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BLOG

# State AG's Allege that Google Has Been Playing Monopoly with Android App Store

JULY 9, 2021

On July 7, 37 attorneys general from various states and the District of Columbia filed a lawsuit against Google in the Northern District of California alleging antitrust violations related to Google's Play Store. The complaint alleges that Google maintains unlawful monopolies in the app distribution and in-app payment processing markets on the Android operating system.

According to the complaint, Google "distributes over 90% of all Android apps in the United States," and requires that app developers use Google Play Billing for all digital in-app purchases made by consumers. (Compl. ¶¶ 10, 11.) Google takes up to 30% of the revenue from both the app and in-app purchases. The complaint also claims that Google has instituted rules and policies to maintain its monopoly power in both markets. The plaintiff states allege seven causes of action for violations of Sections 1 and 2 of the Sherman Act, and an eighth cause of action for state-specific claims. The states seek treble damages, disgorgement, civil penalties, and injunctive relief related to Google's rules and policies regarding the Google Play Store.

Google's Senior Director of Public Policy, Wilson White, issued a response to the lawsuit contesting the market definition and specifically noting competition from Apple. He noted that manufacturers can pre-install other app stores on mobile devices and consumers can download apps directly from developer websites. He also noted the assistance that Google provides to developers and the resulting benefits to American job growth. White acknowledged that "scrutiny is appropriate," and stated that Google is "committed to engaging with regulators," but he framed the lawsuit as "boosting a handful of major app developers who want the benefits of Google Play without paying for it."

This lawsuit is the latest example of the increasing antitrust scrutiny on digital marketplaces in the wake of Epic Games Inc.'s lawsuits against Apple and Google last summer, and civil class action lawsuits brought against the tech giants for alleged monopolistic practices. While states have taken the lead, Congress is also investigating antitrust issues posed by Google and Apple's app stores. The Senate Subcommittee on Competition Policy Antitrust, and Consumer Rights held a hearing on app stores in April 2021 focused on many of the same concerns raised in the complaint. Apple and Google were specifically pressed on the high commission rate for in-app purchases, and their conduct in preventing developers from circumventing the Apple and Google billing platforms.

Across the Atlantic, the European Commission charged Apple with antitrust violations related to Apple's App Store rules. And in Australia, the Australian Competition & Consumer Commission also signaled an intent to address antitrust concerns related to Apple and Google's app stores.

## TAKEAWAY

This multi-state enforcement action is another example of governments' increasing scrutiny of, and assault on, so-called "walled gardens," or closed platforms. This structure, common in software systems and digital ecosystems, typically involves a service provider exerting control over the applications, content, and/or media that are permitted to operate within the system, and restricts convenient access to non-approved applicants or content. While the focus of government scrutiny of late has been on Apple and Google, all companies that operate such systems, or those that provide their services or content within similar structures, should be mindful of their dealings and how they impact the competitive landscape in the relevant market.

The case is *State of Utah et al. v. Google LLC et al.*, case number 3:21-cv-05227-JSC, in the U.S. District Court for the Northern District of California.

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