (08:53):

Just as a quick note, part of why I wasn't surprised is that, I think this case took on a lot of steam when the amounts of money that Google is paying to the likes of Apple to be the default search engine on Apple devices. When that was revealed, it was like 20 billion a year or something. So exorbitant sums, and obviously, it's paying the same to other big tech players, but I think, and our colleague, Evelyn Mitchell-Wolf, made this point back in October, and I'll quote her, she said, "The obvious question is, why would Google pay so much money for default status if consumers would pick its product regardless?"

(09:32):

So in other words, Google is making the argument that it has gotten to this market position simply because it's better. But the way it has gone about, ensuring that it's the default search engine everywhere, it undercuts that argument. So I saw this as a strong case and that's why I wasn't surprised. I also think there are a lot of parallels... To the extent that you can draw parallels to anything that happened more than 10 years ago in the digital world, but there are parallels to the Standard Oil breakup. There's a similar way that Standard Oil got to the market position that it got to. So I thought the writing was on the wall for this decision.

Marcus Johnson (10:08):

The power of defaults is an important part of this case. It was something that the judge had emphasized and Steve Lohr of the New York Times was noting the government presented

studies in behavioral economics from expert witness, Antonio Rangel, professor of neuroscience behavioral biology and economics at Caltech, saying that basically concluding people rarely switch from the automatic settings even if doing so was not a daunting technical task and that the vast majority of searches were done by habit. So this is not a small thing, this idea that if you are the default, then you have a huge advantage. So I think that's one reason it might be difficult for them to win the appeal. The second thing is that being number one gives you a self-perpetuating advantage. More users, better data, better search algorithm, attracts more users, better data, etc. And so it's going to be interesting to see how the appeal goes.

(11:01):

It seems like the next Olympics this time, we'll get a decision on that. Let's talk a bit about those contracts that Google was paying to people like Apple in the sum of 20 billion and Samsung for slightly smaller amounts to be the default. Because how Google could be penalized, this is one of the ways. The government could rip up these existing contracts that device makers had signed with Google and say, "You can't do these anymore." They spent 26 billion in 2021 on exclusive agreements to be the default search engine, and a few folks think that this is almost a certainty. George Hay, law professor at Cornell University and former chief and Commerce for the Justice Department's Antitrust Division, said this is definitely happening. Also, Herbert Hovenkamp, a professor at the University of Pennsylvania's Kerry Law School and Wharton Business School. So that seems like it's definitely going to happen. Max, is that something you would agree with? What else can you see happening to Google once Judge Mehta hands out the penalties?

Max Willens (11:58):

To me, this is the most likely and frankly the only realistic outcome from this ruling. Basically, as you guys have already talked about a little bit, the reason that this has been such a powerful advantage for Google is that it has allowed their flywheel to spin harder and faster for a longer period of time, which has resulted in a pretty significant gap in terms of the user experience. People complain about the creep of more and more advertisements and progressively less relevant results into Google's search engine results. But shortly after ChatGPT got incorporated into Bing, I thought, let me shake this up. Let me just see what happens if I switch over to Bing and have that be my default partly to play with ChatGPT and partly just to see what life is like outside of Google. Frankly, I hate it.

(12:53):

It is astonishing to me how inferior a product it is as a search engine. It makes it very difficult for me to do my job and to do things that had become quite second nature to me using Google for years and years. Breaking the major input into that flywheel, or at least slowing it by not only shredding the revenue sharing agreements, but barring Google from entering to further ones, is probably the most realistic thing.

(13:19):

I keep using the word realistic because the other remedies that I've seen discussed, including things like forcing Alphabet to sell Google's search engine or break it apart from its advertising business, to me, don't feel very realistic. Starting from the simple fact that the price for that search engine would likely be so astronomical that very, very few companies would even be able to entertain buying it, and the ones that I think are positioned to spend money on, it would instantly put themselves into a position of inviting regulatory scrutiny on themselves. Imagine if Amazon or Apple purchased the search engine, it would instantly put them in a similar situation. So to me, the revenue sharing agreements are going to be the focal point when it comes to the remedy that Judge Mehta settles on. But I would love to hear what Paul thinks about it.

Marcus Johnson (14:08):

Paul, really quickly, on this, the part of the problem though is that, Nicole Narea of Vox, is making this point, Apple could still make Google the default search engine. Even if it doesn't, Google users could still go back to using something they're familiar with and that they're comfortable with. Ian Bogost of the Atlantic was writing, "As happened with Microsoft, the government could win its antitrust fight against Google on paper, but lose it in practice."

Paul Verna (14:31):

That certainly could happen, and I think Max's anecdotal example about his own use of Google, it could actually be an indicator that yes, Google has gotten to where it has by forcing others to play the game, but the reality is, it is a very good search engine and maybe it is a better product. So that could actually impact the way the market evolves even if there is a ruling to force changes or to get rid of those contracts. I totally agree with Max on the potential penalty. I see three scenarios, a financial penalty, which for a company with a market cap of \$2 trillion, is always going to be insignificant. A breakup...

Marcus Johnson (15:16):

Quickly on that, I was trying to figure out how much they might get fined. There's been a similar antitrust case in the European Union and that resulted in what was a record \$5 billion fine against Google for antitrust violations.

Paul Verna (15:27):

Market change.

Marcus Johnson (15:28):

For a company who's making hundreds of billions dollars a year, it's nothing.

Paul Verna (15:32):

A breakup, which is typically what has happened with Standard Oil with Ma Bell and other companies over the years, not realistic at all. These businesses, all of the ad tech and the search and the media, like everything in the Google flywheel is totally intertwined. So breaking it up is not realistic for that reason, as well as for the reasons Max mentioned and you Marcus about, there's not going to be a buyer that is going to be able to pick up some of the pieces. So I think the only realistic scenario is forcing changes in the company's business practices.

Max Willens (16:06):

I will say that when you start imagining the scenarios of who might buy it and the firestorm it might kick off, it does start to get funny fairly quickly. Imagine if ByteDance bought Google's search engine and how overjoyed the armed forces and...

Paul Verna (16:24):

The government would be?

Max Willens (16:24):

Security committees would be about that. Imagine if Apple bought it, how funny would that be instead of saying, "Instead of spending 20 billion a year on this, we're just going to buy it." And that will be one more device or ecosystem lock-in because they could basically say, "We have the efficacy and power of this search engine, but we're not going to append the creepy tracking stuff," which has been a cornerstone of our own marketing for several years, which is that Apple is a private-ish digital environment. But anyway, I just wanted to point out how quickly things can get funny if you start thinking about suitors.

Paul Verna (16:59):

If you go down the list of those companies, the obvious ones you mentioned, Max, and then if you start thinking outside the box a bit like Nvidia, Meta, like any one of those companies that would pick up any pieces of a Google breakup would instantly fall under the same or worse scrutiny, and actually most of those companies are already under scrutiny. They're in a tough spot.

Marcus Johnson (17:23):

It's going to be interesting to see what happens. We do have an example of this across the pond. As I mentioned in the EU in Europe, Google already offered customers a choice for their default search engine on Android five years ago. But because of inertia, Google's share of search requests in the EU has basically stayed the same according to search engine land and Trishla Ostwal of Adweek was writing that Google introduced a search ballot screen for Android users in the EU, prompting them to select a default search engine.

(17:50):

Following this, Opera, an EU-based browser challenging the default status of Google, saw a 164% increase in new EU users on iOS. But as Platformer's Casey Newton points out, this has had a negligible effect on Google's market share in Europe, because it's going from such a small base, it barely moved anything. What's quite ironic is that Google could actually benefit from these contracts being ripped up and becoming illegal. Miles Kruppa of the Wall Street Journal was saying, "If users are given a choice screen and most select Google, it might save Google more money in payments to Apple and Samsung, being the 26 billion at paying 2021, then it loses in search advertising." Put another way by Jason Aten of Inc, "Google will likely remain the default for most people without having to pay for the privilege. In an effort to make the internet more fair, what the Justice Department really just did is save Google \$20 billion while likely changing nothing about how the internet actually works."

Max Willens (18:43):

Well, now you're just stepping on the points I was going to make in part two of our conversation.

Marcus Johnson (18:46):

Sorry. All right, no need for.. Max, you can skip part two. I've already covered everything.

Max Willens (18:52):

I'll just make them in a silly place.

Marcus Johnson (18:56):

Sorry about that. But we'll see what happens. They could rip up the contracts, they could be a fine, they could sharing search data with competitors was one thing that got thrown out, maybe splitting off the search business. But Google appealing the ruling took four years to get to this point. The Department of Justice brought the case against Google in 2020. Microsoft did appeal their ruling and 25 years ago, and that did work. So we'll see. We'll talk a little bit more. God knows what about though. We really covered it apparently. So episode tomorrow about how this is going to affect Google and also which competitors are going to benefit the most. That's all we've got time for today's episode. Thank you so much to Max.

Max Willens (19:31):

Always a pleasure, Marcus. Thank you.

Marcus Johnson (19:32):

Thank you to Paul.

Paul Verna (19:33):

Yo, yo.

Marcus Johnson (19:34):

Thank you to Victoria as an outro, Stuart and Sophie, podcast crew, and thanks to everyone for listening in. We hope to see you tomorrow for part two of the Google Antitrust ruling on the Behind the Numbers daily, an EMARKETER's podcast.