IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *et al.*, Plaintiffs, v. GOOGLE LLC, Defendant.	Case No. 1:20-cv-03010-APM HON. AMIT P. MEHTA
STATE OF COLORADO, *et al.*, Plaintiffs, v. GOOGLE LLC, Defendant.	Case No. 1:20-cv-03715-APM HON. AMIT P. MEHTA

EXECUTIVE SUMMARY OF PLAINTIFFS' REVISED PROPOSED FINAL JUDGMENT

I. Introduction

Google is the gateway to the internet. Its search engine provides instant results. The importance of those results to modern commerce and communication means that every single day, the American people depend on Google. For their everyday needs. For their emergencies. In their search to find valuable results to minor queries or questions of profound significance, Americans have learned to "Google it."

The American people's reliance on Google's search engine is well-known. Less understood, however, is how Google—through its unlawful and unchecked, monopolistic conduct over the past decade—secured the American people's reliance. Google's anticompetitive conduct has denied users of a basic American value—the ability to choose in the marketplace. Through its sheer size and unrestricted power, Google has robbed consumers and businesses of a fundamental promise owed to the public—their right to choose among competing services. Google's illegal conduct has created an economic goliath, one that wreaks havoc over the marketplace to ensure that—no matter what occurs—Google always wins. American consumers and businesses suffer from Google's conduct. The consumer is deprived of marketplace competition that drives down prices and spurs innovation amongst competitors. Businesses struggle to innovate and survive as they are subjected to the wrath of an unlawful monopolist. The American people thus are forced to accept the unbridled demands and shifting, ideological preferences of an economic leviathan in return for a search engine the public may enjoy. The path to monopolies often begins with free goods and the promise of an exciting future and ends under the control of an economic "autocrat of trade." Simply put, when the product is free, the American people are the product. For years, Google has been allowed to maintain its status as a monopolist without issue.

Yet, monopolies are incompatible with free markets and freedom more generally. The American dream is about higher values than just cheap goods and "free" online services. These values include freedom of speech, freedom of association, freedom to innovate, and freedom to compete in a market undistorted by the controlling hand of a monopolist. Google's conduct presents genuine danger to freedom in the marketplace and to robust competition in our economy. These concerns prompted the United States and Plaintiff States to sue Google in 2020.

And against these market realities, the Court found Google liable under Section 2 of the Sherman Act for maintaining monopolies in U.S. general search services and U.S. general search text advertising. Mem. Op., *United States et al. v. Google LLC*, 20-cv-3010 (APM), ECF No. 1032, at 276 ("Mem. Op."). The Court's detailed liability opinion on August 5, 2024, meticulously describes the harms that Google's unlawful conduct has created in these critical digital marketplaces. *See, e.g.*, Mem. Op. at 3 ("[M]ost devices in the United States come preloaded exclusively with Google. These distribution deals have forced Google's rivals to find other ways to reach users."); *id*. at 25, 226, 236–42 (Google has controlled the most popular distribution channels for more than a decade, leaving rivals with little-to-no incentive to compete for users); *id*. at 233 (rivals cannot compete for these distribution channels because Google's monopoly-funded revenue share payments disincentivize its partners from diverting queries to Google's rivals).

On November 20, 2024, Plaintiffs filed their Initial Proposed Final Judgment ("IPFJ"). Plaintiffs' IPJF focused on restoring competition in the general search services and general search text advertising markets, addressing the scale advantage that Google's unlawful monopoly maintenance afforded it, and preventing Google from circumventing the remedy by other means, such as leveraging the fast-evolving AI space to further entrench its general search services and

general search text advertising monopolies. Those interconnected and self-reinforcing remedies sought to: (1) stop and prevent exclusion; (2) prevent Google from self-preferencing; (3) disclose data critical to restoring competition; (4) increase transparency and control for advertisers; (5) end Google's unlawful distribution; and (6) allow for the enforcement of the proposed judgment while preventing circumvention.[1] Of particular note, Plaintiffs' IPFJ prohibited Google from making search-related payments to its search distribution partners, required Google to divest Chrome—a critical search access point through which more than 30 percent of search inquiries are routed—and contained a contingent Android divestiture at Google's or the Court's election.

Now, with the benefit of further remedies discovery, and consistent with the Court's September 18, 2024 Scheduling Order, *see* ECF No. 1043, Plaintiffs respectfully submit their Revised Proposed Final Judgment ("RPFJ"), attached as Exhibit A. Plaintiffs' RPFJ maintains the core components of the initial proposal, namely the prohibition on search-related payments to distribution partners that have effectively frozen the ecosystem for over a decade, raised insurmountable barriers to new entry, and created a system dependent on Google's monopoly payments. The RPFJ reaffirms Plaintiffs' proposal to end such payments, while making minor clarifications to minimize unintended consequences, and to also allow for Apple to receive payments unrelated to search. In addition, the RPFJ also reaffirms that Google must divest the

[1] In stark contrast, Google offered a competing Initial Proposed Final Judgment that ignores the Court's factual findings and legal holdings and instead preserves the status quo—containing only modest changes to its distribution contracts with Apple, carriers, OEMs and third-party distributors. Google's proposal falls woefully short of restoring competition to markets that have been harmed by Google's unlawfully entrenched monopolies and is inconsistent with remedies caselaw. *See* ECF No. 1108-1.

Chrome browser—an important search access point—to provide an opportunity for a new rival to operate a significant gateway to search the internet, free of Google's monopoly control.

Although the core components of Plaintiffs' final judgment remain, a few significant items have changed. As detailed further below, Plaintiffs no longer seek the mandatory divestiture of Google's AI investments in favor of a prior notification for future investments and have modified the ads syndication remedy to focus on parity, transparency, and control, while removing the query volume limitation and implementing marginal cost pricing only as contingent relief if Plaintiffs' other remedies are not effective at restoring competition. Plaintiffs also make additional clarifying changes to the self-preferencing sections in order to resolve ambiguities, prevent unintended consequences, and address the Court's concern that Plaintiffs' IPFJ lacked sufficient detail in some areas. *See* Jan. 17, 2025 Status Hearing Tr. (attached as Exhibit B) at 39-42, 87-89. For the Court's convenience, a redline to Plaintiffs' IPFJ is attached as Exhibit C.

II. In Fulfilling Its Duty to Order Effective Relief, This Court Has Broad Discretion To Fashion A Remedy

Under 15 U.S.C. § 4, the United States has the "duty" to institute proceedings in equity to "prevent and restrain" Sherman Act violations, including monopolization. And having found that Google unlawfully monopolized the general search services and general search text advertising markets, "it is the duty of the court to prescribe relief" terminating those monopolies and preventing their recurrence. *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 250 (1968); *see also United States v. U.S. Gypsum Co.*, 340 U.S. 76, 88 (1950) (the court has the "duty" to impose a remedy to "cure the ill effects of the illegal conduct, and assure the public freedom from its continuance"). This Court has "broad discretion to enter that relief it calculates will best remedy the conduct it has found to be unlawful." *United States v. Microsoft Corp*., 253

F.3d 34, 105 (D.C. Cir. 2001). Moreover, "'it is well settled that once the Government has successfully borne the considerable burden of establishing a violation of law, all doubts as to the remedy are to be resolved in its favor.'" *Ford Motor Co. v. United States*, 405 U.S. 562, 575 (1972) (quoting *United States v. E.I. du Pont de Nemours & Co.,* 366 U.S. 316, 334 (1961)).

The "key to the whole question of an antitrust remedy is of course the discovery of measures effective to restore competition." *du Pont,* 366 U.S. at 326. Otherwise, "the Government has won a lawsuit and lost a cause." *Int'l Salt Co. v. United States*, 332 U.S. 392, 401 (1947). The remedy "should unfetter a market from anticompetitive conduct *and* pry open to competition a market that has been closed by defendants' illegal restraints." *Ford Motor*, 405 U.S. at 577-78 (emphasis added) (quotation marks omitted). The remedy should have a "comprehensive" and "unitary framework" to restore competition with provisions "intended to complement and reinforce each other." *See New York v. Microsoft Corp*., 531 F. Supp. 2d 141, 170 (D.D.C. 2008). The remedy must (1) unfetter the search and related advertising from the harm that Google's exclusionary conduct caused, (2) "terminate the illegal monopol[ies]," (3) "deny to [Google] the fruits of its statutory violations," and (4) ensure there remain no practices in place during the judgment period that are likely to result in Google monopolizing these markets in the future. *See Microsoft*, 253 F.3d at 103 (quoting *Ford Motor*, 405 U.S. at 577, and *United Shoe*, 391 U.S. at 250). This Court "is clothed with 'large discretion'" in adopting remedial provisions that meet these distinct ends. *Ford Motor*, 405 U.S. at 573 (quoting *Int'l Salt Co. v. United States*, 332 U.S. 392, 401 (1947)).

Because antitrust remedies are not limited to eradicating existing evils, it is "entirely appropriate" for an injunction to "go[] beyond a simple proscription against the precise conduct previously pursued." *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 698 (1978). A

decree can include "forward-looking provisions" to restore competitive conditions, *Mass. v. Microsoft*, 373 F.3d 1199, 1215-25 (D.C. Cir. 2004), and to "eliminat[e] the consequences of the illegal conduct." *Nat'l Soc'y of Prof'l Eng'rs*, 435 U.S. at 698. In addition, the remedy may restrict otherwise lawful conduct "to preclude the revival of the illegal practices," *FTC v. Nat'l Lead Co.*, 352 U.S. 419, 430 (1957), and the court has "'broad power to restrain acts which are of the same type or class as unlawful acts which the court has found to have been committed.'" *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 395 U.S. 100, 132 (1969) (quoting *N.L.R.B. v. Express Publishing Co*., 312 U.S. 426, 435 (1941)). A remedy going beyond a proscription of the specific exclusionary conduct identified in this Court's liability opinion is necessary to restore competition to the monopolized markets here. "Network effects" and "data feedback loops"—both of which played a prominent role in the Court's liability finding[2]—have amplified the effects of anticompetitive conduct in these markets, entrenching monopoly power. Mem. Op. at 8-9; *see Microsoft*, 253 F.3d at 55 (network effects create a "chicken-and-egg" situation in which the dominant platform becomes difficult to dislodge); *see also Schine Chain Theaters, Inc. v. United States*, 334 U.S. 110, 128 (1948) ("If all that was done was to forbid a repetition of the illegal conduct, those who had unlawfully built their empires could preserve them intact. They could retain the full dividends of their monopolistic practices and profit from the unlawful restraints of trade which they had inflicted on competitors.").

Plaintiffs look forward to engaging further with the Court on the legal standard during trial and in pre- and post-trial briefing.

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[2] *See, e.g.*, Mem. Op. at 226 ("Scale is the essential raw material for building, improving, and sustaining a GSE.").

III. Plaintiffs' Revised Proposed Final Judgment

On November 20, 2024, Plaintiffs filed their IPFJ. *See generally* ECF Nos. 1062 and 1062-1. Our RPFJ continues to, among other things: prohibit Google (with limited exceptions) from making search-related payments to Apple and non-Apple search distribution partners, *see* RPFJ ¶¶ IV(A)-(B); require Google to divest Chrome—a critical distribution point—to shield against self-preferencing, *see* RPFJ ¶ V(A); contain a contingent Android divestiture provision, *see* RPFJ ¶ V(C); and require Google to share data to offset the scale disadvantage that its unlawful conduct has created, *see* RPFJ ¶ VI. The RPFJ changes insofar as it substitutes notification for prohibition of AI investments, no longer requires immediate marginal-cost pricing for ad syndication or offers Google the option of divesting Android now, and makes additional clarifying changes aimed to resolve ambiguities, prevent unintended consequences, and address the Court's concerns.

A. Remedies To Stop And Prevent Exclusionary Third-Party Agreements

An effective remedy must prevent Google from executing contracts that foreclose or otherwise exclude competing general search engines and potential entrants, including by raising their costs, discouraging their distribution, or depriving them of competitive access to inputs. To that end, Plaintiffs' proposed remedies have not changed from the IPFJ as a substantive matter, other than to allow Google to make non-search-related payments to Apple.

As detailed in Section IV, the RPFJ prohibits Google from providing third parties something of value (including financial payments) in order to make Google the default general search engine or otherwise discourage those third parties from offering competing search products. *See* Mem. Op., at 216 (finding "Google's distribution agreements are exclusionary contracts that violate Section 2" and "'clearly have a significant effect in preserving [Google's] monopoly.'") (alteration in original) (quoting *Microsoft Corp.*, 253 F.3d 34 at 79)) (*see also id.*

at 106 ("Absent such causation, the antitrust defendant's unlawful behavior should be remedied by "an injunction against continuation of that conduct."). Based on the Court's input and comments, Plaintiffs have modified and clarified language contained in the initial proposal related to economic incentives that the Court identified as potentially vague. *See* RPFJ ¶ IV(G).

The RPFJ also prohibits Google from entering exclusive agreements with content publishers; bundling, tying, or commingling its general search engine or search access point with any other Google product; entering revenue share agreements related to the distribution of general search services; or participating in investments in, collaborations with, or acquisitions of its competitors or potential competitors in the general search services or general search text ads markets without prior notification to Plaintiffs. Each of these remedies are designed to end Google's unlawful practices and open up the market for rivals and new entrants to emerge.

B. Prohibited Ownership And Control That Enables Self-Preferencing

An effective remedy must safeguard against further market foreclosure and the exclusion of rivals through the use of self-preferencing. To that end, the RPFJ continues to require Google to divest Chrome. *See* RPFJ ¶ V(A). *See also* Mem. Op. at 159 (Chrome default is "a market reality that significantly narrows the available channels of distribution and thus disincentivizes the emergence of new competition."). In contrast, evidence gleaned from remedies discovery indicates a risk that prohibiting Google from owning or acquiring any investment or interest in any search or search text ad rival, search distributor, or rival query-based AI product or ads technology could cause unintended consequences in the evolving AI space. Plaintiffs are no longer advocating for this specific remedy; however, they continue to be concerned about Google's potential to use its sizable capital to exercise influence in AI companies. As a result, Plaintiffs included an advance notification provision to permit a review of proposed transactions. *See* RPFJ ¶ IV(I).

Finally, Plaintiffs' RPFJ continues to provide for further contingent structural relief—the divestiture of Android—if Plaintiffs' proposed conduct remedies are not effective in preventing Google from improperly leveraging its control of the Android ecosystem to its advantage, or if Google attempts to circumvent the remedy package. *See* RPFJ ¶ V(C); *United Shoe*, 391 U.S. at 249–51 (If "the decree had not achieved the adequate relief to which the Government is entitled in a § 2 case, it would have been the duty of the court to modify the decree so as to assure the complete extirpation of the illegal monopoly.").[3] However, Plaintiffs are no longer requesting a provision that allows Google to divest Android at the outset in lieu of adhering to the requirements of Section V as they relate to Android. *Compare* IPFJ ¶ V(B) *with* RPFJ ¶ V.

C. Conduct Remedies That Prevent Self-Preferencing

An effective remedy must also ensure that Google cannot circumvent the Court's remedy by providing its search products preferential access to related products or services that it owns or controls, including mobile operating systems (e.g., Android), apps (e.g., YouTube), or AI products (e.g., Gemini) or related data. This aspect of Plaintiffs' RPFJ has not substantively changed, although it removes certain language that created ambiguity and could result in unintended consequences. *See* RPFJ ¶ V(B).

As noted in Section V, the RPFJ prohibits, among other things, Google from using any owned or operated asset to preference its general search engine or search text ad products. The RPFJ further prohibits Google from engaging in conduct that undermines, frustrates, interferes with, or in any way lessens the ability of a user to discover a rival general search engine, limits the competitive capabilities of rivals, or otherwise impedes user discovery of products or services that are competitive threats to Google in the general search services or search text ads markets.

[3] As the Court in *Microsoft* recognized, "conduct remedies may be unavailing" in cases such as this, where "years have passed since [Google] engaged in the first conduct." 253 F.3d at 49.

See RPFJ ¶ V(B)**;** *see also* Mem. Op. at 210 (finding that Google's contractual requirements that "all Android devices featuring the Google Search Widget and Chrome on the home screen to the exclusion of rivals" was an unlawful exclusive agreement).

D. Restoring Competition Through Syndication And Data Access

Data at scale is the "essential raw material" for "building, improving and sustaining" a competitive GSE. Mem. Op. at 226 (finding that "Google's exclusive agreements…deny rivals access to user queries, or scale, needed to effectively compete."). Through its unlawful behavior, Google has accumulated a tremendous amount of data over many years, at the expense of its rivals. *Id*. Plaintiffs' RPFJ aims to correct this anticompetitively acquired advantage. Of particular note, the data sharing remedies have not changed as a substantive matter since Plaintiffs filed our IPFJ; however, they contain additional detail, consistent with the Court's observation that the data remedies lacked sufficient detail. *See* RPFJ ¶¶ VI(A)-(F); *see*, *e.g.*, January 17, 2025 Status Hearing Transcript at 39-42, 87-88.

In addition, and as it relates to search text ads, the RPFJ no longer requires Google to immediately price search text ads syndicated to Qualified Competitors at marginal cost, nor does it limit Qualified Competitors to syndicating 25 percent or less of their search text ads from Google. Instead, the RPFJ focuses on providing parity, transparency, and control to Qualified Competitors syndicating search text ads from Google and marginal cost pricing for ad syndication. *Compare* IPFJ ¶ VII(B) *with* RPFJ ¶ VII(D) & VIII(E).

As set forth in Section VI, the RPFJ requires Google, among other things, to make critical portions of its search index available at marginal cost, and on an ongoing basis, to rivals and potential rivals; and also requires Google to provide rivals and potential rivals both user-side and ads data for a period of ten years, at no cost, on a non-discriminatory basis, and with proper privacy safeguards in place. Section VI further requires that Google provide to publishers,

websites and content creators crawling data rights (such as the ability to opt out of having their content crawled for the index or training of large language models or displayed as AI-generated content).

To remove barriers to entry and erode Google's unlawfully gained scale advantages, Section VII requires Google to syndicate (subject to certain restrictions) its search results, ranking signals, and query understanding information for 10 years. *See Mass.*, 373 F.3d at 1218 (disclosure of APIs "represent[ed] a reasonable method of facilitating the entry of competitors into a market from which Microsoft's unlawful conduct previously excluded them" (internal quotation omitted)). The RPFJ only requires Google to syndicate queries that originate in the United States. *See* RPFJ ¶ VII(B).

E. Restoring Competition By Improving Text Ad Transparency And Reduction Of Switching Costs

While they contain some additional details, the IPFJ's proposed remedies regarding text ad transparency have not substantively changed since filing our IPFJ. *See* RPFJ ¶ VIII. As noted above, however, Paragraph VIII(E) requires Google to provide Qualified Competitors nondiscriminatory, *pari passu* access to syndicated search text ads and ensuring Qualified Competitors have control over and visibility into the ads appearing on the Qualified Competitor's sites.

Notably, Google's unlawful maintenance of its general search text advertising monopoly has undermined advertisers' choice of search providers as well as rivals' ability to monetize search advertising and has enabled Google to "profitably charge supracompetitive prices for [search] text advertisements" while "degrad[ing] the quality of its text advertisements" and the related services and reporting. Mem. Op. at 258-64 (finding "Google's text ads product has degraded" and "advertisers receive less information in search query reports."). As set forth in

Section VIII, Plaintiffs' RPFJ will help address these harms by providing advertisers with the information and, options providing, visibility into the performance and cost of Google Text Ads necessary to optimize their advertising across Google and its rivals. In particular, the RPFJ requires Google to include fulsome and necessary real-time performance information about ad performance and costs in its search query reports to advertisers and further requires Google to increase advertiser control by improving keyword matching options to advertisers. Mem. Op. at 263–64 (finding Google degraded SQR content and reduced control over keyword matching).

The RPFJ also prohibits Google from limiting the ability of advertisers to export search text ad data and information for which the advertiser bids on keywords and further requires that Google provide to the Technical Committee and Plaintiffs a monthly report outlining any changes to its search text ads auction and its public disclosure of those changes. *See* RPFJ ¶¶ VIII(C)-(D).

F. Limitations On Distribution And User Notifications To Restore Competition

A comprehensive and unitary remedy in this case must also undo the effects on search distribution. *See* Mem. Op. at 3 ("[M]ost devices in the United States come preloaded exclusively with Google. These distribution deals have forced Google's rivals to find other ways to reach users."). To that end, Plaintiffs' proposed remedies have not changed from the IPFJ as a substantive matter, as the record evidence continues to support them.

To remedy these harms, the RPFJ requires Google to divest Chrome, which will permanently stop Google's control of this critical search access point and allow rival search engines the ability to access the browser that for many users is a gateway to the internet.[4] In

[4] Once the Court orders divestiture, the Plaintiffs will submit a detailed proposed order setting forth the process by which divestiture can be efficiently accomplished, including through the appointment of a Divestiture Trustee. Such a two-step process has been used in the past. *See,*

addition, the RPFJ contains multiple provisions that will limit Google's distribution of general search services by contract with third-party devices and search access points (e.g., Samsung devices, Safari, Firefox) and via self-distribution on Google devices and search access points (e.g., Pixel) which will facilitate competition in the markets for general search services and search text advertising. These provisions are designed to end Google's unlawful distribution agreements, ensure that Google cannot approximate its unlawful practices with updated contracts, and eliminate anticompetitive payments to distributors, including Apple. As set forth in Section IV, the RPFJ prohibits Google from offering Apple anything of value for any form of default, placement, or preinstallation distribution (including choice screens) related to general search or a search access point. *See* Mem. Op. at 238, 240–44 ("Apple, a fierce potential competitor, remains on the sidelines due to the large revenue share payments it receives from Google"). As set forth in Section IX, for non-Apple distributors and third-party devices, the RPFJ similarly prohibits—with limited exceptions—Google from offering anything of value for any form of default, placement, or preinstallation distribution (including choice screens) related to general search or a search access point.

The RPFJ further prohibits Google from preinstalling any search access point on any new Google device and requires it to display a choice screen on every new and existing instance of a Google browser where the user has not previously affirmatively selected a default general search engine. The choice screens must be designed not to preference Google and to be accessible, easy to use, and minimize choice friction, based on empirical evidence of consumer behavior, among other requirements.

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e.g., Steves and Sons, Inc. v. JELD-WEN, Inc., 988 F.3d 690, 722 (4th Cir. 2021) (discussing district court's two-step process).

User choice will be improved when users better understand the benefits that Google's rivals can provide. For that reason, Colorado Plaintiff States have included a provision requiring Google to fund a nationwide advertising and education program designed to encourage informed consumer choices. This provision has not changed substantively from the IPFJ. The fund's purpose is to enhance the effectiveness of distribution remedies by informing consumers of the outcome of this litigation and the remedies in the Final Judgment designed to increase user choice. The program may include short-term incentive payments to individual users as a further incentive to engage with and develop informed views on the merits of different general search engines.

G. Administration, Anti-circumvention, and Anti-retaliation

A remedy that prevents and restrains monopoly maintenance will require administration as well as protections against circumvention and retaliation, including through novel paths to preserving dominance in the monopolized markets. As set forth in Section X, Plaintiffs' RPFJ requires Google to appoint an internal Compliance Officer and establishes a Technical Committee to assist Plaintiffs and the Court in monitoring Google's compliance. *See United States v. Microsoft*, Civ. No. 98-1232 (CKK), 2002 U.S. Dist. LEXIS 22864, at *22 (D.D.C. Nov. 12, 2002) (establishing a Technical Committee to "to assist in enforcement of and compliance with this Final Judgment."). This section of the RPFJ has not changed and provides Plaintiffs tools to investigate complaints about Google's compliance and prohibits Google from taking retaliatory or circumventing actions.

* * *

Consistent with remedies case law, Plaintiffs' RPFJ will pry open the markets that Google unlawfully monopolized for more than a decade, while further thwarting Google's ability to circumvent those remedies in the future in this ever and fast-evolving digital space. Plaintiffs

look forward to engaging with the Court on their proposal at trial and in pre- and post-trial briefing.

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