

Remedy Considerations in *US v. Google*

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This memo proposes a set of effective remedies and discovery requests to restore competition to the search markets Google has monopolized.

As per the decision in *US v. Google*,¹ potential rivals are currently foreclosed from accessing user search queries into Search Input Properties (SIPs) (e.g., Apple's Safari browser) due to the illegal terms of Google's licensing agreements that require SIPs to make Google the default, and exclusive, recipient of those queries.

A remedy that unties Google's search results product from its search advertising monetization product would compel Google to compete against rival providers in both markets in which the Court found Google holds a monopoly: the General Search Services market and the General Search Text Ads market.²

The framework for the proposed remedies can be summarized as:

(1) prohibit Google from participating in the General Search Services and General Search Text Ads markets on an "all or nothing" basis through default licensing agreements with SIPs that force SIPs to "push" searchers to Google's search engine result page; and

(2) order Google to untie its search services product from its search text ads product and offer both of those products to SIPs through a non-exclusive license. This shifts the locus of control over the user search experience to the SIPs, who can "pull" outputs from those products in response to a user search query to create curated search experiences. As a result, (a) SIP users can access Google's search results and search text ads on the SIP properties, and (b) Google continues to pay the SIPs a share of revenue when those users click on Google's search ads.

Organized in two sections, this memo:

(I) provides a real-world example of how market competition that will result from the suggested remedies would give SIPs the flexibility to innovate their user search experience, increasing search advertising cost-and-value transparency to both SIPs and search advertisers, thereby allowing true price competition in the market; and

(II) proposes a specific set of remedies to create market competition in each of the two markets identified by the Court. This discussion about the specific set of remedies in each market includes the role a Technical Committee would serve in enforcement, and identifies discovery needed to address details that may not have been addressed during the liability phase of the case. This second section concludes with defined terms.

¹ *United States v. Google LLC*, No 20-cv-3010 (APM) (D.D.C.); *Colorado v. Google LLC*, No. 20-cv-3715 (APM) (D.D.C.).

² Capitalized terms are defined in the "Definitions" section at the end of this document.

I. Practical Outcome of an Effective Remedy

This section provides an example of how a set of effective remedies would restore competition in the relevant product markets for Apple, for whom Safari is a SIP.

Under the proposed remedies, Apple would be able to provide and monetize search results to their Safari users by pulling results and ads from Google instead of being forced to push their searchers to Google's Search Engine Results Page exclusively – which is currently the only way Apple's Safari users can access Google's search results and advertisements.

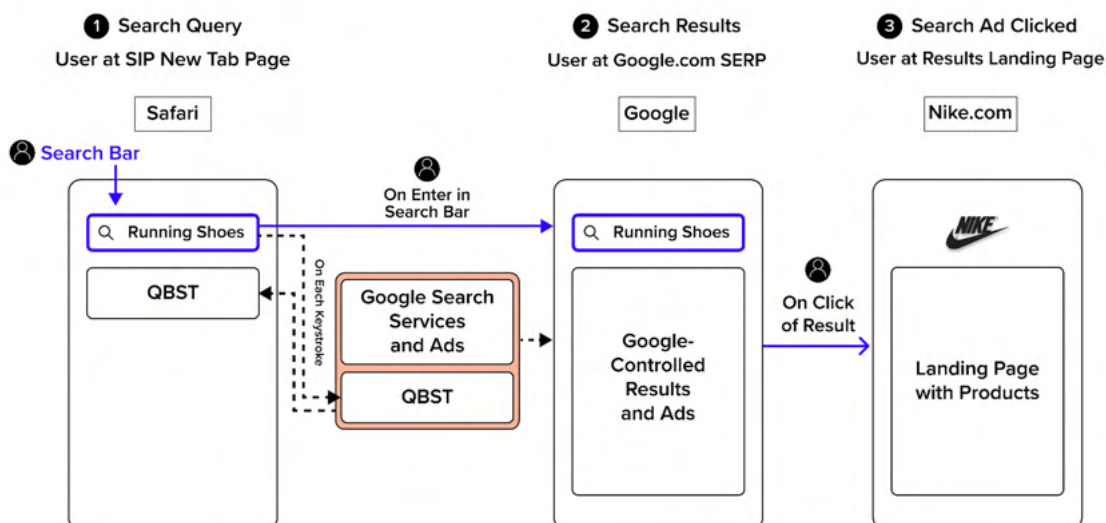
Here is an example of the user experience with these remedies in place, supplemented with graphics distinguishing the current state of the market, where SIP users are pushed to Google's SERP, from the but-for-world market, where the SIP pulls search results and search text ads from Google and other sources to curate responses to user queries:

- A user of Apple's Safari browser enters a commercial search query (e.g., "running shoe") into Safari's search bar.
- Apple then pulls responsive search results and search text ads from Google and also from Google's rivals in both of those markets, who will now compete for distribution to Apple users.
- Apple decides if it wants to (a) transit the user to a search results page hosted by Google or another party, or (b) curate and present outputs from competing search product providers to the user within the Safari application. If the latter, Apple can present a combination of responsive outputs from the competing search product providers to the user, including for example: (i) Google search results (ii) Apple's own Gen AI response, (iii) Google search text ads, (iv) search text ads sold directly by Apple, and (v) product listing ads from a third party (e.g., adMarketplace).

Current State

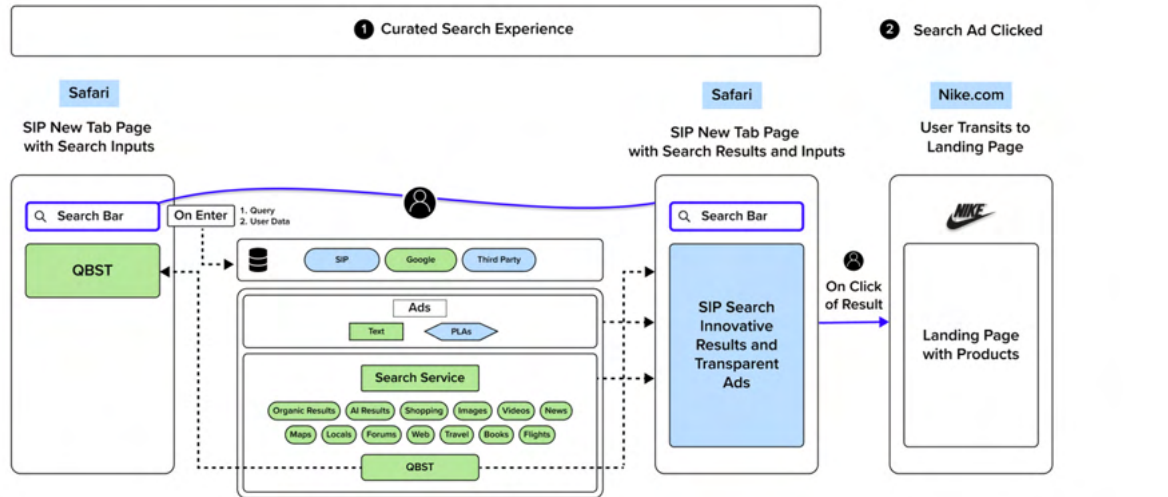
— User Search Flow Backend API Calls

Three-Step User Search Flow from (1) Search Input Property (SIP) to (2) Google SERP Results to (3) Landing Page



Remediated State

(1) Curated User Search Experience Curated by SIP Until (2) User Transits to Landing Page



Here are the benefits of this outcome:

- Apple would be able to improve and innovate the user search experience on its Safari browser – while ensuring that its user search experience and search advertising monetization is no worse than the monopoly-dominated status quo. Instead of being forced to present the outputs from Google’s General Search Engines as a “bundle” of offerings,” which appears to an Apple user as Google’s Search Engine Results Page (SERP), Apple would have flexibility to untie the General Search Services product from the General Search Text Ads product;
- Apple would be able to experiment to improve its user search experience – with Google, Google’s rivals (e.g., Bing) and new entrants, and/or by building new search solutions in-house – and can still choose to direct searchers to Google’s SERP for any and all user queries; and
- Apple would be able to offer search advertisers the opportunity to buy user search clicks from its default search experience directly or through other channels. It would discover market-competitive prices, and all search advertising providers (including Google) would be incentivized to provide transparent search query reports to advertisers to improve relevance and performance.

The proposed remedy is designed to spur competition in the relevant markets, freeing consumers from the default search experience of forced funneling to Google’s Search Engine Results Page in response to every query in the default search experience on SIPs. In the but-for world, SIPs would curate responses to user queries, choosing between technology providers of General Search Services and monetization providers of General Search Text Ads.

Enabling Apple to curate the default search experience in Safari by responding to user queries with both search results and search text ads sourced from multiple firms would create the conditions for Google competitors to begin overcoming the tremendous scale advantage that Google obtained through illegal means.

In the but-for world General Search Services market, the current outputs from Google's GSE would serve as the "floor" for the user search experience presented by SIPs. Currently, Google's GSE outputs represent the ceiling – and only version – of the user search experience SIPs can present if they want to include Google search assets in their default user search experience.

II. Proposed Court-Ordered Remedies

A. Remedy Components Applicable to Both the General Search Services and General Search Text Ads Markets

1. End Google's exclusive control over user queries from partners' Search Access Points.
 - a. Prohibit Google from enforcing existing – or entering new – exclusivity provisions in search distribution contracts (including its Revenue Share Agreements ("RSAs") and Mobile Application Distribution Agreements ("MADAs")), content agreements, or any other agreements.
2. Appoint a Technical Committee to ensure compliance with the Court-ordered remedy, and order Google to pay the Technical Committee's reasonable costs.
 - a. The Technical Committee will monitor Google's search distribution licensing agreements and monitor execution (using technology and practical monitorship) of those agreements consistent with the Court-ordered remedies. The Technical Committee will be empowered – as is set forth in more detail within the market-specific sections below – to determine whether pricing, Relevancy, and Latency are being provided on the same terms as to Google O&O Search Properties.
 - b. Non-compliance with the remedy or the recommendations of the Technical Committee will initially result in fines, and possibly in divestment of the Chrome Browser if Google is not compliant, to disincentivize "all or nothing" activity by Google towards Search Input Properties.

B. General Search Services Market: Remedy, Discovery Required, and Enforcement Details

PROPOSED REMEDY

1. Order Google to participate in the General Search Services market through licensing agreements that provide Search Input Properties with Google's search services product.
 - a. This product must be provided by Google with Relevancy and Latency that are no worse than those offered on Google O&O Search Property (e.g., Chrome). Thus, SIPs will have access to the same GSE assets for search results as are available on the Google SERP accessed via Chrome.
 - b. The licensing economics will be set by the Court, pursuing the goal of fair, reasonable, and non-discriminatory (FRAND) license terms to remediate the gains Google has received from its monopoly practices.
 - i. Regarding pricing, Google shall offer its General Search Services product either free or heavily subsidized for a sufficient period of time, as determined by the Court.

2. Prohibit Google from entering into or enforcing existing exclusive data licensing agreements for inputs into its General Search Services indexes, including structured data and data for its AI training models (e.g., Google's licensing agreement with Reddit), because those exclusive licensing agreements serve as a barrier to competitors obtaining access to search services data inputs necessary to build search engine indexes with relevant results.

DISCOVERY REQUIRED

3. Discovery is required to craft and implement the details of the proposed remedy pertaining to the General Search Services market. The Court can order Google to produce all technical documentation and testimony regarding this market to the government during the relevant phase of the proceedings, and to the Court and its Technical Committee on an ongoing basis after a remedy is ordered.

4. The discovery needed covers:

- a. General Search Services outputs

- i. The components of Google's General Search Services include: QBST (query-based salient terms), organic results, Gemini, snippets, images, maps, video, news, shopping, web forums, books and flight services (all tabs on Google's General Search Engine). Details are needed about how Google generates outputs for the Technical Committee to determine whether appropriate Relevancy is being delivered across contexts where the level of user data varies.
- ii. Methods used to provide General Search Services in response to search queries entered into Search Access Points outside of Google O&O Properties, including details about how API calls are made, received, and responded to, including Relevancy and Latency metrics.
- iii. Methods used to provide General Search Services on Google's SERP from Chrome search inputs, including Latency optimizations.
- iv. Technical documentation sufficient to illustrate how to untie Google's General Search Services product from its General Search Text Ads product so that the two can be offered separately.

- b. General Search Services Inputs

- i. Agreements Google has entered into with content providers (including but not limited to Reddit) related to the training of AI models Google intends to build to improve either its General Search Services or General Search Text Ads products.
- ii. Internal communications and business records related to Google's plans to integrate AI into its search offerings, and depositions of relevant personnel.

ENFORCEMENT

4. The Technical Committee shall have the power and authority to monitor Google's compliance with the Court-ordered remedy, explicitly including but not limited to the power to review Google's contracts related to its General Search Services product, and to monitor execution (using technology and practical monitorship) of those agreements.
 - a. The Technical Committee will be empowered to, amongst other duties, determine whether Relevancy and Latency are being provided on the same terms as to Google O&O Search Properties.
 - i. Regarding pricing, the Technical Committee will be empowered to determine whether Google's charges to Search Input Properties are consistent with the cost model (if any) dictated by the Court to stabilize the General Search Services market through the period of transition.
 - ii. User-Level Data: The Technical Committee will be empowered to determine what level of Relevancy and Latency are appropriate across contexts where the user-level data varies – *i.e.*, will assess the impact of reduced user data inputs on Relevancy and Latency, and use that information to determine both:
 - an appropriate standard for evaluating Google's outputs, and
 - the impact on licensing cost, if any.

C. General Search Text Ads Market: Remedy, Discovery Required, and Enforcement Details

PROPOSED REMEDY

1. Order Google to participate in the General Search Text Ads market through licensing agreements that provide Search Input Properties with Google's search text ads product.
 - a. This product must be provided by Google with pricing, Relevancy, and Latency that is no worse than is offered on Google O&O Search Property (*e.g.*, Chrome). Thus, SIPs will have access to the same GSE assets for search text ads as are available on the Google SERP accessed via Chrome.
 - b. The licensing economics will be set by the Court, designed to achieve FRAND license terms, in order to remediate the gains Google has received from its monopolistic practices. As a baseline, the appropriate revenue share of Search Text Ads should be 50% of the advertiser's cost per click, with details to be refined after discovery and consideration by the Technical Committee (as set forth below).
2. Order Google to provide its advertisers with Search Query Reports reflecting searches from Search Access Points that include at least the following click level data: (1) cost per click, (2) query entered, and (3) match type.

DISCOVERY REQUIRED

3. Discovery is required to craft and implement the details of the proposed remedy pertaining to the General Search Text Ads market. The Court can order Google to produce all technical documentation and testimony regarding this market to the government during the relevant phase of the proceedings, and to the Court and its Technical Committee on an ongoing basis after a remedy is ordered.
4. The discovery needed covers:
 - a. General search text ads product outputs
 - i. Methods used to provide search text ads products in response to commercial search queries entered into Search Access Points outside of Google O&O Properties, including details about how API calls are made, received, and responded to, including Latency metrics.
 - ii. Methods to provide General Search Services on Google's SERP from Chrome search inputs, including (a) Advertiser Cost Per Click and (b) match type for each advertisement, as well as Latency optimizations.
 - b. Discovery from Search Input Providers into the impact of changing from their current revenue share model under exclusive agreements to FRAND license terms.
 - i. This discovery should be sufficient to inform the Court about the minimum time period expected for competitors to build alternatives to Google's offerings, and the time needed for Search Input Properties to begin to present competitive products.

ENFORCEMENT

4. The Technical Committee shall have the power and authority to monitor compliance with the Court-ordered remedy, including but not limited to the power to review Google's contracts related to its general search text ads product, and monitor execution (using technology and practical monitorship) of those agreements.
 - a. The Technical Committee will be empowered to, amongst other duties, determine whether Google is providing its search text ads product with pricing, Relevancy, and Latency on the same terms as to Google O&O Search Properties.
 - i. In this context, the Technical Committee will evaluate the tradeoffs between privacy and search quality (*i.e.*, between the user data inputs and the resulting Relevancy and Latency of Google's response), to determine whether Google's outputs are appropriate in light of varying user data inputs.
 - b. The Technical Committee will advise the Court on qualifications for search monetization platforms to obtain a license for Google's General Search Services and General Search Text Ads products.

- i. The search monetization platforms deemed qualified to obtain these licenses from Google must satisfy the basic requirements of being useful to advertisers and publishers – *i.e.*, must demonstrate that they will not use the licenses for improper means, or to present advertisers experiences that may jeopardize their brand safety.
 - ii. Specific examples of qualifications include the volume, quality, and value of search media in the search monetization platform.
 - iii. Providing qualifying search monetization platforms with licenses to Google's general search and search text ads products, with ongoing monitoring to ensure that the platforms given these licenses satisfy the qualifications established will be necessary unless or until all SIPs develop the capabilities to run an auction that includes sufficient demand liquidity of search text ads and product listing ads to support adequate search monetization.
- c. The Technical Committee will advise the Court regarding when it expects Google may cease providing specific components of Search Query Reports, *i.e.*, when it expects market forces will render such a requirement superfluous.

Definitions

- Browser: Software that allows users to access websites on the internet, among other things. Examples include Google's Chrome and Apple's Safari.
- General Search Engine (or GSE): Software that produces links to websites and other relevant information in response to a user query.
- General Search Services: One of the two markets the Court held Google has monopoly power in. The GSEs offered within this market seek to fulfill a broad array of informational needs by providing relevant search results in response to user queries. By way of illustration, components of Google's General Search Services product include QBST (query-based salient terms), organic results, Gemini, snippets, images, maps, video, news, shopping, web forums, books, and flight services.
- General Search Text Ads: One of the two markets the Court held Google has monopoly power in. The participants in this market display general search text advertisements, or "text ads," in response to user queries. By way of illustration, Google's General Search Text Ads product displays text ads on the Google SERP in response to a user's query.
- Google O&O Search Property: Google's Owned and Operated search properties where users input search queries. Examples include the Chrome browser, the Google Search Widget, and Google.com.
- Latency: A measure of the time between a user entering a search query and a General Search Engine providing a response.
- Relevancy: A measure of how well an output from a General Search Engine aligns with a user's query and intent.
- Search Access Points: Locations on mobile and desktop devices where users enter search queries. Examples include (1) the search bar integrated into browsers; (2) search widgets on Android device home screens; (3) search applications; (4) preset bookmarks within the default browser; (5) downloading an alternate browser; and (6) direct web search (e.g., navigating to www.google.com or www.bing.com).
- Search Engine Results Page (or SERP): Page produced by GSEs in response to a query, providing links to websites drawn from a broad index of the web as well as additional information.
- Search Input Properties: The entities who provide users with Search Access Points to enter queries, such as browser developers, mobile device manufacturers, and wireless carriers.
- Search Query Report: Information made available by Google to advertisers to help advertisers determine whether to add new affirmative or negative keywords.