

March 24, 2023

VIA EMAIL to competition-consultation-concurrence@ised-isde.gc.ca

To whom it may concern,

Canada's news publishers welcome the opportunity to participate in the Government of Canada's consultation on the future of competition policy in Canada.

The discussion paper notes, "Our economy has changed: the rise of digital commerce has upended the way Canadians do business and consume products, leading to a new class of dominant gatekeepers and uneven growth."

The Competition Act generally applies equally to all sectors of the economy. We believe the time has come for sector-specific mechanisms to be added to better address anti-competitive behaviour.

We are very concerned that important aspects of our competition enforcement framework are not fit for purpose for today's digital economy, where web giants have durable market power and exercise that dominance to the detriment of consumers, businesses, and the overall competitiveness of the marketplace. As the consultation scene setter noted, "The digital transformation has reshaped our economy in ways that were unimaginable when the *Competition Act* was written."

When it comes to search, aggregation, and digital advertising, one company has monopoly-like power, and we believe it is abusing its dominant position.

Advertising has evolved dramatically since the advent of the internet. Advertising used to be negotiated by people. Today, it is auctioned through sophisticated fully automated digital trading exchanges in fractions of seconds. In theory, this should lead to competitive prices, choice, and fair markets for the purchase and sale of digital advertising. However, it does not because one party has come to dominate the technology that represents both the buyers and sellers, owns the dominant digital ad exchange, and has created unrivaled scale and impenetrable network effects.

In this regard, on January 24, 2023, the United States Department of Justice (DOJ), along with the Attorneys General of California, Colorado, Connecticut, New Jersey, New York, Rhode Island, Tennessee, and Virginia, filed a civil antitrust suit against Google for monopolizing multiple digital advertising technology products in violation of Sections 1 and 2 of the Sherman Act. According to the DOJ, Google controls the digital tool that nearly every major website publisher uses to sell ads on their websites (publisher ad server); it controls the dominant advertiser tool that helps millions of large and small advertisers buy ad inventory (advertiser ad network); and it controls the largest advertising exchange (ad exchange), a technology that runs real-time auctions to match buyers and sellers of online advertising. The Complaint goes on to explain and demonstrate that “[s]cale and related network effects are cumulative; they reinforce market power for incumbents and raise barriers to entry and competition for nascent and smaller rivals.”

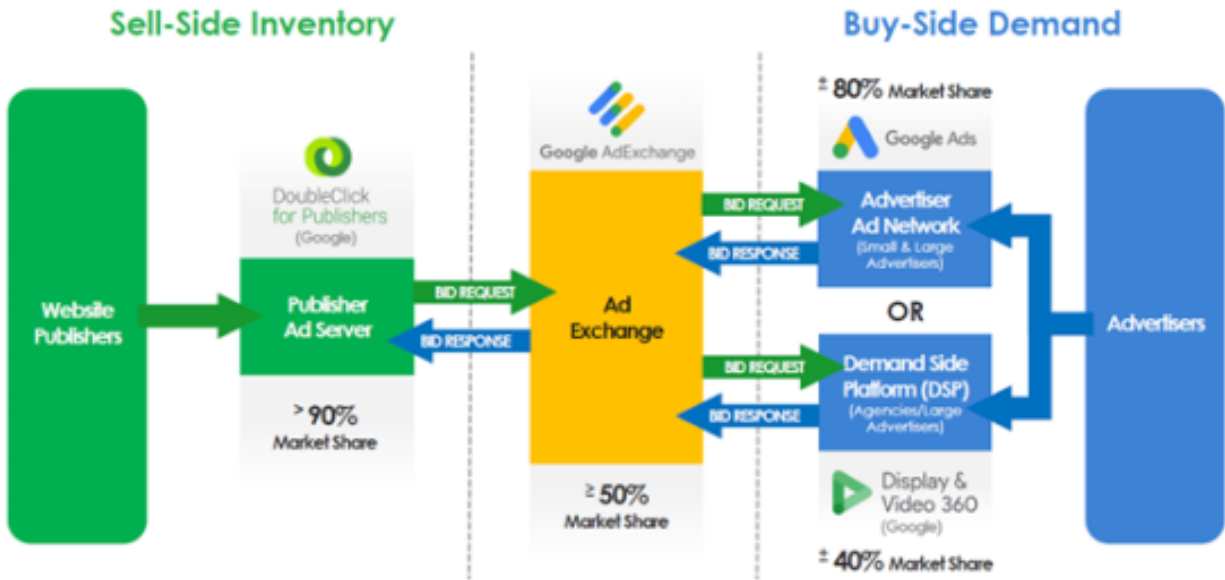


Figure 1 - Source: United States Department of Justice

Google’s anti-competitive conduct has included acquiring competitors; forcing adoption of Google’s tools; distorting auction competition; and auction manipulation. When compared to another electronic exchange, such as a stock exchange, the fees are relatively much higher. The DOJ found that Google’s own documents estimate it keeps, on average, at least 30 cents of each advertising dollar that flows through Google’s ad tech tools.

For some transactions, and for certain customers, Google keeps significantly more. In effect, the system is opaque and operates more like a casino (where the house always wins) than a stock exchange. Stock exchanges are regulated, but digital ad exchanges more closely resemble the Wild West, where high trading costs and a lack of transparency harm both advertisers and publishers.

The DOJ alleges, over the past 15 years, Google has:

“engaged in a course of anticompetitive and exclusionary conduct that consisted of neutralizing or eliminating ad tech competitors through acquisitions; wielding its dominance across digital advertising markets to force more publishers and advertisers to use its products; and thwarting the ability to use competing products. In doing so, Google cemented its dominance in tools relied on by website publishers and online advertisers, as well as the digital advertising exchange that runs ad auctions.”

Dominant platforms should never be allowed to abuse their monopoly power to destroy competition and harm consumers. In today’s digital world, the Government of Canada and the Competition Bureau can no longer afford to take an outdated analog approach to competition policy and enforcement. We need to ensure that the Competition Bureau has the resources, tools, and teeth it needs to investigate the dominance of dominant players in the ad tech market. With the bread price-fixing scandal still under investigation more than five years later, does the Competition Bureau have the resources it needs to rigorously investigate traditional industries, let alone web giants?

As part of your review and to ensure digital advertising markets function in a transparent, balanced, and non-discriminatory manner, we respectfully recommend the following:

- Enhance cooperation with regulators in other jurisdictions, specifically the United States and the European Union, and adopt best practices.
- Act to prevent and prohibit companies from acting anti-competitively as both buyers and sellers in digital advertising markets.
- Put an end to anti-competitive self-preferencing practices and discriminating against competing products and services on online platforms.
- Look to the principles and approaches of regulators that have already been developed to protect the competitiveness of other electronic trading markets, such as stock exchanges and other gatekeeper examples.

These platforms should not have a stranglehold on the digital advertising market in Canada. When it comes to ad tech, both advertisers and publishers are getting a raw deal. We need optionality and real provider choice – not just for the market to function properly, but also to ensure business continuity in the event of an ad tech outage.

We cannot afford to have one company use its extraordinary market power to dictate and coerce digital advertising terms, and control pricing, while self-preferencing to the detriment of publishers and advertisers alike. It is long past time to end this anti-competitive conduct. The Competition Bureau has been examining the conduct of the dominant player in the online

display advertising industry to determine if it is impeding the success of competitors, resulting in higher prices, reducing choice, hindering innovation for advertising technology services, and harming advertisers, publishers, and consumers. We hope the Bureau will update Canadians on its ongoing investigation soon, with a view to coming to a conclusion.

At the same time, existing provisions of the Competition Act need to be reviewed to ensure that they are fit for purpose in today's digital world.

Canada's news publishers are facing an existential threat at a time when Canadians need trusted sources of information more than ever before. Real journalism costs real money. *The American Prospect* [estimates](#) that it costs \$1965.58 to produce an average story. A market where one company uses its dominance across all digital platforms and, as a result, skims about one third of increasingly scarce advertising dollars off the top, makes it extremely difficult for news publishers to find the funds to invest in investigative journalism and other high-quality content that otherwise competitive markets would have afforded them.

As Assistant U.S. Attorney General Jonathan Kanter has stated, "For more than two centuries, advertising in this country has funded newspapers and other avenues of free expression. Revenue from advertising has provided critical support for content creation, the sharing of information, and the exchange of viewpoints, which promote a vibrant, free, and healthy society."

We cannot continue to watch and allow clearly dominant and anti-competitive conduct and practices erode and destroy this foundation of our vibrant and free society. We thank you for this opportunity to share our views.

Sincerely,

Original Signed by Paul Deegan

Paul Deegan
President and Chief Executive Officer
News Media Canada

cc: Hon. François-Philippe Champagne, Minister of Innovation, Science, and Industry
Simon Kennedy, Deputy Minister of Innovation, Science, and Industry
Matthew Boswell, Commissioner of Competition