



United States & Co-Plaintiff States v. Google LLC

Plaintiffs' Remedies Closing Argument

Legal Standards

May 30, 2025

“A public interest served by such civil suits is that they effectively pry open to competition a market that has been closed by defendants’ illegal restraints. If this decree accomplishes less than that, the Government has won a lawsuit and lost a cause.”

Int’l Salt Co. v. United States, 332 U.S. 392, 401 (1947)
(emphasis added).



Liability Facts Support Plaintiffs' Remedies

“Google is a monopolist, and it has acted as one to maintain its monopoly.”

Defaults

“Google also has a major, largely **unseen advantage over its rivals: default distribution.**”

Searches

“[N]early **90%**, and even higher **on mobile devices at almost 95%.**”

Data

“Google derives **extraordinary volumes of user data** from such searches. It then uses that information to improve search quality.”

Quality

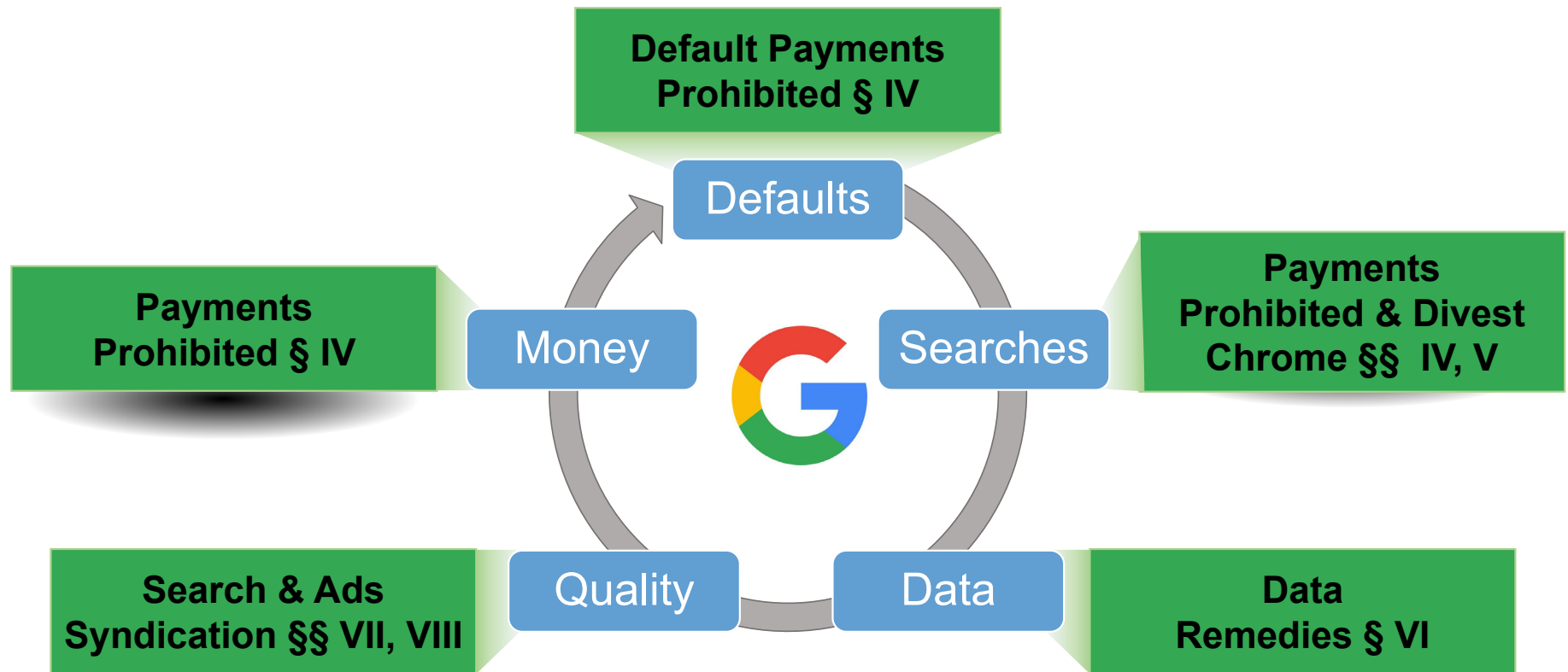
“Google’s exclusive agreements . . . deny rivals access to user queries, or scale, needed to effectively compete. **Scale is the essential raw material for building, improving, and sustaining a GSE.**”

Money

In 2021, “payments totaled more than **\$26 billion**” for which “Google not only receives **default** placement . . . but its partners also agree not to preload any other general search engine on the device.” This is funded by “**supracompetitive prices**” on general search text advertising.



Plaintiffs' Remedies Enable Competition



Legal Framework



Remedies Legal Framework

1

Goals

2

Causation

3

But-For World



Remedies Must Restore Competition

- “The relief in an antitrust case must be ‘effective to redress the violations’ and ‘to **restore competition**.’”

Ford Motor Co. v. United States, 405 U.S. 562, 573 (1972)
(citation omitted).

- “[E]ffectively **pry open to competition** a market that has been closed by [a] defendant[’s] illegal restraints.”

Int’l Salt Co., 332 U.S. at 401.

- There are four objectives in a remedies decree: to [1]“**unfetter** a market from anticompetitive conduct,” “[2] **terminate** the illegal monopoly, [3] **deny** to the defendant the **fruits** of its statutory violation, and [4] ensure that there **remain no practices** likely to result in monopolization in the future.”

United States v. Microsoft Corp., 253 F.3d 34, 103 (D.C. Cir. 2001)
(en banc) (*Microsoft III*) (citations omitted).



Remedies Can Go Beyond Illegal Conduct

- A proper remedy can “**go[] beyond** a simple proscription against the precise conduct previously pursued.”

Nat'l Soc. of Prof'l Eng'rs v. U.S., 435 U.S. 679, 698 (1978) (emphasis added).

- Court may order “**forward-looking** provisions” to address conduct that “played no role in [the] holding [that the defendant] violated the antitrust laws.”

Massachusetts v. Microsoft Corp., 373 F.3d 1199, 1215 (D.C. Cir. 2004) (emphasis added).

Causation



Causation Connection: Inference

- “We **may infer causation** when exclusionary conduct is aimed at producers of nascent competitive technologies as well as when it is aimed at producers of established substitutes.”

Microsoft III, 253 F.3d at 79 (emphasis added).

- “[W]e have **found a causal connection** between Microsoft’s exclusionary conduct and its continuing position in the operating systems market **only through inference**.”

Microsoft III, 253 F.3d at 106–07 (emphasis added).



Test for Causation Is “Edentulous”

- “Given this rather **edentulous** test for causation. . . .”

Microsoft III, 253 F.3d at 79 (emphasis added).

- “[R]equires a **clearer indication of a significant causal connection** between the conduct and creation or maintenance of the market power.”

Microsoft III, 253 F.3d at 106 (citing *Areeda* (1996) ¶ 653b at 91-92) (emphasis added).

- “[T]he appellate court appears to have identified a **proportionality** between the strength of the evidence of the causal connection and the severity of the remedy.”

New York v. Microsoft Corp., 224 F. Supp. 2d 76, 102 (D.D.C. 2002) (*New York I*).



Plaintiffs Established Significant Causal Connection

- “The exclusive distribution agreements have **substantially contributed** to these anticompetitive market conditions.”
- Google’s agreement with Apple is “**significantly contributing** to keeping Apple on the sidelines of search, thus allowing Google to maintain its monopoly.”
- Google’s agreements have “**contributed significantly** to [a] lack of new investment.”
- “Google’s exclusive distribution agreements **substantially contribute** to maintaining its monopoly in the general search text advertising market”



Causal Connection: Consumer Welfare



Prof. Kevin Murphy

Google's Expert

Professor of Economics

University of Chicago

“The **question for causal connection** is, Have they changed the competitive landscape in such a way that the prospect for **consumer welfare diminished** going forward?”



Google “Thwarted True Competition”

“**Google has thwarted true competition** by foreclosing its rivals from the most effective channels of search distribution. The result is that **consumer use of rival GSEs** has been **kept below the critical levels** necessary to pose a threat to Google’s monopoly. The exclusive distribution agreements thus have **significantly contributed** to Google’s ability to maintain its highly durable monopoly.”



“Terminate the Illegal Monopoly”

- “The Supreme Court has explained that a remedies decree in an antitrust case **must seek to** ‘unfetter a market from anticompetitive conduct,’ to **‘terminate the illegal monopoly**, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.’”

Microsoft III, 253 F.3d at 103 (citations omitted) (emphasis added).

- “[S]tructural relief, which is designed to **eliminate the monopoly** altogether . . . **require[s] a clearer indication** of *significant causal connection* between the conduct and creation or maintenance of the market power.”

Microsoft III, 253 F.3d at 106 (internal quotation marks and citation omitted) (emphasis added and original).

- “Rather, the **proper objective** of the remedy in this case is **termination of the exclusionary acts and practices** related thereto which served to illegally maintain the monopoly.”

New York I, 224 F. Supp. 2d at 101 (emphasis added).



Google Can Compete In Remedial World



Tasneem Chipty, Ph.D.

Plaintiffs' Expert

Founder and Managing Principal

Chipty Economics, LLC

“You know, the fact is that Google could still compete under plaintiffs’ proposed remedies. I showed you that even without defaults, **Google would be a significant player in the marketplace.**”

“But-For World”



But-For World Is Not Required

“Importantly, causation does not require but-for proof.”

Mem. Op. at 216.

- “[N]either plaintiffs nor the court can confidently **reconstruct** a product’s hypothetical technological development in **a world absent the defendant’s exclusionary conduct.**”

Microsoft III, 253 F.3d at 79 (emphasis added).

- “Microsoft demands of Plaintiffs precisely what the appellate court deemed to be **largely unattainable.**”

New York I, 224 F. Supp. 2d at 147 (emphasis added).



“Nobody” Can Establish A “But-For World” In This Case



Prof. Kevin Murphy

Google’s Expert

Professor of Economics

University of Chicago

The Court: “[W]e’ve talked a lot about but-for world during these proceedings, and **it hasn’t been made clear to me how anybody establishes what that but-for world is**

A. . . . The idea that I could tell you, and the world will look just like this, nobody is going to do that. **And nobody is going to do that in this case, nobody is going to do it in most cases”**



Google's Expert: "Actual World Is the But-For World"



Prof. Kevin Murphy

Google's Expert

Professor of Economics

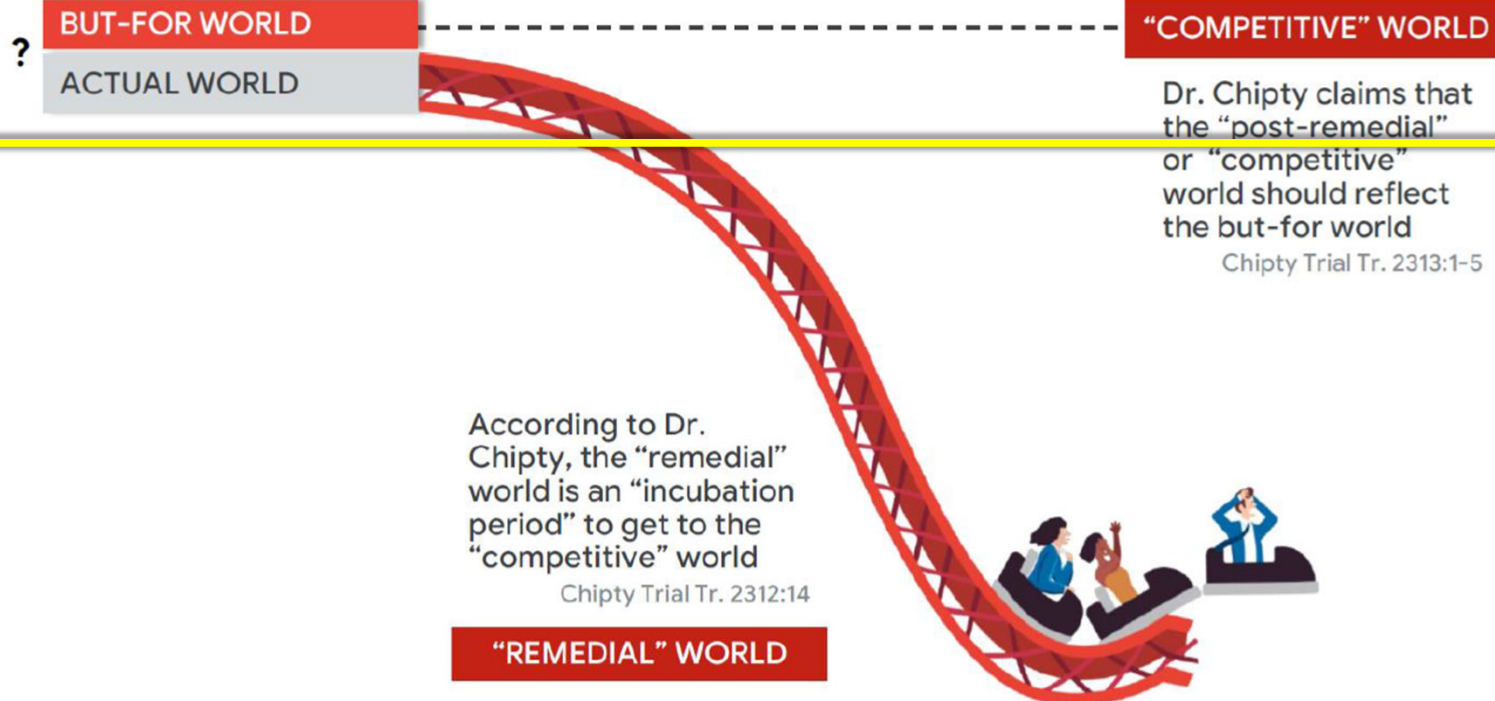
University of Chicago

- Q. . . . **[Y]ou did not create a but-for world** as you describe needs to be done under your test, correct?
- A. **I did not** go all the way to a but-for world. But **my view of the world is the actual world is the but-for world because they're not anti-competitive.**



Google's World: All Worlds Are The Same

No Basis that Dr. Chipty's "Remedial" World Would Lead to a "Competitive" World that Approximates the But-For World



Slide 8, Demonstrative Deck of Dr. Murphy

Google
RDXD-33.00E