



Comment on regulation of competition and economic aspects of digital platforms
Secretary of Economic Reforms – Brazil’s Ministry of Finance
Center for Journalism & Liberty | Open Markets Institute

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Secretary of Economic Reforms,

The Open Markets Institute’s Center for Journalism & Liberty (CJL), based in Washington, D.C., submits this comment with the goal of providing relevant U.S.-based and other international sources to inform the work of the Secretary of Economic Reforms, the Secretary of Digital Public Policy, and the Secretary of Digital Rights in assessing regulation of competition and economic aspects of digital platforms in Brazil.

At the Open Markets Institute, we work to help people relearn how to use competition policy to build stronger democracies, more just and equitable societies, more innovative and sustainable economies, and a more secure and peaceful world. At the CJL, we work to ensure that the news media industry of the 21st century is robustly funded and suited to the needs of citizens of the world’s democracies.¹

Through reporting, deep research, and discussion forums, the CJL shines a light on the harms of market concentration in media, and the increasingly critical role played by large digital platforms, such as Google and Meta, throughout the news value chain, and the subsequent destruction of the fundamental economics needed for a free and independent press to uphold its mission of sustaining democracy.

In this comment, we provide lessons learned from some of the latest antitrust complaints filed by the U.S. Department of Justice Antitrust Division (DOJ) and the Federal Trade Commission (FTC) that tackle digital platforms’ potentially anticompetitive practices in a variety of markets, which can be pertinent as Brazilian regulators examine and draw parallels to the Brazilian economy. We focus on key lessons that can feed answers to questions in Section II (Sufficiency and adequacy of the current economic regulation model and antitrust law) of the Ministry of Finance’s inquiry.

¹ Center for Journalism & Liberty, “Our Mission at Center for Journalism & Liberty,” Center for Journalism & Liberty, n.d., <https://www.journalismliberty.org/mission>.

Google's Monopoly Over Search

- The U.S. Department of Justice (DOJ) filed an antitrust lawsuit against Google in 2020 for illegally monopolizing the search and search advertising markets.² The trial took place in Washington, D.C., from September to November 2023, and it is awaiting a judge's ruling before the end of the year. Essentially, the case tackled Google's pervasive use of exclusive agreements with device manufacturers to make Google's search engine the default service on browsers across devices. The DOJ argued this is an anticompetitive practice that enabled Google to lock up the online search market, subsequently depriving competitors from scale they needed to grow while fortifying Google's power over both search and search advertising markets.
- The DOJ argued that Google maintains an illegal monopoly over the search market since at least 2010. Even though Google's use of exclusive agreements in this market was known, it was only during the trial that the public was able to discover details of *how exactly* these agreements worked and their impact in foreclosing competition. For example:
 - Testimony in the trial revealed that Google spent a total of \$26.3 billion in 2021 to become the default search engine in multiple browsers, phones, and platforms. Google is giving up about 16 percent of its search revenue and about 29 percent of its profit to those distribution deals.³ Most of that money went to Apple.⁴
 - The CEO of Google's vision was to work with Apple as if they were "one company." The agreements Google struck with Apple also meant that Apple could never switch to a Google competitor — despite several attempts — or present users with other browser options when setting up

² U.S. Department of Justice, U.S. and Plaintiff States v. Google LLC [2020], No. 1:20-cv-03010, (D.D.C.) (n.d.).

³ David Pierce, "Google Paid a Whopping \$26.3 Billion in 2021 to Be the Default Search Engine Everywhere," *The Verge*, October 27, 2023, <https://www.theverge.com/2023/10/27/23934961/google-antitrust-trial-defaults-search-deal-26-3-billion>.

⁴ David Pierce, "Google Reportedly Pays \$18 Billion a Year to Be Apple's Default Search Engine," *The Verge*, October 26, 2023, <https://www.theverge.com/2023/10/26/23933206/google-apple-search-deal-safari-18-billion>.

their iPhones.⁵

- Under U.S. antitrust law, this is the first antimonopoly case of the modern internet era that examines how a dominant digital platform with global presence has willfully deployed business practices to maintain the market power it has captured in the United States. Thus, the DOJ argues such market power is distinct from growth or development as a consequence of a superior product, business acumen, or historic incident. Google’s arguments largely defend the use of such practices by deeming them “pro-competitive.” From a legal perspective, the DOJ will have to demonstrate that anticompetitive harms outweigh the benefits of Google’s pro-competitive approach.⁶

Google’s Monopoly Over Digital Advertising Technologies

- Another key lawsuit to keep track of is the DOJ’s antitrust complaint against Google’s business of advertising technologies (“ad tech”), filed in January 2023.⁷ The complaint dives deep into the last 15 years of Google’s conduct to dominate all segments of the ad tech industry, which connects the demand of advertisers with the ad inventory of web publishers. This lawsuit, unlike the Google Search case, seeks specific remedies, the main one of which is to break Google’s ad business off from the rest of the corporation. Structural separations have been a mainstay of American economic regulation, traditionally applied to critical networks and essential infrastructure.⁸ Requesting such remedy in this case underscores the need to address the competition problems created by platforms that control both ad tech services and other adjacent services such as social media or e-commerce marketplaces.
- This case will be Google’s first jury trial in the United States, and is set to start on **September 9, 2024**, in a Virginia federal court.

⁵ Todd Shields, Leah Nylen, and Davey Alba, “Google’s Pichai to Defend Search Dominance as Trial Pivots,” *Bloomberg News*, October 30, 2023, [https://www.bnnbloomberg.ca/google-s-pichai-to-defend-search-dominance-as-trial-pivots-](https://www.bnnbloomberg.ca/google-s-pichai-to-defend-search-dominance-as-trial-pivots-1.1991321#:~:text=In%20one%20email%20from%20Apple,where%20Google%20and%20Apple%20compet)

⁶ United States of America v. Google LLC (1:20-cv-03010), Plaintiffs’ Post-Trial Brief, No. 1:20-cv-03010 (n.d.).

⁷ United States v. Google LLC (1:23-cv-00108), No. 1:23-cv-00108 (n.d.).

⁸ Lina Khan, “The Separation of Platforms and Commerce,” *Columbia Law Review* 119 (May 15, 2019): 973.

- The ad tech market constitutes the backbone of the commercially supported World Wide Web, worth around \$300 billion in the United States. But it is mostly invisible to users. For ads to be placed, publishers and advertisers use three main ad tech products — which are the focus of DOJ’s complaint: publisher ad servers (for publishers to manage their ad spaces), ad buying tools (for small and large advertisers to buy ads), and ad exchanges, where supply and demand meet.⁹
- Ad sales occur through auctions. When a webpage loads, a publisher ad server requests a bid for a number of ad views (impressions) from an ad buying tool. But it’s not a direct connection. The ad exchange receives the bid request, makes it “more appealing” (adding data such as a user’s location or browsing history), sends it to the ad buying tool, receives bid prices, determines the winner, and executes the sale on the publisher ad server. Finally, the ad is shown, all in a split second.
- Per the DOJ, Google — which controls most of the tools in *all* three market segments — locked web publishers into using its tools and developed pricing manipulation schemes that raised costs for advertisers and reduced payouts to publishers, which enabled Google to shift away ad revenues to its own pockets.¹⁰
- As part of the lawsuit, the DOJ also examines **three key acquisitions** by Google that it claims were designed to kill nascent competition in the ad tech market: **DoubleClick**, acquired in 2007, which drove consolidation of the publisher ad server and ad exchange product markets; **Invite Media**, an ad buying tool acquired by Google in 2010 that Google later merged with its proprietary ad buying tool DV360; and the purchase in 2011 of **AdMeld**, a company that developed a technology designed to help web publishers find the best possible price in the open ad programmatic market.¹¹

⁹ Karina Montoya, “How Google Manipulated Digital Ad Prices and Hurt Publishers, Per DOJ,” *Tech Policy Press*, February 2, 2023, <https://www.techpolicy.press/how-google-manipulated-digital-ad-prices-and-hurt-publishers-per-doj/>.

¹⁰ Montoya.

¹¹ Karina Montoya, “DOJ Case Against Google Ad Monopoly Means a More Free Press and More Open Internet,” *The Corner Newsletter* (blog), February 3, 2023, <https://www.openmarketsinstitute.org/publications/the-corner-newsletter-january-19-2023-gkgtf>.

- This is a particularly complex antitrust case. It scrutinizes an industry in which decisions about when and where ads are placed are controlled largely by algorithms, and where there is an almost complete lack of transparency on platforms' fees and pricing. The DOJ will need to simplify that black box and get to the heart of how Google conquered this market at the expense of news publishers: by manipulating ad prices in ways that allowed Google to siphon ad revenues away from news and by eliminating ad tech competitors that could have resulted in more revenues for newsrooms.¹²

Amazon's Monopoly Over Online Retail

- Another case worth analyzing is the Federal Trade Commission's antitrust lawsuit against Amazon for maintaining an illegal monopoly over large swaths of online retail.¹³ Filed in September 2023, this lawsuit focuses on Amazon's pattern of anticompetitive conduct in two markets: the online superstore market that serves shoppers and the market for online marketplace services purchased by sellers.
- According to the FTC, Amazon exclusionary conduct in these markets made it impossible for rivals of and sellers on the Amazon Marketplace to lower prices in the overall online retail market, all while giving Amazon the ability to degrade product quality for shoppers, overcharge sellers, extract rents from deceptive practices in selling advertising on the platform, and self-preference Amazon-branded products.
- Although the FTC lawsuit is narrow in scope, it provides several important insights into Amazon's other operations related to online retail, such as digital advertising. One explosive revelation about this line of business, which brought in \$48 billion in revenues last year, was its origins in intentionally deceptive

¹² Karina Montoya, "Countdown to the Google Ad Tech Trial: A Guide for Journalists and the Public," *The Corner Newsletter* (blog), March 1, 2024, <https://www.journalismliberty.org/publications/countdown-to-the-google-ad-tech-trial-a-guide-for-journalists-and-the-public>.

¹³ Federal Trade Commission, "FTC Sues Amazon for Illegally Maintaining Monopoly Power," September 26, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power>.

business practices that appear designed to harm both consumers and third-party sellers.¹⁴

- Another key revelation is the use of pricing manipulation schemes deployed by Amazon to hike prices of products in the general online retail sector. The FTC lawsuit argues that Amazon created a “secret algorithm,” dubbed “Project Nessie,” to predict when other online stores would raise the price on specific products to follow Amazon’s price increases on said products. Then the algorithm would automatically raise prices for those products. When other stores followed suit, the algorithm also kept the now-higher price in place. By systematically analyzing which products and which competitors resulted in “safe” price increases, Amazon could arbitrarily raise prices and extract additional profit from customers. As a result, Amazon made \$1.4 billion in revenues during the years it used this algorithm.¹⁵
- Open Markets Institute is known in the United States for having worked for years to raise policymaker and public awareness of how Amazon’s abuse of its monopoly power endangers American innovation, small businesses, good wages and working conditions, and the free flow of ideas critical to a healthy democracy. Below we list additional resources that reveal the breadth of potentially anticompetitive practices by Amazon in the U.S. and other regions (see link to full list in footnotes):¹⁶
 - **September 2023:** Open Markets’ legal director Sandeep Vaheesan and chief economist Brian Callaci [call on the FTC](#) to use its unfair methods of competition authority to regulate Amazon’s control of independent trucking companies.

¹⁴ Karina Montoya, “FTC Details How Amazon Aims to Deceive Customers and Harm Sellers,” *The Corner Newsletter* (blog), November 10, 2023, <https://www.journalismliberty.org/publications/ftc-details-amazon-advertising-deceives-customers-sellers>.

¹⁵ Devin Coldewey, “Unredacted FTC Suit Shows ‘Project Nessie’ Price-Raising Algorithm Made Amazon \$1.4B,” *Tech Crunch*, November 2, 2023, <https://techcrunch.com/2023/11/02/unredacted-ftc-suit-shows-project-nessie-price-raising-algorithm-made-amazon-1-4b/>.

¹⁶ Open Markets Institute, “Open Markets & Amazon: Our Years of Work to Address Amazon’s Monopoly Abuse,” September 26, 2023, <https://www.openmarketsinstitute.org/publications/open-markets-amazon-our-years-of-work-to-address-amazons-monopoly-abuse>.



- **August 2023:** Open Markets partners with the Authors Guild and the American Booksellers Association to [call on the Justice Department and the FTC](#) to [open an investigation](#) into how Amazon uses unfair methods of competition to maintain its dominance over the book market.
- **February 2023:** Open Markets legal director Sandeep Vaheesan pens an op-ed in The New Republic: “[The Shadow Empire That Fuels Amazon’s Dominance](#)” regarding Amazon abusive grip over its delivery partners.
- **February 2023:** Open Markets and European partners Foxglove, SOMO and the Balanced Economy Project [urge the European Commission](#) to investigate Amazon’s planned takeover of iRobot, with a focus on the personal data Amazon will gain access to as a result.
- **January 2023:** Open Markets [files an amicus brief](#) in *District of Columbia v. Amazon.com Inc* in support of the District’s appeal, backing up their case that Amazon uses its monopoly power to prohibit sellers and suppliers from offering better prices on their very own sites and rival platforms.

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