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## AG Ferguson files antitrust lawsuit against Google for burying Play Store competition

**FOR IMMEDIATE RELEASE:**

Jul 7 2021

*Bipartisan coalition of 37 attorneys general assert Google used its market dominance to stifle competition*

**OLYMPIA** — Attorney General Bob Ferguson today filed an antitrust lawsuit against technology giant Google for using anticompetitive practices to insulate its app distribution service, Google Play Store, from competition — forcing Android app developers to raise app prices for users in order to pay Google’s exorbitant fees. These practices have targeted all levels of the smartphone ecosystem, including device manufacturers, network operators and app developers.

Washington’s Consumer Protection Act prohibits anticompetitive business practices that stifle or suppress competition. These practices cause unlawful monopolies that harm consumers. Reduced competition from monopolies drives up prices, inhibits innovation and reduces the quality of products and services.

Google’s anticompetitive tactics include, among others, blocking non-Google Play Store apps from advertising on Google’s ubiquitous search platforms. These practices have helped it dominate the Android app distribution market. Well over 90 percent of all Android apps are downloaded from Google Play Store.

Ferguson, in a bipartisan group of 37 state attorneys general, filed the lawsuit today in the U.S. District Court for the Northern District of California. The states’ lawsuit asserts Google formed an unlawful monopoly in the app distribution and in-app-payment services markets, harming both Android phone users and app developers. An estimated 2.9 million Washingtonians and more than 100 million people nationwide use a phone that runs on Android, Google’s operating system. An estimated 40,000 app developers live in Washington.

“When companies illegally act like monopolies, everyone loses out on the benefits of healthy competition,” Ferguson said. “People face higher prices and fewer choices. Smaller businesses are forced out of the market — or have no way into it in the first place. We will hold Google accountable and fight to stop these unfair and illegal practices.”

The states’ lawsuit asserts that Google unlawfully forced out its competition for Play Store and its payment processing service, Play Billing, in several ways. For example:

- Preventing apps that aren't offered on Play Store from advertising on Google's platforms, including search ads and YouTube ads
- Imposing restrictions that deter people from directly downloading apps or installing other app stores that would compete with the Google Play Store
- Paying off device manufacturers and mobile network operators not to make their own app stores and instead preload Google Play Store and make it impossible to delete
- Offering incentives to Samsung, a major smartphone manufacturer, to use Play Store instead of its own Galaxy app store
- Sharing monopoly profits with large app developers to prevent them from making their own app store or moving their apps to a competing app store
- Mandating that all apps on the Play Store also use Google Play Billing after their initial download for subsequent in-app purchases, forcing people to unknowingly pay Google's up to 30 percent commission instead of the cheaper rates of competing payment services

Because of Google's exclusionary conduct, even large, sophisticated content distributors like Amazon have failed to create a competitive alternative to Google Play Store.

Google's efforts to eliminate its app distribution competition translates into higher prices for consumers. Google charges up to a 30 percent commission on Play Store app purchases and in-app purchases processed by Google's payment processing service, Google Play Billing — as much as 10 times more than other payment processing systems.

If it weren't for its anticompetitive practices, Google wouldn't be able to get away with these exorbitant fees. For example, Google charges substantially lower fees on its Chrome Web Store at only 5 percent for app purchases, in the face of competitors like Mozilla and Microsoft.

### **Details of the case**

Google owns Android, an operating system for smartphones, similar to Apple's iOS. Android and iOS are the only two smartphone operating systems available to consumers. Because Apple only allows iOS on Apple devices, Android is the only operating system currently widely available to other mobile device manufacturers, such as Samsung and Sony. Globally, approximately 75 percent of smartphones use Android.

Android began as a free, open-source product, meaning anyone could use it and modify the code. Google marketed the predecessor to the Google Play Store as an open, revenue-neutral service to help developers distribute their apps.

Over time, Google began restricting customization of Android, deterring developers from making competitive alternatives to Play Store, and steering all app distribution there — then cutting deals to discourage and disincentivize any remaining potential competition.

### **Paying off the competition**

Mobile network operators or device manufacturers are able offer their own app stores on Android devices. Recognizing this potential threat to its monopoly, Google has entered into revenue share deals through which it effectively pays phone makers and mobile network operators not to develop their own app stores or support third-party stores. It has used similar agreements with major app developers to prevent them from launching their own stores.

For example, Google offered incentives for Samsung to turn the Galaxy app store into a mere "white label" for the Google Play Store — meaning that Samsung would use all the backend services of the Google Play Store under Samsung Galaxy Store branding.

### **Restricting app developers**

Google only grants access to advertising space, such as Google Search ads and YouTube ads, to apps distributed through Google Play. Because Google dominates the search ad market as well, Android app developers cannot effectively use search advertising to promote their products unless they comply with Play Store rules.

Google requires most Android apps to use Google Play Billing, the company's app payment processing service, to process all transactions made within apps. Many app developers offer their apps for free initially, and earn revenue when people purchase extra content within the app. Google Play Billing charges a 30 percent commission for these in-app purchases.

The states assert that this commission far exceeds — by as much as 10 times — the fees charged by alternative payment processors such as PayPal. Without Google's mandate to use Google Play Billing, most developers would use another processing service or build their own. That competition would drive down Google's processing fees and spur innovation, benefitting developers and consumers.

## **Legal claims**

The states' lawsuit asserts Google's anticompetitive practices violate longstanding federal antitrust law, the Sherman Antitrust Act of 1890, which prevents companies from monopolizing or attempting to monopolize a market. Its conduct also violates Washington's own, similar antitrust and consumer protection laws.

The lawsuit seeks to stop Google's anticompetitive, unfair and deceptive practices and make structural changes to remedy and prevent Google's unlawful conduct. These changes could include a ban on contracts that force developers and manufacturers to use Google Play Store and Play Billing — or even legally requiring Google to sell Play Store or Play Billing to a competitor.

The states' lawsuit also asks the court to order Google to pay restitution, civil penalties, and other remedies, including interest, as the court may deem appropriate, as well as reimbursement of attorney fees and costs.

Washington's legislature recently increased Washington's maximum penalty for each corporate violation of Washington's antitrust law provisions from \$500,000 to \$900,000. It also increased Washington's maximum penalty for each unfair or deceptive practice from \$2,000 to \$7,500. Additionally, the Attorney General's Office estimates that Google's anticompetitive conduct cost Washingtonians in the millions of dollars. This number will be refined at later stages of the case. The Attorney General's Office will seek full restitution for all impacted Washingtonians.

Assistant Attorneys General Amy Hanson and Nathaniel Hopkin with the office's Antitrust Division are leading the case for Washington.

The Office of the Attorney General's Antitrust Division is responsible for enforcing the antitrust provisions of Washington's Consumer Protection Act and federal antitrust laws. The division investigates and litigates complaints of anticompetitive conduct and reviews potentially anticompetitive mergers. The division also brings actions in state and federal courts to enforce antitrust laws. It receives no general fund support, funding its own actions through recoveries made in other cases.

For information about filing a complaint about potential anticompetitive activity, visit <https://fortress.wa.gov/atg/formhandler/ago/AntitrustComplaint.aspx>.

## Other actions against Google

This is Ferguson's second antitrust lawsuit against Google. In December 2020, Ferguson partnered with a bipartisan coalition of 38 attorneys general to file a federal antitrust lawsuit over the company's monopoly in the online search and search advertising markets. The lawsuit asserts that the technology giant illegally leverages its dominance in the market to stifle competing platforms, drive advertisers away from rival search engines, and limit competing specialized sellers' ability to bring customers directly to their sites from general Google search results.

In 2013, Google paid Washington state more than \$600,000 over alleged data privacy violations involving tracking consumers. The payment to Washington was part of a total of \$17 million split between 37 states and the District of Columbia. Google also paid Washington state more than \$135,000 the same year for unauthorized data collection through its Street View service. This payment to Washington was part of a \$7 million settlement split between 38 states and D.C.

In 2018, Google paid Washington state \$217,000 to resolve Ferguson's lawsuit accusing the company of violating Washington campaign finance disclosure laws that require political advertisers to maintain information about those who purchase advertising and make that information available to the public. In October, Ferguson announced his intention to file a second lawsuit against Google after a referral from the state Public Disclosure Commission, accusing the company of continuing to violate campaign finance disclosure laws.

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