

Antitrust Settlements, Remedies & Sentencings, A Fireside Chat with DOJ

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Winston & Strawn recently participated in a workshop hosted by the University of Chicago Law School, titled “Antitrust Settlements, Remedies & Sentencings, A Fireside Chat with DOJ.” To open the event, Co-Chair of Winston’s Antitrust/Competition Practice, Jim Herbison, sat down with his former colleague, David Dahlquist, who currently serves as Acting Deputy Director of Civil Litigation for the DOJ Antitrust Division. Their wide-ranging discussion centered on key insights from the DOJ’s active civil antitrust docket, with a particular focus on two landmark cases against Google related to its search engine and advertisement technologies (collectively, Google Antitrust Cases):

- *United States v. Google LLC*, No. 20-cv-3010 (D.D.C.) (“Google Search Case”)
- *United States v. Google LLC*, No. 23-cv-00108 (E.D. Va.) (“Ad Tech Case”)

BACKGROUND ON THE GOOGLE ANTITRUST CASES

The DOJ initiated the Google Search Case in 2020, and the Ad Tech Case in 2023, alleging in each that Google engaged in anticompetitive and exclusionary conduct in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, among other provisions. In both cases, the parties agreed early on to bifurcate the proceedings into separate phases to address liability and, if necessary, remedies. Following the liability phases, federal courts in the District of Columbia and the Eastern District of Virginia ruled in favor of the DOJ, finding that Google violated the Sherman Act. (Google Search Case, Dkt. 1033; Ad Tech Case, Dkt. 1410.)

KEY TAKEAWAYS

At the time of the workshop, the DOJ was preparing its closing arguments in the remedies phase of the Google Search Case. With his unique insight into these landmark antitrust cases, Dahlquist provided three key lessons.

Bifurcation. Dahlquist emphasized the strategic value of bifurcating the issues of liability and remedies, particularly in complex technology cases which often rely on the testimony of highly specialized experts. This approach is valuable in that it helps to streamline complex and evolving litigation issues, and may allow for the development of a more comprehensive record. For instance, in the remedies portion of the Google Search Case, the DOJ considered

additional evidence regarding the emergence of generative AI platforms in shaping its proposed remedies. As such, practitioners should consider this strategy at an early stage in the case.

Remedies. Dahlquist highlighted that remedies are not merely an end-stage consideration, but they also influence strategy from the outset. The DOJ's goal in antitrust enforcement is to restore competition to markets, which is carried out through the application of remedies. As such, whether an antitrust remedy can effectively correct an alleged market imbalance is a component in the decision to bring a case in the first instance. However, the applicability of remedies can, and should, evolve over the course of the litigation. In the Google Search Case, for example, the DOJ sought several remedies, including: (1) a payment ban, (2) a data sharing mandate, and (3) a divestiture of Google Chrome. Dahlquist explained that these remedies were informed by the parties' extensive discovery record, as well as by considerations of the changing technology market—underscoring the need for remedies to evolve with the case.

Practice Tips. Drawing on his experience in both the private and public sectors, Dahlquist offered three principles for litigating against the government. First, always maintain civility. Practitioners who abandon collegiality with the government invariably develop a bad reputation among peer lawyers and the court, which undermines their advocacy. Second, much like in any litigation, documents are the source of truth. As such, practitioners should not make arguments without a sufficient understanding of the record, or else they risk losing significant credibility and running afoul of their ethical obligations. Third, practitioners should respect the government's chain of command. If a practitioner wishes to communicate their position to a government supervisor, they should be transparent with the assigned staff attorneys and should not circumvent their authority. Adhering to the established chain of command promotes constructive dialogue, which is beneficial for all parties.

3 Min Read

Speaker

[Jim Herbison](#)

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