

AG Mark Brnovich Joins Multistate Lawsuit Seeking to End Google's Illegal Monopoly in Search

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Bipartisan Coalition Alleges Google Illegally Maintains a Monopoly & Has Created Insurmountable Barriers to Entry for Competitors

WASHINGTON, D.C. - Attorney General Mark Brnovich is part of a bipartisan coalition of 38 attorneys general in suing Google LLC for anticompetitive conduct in violation of Section 2 of the Sherman Act. As a member of the Executive Committee, the Arizona Attorney General's Office (AGO) has played a key role in the investigation and development of the lawsuit.

The attorneys general allege that Google illegally maintains its monopoly power over general search engines and related advertising markets through a series of anticompetitive exclusionary contracts and conduct. As a result, Google has deprived consumers of competition that could lead to greater choice, innovation, and better privacy protections. Furthermore, Google has exploited its market position to accumulate and leverage data to the detriment of consumers.

"Google's quest to build a monopoly has led to less privacy, stifled innovation, and reduced choice for consumers," said Attorney General Brnovich. "I'm not interested in micromanaging businesses, but consumer privacy must be protected. Our bipartisan antitrust lawsuit against Google is targeted to stop illegal conduct and improve consumer welfare."

In many ways the states' complaint is consistent with the lawsuit filed by the U.S. Department of Justice on October 20, which alleged that Google improperly maintains its monopoly power in general search and advertising through the use of exclusionary agreements. However the states' filing asserts additional allegations and describes Google's monopoly maintenance scheme as a multi-part effort. The states' lawsuit alleges that Google:

- Uses exclusionary agreements and other practices to limit the ability of rival general search engines and potential rivals to reach consumers. This conduct cements Google as the go-to search engine on computers and mobile devices.
- Disadvantages users of its search-advertising management tool, SA360, by promising that it would not favor Google search advertising over that of competing search engines such as Bing. Instead, Google continuously favors advertising on its own platform, inflating its profits to the detriment of advertisers and consumers.
- Discriminates against specialized search sites – such as those that provide travel, home repair, or entertainment services – by depriving them access to prime “real estate” in the search results pages because these competing sites threaten Google's revenue and dominant position.

The attorneys general argue that more competition in the general search engine market would benefit consumers, for example, through improved privacy protections and more targeted results and opportunities for consumers. Competitive general search engines also could offer better quality advertising and lower prices to advertisers.

The attorneys general expand on the U.S. DOJ's allegation that Google's anticompetitive conduct continues. As explained in the complaint, the company seeks to deploy the same exclusionary contracting tactics to monopolize the emerging ways consumers access general search engines, such as through their home smart speakers, televisions, or in their cars ("voice assistants"). In so doing, Google is depriving consumers of competitive choices and blocking innovation.

The states also go further than the U.S. DOJ in explaining how Google's acquisition and command of vast amounts of data – obtained in increasing part because of consumers' lack of choice – has fortified Google's monopoly and created significant barriers for potential competitors and innovators. The bipartisan coalition is asking the court to halt Google's illegal conduct and restore a competitive marketplace. The states also seek to unwind any advantages that Google gained as a result of its anticompetitive conduct, including the divestiture of assets as appropriate. Finally, the court is asked to provide any additional relief it determines appropriate, as well as reasonable fees and costs to the states.

The complaint was filed in the U.S. District Court for the District of Columbia, in conjunction with a Motion to Consolidate seeking to combine this case with the pending U.S. DOJ case.

For Arizona, this case is being handled by Solicitor General Beau Roysden, Deputy Solicitor General Michael Catlett, Competition, Innovation & Privacy Unit Chief Dana Vogel, Assistant Attorney General Christopher Sloat, and Legal Assistant Project Specialist Amber Daniels.

The states' investigation was led by an executive committee made up of the attorneys general of Arizona, Colorado, Iowa, Nebraska, New York, North Carolina, Tennessee, and Utah. The executive committee is joined by the attorneys general of Alaska, Connecticut, Delaware, Hawaii, Idaho, Illinois, Kansas, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, West Virginia, Wyoming, the District of Columbia, and the territories of Guam and Puerto Rico.

Copy of the Multistate Complaint. (</sites/default/files/docs/press-releases/2020/complaints/02b%20-%20Attachment%201%20-%20Colorado%20et%20al.%20v.%20Google%20PUBLIC%20REDACTED%20Complaint.pdf>)

Consumer Data Privacy and Big Tech

Since taking office, General Brnovich has prioritized consumer data privacy. In May 2020, Arizona became the first state to file a consumer fraud lawsuit against Google (<https://www.azag.gov/press-release/attorney-general-mark-brnovich-files-lawsuit-against-google-over-deceptive-and-unfair>) over how the company deceptively tracks users' locations. In the case, the AGO filed a Reply in Support of Motion for Partial Summary Judgment

(<https://www.azag.gov/media/interest/state-v-google-reply-support-motion-partial-summary-judgment>) on Tuesday. Even if summary judgment is not granted, the case is set to continue through discovery with a trial in 2022.

Last week, General Brnovich and a bipartisan coalition of 47 other attorneys general filed an antitrust lawsuit against Facebook Inc. (<https://www.azag.gov/press-release/ag-brnovich-joins-multistate-lawsuit-seeking-end-facebooks-alleged-illegal-monopoly>), alleging that the company has and continues to stifle competition to protect its monopoly power illegally. The attorneys general allege Facebook's unlawful monopoly gives it broad discretion to set the terms for how its users' private information is collected and used to further its business interests.

In March 2018, General Brnovich sent a letter (<https://www.azag.gov/sites/default/files/docs/press-releases/2020/letters/Letter%20to%20Facebook%20-%203.27.18.pdf>) to Facebook discussing his obligation as Attorney General to help "ensure that the privacy of the people of Arizona is respected and preserved." He also raised concerns about Facebook allowing third-party application developers to not only access personal data from Facebook users but also acquire comprehensive data about friends of those Facebook users.

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