Searching For Insight On Requested Google Chrome Remedy

By **Kristen Broz, Elizabeth Weissert and Elizabeth Lilly** (January 6, 2025)

Kristen Broz

Elizabeth Weissert

Elizabeth Lilly

In August 2024, U.S. District Judge Amit P. Mehta of the U.S. District Court for the District of Columbia issued a landmark ruling in U.S. v. Google LLC that Google abused its monopoly power in the general search and search text advertising markets in violation of Section 2 of the Sherman Act through exclusive dealing agreements with device manufacturers.[1]

On Nov. 20, 2024, wasting no time, the U.S. Department of Justice requested structural and other injunctive remedies against Google that, if granted, could alter consumer life as we know it.

Perhaps the most controversial of these proposed remedies is the request that Google divest Chrome.

Chrome, Google's web browser, which integrates Google's search engine and allows a user to type searches directly into the browser address bar, needs little introduction.

Although reasonable minds may differ regarding how the web browser market should be defined — as well as what shares various browsers hold within that market — there is little dispute that Chrome is the most popular web browser, across device types, nationally and internationally.

A decision ordering Google to divest Chrome would have a dramatic impact on multiple industries and consumers.

Perspectives on Proposed Divestiture

Critics of the DOJ's proposal[2] raise myriad concerns with a potential divestiture. Chief among these concerns is that fragmenting the browser market could increase the risk of data security vulnerabilities due to, inter alia, inconsistent web standards, compatibility issues and weakened cookies.

Additionally, Google has argued that divestiture will negatively affect services like Mozilla's Firefox that rely on Chrome as a foundation for their services. There are also concerns that divesture may have a net negative impact on consumers, including increased cost of smart phones.

Supporters of divestiture argue it is essential to foster competition in the search market,[3] which will also spur innovation, particularly with the advent of generative artificial intelligence. They also posit that internet advertising may become less expensive, which may ultimately be passed on to consumers.

Legal Precedent for Divestiture

From a legal perspective, divesting Chrome arguably pushes the limits of the court's "broad

discretion" — as articulated by the U.S. Court of Appeals for D.C. Circuit in the 2001 decision in U.S. v. Microsoft Corp. — in identifying what remedies will best address the conduct found to be unlawful.[4]

The main requirement when imposing antitrust remedies is that the remedy should be proportionate to the strength of the evidence of the causal connection between the company's anti-competitive behavior and the impact on the market.[5]

The reason courts require a direct link between any remedy and the alleged violation is that remedies must "leave the defendant without the ability to resume the actions which constituted the antitrust violation in the first place," as per the D.C. Circuit's landmark 1982 decision in U.S. v. AT&T.[6]

Judge Mehta's specific finding was that Google enhanced its monopoly power in the markets for general search services and text ads through exclusive agreements that set Google as the default search engine. The court did not find Google's integration with Chrome to be problematic.

Precedent dictates a result that addresses the specific liability finding without chilling innovation and other desirable consumer outcomes, particularly where, as here, the technology market is constantly shifting. Many industries have integrated their business and technologies into Google's existing services, and the impact of divestiture on consumers is difficult to predict.

As the Microsoft court noted, divestiture, specifically, is "imposed only with great caution" because it is so severe, and may not be effective in complex technological marketplaces.[7] Microsoft also observed that conduct remedies may be unavailing where innovation renders anticompetitive behavior obsolete, and effective structural remedies are similarly difficult to identify where a marketplace is constantly changing.[8]

Historically, divestiture is more common where a monopoly has stemmed from a merger and the divestiture breaks up the company to restore competition.[9]

This makes intuitive sense — not only does divestiture in a merger situation typically follow from the liability finding, but also the impact of the remedy on competition is more predictable than in a situation like with Chrome, where the integration developed organically though Google's growth as a company.

Indeed, as per the Microsoft decision, one "apparent reason why courts have not ordered the dissolution of unitary companies [such as Google] is logistical difficulty."[10]

Lessons From AT&T Divestiture

The breakup of AT&T is a compelling case study in the complexity of divestiture, even where, unlike here, the monopoly stemmed from various mergers and acquisitions. AT&T grew through a series of mergers with the American Bell Telephone Company, Western Union and their subsidiaries. After decades of antitrust enforcement against AT&T, a 1982 consent decree required AT&T to divest itself of the portions of its 22 operating companies that supplied local telephone service.[11]

In effect, each regional operator became an independent company, and AT&T no longer operated in the market for local telephone services, theoretically easing barriers for new market entrants.

Importantly, with AT&T, divestiture was feasible for two reasons: (1) AT&T's acquisition history set the framework for how services could be broken up and (2) local telephone service could be separated by region.

With Chrome, neither of these circumstances exist. Because Chrome developed as an integrated product, there is not a clear way to divest, and Google's global search services cannot reasonably be divided among regional markets. And then, of course, there's the $20 billion question of who would buy it.[12]

Further, even with the structural and geographic features that made AT&T's divestiture feasible, it was notoriously expensive for consumers and economists debate whether any long term benefits in the market for long-distance phone services actually resulted from the divestiture, rather than from other regulatory and technological developments.

Indeed, there is little economic evidence that structural remedies have improved Section 2 consumer welfare in cases, generally.[13]

What Comes Next for Google

Google submitted its own proposed remedies on Dec. 20, 2024, which made modest concessions, but urged the court to narrowly tailor its relief to its liability findings, including a three-year, rather than 10-year, term, as was proposed by the DOJ.

Google's proposal focuses mostly on licensing and easing up on defaults and exclusives. Google emphatically opposes a Chrome divestiture as disproportionate, and declined to propose major structural remedies.

The evidentiary hearing regarding remedies is set to begin April 22 and end by May 2. The outcome is anxiously anticipated by the tech industry, consumers and the antitrust community alike. For updates between now and then, just Google it.

Kristen Broz is a partner, and Elizabeth Weissert and Elizabeth Lilly are associates, at Ballard Spahr LLP.

[1] U.S. et al. v. Google LLC, No. 1:20-cv-03010, and Colorado et al. v. Google LLC, No. 1:20-cv-03715, in the U.S. District Court for the District of Columbia.

[2] See, e.g., https://blog.google/outreach-initiatives/public-policy/doj-search-remedies-nov-2024/.

[3] See, e.g., https://www.economicliberties.us/press-release/googles-proposed-remedies-are-predictably-and-woefully-inadequate/.

[4] United States v. Microsoft Corp., 253 F.3d 34, 105 (D.C. Cir. 2001).

[5] United States v. Microsoft, 231 F. Supp. 2d 144, 163-164 (D.D.C. 2002).

[6] United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 150 (D.D.C. 1982).

[7] 253 F. 3d at 80.

[8] 253 F. 3d at 49.

[9] See Microsoft, 253 F.3d at 105; Ford Motor Co. v. United States, 405 U.S. 562 (1972) (requiring Ford to divest spark plug manufacturer and purchase from the manufacturer as a consumer); Saint Alphonsus Med. Ctr.-Nampa Inc. v. St. Luke's Health Sys., Ltd., 778 F.3d 775 (9th Cir. 2015) (requiring divestiture where the largest and third-largest health care providers in the same geographic region had merged); International Boxing Club of NY, Inc. v. Unites States, 358 U.S. 242 (1959) (divestiture deemed appropriate where two corporations and multiple individuals monopolized the promotion, broadcasting, and televising of professional world championship boxing contests).

[10] Microsoft, 253 F.3d at 106.

[11] United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 141 (D.D.C. 1982).

[12] https://finance.yahoo.com/news/doj-push-google-sell-chrome-222920497.html.

[13] https://www.justice.gov/archives/atr/att-divestiture-was-it-necessary-was-it-success.