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AG Ellison sues Google for antitrust violations over app store

Joins bipartisan coalition of 37 AGs in alleging Google illegally maintains app store monopoly, unfairly edges out competition

July 7, 2021 (SAINT PAUL) — Minnesota Attorney General Keith Ellison today joined a broad bipartisan coalition of 37 attorneys general in suing tech giant Google for alleged antitrust violations related to its app store, Google Play. In the lawsuit, filed in federal court in California, Attorney General Ellison and the coalition accuse Google of using its dominance to unfairly restrict competition with the Google Play Store, harming consumers by limiting choice and driving up app prices. The suit alleges that Google illegally requires all apps sold on the Google Play Store to use Google Billing to process in-app payments. Because Google takes a huge cut of payments made through Google Billing, Google is forcing app developers to pay this rate, raising prices for consumers and stifling innovation in app development.

“Smartphones aren’t luxuries, they’re essential tools for folks trying to afford their lives and stay connected to family, friends, and the world. But Google’s illegal conduct drives up the cost of doing that for everyone,” Attorney General Ellison said. “It also stifles innovation and competition that could help everyone in our economy do better. I joined a bipartisan majority of attorneys general from around the country in this lawsuit because Google doesn’t get to break federal antitrust law and make it harder for all of us to afford our lives just because they’re big and powerful.”

This antitrust lawsuit is the latest legal action against the tech giant claiming illegal, anticompetitive, and unfair business practices. In December 2020, Attorney General Ellison joined a bipartisan coalition of 38 attorneys general in another antitrust lawsuit against Google, alleging that Google illegally maintains its monopoly power over general search engines and related advertising markets through a series of anticompetitive exclusionary contracts and conduct.

Today’s lawsuit focuses instead on Google’s conduct within its own Android mobile operating system. When Google bought Android in 2005, Google promised Android would remain “open source.” Google broke that promise, making their own proprietary Google-sanctioned version of Android, which users and developers cannot modify. Google’s Android is the version running on over 99% of all Android mobile devices in the world.

Smartphone users accomplish most tasks on their phones through apps.On Google’s Android, nearly all apps are bought and sold through the Google Play Store. Google took deliberate, deceptive, and anticompetitive steps to ensure no other app store would compete with it, in which it has largely succeeded. Now, with very few exceptions, an Android app will fail if it is not listed in the Google Play Store.

For an app to be listed in the Google Play Store, Google requires that it use Google Billing, which takes a 30% cut for Google of all in-app purchases. This 30% cut is more than 10 times higher than the cut collected by other payment-processing services. Google can only charge this rate because it takes extensive steps to prevent

competition on the Google Play Store. This raises prices for consumers, makes it harder for app developers to stay afloat, and stifles innovation in app development.

Google closed the Android app-distribution ecosystem to competitors

When Google launched its Android OS, it originally marketed it as an open-source platform. By promising to keep Android open, Google successfully enticed mobile device manufacturers (known as original equipment manufacturers, or OEMs) and mobile network operators (MNOs) to adopt Android and forgo competing with Google's Play Store at that time. Once Google had obtained a critical mass of Android OS adoption, however, Google moved to close the Android OS ecosystem — and the relevant Android App Distribution Market — to any effective competition by, among other things, requiring OEMs and MNOs to enter into various contractual and other restraints. These contractual restraints disincentivize and restrict OEMs and MNOs from competing or fostering competition in the relevant market. The lawsuit filed today alleges that Google's conduct constitutes unlawful monopoly maintenance, among other claims.

In addition to the unlawful tying of Google Billing to the Google Play Store, Attorney General Ellison and the bipartisan coalition allege that Google engaged in the following conduct, all aimed at enhancing and protecting Google's monopoly position over Android app distribution:

- While downloading an Android app from the internet should be as easy as downloading a program from a web browser on a desktop PC, Google has made downloading anything from outside the Google Play Store frightening, cumbersome, or sometimes outright impossible. Google builds into Android a series of security warnings that go off — regardless of actual security risk — when a user tries to install anything from outside the Google Play Store. It also makes the installation process deliberately cumbersome and complicated. This deterrence has proven very effective, almost entirely foreclosing app developers and app stores from direct distribution to consumers.

- Google has not allowed Android to be open source for many years, effectively cutting off potential competition. Google forces OEMs that wish to sell devices that run Android to enter into agreements called "Android Compatibility Commitments." Under these take-it-or-leave-it agreements, OEMs must promise not to create or implement any variants or versions of Android that deviate from the Google-certified version of Android. If the OEM does not agree, the OEM's device cannot use Google's version of Android. Being cut off from Google's Android all but guarantees that the product will fail.

- Google's required contracts foreclose competition by forcing Google's proprietary apps to be "pre-loaded" on essentially all devices that are designed to run on the Android OS, and requires that Google's apps be given the most prominent placement on device home screens.

- Google buys off its potential competition in the market for app distribution. Google has successfully persuaded OEMs and MNOs not to compete with Google's Play Store by entering into arrangements that reward OEMs and MNOs with a share of Google's monopoly profits.

Today’s lawsuit is led by two Republican and two Democratic attorneys general: Utah Attorney General Sean D. Reyes, New York Attorney General Letitia James, North Carolina Attorney General Josh Stein and Tennessee Attorney General Herbert Slatery III. Also joining Attorney General Ellison in the lawsuit are the attorney general of Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Idaho, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Vermont, Virginia, Washington, and West Virginia.