

AG Lynn Fitch Sues Google for Antitrust Violations

Bipartisan Coalition of States Say Google Illegally Maintains an App Store Monopoly; Unfairly Edges Out Competition



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Lynn Fitch

Attorney General Lynn Fitch joined a coalition of 37 attorneys general, to file a lawsuit against Google, alleging exclusionary conduct relating to the Google Play Store for Android mobile devices and Google Billing. This antitrust lawsuit is the latest legal action against the tech giant, claiming illegal, anticompetitive, and unfair business practices. The States 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.

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This case centers on Google’s exclusionary conduct, which substantially shuts out competing app distribution channels. Google also requires that app developers that offer their apps through the Google Play Store use Google Billing as a middleman. This arrangement, which ties a payment processing system to an app distribution channel, forces app consumers to pay Google’s commission—up to 30 percent—on in-app purchases of digital content made by consumers through apps that are distributed via the Google Play Store. The lawsuit alleges that Google works to discourage or prevent competition, violating federal and state antitrust laws.

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 “OEMs”—mobile device manufacturers—such as Samsung and “MNOs”—mobile network operators such as Verizon—to adopt Android, and more importantly, to forgo competing with Google’s Play Store. Once Google obtained the “critical mass” of Android OS adoption, 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 alleges that Google’s conduct constitutes unlawful monopoly maintenance, among other claims.

In aid of Google’s efforts discussed above, the AGs allege that Google also engaged in the following conduct, all aimed at enhancing and protecting Google’s monopoly position over Android app distribution:

- Google imposes technical barriers that strongly discourage or effectively prevent third-party app developers from distributing apps outside the Google Play Store. Google builds into Android a series of security warnings (regardless of actual security risk) and other barriers that discourage users from downloading apps from any source outside Google’s Play Store, effectively 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,” or ACCs. 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.
- Google’s required contracts foreclose competition by forcing Google’s proprietary apps to be “pre-loaded” on essentially all devices designed to run on the Android OS, and require 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.
- Google forces app developers and app users alike to use Google’s payment processing service, Google Play Billing, to process payments for in-app purchases of content consumed within the app. Google is unlawfully tying the use of Google’s payment processor, which is a separate service within a separate market for payment processing within apps, to distribution through the Google Play Store. By forcing this tie, Google is able to extract an exorbitant processing fee as high as 30 percent for each transaction, which is many times higher than payment processing fees charged in competitive markets.

In addition to Mississippi, attorneys general from Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Idaho, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, and West Virginia joined the lawsuit.



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