



Technology Policy Institute

The Google Search Antitrust Case – Finding a Remedy that Helps Consumers

Panelists:

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Tom Lenard

Good afternoon. I'm Tom Lenard, Senior Fellow and President Emeritus, the Technology Policy Institute and welcome to our panel on the Google Search Antitrust Case finding a remedy that helps consumers. Last August in a decision by Judge Amit Mehta, the DC. District Court found Google liable for violating Section 2 of the Sherman Act. Judge Mehta found that Google had acted illegally to maintain its monopoly in general search and search text, advertising the opinion focused on Google's agreements with Apple, Samsung, and other distribution channels to be the exclusive pre-installed search engine. These agreements helped Google to grow its user base, accumulate data, and improve its product. And this cycle, according to the plaintiff's deprived entrance of the ability to achieve sufficient scale to compete effectively. So the next phase of the case which will take place over the coming year involves finding a remedy which is often the bigger challenge. We have a great panel to discuss the remedy issues. Ginger Jin is the Neil Moskowitz, Professor of Economics at the University of Maryland, and served as Director of the Federal Trade Commission's Bureau of Economics. Randy Picker is the James Parker Hall, Distinguished Service Professor of Law at the University of Chicago Law School. And Larry White is the Robert Cavish, Professor of Economics at the NYU stern school of business and a former Chief Economist at the Department of Justice Antitrust Division.

So the remedy phase began on October 8, with the filing by the Department of Justice and the plaintiff states of a high level framework which put on the table a range of behavioral structural and data sharing remedies, the remedies range from changes to the distribution contracts that are at issue. A major issue in this case to more far reaching measures that could effect of virtually all aspects of Google's business model. So let me start by asking the panel. You know, overall, what is your overall opinion? Your general opinion of the proposed remedy framework? Maybe we'll go, and sorry, Larry, we'll go in alphabetical order. Start with Ginger and Randy, and then Larry-- Ginger, yeah.

Lawrence White

It happens all the time, Tom, I'm you know. Come, dude.

Tom Lenard

Since grade since grade school, I'm sure. Yeah.

Ginger Jin

Thank you, Larry. Thank you, Tom. After reading the DOJ's proposed remedy framework, I have 3 impressions. The 1st is, it has a very long and comprehensive wish list. And the second is, somewhat to my surprise, I don't see an explicit and detailed description of the but for world taking into account potential reactions from other main players that would include consumers, Apple, Microsoft, Mozilla, and Samsung, and maybe generative AI startups as well. So as a result, I feel like the proposal does not fully consider the potential costs and unintended consequences of the proposed remedy, and my 3rd impression is a lot of the remedies proposed seems to go beyond the Google Search case itself. The case focus on Google's distribution agreements. But many remedies go into, for example, advertising chrome Google play store android, and even the AI space and those tends

to touch on behaviors that either have not happened or have not been decided by the court to be under competitive. So sounds like DOJ tried to preempt future potential actions. That's my impression.

Tom Lenard

Well, hopefully we will get to discuss the “but for world” during the course of this panel. But Randy.

Randy Picker

So I guess what I was struck by immediately when I downloaded the document and then printed it out is the fact that the number of signature pages actually exceeds the substance of the document. So that says 2 things, I guess, that there are a lot of parties involved in this case, and lots of lawyers. I think maybe I'm the only lawyer on the on this panel, the rest of them must be in the case. And then the second thing to note is that this framework is Tom described. It's just the starting framework. So look honestly when I got this document. And just so we're clear where we are. They say they're going to file a more comprehensive document by the end of November, as we head then into a possible remedies trial, I guess, in April of 2025. I immediately reset my antitrust syllabus to push Google farther down the line, so that we can actually see the November document before we do this in class. All right, that's all by way of intro, I guess. Look, I'm not surprised. I heard what Ginger said. I guess I'm not surprised that, you know they're doing more than the distribution agreements. We're obviously going to talk about how you might run a debt directly. There's some straightforward ideas there that I suspect they're going to reject, but we'll see what to make of that. They clearly, you know, want to look forward. And you know, win. And we're not going to talk about the liability phase I take it today. I think Google will run pretty hard at the liability finding on appeal, even as I should say, I think the opinion is a terrific opinion in so many ways. I really think the judge shows a deep knowledge at the same time, right as we get to the exclusivity discussion. I don't know that that works quite as well, but I'm not surprised that the government wants to go bigger. And I'll say, look, we haven't done a case like this since maybe Microsoft. And so this is gonna set, maybe a framework going forward. So I think they want to be expansive.

Tom Lenard

Larry.

Lawrence White

Well, you know the cost of going 3rd is, many of the good things have already been said. But you know, I and basically, I agree with what Ginger and both Randy said. It felt like a kitchen sink, kind of, just throw everything out there, and then, as we think more about it, we can come back and build on the things that we are interested in. I was struck, and it's sort of related to your question, that it appeared that the Department of Justice had not thought especially hard about remedy beforehand. After they received the liability decision going in their favor then, “Oh, gee! I guess we need to start thinking about remedy.” Now, that may be part of the you know large numbers of plaintiffs that Randy mentioned and but still, I just, that struck me.

Tom Lenard

Wasn't that-- wasn't that also kind of a characteristic of the Microsoft case?

Lawrence White

You know, now I've got to think back 25 years ago. What did I know and when did I know it? But I think, well, no, you may be right that the proposal to split Microsoft into an operating system company and an applications company may have sort of come out of the blue it took me by surprise.

Randy Picker

Yeah. Tom, that's my impression as well. So I agree with you and Larry on that.

Lawrence White

All right. So last thing I wanna point out is that if, as the Justice Department is going to continue to argue. The goal is to create a more competitive environment. Indeed, the competitive environment that would otherwise be in place today had there not been these illegal actions. Then, you know, looking around for other things that the judge could ask Google to do, not just the distribution agreements strikes me as a not outrageous thing, at least to be out on the table. Let me just add one more thing, which is there's a saying in Washington, "if it ain't broke, don't fix it." And there are, you know, a considerable number of people who, thinking about this case, say it wasn't broke you know. They're sorry that the judge, Judge Mehta, came out where he did, and they will want a minimalist remedy, you know. Stop paying for the distribution, and that's it. Others think, gee! There was a lot of breaking going on, and we need a very expansive remedy to deal with that breaking. So again, thinking about the remedy is conditioned on do you think there was a problem before?

Tom Lenard

Yeah. So I wanted to. The minutes gets maybe a little bit to what Randy was talking about the liability phase. But I mean, how do you think the way they frame the harms, you know, talking about pernicious harms? I mean, it gets to what you're talking about, Larry, that you know, I mean, a lot of people are a lot of people are fairly happy when they use when they use the Google search product, and they probably think nothing's broken. So I mean, was anybody surprised that they came out very strong in terms of characterizing the harms? Or maybe that's just typical. Yeah, they're advocates on one side.

Lawrence White

You know that doesn't surprise me, but also and again echoing what Randy said a few minutes ago, I don't remember seeing the word pernicious in Judge Mehta's decision. It's a very, you know, it's a very reasoned decision. He finds that there was a liability. But he doesn't have, you know, call it florid language, in the opinion. At the same time he's not reluctantly coming to where he came out, he says, Look, I think the preponderance of the evidence shows there was a problem. They did cross the line, but he's not florid about it.

Randy Picker

I'm happy to say something, Ginger. Do you want to say something, or then I'll then I'll go. So look, think, go ahead! No, go ahead.

Ginger Jin

No, no! You go ahead. Go ahead!

Randy Picker

Okay. So look, I think the opinion I don't. We look, people can talk about Google. And you know, is it the product it once was, we could have that conversation. But I think the opinion reflects more, you know, sort of a reasonably firm belief in the competitive process, and I believe in the competitive process. And so well you know to what extent has Google distorted that process, and God only knows what products we would have in a, you know, as Ginger puts it, the "but for world." So I think that's the focus of the opinion. And that's a fair focus.

Tom Lenard

Ginger?

Ginger Jin

Yeah, I want to come back to the "but for world." I was quite surprised by the opinion. I agree with Larry and Randy. That opinion is quite thoughtful, and reflect the judges strong belief in market process for competition. But, on the other hand, I'm sort of surprised that he seems to dismiss the lead of having a very detailed description of the "but for world," and it seems like just reading between the lines the "but for world" in the judge's mind would be a world without the Google's default distribution contract. But somehow Google may still be a better product, as its elevation and other efforts deserve, and as many consumers has expressed their preference over and maybe going forward somehow without this default contract, then the competition in the general search market, as well as the tax advertising market, including the future. Maybe AI powered search engines will be sort of a level play field between Google and other existing and potential players. So that's my impression of the potential "but for world."

Randy Picker

I think a couple of things if I could. So I thought, it's interesting for and a little bit this, "but for world" I mean, Microsoft. I think the judge's perspective has achieved a kind of parity, at least with regard to users on search. Not necessarily advertisers on the desktop, got to be really clear about that. So there's all this discussion, Tom, as you said about scale being through the defaults on Windows through edge, seems to have sufficient scale to achieve parity on the desktop where they clearly do not have parity. And this is because Microsoft did a terrible job in mobile, on mobile. And so you do a terrible job. It has market consequences, and that's not surprising. And so the difference between Microsoft's position on desktop and on Mobile-- that's really dramatic.

Ginger Jin

Yeah, that's a great point. I feel like, unlike the Microsoft case where the Netscape might be described as a nascent competitor. And here, and Microsoft has been competing with Google in this area for a very long time, especially.

Randy Picker

Microsoft went into search before Google did. That's a little bit of a not right. But they certainly, with regard to MSN. And the day confronted whether to build a search engine. They said, No, we're going to outsource that to. I think I have it right name, Tommy. That's a name you guys don't know. So they could have done search. They were there, and they just haven't done a good job. On the whole.

Tom Lenard

Well, and they also presumably have scale right?

Randy Picker

Oh, and resources! When I when I look at the companies with market caps of 3 trillion, I count 3, and one of those is Microsoft.

Tom Lenard

Right? Right? So. But also, I mean, maybe we can get back to this a little later, because I seems to me it's key to the economics behind this case and the "but for world" is not just that. There might have been more entrants, you know, if Google didn't have these types of contracts, but there would have been more innovation. That's supposed to be the key right? It's that would have produced more innovation. And I don't know the economic. Well, I don't know. Maybe you maybe we could discuss a little bit what the economics literature has to tell us about in this, for you know structure of the industry and innovation big firms relative to small firms, and all of that, I mean, is there any? Is there any clear guidance there? We might have had more firms, but it's not necessarily might wouldn't necessarily have had more innovation. Google might have been less innovative.

Lawrence White

You know I don't think the literature provides us with very good guidance here. Important innovations can come from guys in their garage. Important innovations can come out of industrial labs. And it all, it's very idiosyncratic. The other thing I think I just want to get out on the table. I mean, there's a lot of stuff going on in this case, but the issue of scale is, and oh, sorry is, and is not something new, for at least I can remember back in the early 1980s, at the Justice Department, people coming in arguing, hey? They wouldn't use the word learning curve or experience curve. But that's what they were talking about. And they would say, and so, look, we need to price aggressively. We, you know, we shouldn't be accused of predatory pricing below our marginal cost whatever, because all we're trying to do is get scale, you know, learn. And we're just trying to get better so this whole issue of scale related to the information that gets accumulated through experience. It's not, it's not new. And arguably the understanding, there is something called a learning curve. It goes back to the 1920s when people noticed that airframe manufacturers had a much higher per unit cost for the 1st airplane they built than for the 200th airplane they built. And so this is just not a new issue.

Tom Lenard

So let's discuss some of these proposed remedies, and, you know, dig down a little bit. So the you know the narrowest remedy, and the one that seems to be most would be most targeted at what seems to be

at issue with these contracts is just to prohibit Google from paying for exclusive default placement. So there's, I mean, seems to me there's several things, and you may think of more that could happen. In that event, I mean Apple and the other distributors could sell default placement to Google's competitors. They could adopt Google as the default without getting paid for it. If they think that's what their users want, or they could put up a choice screen with everyone but Google paying for a place on it. How do you think this would? Do you have any idea how this would actually play out? I would assume, and maybe you can correct me. I would assume that in this whole range of remedies at least one of them is going to be this one.

Randy Picker

So can I. I just wanna you said something there. But I and I had a thought this morning. And so I wanted to call it the pay for play choice screen. And what I meant by that was, so you, Tom, you seem to have a vision of a choice screen where Google didn't pay. I think the issue here is, maybe we wanna put it-- we want to decouple the question of payment from how the competition works. So Apple could say, Look, we're going to have a choice screen. Anyone who wants to be on the choice screen. You got a bid for that. We'll randomize. If DOJ says we should randomize great, we'll randomize. But everyone has to pay to be on the choice screen and Google vis-a-vis, the consumers making choices. Those numbers aren't visible. No one cares right? So Apple would continue to get paid. Mozilla, whose business goes away if they can't get paid, would continue to get paid. But the choice screen that means Google's not buying the default placement which look the biggest surprise to me in the case was how valuable that default placement seems to be. So there's I never understood why Google was paying billions of dollars to Apple. That was always a mystery. I assume we don't all choose Google. And there's an exhibit which isn't public where Google does an internal study. And that internal study says we would lose a whole bunch of searches on IOS if we were not the default placement that surprised me. But that's what it seems to say.

Lawrence White

Let me just jump in quickly, Randy. I think you talked about Apple being required to do something. Why do I say that I'm not a lawyer. I'm not a lawyer.

Randy Picker

No, no, no! I agree.

Lawrence White

So I don't believe that apple can be required to do anything.

Randy Picker

They are not a party here.

Lawrence White

Okay. Alright!

Randy Picker

I Agree. I misspoke.

Lawrence White

So the way I understand what, how any requirement for a search screen would work, at least one version is, if I either on my laptop, on my smartphone come to a Google search page with a Google box. First, Google has to show me a choice screen that says, Do I want to switch to Bing? Do I want to switch to Duck, Duck Go? Do I want to switch to Picker search? You know.

Randy Picker

Which is so we're clear, just fantastic. So, Picker search.

Lawrence White

Picker search, okay? So I, you know, it's Google that is going to be required to do something. And at least my vision is that would be on the 1st time you bring up the Google search box to begin with. And then how often does that choice have to be offered to the searcher. Every time?

Randy Picker

Yeah, yeah.

Lawrence White

Geez! That slows down! Search!

Randy Picker

A lot.

Lawrence White

Once a week, once a month, once a year? You know, there's some issue of frequency, but I think that's you know there's going to be that choice. But it shows up. You know, Google, having to prevent.

Randy Picker

The only thing I'm going to say, and then I'm going to stop, and Ginger is going to say something, I'm sure. So look! Ginger took us to the "but for world" and the "but for world" is one where Apple's getting 20 billion dollars a year right now, and presumably is not eager to walk away from that money. So how they're going to respond. And I think that's where Ginger was taking us is a critical issue here. And so the choice screen that I was talking about was one where the pay for what I guess I called it the pay for play choice screen, Apple would choose to do that. You're absolutely right. Obviously, Larry DOJ can't force Apple, all right. I'll stop there.

Ginger Jin

Yeah. And I totally agree with what Randy and Larry have said. But no matter what's the remedy in this case, it's going to set a precedent for the future cases. And we know the default bias on consumers mind

is not just limited to search engine, but will be limited to many things, especially in the mobile world. So if we're thinking, what's the guiding principle of banning somebody from signing a default contract, but allowing others to sign a default contract, I couldn't find myself to be very clear on that. Like, if, say, the guiding principle is we're only going to disallow dominant firms from signing such a default contract right? Like in the Google case here, I mean, how are we going to define dominant? Is 90% dominant? Is 51% dominant? Is 40% dominant? So that's one question and second question is, suppose Apple cannot receive money from Google, but can receive money from Microsoft and anybody else. And suppose Bing is willing to pay enough so that Apple wants to set Bing as a default. Even after knowing that most consumers may prefer Google to be the default given their behavioral actions, then, is that really good for consumers? That's their nudge. To use a product that's somewhat not the 1st choice and they either have to reset the default by themselves, assuming there's some cost there, or they end up using a potentially inferior product, and hopefully, that product would improve to be of the same quality as their 1st choice tomorrow. So I think that seems a tricky question to me.

Tom Lenard

Right. I was going to go there also. I mean, really what is the effect of this type of scheme on consumers? Because it seems to me there is an argument that Ginger just made, that to put it slightly differently, that if you know which choice consumers generally prefer, you should set that as the default and make it easy for consumers.

Randy Picker

So when I when I teach this, I start with the Apple's release of Safari in 2003, and the press release for that. And what they say is, "we're doing this. We're excited about it. And oh, by the way, we're doing something really fantastic, we're gonna build a search engine in. That's a fantastic search engine called Google." They thought it was the right choice. There was no money changing hands. Money shows up later. This is way pre-iPhone. They thought it was best for consumers.

Tom Lenard

By the way. Oh, well, to the audience, listening, I am at some stage, I think, going to get to the queue, to the questions that are listed here, so please feel free to write them in.

Lawrence White

You know, there's no question, you know, that given if and this is an issue that's sort of lurking in the Judge Mehta's opinion-- if Google had a head start to begin with, was a superior engine to begin with, then what follows? And partly it addresses you know, Ginger's point, which is well, how dominant you know, how would you know what's the level of dominance? But that also brings in what at least I call, the Gilbert Newberry point. Richard Gilbert David Newberry, writing in the American Economic Review over 40 years ago, pointed out that if you have a dominant firm and call it an entrant or a smaller rival, and there is some crucial resource that's up for grabs, the dominant firm is going to find it worthwhile to outbid the entrant or the smaller rival, because the dominant firm is protecting monopoly profits. The best that any rival could hope for would be duopoly profits. That to me is a real dilemma-- when you've got a crucial resource. You know, Google's dominance, the head start would have naturally led it to be

bidding more. It would be harder being a smaller rival to match Google, because all they could hope for would be duopoly profits.

Randy Picker

That's great. I think of that point on the monopoly/duopoly point is just like breathing the air. We all know that, but where the origin was, I guess I didn't know, so I'm happy to hear that right now. That's great.

Lawrence White

All right. It's American Economic Review, 1982.

Randy Picker

I wrote it down.

Lawrence White

Gilbert Newberry.

Randy Picker

Got it.

Ginger Jin

And I want to add a few points related to this default. Mozilla received, I think, 480 million dollars from Google in 2022, which accounts for 81% of their revenue. So if Google is not allowed to pay that much, would that hurt the elevation operational Firefox and other products from Mozilla? Right? That's number one question. And number two, similarly, for Apple. Apple received 20 plus 1 billion dollars. And Samsung received some dollars. If they're not allowed to receive this amount, or they end up receiving smaller amount from somebody else, does that mean other services, including the phone itself will be more expensive? I mean, these are the potential ripple effect of this similarly simple ban on the default contract by.

Tom Lenard

Let me before we go on to some of the other potential remedies. Let me see if I can get you guys to guess, or give educated guesses to the question of, if this is part of the remedy-- which I think, we probably agree, it will be-- prohibiting Google for paying from paying for, will that will that one, produce consumer benefits and two, result in more innovation? I mean, it seems to me the theory that has to be behind what the judge is doing, is that we'll make life a little less pleasant for consumers in the short run, in the hopes that over time we will get more entry, more innovation, more competition, more innovation. But that's kind of I know, speculative, as a legal term, and I've never-- but still.

Lawrence White

I think that's--I think that's right, that you know the thumb on the scale. Whatever metaphor you want restricting what Google can do in order to somehow recreate a "but for world," whatever that is, where

there's more competition. And then you know, once we're there, take the thumb off the scale and let her rip. But you know, it's easy to say those words in great generality. And what does that actually mean in specifics? I guess that's why Federal District Court judges get paid such handsome salaries.

Tom Lenard

Right. Well, let's start it.

Randy Picker

Go ahead!

Tom Lenard

No, no.

Randy Picker

All I was gonna say, is look, it seems to me the vision has to be that getting more scale to Microsoft on mobile would increase competition and increase innovation. That's the story. I'm completely with Larry. We can say those words. But the reality is, I have no idea. But that's nature of competition. Right? We're not supposed to know the endpoint. We're supposed to believe in the process right?

Ginger Jin

And, Tom, to answer your question. I think that depends whether the ban on the default contract is the only remedy or not, right? If this is the only remedy, I would say, it's probably hard to predict how the elevation would change, because who knows how Google will use the extra money, and how Apple and Mozilla and Microsoft will react with this change. But if there are other remedies, I mean DOJ has a very long list of other remedies, I think many of those probably, will affect the elevation incentive of every player here, as well.

Tom Lenard

Do you think, you know, when I was in government, we always knew that the way to write a memo was to put, you know, put all the options, you know. Put A, B, and C. And you really want B. So you make you make A and C look extreme. So in one way or the other, I do assume that that that DOJ is going to propose a whole range of options, probably more than 3. And maybe the judge will pick something in the middle. But obviously there's been a lot of talk about a structural issue. Let's talk about the structural issue, because I certainly don't want to run out of time before we do that.

Lawrence White

All right, let me let me leap in on structural, and please understand. This is not what I would do if I were the decision maker. But the idea of requiring divestiture of Android to requiring divestiture of the Chrome browser is not an outrageous idea. It somewhat parallels what Justice had and Judge Jackson had approved in Microsoft in 1998/'99, and the basic idea would be an independent Android is more inclined to make, call it on the merits decisions, about what search engine to have as default. Might even create its own search engine, creating more competition. Similarly for Chrome. And so that's not

an outrageous idea. I don't endorse it, because I think, even after decades of studying it, we don't understand enough about the economies, efficiencies, of these kinds of vertical and complementary arrangements. And so that's not what I would do. But the idea you get a structural separation. You don't have to worry about behavioral this' and that's. Judge Meta is less in a position of being a day-to-day regulator. There is something to be said for that, it's not an outrageous idea.

Tom Lenard

I doubt it if they did that-- I don't know if they would, that the--that I I'm sure they would. They would join. They would also have behavioral--

Lawrence White

I, you know, hey, you can't bid for contracts is a behavioral remedy.

Tom Lenard

And that, and even if they had the structural they would, they would probably have that as well.

Lawrence White

No, they're yeah. But again, I just wanted to get that, it's not, you know, it's not looney tunes. It's really not.

Randy Picker

So, Larry, in that world, do you do you think we would like auction off Android, or auction off Chrome? And what does that look like, and who buys, and is that I'm not sure when you say split it off. I'm just trying to.

Lawrence White

I. You know. I'm a guy who lived—I wasn't part of the decision of the AT&T, break off, breakup. But I lived through a lot of the thinking about it, and I just see it as a you know, you've got to draw lines somewhere of what's Android? What's Chrome? What's Google search? And you sort of separate the IP, you separate to the extent you can, the people, and you have a shareholder distribution, so that you've created 3 freestanding companies with separate managements and separate IP, and at least initially separate human capital. That's the way I would envision something like that in AT&T. It was primarily physical capital. But there was some human capital there. You know, here a lot more IP and human capital, but just 3 spun, spun off.

Randy Picker

Look there was a central vision, though I mean AT&T is obviously our last major breakup. Obviously we looked at Microsoft briefly and then backed away. The AT&T breakup I think, was driven by 2 things. It was driven by AT&T's proper desire to be free of the 1956 final judgment, because that was keeping them out of the computer business. And they wanted to go into that business at a time when communications and computers was converging. And then a conceptual, and I think this was Baxter, conceptual clarity. That look, the regional bell operating companies were still going to be treated as

regulated natural monopolies, and the new AT&T was going to be competitive in a market. I use this phrase in class, and I get blank stares long distance. What is that? No one knows right? But that was obviously the world that we lived in then. So there was a conceptual clarity to what was going on there. I'm not sure that that maps here particularly well.

Ginger Jin

Yeah, I sort of agree. I feel like the structural remedy as a prescription is not exactly targeting the disease. I mean, if we look at distribution contract here, the most expensive contract is between Google and Apple. And given that Apple is not the party in the case, the court cannot do anything ordering Apple to do or not to do something, right? So it's sort of like looking for maybe the second best, of Android, because Android is owned by Google. But I just don't see a very clear connection of like how ownership of Android or Chrome or Google Play Store has a direct causal impact on how like-- decouple them is going to improve the consumer welfare or advertiser welfare.

Tom Lenard

I think maybe what the people who are proponents of that would say is that if you had an independent Android that couldn't, Google couldn't, buy default placement there, they might be inclined to sell it to somebody else or kind of jump. I think the idea is to jump, start competition. It's not my, that's not my view of the of the way of what should be done, but I think that's what the proponents of that would which.

Randy Picker

But you could do that by intervening directly on forcing them to like auction off Chrome, you know, distribution or the same for Android. Look, Google, I heard the phrase, Google owns Android. I don't know what to make of that. It's like open source software. But their business model finances all the development there, and that's true on Chrome, and what that would look like in the world in which we split those off in the way that Larry was describing? I don't, I don't really know at all. That's easy.

Ginger Jin

And if the goal is to promote competition and then clean start like you could have the choice screen, as Larry described, right on Chrome or on Android, without the structural remedy of breaking up.

Randy Picker

Yes, I agree with that completely.

Tom Lenard

Well, let me. Let me see if what the--

Lawrence White

Well, there's 1 remedy we haven't talked about, which has been you know, put out there is requiring Google to share at least its current a block of information. You know, however many petabytes of

information is out there. You know. Just make it available. That feel that's sort of a structural thing, especially if you say it's a 1 time divestiture. It's not a continuing thing. They don't have to continue to share what they learn in the future. But hey, we're trying to make up for the absence of information scale in that "but for world." Okay. Get that information out there.

Tom Lenard

I'd like to ask you all maybe a question I should have put on the table at the outset about what the goal of the remedy should be. I mean, on the one hand, you could say the goal should just be to remove what you think the anti-competitive behavior is, which is the distribution contracts. On the other hand, you could say, well, the goal is to jump start competition, and to have a remedy that somehow offsets the past 10 years of purportedly anti-competitive behavior. So I mean is that, you know, in jump starting competition, I know that we talked about that a lot in the Microsoft case and stuff like that. But it's kind of, then you're really getting into to managing the company. And I'm not sure they talk about a committee of experts to monitor the remedies and everything that kind of a seems like kind of a big deal to do with a company that by and large consumers like.

Ginger Jin

Yeah, I saw the goal is to restore the competition harmed by this particular behavior, but somehow not hurting the computation in the future. In this particular area as well as adjacent and related areas. That that's kind of the implicit and goal in my mind.

Randy Picker

Look the information sharing, and that's what Larry mentioned, look I get it conceptually right. Bing has been deprived inappropriately, anti-competitively of scale, especially on mobile. That's the idea. Let's restore. Let's give them the scale they would have had, and the way to do that is to give them all this data from Google. I get it, man, the mechanics of that, I think, is going to be hard. And we're seeing that play out in Europe with regard to the DMA, or at least we're going to see that. So it's not as if you know, again Larry's been saying what's crazy and what's not crazy. It's not crazy, right? It's hard, and maybe it would then restore the competition that we would have had in the absence. Now I think they're going to push, Larry said, maybe a 1 time data dump? No, I think they're going to want it to be ongoing until they've got up. So that's hard Not easy.

Ginger Jin

But if we're thinking about logistics, I think the devil's in the detail, right? The data that Google has or upon the consumer's consent of giving Google those data for maybe Google's internal use. And now let's say we're going to zip that into a big file and dump on the lap of Microsoft. Would that automatically violate the consumer's consent? And if yes, how you're going to mitigate that before having that data created and available to competitors.

Lawrence White

Oh, Ginger, that's very. I hadn't thought about that consumer consent aspect of it. That adds, I'm not going to say one wrinkle, tens of millions of wrinkles to that issue. Randy, you're more skeptical.

Randy Picker

You'll set up an opt out dark screen. The consumers will be sheep. It'll be fine.

Tom Lenard

What does it do to incentives? I mean, presumably, you know, Google has spent. It's a big investment accumulating that data. And now you say, well, I mean, this happens in other, you know, public utility type of cases. You know it's obviously well. It's a disincentive to invest if you got to share it, to share it with everybody else, and it's also disincentive for the entrants to invest. Assuming they can get it, you know, get it for free. I don't know exactly how this would work in practice. It might not. It might not really be getting that much for free, but so, but well.

Lawrence White

But that's why you know Randy, may be right, that there may be this initial idea of ongoing sharing of information. Which is why, the idea of just, though all right, here we are on October 22, 2024. Here's the amount of information that Google has learned or learned over the period where they were making these illegal distribution payments. That's the information. Again, we need to get past the consumer permission issue that Ginger raised. But here's the information. There, now you're caught up. Good luck, and let's move forward.

Tom Lenard

So a major question that we haven't talked about, and maybe this will be the last topic is AI. That's clearly, I think, a big part of this whole issue. I guess the question really is, I mean is AI a pro-competitive development, and at least in this world might have thought so. But part of the discussion in the remedies document and elsewhere is that we somehow need to constrain these companies from. I mean, I guess the idea is that the incumbents who already have a dominant position and other things. We don't want them to have a dominant position also in AI which they already have. Maybe I'll start with Ginger. How does AI play in this? And how should it play in this?

Ginger Jin

Yeah, very good question. I think AI is potentially a very large competitor, or, I should say, a series of competitors in the search, general search area. And I think Google will be a very important competitor there along with other people. So whatever remedy DOJ or the court ends up having, I feel like we want to make sure that race is a level play field. That's I'm sort of concerned that some remedies on the table may end up hurting Google's ability to compete effectively in that area. I understand that Google is dominant in the current technology of a general search. But if we take away Google as effective competitor from the future AI race, I'm not sure that's going to help with competition in that area. And if Google is able to say, gain a merit in that competition as well, we should not be against for Google to become the popular choice by consumers. But at least we should let Google and other players, OpenAI and other many other startups to compete in this area. I really don't want to handicap Google just because its past action have somewhat hampered the competition in the traditional search area.

Tom Lenard

Well, I mean, I think one of the narratives around the Microsoft case was that Microsoft was, it wasn't so much a particular remedy, it was just that Microsoft was so preoccupied with their antitrust issues that allowed Google to emerge, be as successful now.

Randy Picker

So I think they on that I think they just didn't get searched. And I think that's why they're in the mess. They're in Microsoft on the AI. I will say, I thought, I agree with Ginger that wow! If we sort of say Google, you've got to exit. AI can't do that we're taking a firm that we want to be a powerful competitor. Okay? I thought, actually, what DOJ said in the remedies, and we'll see what the November version looks like was a little more narrowly tailored in the sense that they're concerned, that Google will use its monopoly position somehow to do better on training data. And so and that was that was a little more narrowly focused. And I guess I need to see more. So that didn't scare me in quite the way something much more encompassing would scare me that I hear occasionally discuss block Google from AI completely, I think, would be a bad, bad outcome.

Lawrence White

I'm with you all the way, you know we don't, again, one would like to try to recreate the but for more competitive world. But geez limiting quality improvements on the part of Google, just shouldn't be. And again, it's hard for me to envision Judge Meta given the sort of a high level of I'll call it reasonableness. He shows in his writing of the opinion hard for me to believe he would embrace some. You know that kind of handicapping of what he clearly recognizes to be a very talented and productive company.

Ginger Jin

And even on the narrow proposal that Randy mentioned, I'll read the exact word here by requiring Google to allow website, crawled for Google search to opt out of training or appearing in any Google owned artificial intelligence, product or features on Google search such as retrieval augmented generation source summaries. So that's the proposed narrow and remedy from DOJ. My 1st reaction reading this is, Wow. If some artists don't want their materials to be crawled by Google shouldn't that option be available for that artist not to be proud by any other things. Open AI or Microsoft, or other potential competitors. Right? I feel like, if this remedy is only for Google, that seems to generate kind of a special treatment here.

Randy Picker

Well, I think there was a lawsuit brought against Perplexity yesterday on these issues. So it's you know, this is all gonna play out. I teach copyright, too. It's all gonna play out in that system as well. Yeah.

Tom Lenard

Okay, I do have, I do have a final question. You know, I know, you guys all like to predict. So search good there. But so what do you think, what do you think the DOJ will propose in its November in its November filing. And what do you think final resolution will be in terms of a remedy?

Lawrence White

I'm not sure it feels like DOJ is gonna continue to shoot for the moon. You know, the broad kitchen sink. So I'm not prepared to really refine my thoughts to a specific DOJ request or proposal, but I'll go out on a limb, and this may be my own wishful thinking of what I would do if I were Judge Mehta. I will predict 3 things, one gotta stop the distribute paying for distribution. 2, Google has to have a search, sorry a screen, a choice screen when you 1st bring up the Google Search screen itself. And I don't know, he'll pick some frequency. Maybe it'll be once a month. He'll be sensitive to this. We don't want consumers wasting a lot of time having to make that choice every minute, every hour whatever. And then last, there will be this one time, distribute dump distribution of the existing Google search database of making it available. There'll be the consumer opt out issue that Ginger and Randy highlighted. But those are the 3 things that I'm going to predict for Judge Mehta.

Tom Lenard

Anybody else want to go there.

Ginger Jin

Yeah, I largely agree with Larry. I think the DOJ's proposal actually has an item on consumer education like requiring Google engage in some consumer education about potential search options. Maybe that will be coupled with the choice screen, as Larry mentioned.

Randy Picker

Yeah, I guess I think the question is because Larry sort of I don't say, did a sleight of hand there? He went from DOJ to Mehta, and I think those are different. I think those are different people right? So I think Judge Mehta and I thought Larry said earlier that he seems like a smart, reasonable guy. I don't know them at all, but just the opinion. So I think something along the lines of what Larry's talking about might sell at that level, and they could get that through. If they want the precedent, they're going to go bigger. And I think the question is, do they want the precedent, or do they want the chance for more immediate, rapid progress in this market? And if they want to do that, then they want to head down Larry's path. I think.

Tom Lenard

Do you? Do you think I mean? I think that for maybe for a variety of reasons, I think there's a decent chance they would propose some sort of structural remedy which I think I agree the judges may not be inclined to give them. But is there a risk to them, is it? Is it costless for them to propose it and not get it?

Randy Picker

I just think of this is about time, right? These markets are changing so rapidly. So I think if you just care about the market in your DOJ. You want a rapid solution. So that's what I see as the cost.

Ginger Jin

And I think the 2 sides probably going to spend a very long time debating on those structural remedy if that's the serious consideration on the table. And on that, we probably need to couple this case with the

Google Ad Tech case and see how that turns out in the court, and what remedies are on the table for that, if the court ends up deciding against the Google.

Lawrence White

Gee. We can have another one of these, you know, sessions. I'm having such a good time. Let's, as Ernie Banks used to say, for the Chicago Cubs. Let's play 2!

Tom Lenard

Well, we could even have another one on this after November 20th or whenever they put their actual proposal up. Well, I thought this was a great discussion. I want to thank you all for participating, and thank the audience for listening in.

Lawrence White

Thank you, Tom.

Randy Picker

Tom.

Lawrence White

And thank you to TPI.

Ginger Jin

Thank you. Tom.