

# Plaintiffs' Opening Statement



VIRGINIA



ARIZONA



CALIFORNIA



COLORADO



CONNECTICUT



ILLINOIS



MICHIGAN



MINNESOTA



NEBRASKA



NEW HAMPSHIRE



NEW JERSEY



NEW YORK



NORTH CAROLINA



RHODE ISLAND



TENNESSEE



WASHINGTON



WEST VIRGINIA

Plaintiffs'  
Demonstrative A  
1:23-cv-00108

## The Defendant



“. . . Google has **willfully engaged** in a series of anticompetitive acts to **acquire** and **maintain** monopoly power in the **publisher ad server** and **ad exchange** markets for open-web display advertising.”

Opinion at 114

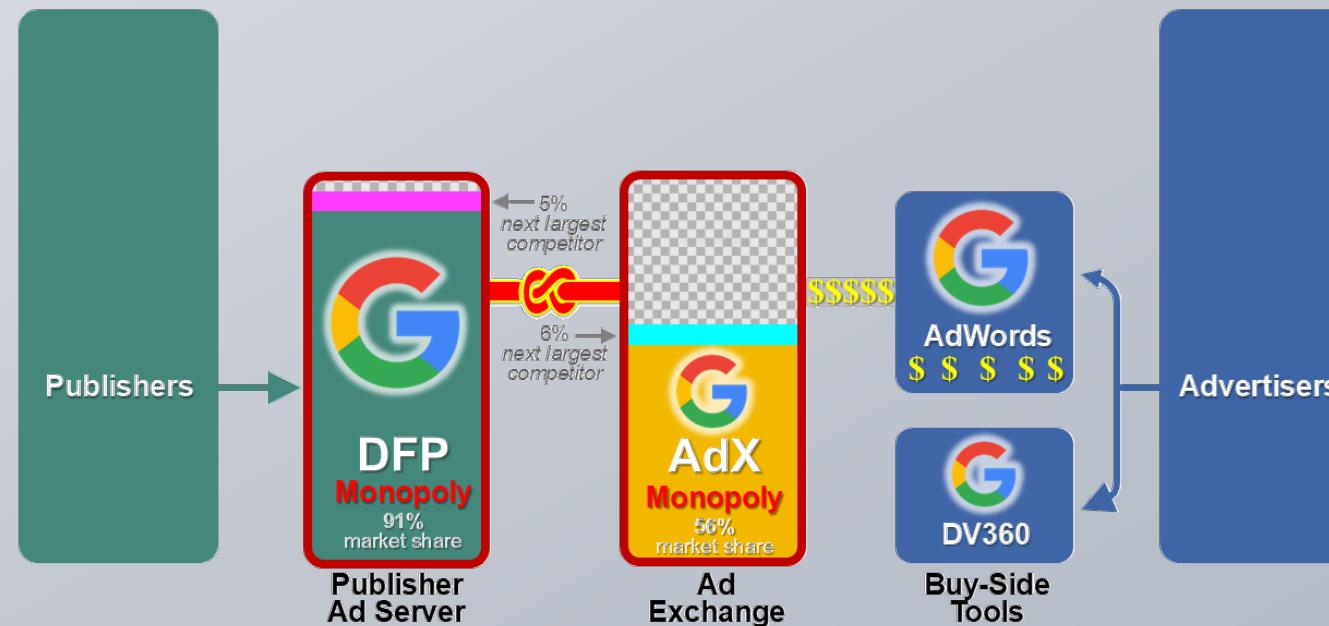
# Google's Ad Tech Dominance



# Google's Ad Tech Dominance

**“For over a decade, Google has tied its publisher ad server and ad exchange together through contractual policies and technological integration, which enabled the company to establish and protect its monopoly power in these two markets.”**

Opinion at 114



# Four Remedy Objectives

- 1. “terminate the illegal monopoly”**
- 2. “unfetter the market from anticompetitive conduct”**
- 3. “deny the defendant the fruits of its . . . violation”**
- 4. “ensure . . . no practices likely to result in monopolization in the future.”**

*United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001) (quoting *Ford Motor Co. v. United States*, 405 U.S. 562, 577 (1972), and *United States v. United Shoe*, 391 U.S. 241, 250 (1968))

# All Doubts Resolved in Plaintiffs' Favor

Now that “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.**”

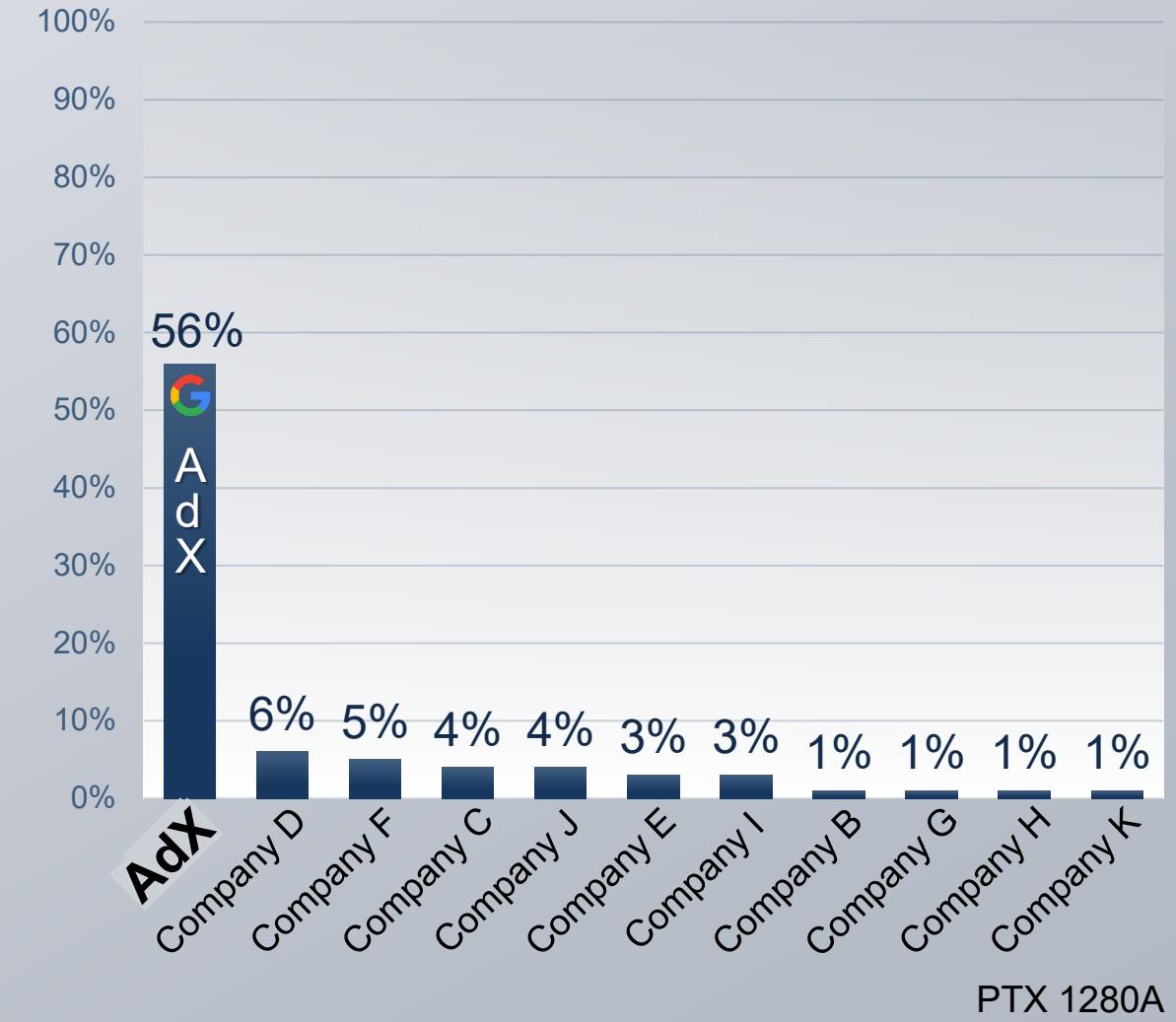
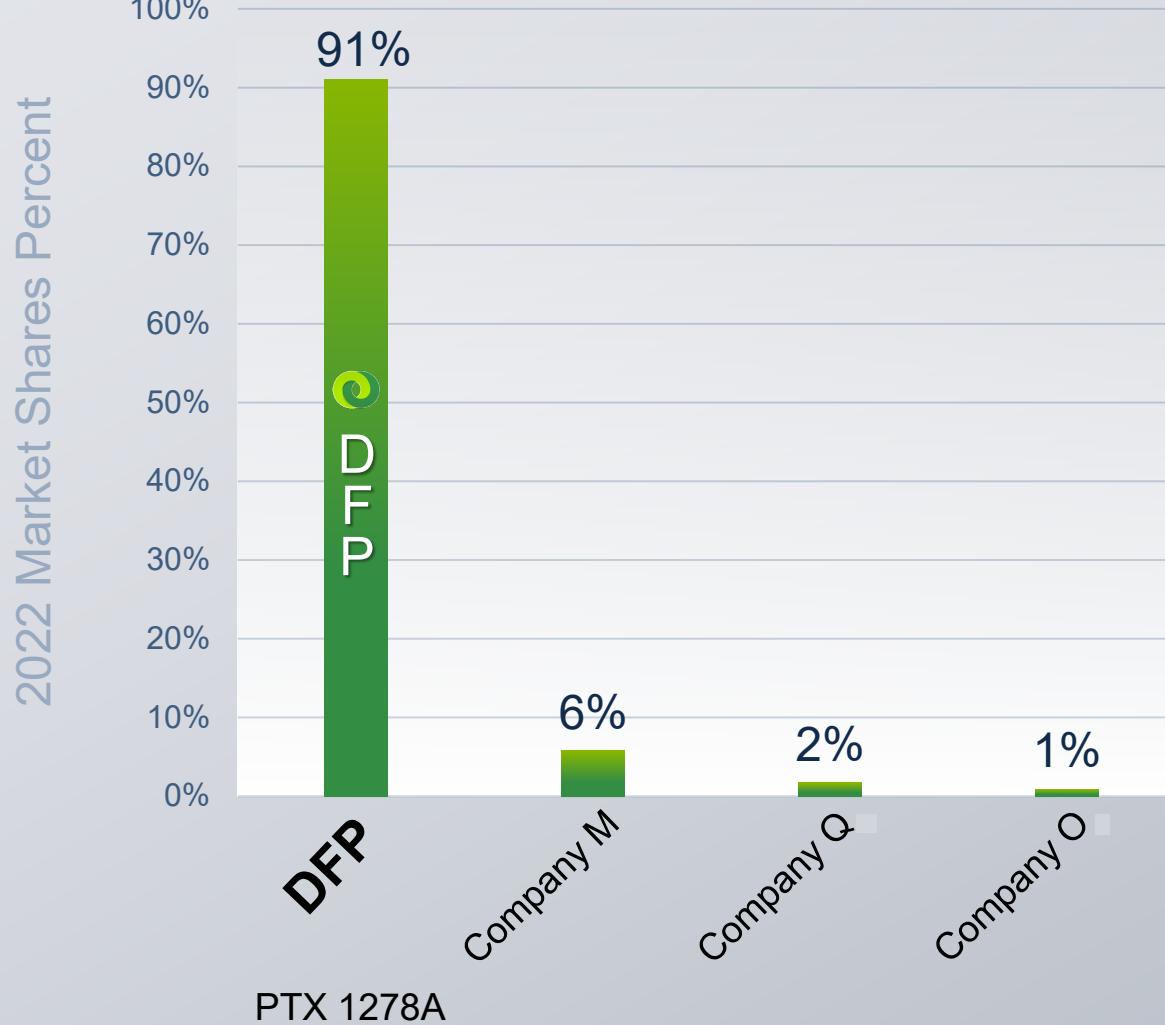
*Ford Motor*, 405 U.S. at 575 (quoting *United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 334 (1961))



**“In addition to depriving rivals of the ability to compete, this exclusionary conduct substantially harmed Google’s publisher customers, the competitive process, and, ultimately, consumers of information on the open web.”**

Opinion at 114-15

# The Publisher Ad Server and Ad Exchange Markets Are Broken



# The Ad Exchange Market is Broken

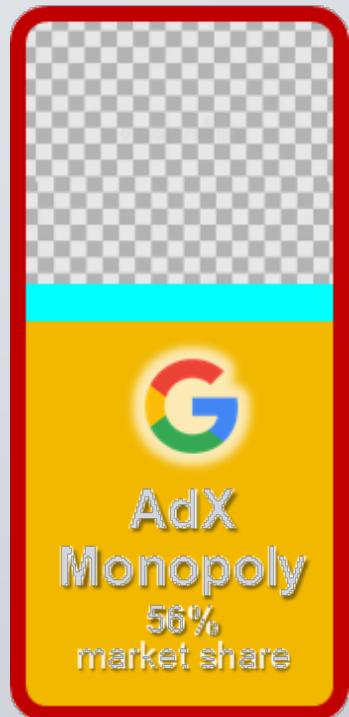


- **Prices are too high:**
  - “AdX charges **supracompetitive prices**” Opinion at 95
- **Customers are locked in:**
  - “**compel[led] publishers’ to use AdX**” Opinion at 29
  - “make it **more difficult for customers . . . to switch** to rival exchanges” Opinion at 80
- **Competition is stifled:**
  - “**imped[ed] [rivals’] ability to enter the market, grow, and compete**” Opinion at 31
  - “**decreased rivals’ scale**” which is “**crucial for ad exchanges**” Opinion at 108-09, 83

# Proposed Remedies



## Ad Exchange Monopoly



- AdX provides real-time bids to rival publisher ad servers and Prebid (interim)
- **AdX is divested**
- AdX provides real-time bids to rival publisher ad servers and Prebid

# Remedies Should Account for the Past to Protect the Future



“The District Court is not obliged to assume, contrary to common experience, that a violator of the antitrust laws will relinquish the fruits of his violation more completely than the court requires him to do. . . . [I]t is not necessary that all of the untraveled roads to [an anticompetitive] end be left open and that only the worn one be closed.”

*Int'l Salt Co. v. United States*, 332 U.S. 392, 400 (1947)

# Divestiture is Sure

“. . . that most drastic, but **most effective**, of antitrust remedies—divestiture. . . . It is **simple, relatively easy to administer, and sure.**” *U.S. v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 326, 331 (1961)

“**The proclivity in the past** to use that affiliation for an unlawful end **warrants effective assurance** that no such opportunity will be available in the future.”

*U.S. v. Crescent Amusement Co.*, 323 U.S. 173, 190 (1944)

“**And advantages already in hand may be held by methods more subtle and informed, and more difficult to prove . . . .**” *Int'l Salt Co. v. United States*, 332 U.S. 392, 400 (1947)

# The Publisher Ad Server Market is Broken



Publisher Ad Server  
Monopoly



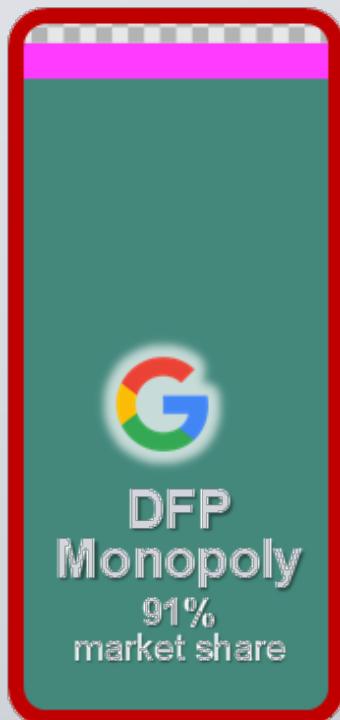
Publisher  
Ad Server

- **Publishers have no alternatives:**
  - “Google has ‘destroyed all competition’ in the ad server market” Opinion at 98
  - “[A]lmost ‘every other publisher ad server either went out of business or was sold for scrap’” Opinion at 98
- **Barriers to entry are daunting:**
  - “very challenging to gain” customers
  - “[t]akes an act of God” to switch ad servers Opinion at 74
- **Innovation is stagnant:**
  - “Google degraded . . . DFP features” without “concern[ ] about whether publishers would switch away” Opinion at 75-76

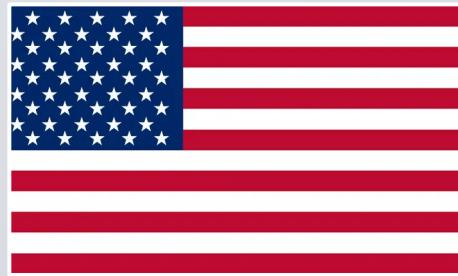
# Proposed Remedies



## Publisher Ad Server Monopoly



Publisher Ad Server



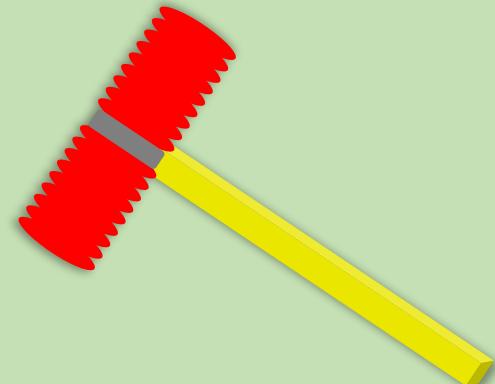
- Interoperate with Prebid
- API to move publisher data to rival publisher ad servers
- **DFP's final auction logic is divested to open-source provider**
- Only if necessary:  
Remainder of DFP is divested



- Interoperate with Prebid
- API to move publisher data to rival publisher ad servers
- Deprecate UPR
- No Future UPR, First Look, Last Look

# Google's Anticompetitive Conduct is a Game of Whack-a-Mole

First  
Look



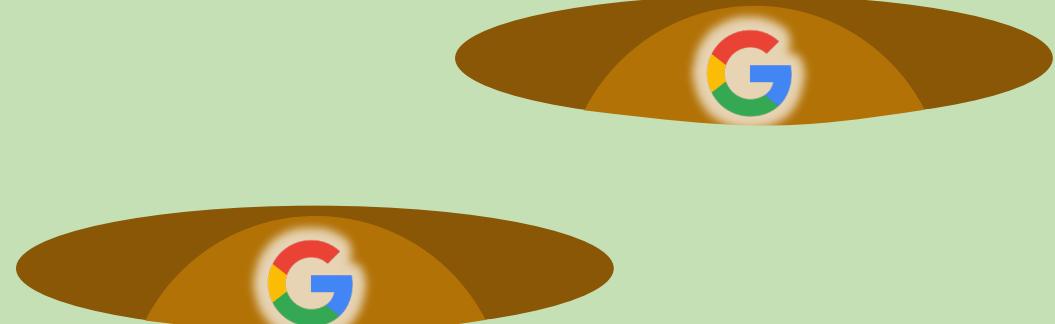
Last  
Look



UPR



????



# Plaintiffs' Feasibility Experts



**Paul Crisci**  
Former Global Co-Head  
TMT Investment Banking  
at UBS Securities  
(*Commercial Feasibility*)



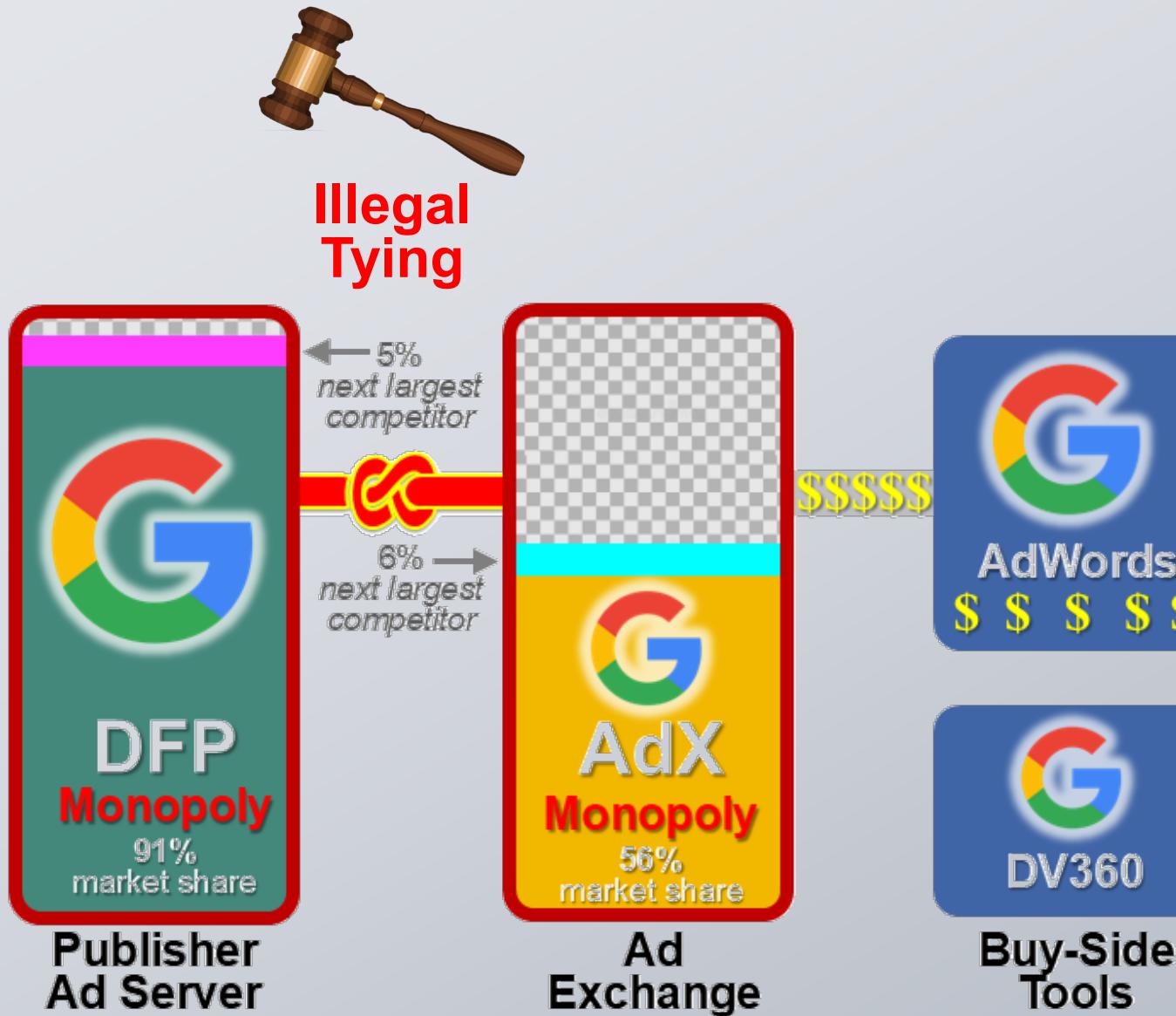
**Dr. Jonathan Weissman**  
Computer Science Professor  
(*Technical Feasibility*)



**Dr. Goranka Bjedov**  
Former Computer  
Scientist  
Google and Facebook  
(*Technical Feasibility  
Timeline*)

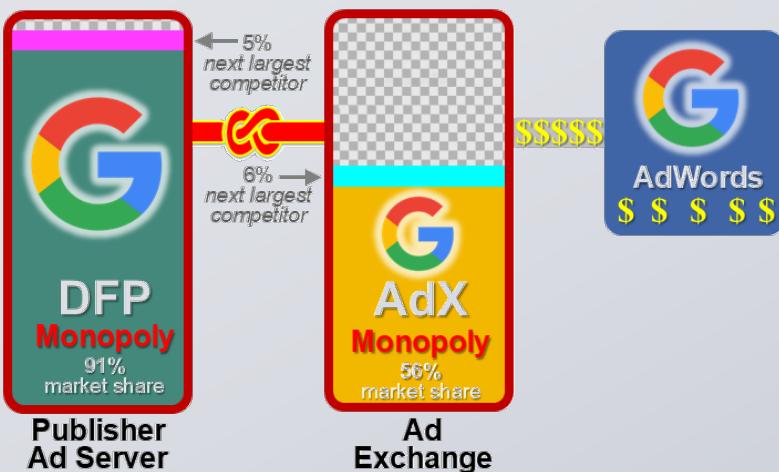


# Plaintiffs' Complementary Behavioral Remedies



- No discriminatory bidding/routing/serving (absent customer consent)
- No direct bidding between Google's ad tech products
- No discriminatory use of first-party data or DFP data signals

# AdWords Demand Gives Google Leverage to Create Monopolies



**“AdWords was a singularly powerful source of digital advertising demand.”**

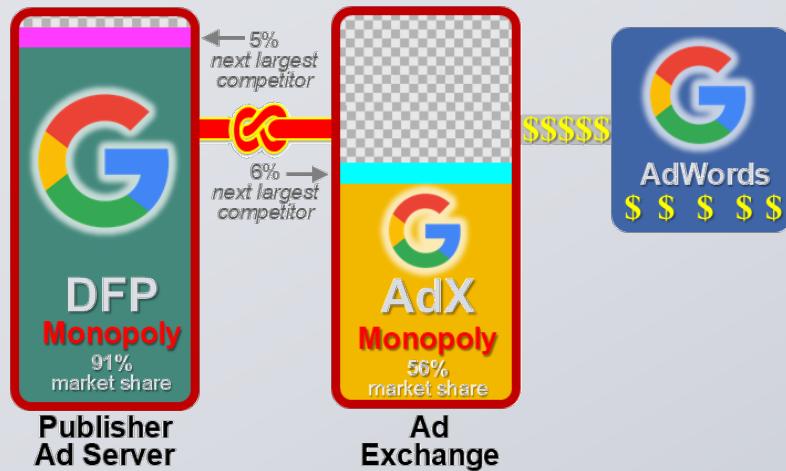
Opinion at 28-29

**“AdX became the ‘glue that seal[ed] DFP’ inventory to AdWords demand.”**

Opinion at 28 (citing PTX 41)

**“. . . [P]ublishers felt they had to use DFP to obtain effective access to AdX and, consequently, to AdWords’ unique demand.”** Opinion at 81

# Google's Proposal



“Nothing in this Final Judgment applies to AdSense, AdMob, **Google Ads**, DV360, or any other Google advertising technology tool besides Google Ad Manager, or applies to any Inventory other than Open Web Display Inventory.”

ECF 1664-1 at 2 (Par. II(2))

# Google's Proposed Remedies Fail to Satisfy Four Objectives

1. “unfetter the ~~market~~ from anticompetitive conduct”
2. “terminate the illegal monopoly”
3. “deny 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 (D.C. Cir. 2001) (quoting *Ford Motor Co. v. United States*, 405 U.S. 562, 577 (1972), and *United States v. United Shoe*, 391 U.S. 241, 250 (1968))

# Industry Witnesses

## Publishers



Grant Whitmore  
**ADVANCE  
LOCAL**



Stephanie Layser  
*News Corp*



Matthew Wheatland  
Daily **Mail**.com



Jay Friedman  
**goodway group**



Luke Lambert  
**OMP**

## Publisher Ad Servers



James Avery  
**kevel**



Arnaud Creput  
**EQUATIV**

## Prebid



Michael Racic  
**Prebid**

## Ad Exchanges



Rajeev Goel  
**PubMatic**



Andrew Casale  
**Index  
Exchange**

## Demand Side Platform



Jed Dederick  
**theTradeDesk**

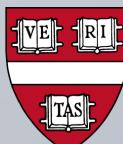
“In this type of case, we start from the premise that an injunction against future violations is not adequate to protect the public interest. If all that was done was to forbid a repetition of the illegal conduct, **those who had unlawfully built their empires could preserve them intact.**”

*Schine Chain Theaters v. U.S.*, 334 U.S. 110, 128 (1948)

# Plaintiffs' Economic Expert



**Dr. Robin Lee**  
Professor of Economics  
Harvard University



HARVARD

# Google's Scale Advantages Will Not Disappear Overnight



Ad Exchange  
Competitor

Publisher Ad  
Server Competitor

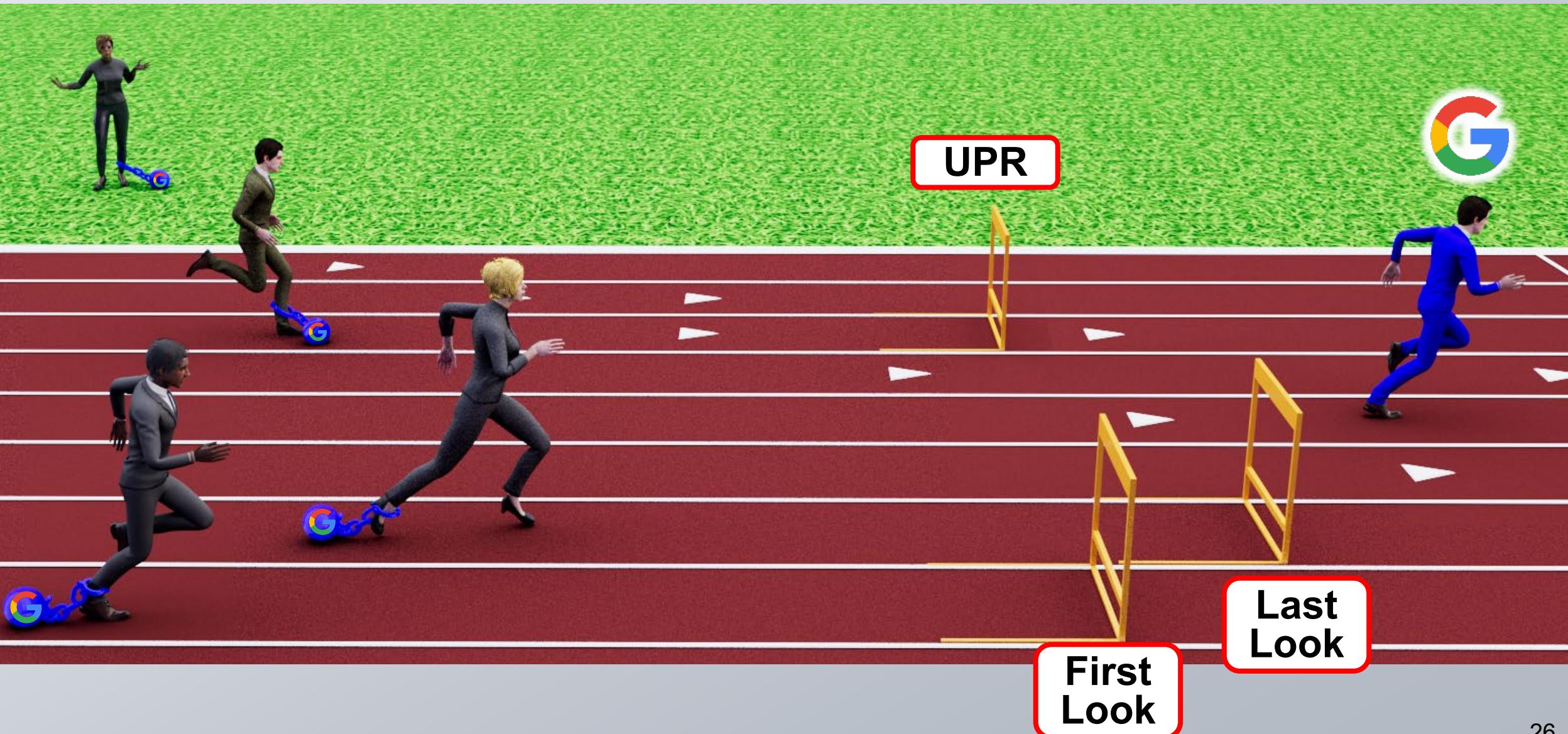
# Google's Enormous Scale Advantages Will Endure



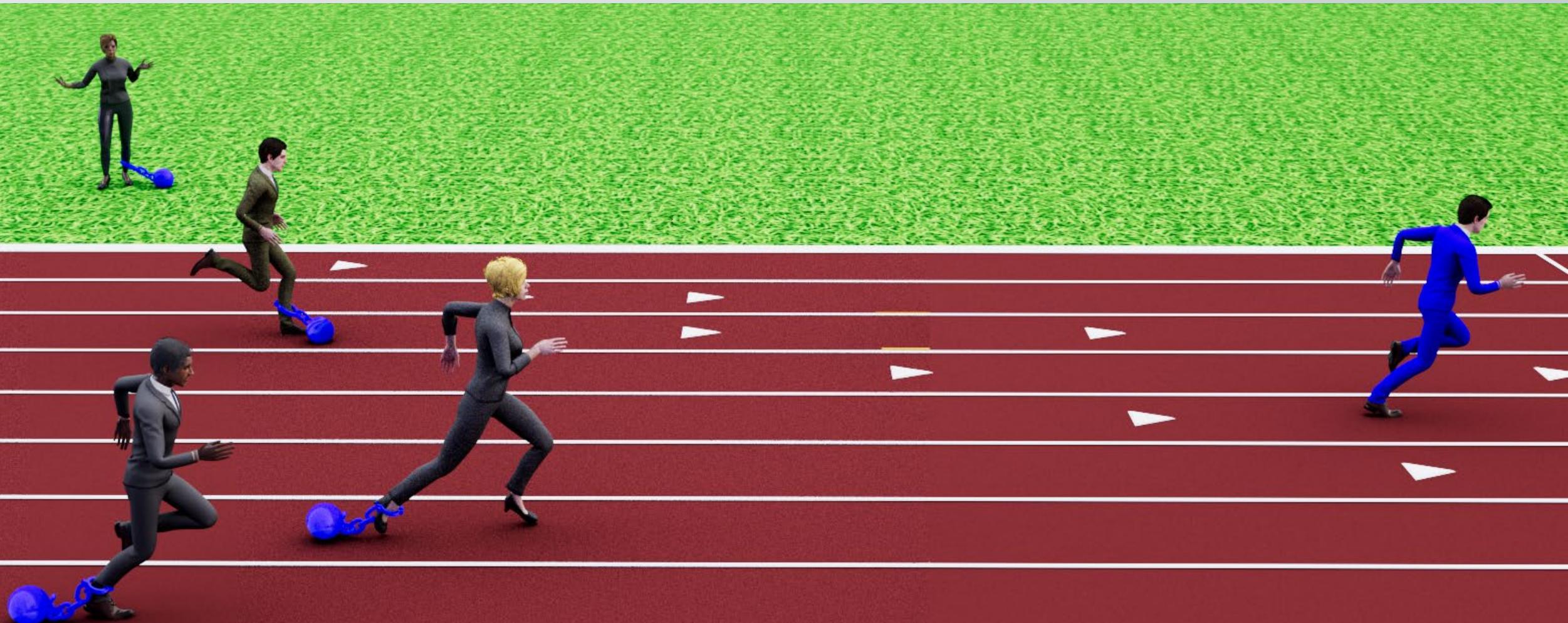
**“Scale is a crucial factor for ad tech companies’ ability to compete because of the importance of bid data analytics for optimizing ad tech services and the significant network effects that exist in programmatic advertising.”** Opinion at 40

**“The unmatched scale that Google has achieved . . . helps [it] test products more quickly and make higher-quality matches between advertisers and publishers.”** Opinion at 40

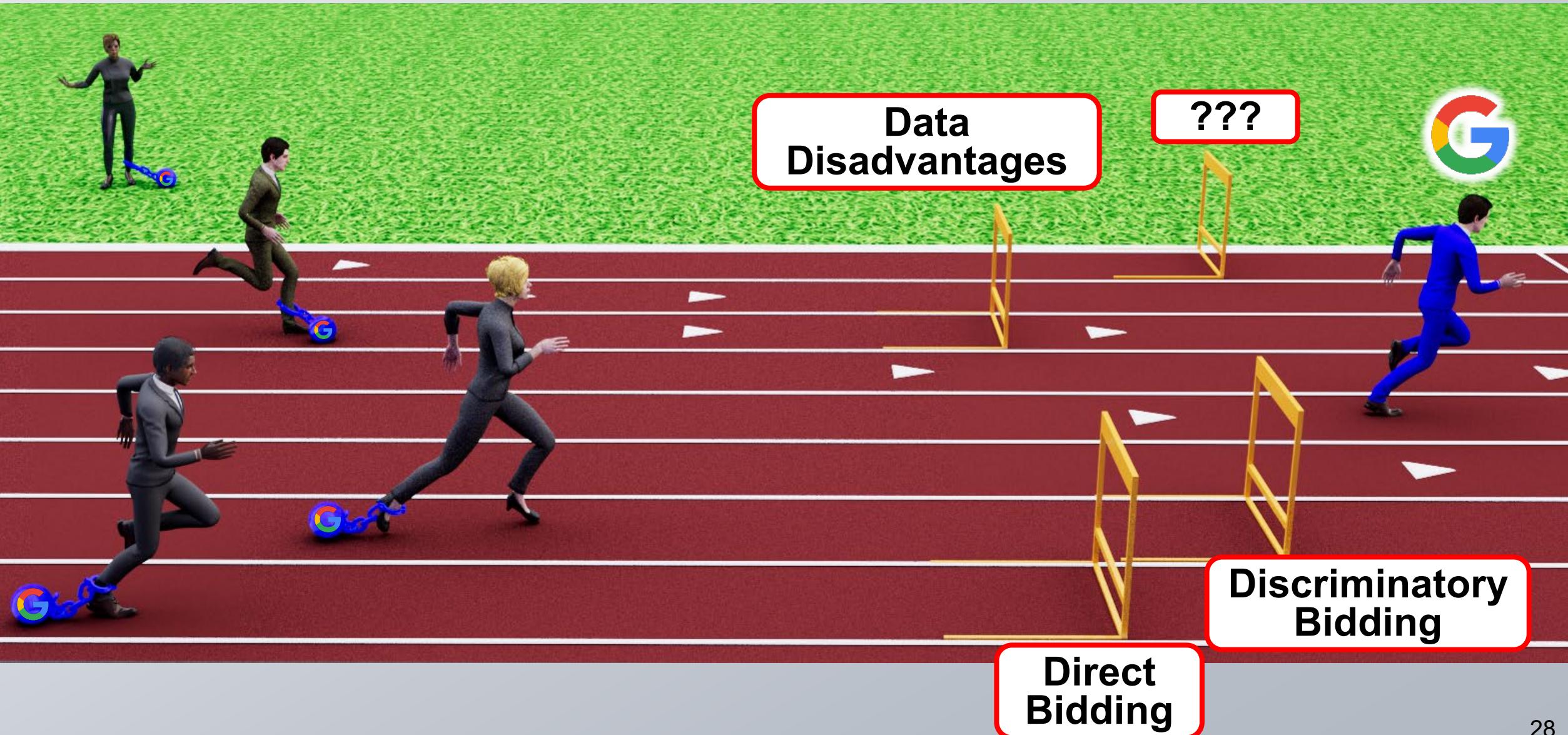
# Google's Proposed Remedies Are Insufficient



# Google's Proposed Remedies Are Insufficient



# Google's Proposed Remedies Are Insufficient



# Remedies Must Eliminate the Consequences of Illegal Conduct

A decree that “end[s] specific illegal practices,” *without eliminating the consequences of the illegal conduct*, will leave Plaintiffs having “won a lawsuit and lost a cause.”

*Int'l Salt Co. v. United States*, 332 U.S. 392, 401 (1947);  
*Nat'l Soc'y of Pro. Eng'rs. v. U.S.*, 435 U.S. 679, 698 (1978)