



March 19, 2021

# WHAT YOU NEED TO KNOW ABOUT Tech Antitrust Suits

## PRO POINTS

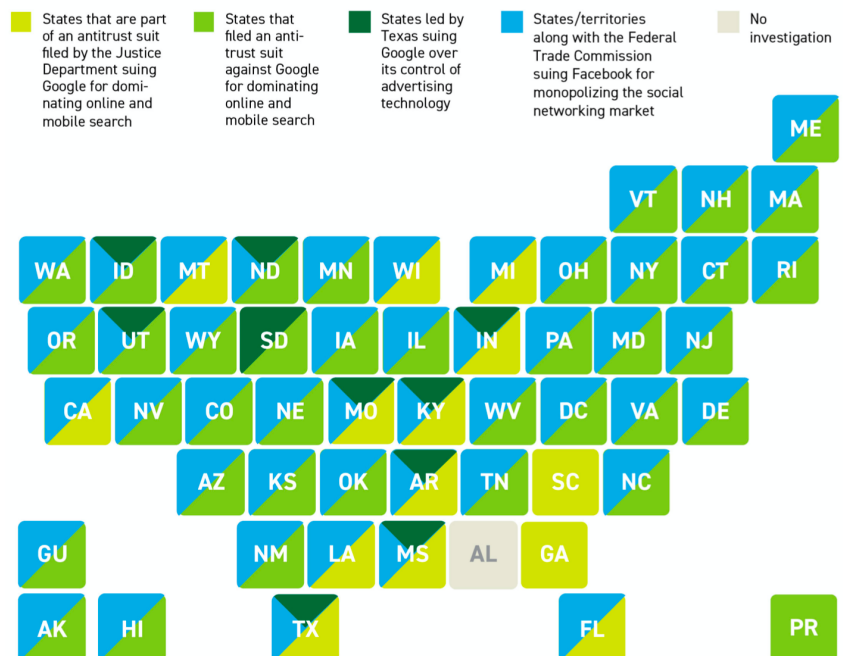
- **The Justice Department and a group of 35 states, D.C., Puerto Rico and Guam** are pursuing twin antitrust suits against Google for its dominance in online and mobile search.
- **Fourteen states and territories led by Texas** are separately suing Google over its control of the technology that helps buy, sell and serve online display advertising.
- **The Federal Trade Commission and 48 states and territories** have filed a suit accusing Facebook of monopolizing the market for social networking and are seeking to force the company to spin off its photo-sharing app Instagram and messaging platform Whatsapp.
- **Fortnite creator Epic Games is suing Apple and Google**, accusing them of illegally forcing app developers to use their payment systems in exchange for access to their smartphone app stores.

## HOW WE GOT HERE

During the early 2010s, the U.S. antitrust agencies largely left the major online platforms alone. That free pass ended in 2019, when the agencies and multiple state attorneys general opened antitrust probes into the tech giants. Two of those investigations culminated in late 2020 with five federal antitrust suits against Google and Facebook. The FTC and 48 states and territories allege that Facebook engaged in a pattern of behavior to quash potential rivals.

### Who's investigating Big Tech

Almost every state is pursuing antitrust investigations of Google and Facebook.



Source: POLITICO research

Meanwhile, DOJ and attorneys general for nearly all U.S. states allege that Google sought to maintain a monopoly over online search. A third antitrust suit alleges Google manipulated its advertising tools to maximize its own profits and stifle competition from rival technologies that might yield higher returns for website publishers. DOJ is also investigating Apple, but with that probe ongoing, Epic Games sued Apple and Google over app store policies that allegedly illegally stifle developers.



## WHAT'S NEXT

Epic's suit against Apple is headed for a bench trial in May. U.S. District Judge Yvonne Gonzalez Rogers plans for an in-person trial in Oakland, Calif., that will last two to three weeks. The Fornite-maker accuses Apple of illegally tying access to its App Store — the only way for iPad and iPhone users to download apps — to Apple's payment mechanism, which takes a 30 percent cut on transactions. Epic has a similar suit challenging Google over the policies and commissions of its Play Store. That case, being overseen by U.S. District Judge James Donato in San Francisco, doesn't have a trial date, although Donato said he is likely to schedule one in 2022. Epic hopes for a court order forcing Apple and Google to let developers use other payment methods that charge lower fees.

### Apple app store and services revenue

Worldwide gross revenue from Apple's app store plus subscription services, such as Apple Music and Apple TV.

IN BILLIONS OF DOLLARS



Source: Statista

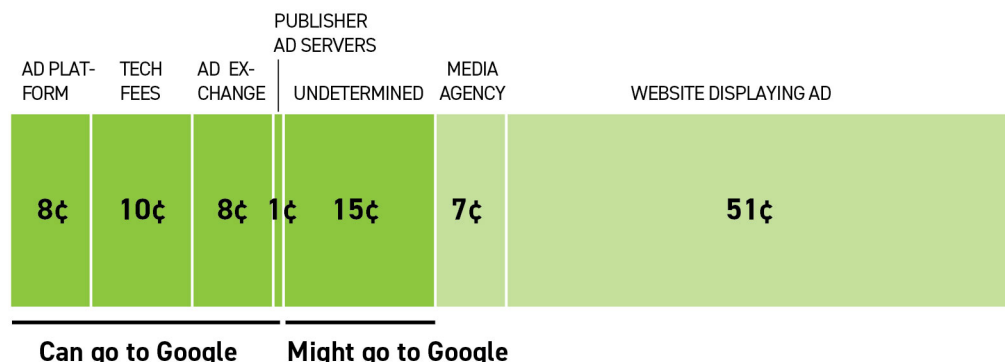
The Justice Department's suit against Google is scheduled for trial in the fall of 2023 before U.S. District Judge Amit Mehta in Washington, D.C. A related suit by more than 30 state attorneys general could be tried at the same time, but it includes additional claims and might require its own trial later. The DOJ and states haven't outlined exactly what remedies they want the court to impose, but one possibility is requiring Google to sell off parts of its business, what's known as "structural separation." The third antitrust suit against Google, over advertising technology, is pending in Texas federal court, where U.S. District Judge Sean Jordan hasn't set a trial date but state prosecutors hope to schedule it for early 2022. Texas wants to require Google to sell off parts of its advertising technology business and is seeking damages under state laws that prohibit deceptive business conduct.



## How much Google gets from display ad spending

Google could collect as much as 42 cents of every dollar spent on online display ads through the advertising technology it controls, according to a study by British advertising group ISBA and accounting firm PwC. The study focused on the United Kingdom's estimated \$7 billion market for digital ads sold through exchanges but has implications for the roughly \$60 billion U.S. market.

### Where a dollar spent on display advertising goes



Source: ISBA Programmatic Supply Chain Transparency Study, May 2020

Facebook's case is on a slower track: The social network has asked U.S. District Judge James Boasberg in D.C. to dismiss the suits filed by the FTC and the state attorneys general — a common legal maneuver in antitrust cases that will force prosecutors to justify aspects of the suit early on. Boasberg will have to consider those issues before the case progresses and probably won't have a decision until the summer of 2021. He hasn't yet indicated how quickly the suits might reach a trial. The FTC and states have asked Boasberg to require Facebook to sell off Instagram and WhatsApp.



## POWER PLAYERS

- **Amit Mehta:** The Obama-appointed judge overseeing the DOJ and state antitrust suits against Google over online search was a partner at the law firm Zuckerman Spaeder and a D.C. public defender before he joined the bench in 2014.
- **James Boasberg:** Also an Obama appointee, Boasberg is the judge overseeing the FTC and state antitrust suits against Facebook. He joined the federal bench in 2011 after eight years as a judge in D. C. courts. He also spent nearly six years as a federal prosecutor specializing in homicide cases in D.C.
- **Sean Jordan:** The judge overseeing the Texas antitrust suit against Google over advertising technology, Jordan is a Trump appointee who joined the bench in 2019. He was a partner at the law firm Jackson Walker LLP, focusing on appellate litigation, and also served in the Texas attorney general's office from 2004 through 2012.
- **Yvonne Gonzalez Rogers:** The judge overseeing Epic Games' antitrust suit against Apple over its AppStore. An Obama appointee and the first Latina to serve as a judge in the Northern California federal courts, Gonzalez Rogers was a state court judge in Alameda County and a litigator for the law firm Cooley before she joined the bench.
- **John Schmidlein:** Google's lead litigator in the search suits and a partner at Williams & Connolly, Schmidlein also represented the search giant in its earlier FTC probe and a private antitrust suit related to Google's Android operating system. In the early 2000s, Schmidlein represented a group of states in the landmark Microsoft antitrust suit.