IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America, *et al.*, Plaintiffs, v. Google LLC, Defendant.	Case No. 1:20-cv-03010-APM HON. AMIT P. MEHTA
State of Colorado, *et al.*, Plaintiffs, v. Google LLC, Defendant.	Case No. 1:20-cv-03715-APM HON. AMIT P. MEHTA

JOINT STATUS REPORT REGARDING
REMEDY PROCEEDINGS

Pursuant to the Court's August 5, 2024, Order, the Parties submit the following Joint Status Report regarding a proposed schedule for proceedings regarding remedies. ECF No. 1035.

I. Status

On September 3, 2024, the Parties met to discuss the schedule for the remedy proceedings and related discovery in these cases. The Parties have not been able to reach an agreement and, as such, submit their respective position statements and proposed schedules for the Court's consideration.

II. DOJ And Colorado Plaintiffs' Remedy Schedule Statement

A. Overview

The Court bifurcated the proceedings in this case such that it would hold separate trials on the issues of liability and remedies. ECF No. 264 (Dec. 06, 2021) ("holding separate trials on the issues of liability and remedies will be more convenient for the Court and the Parties"). Accordingly, the Parties have focused their discovery and trial presentations thus far on liability issues and expressly did not conduct discovery on the various issues related to potential remedies.

On August 5, 2024, the Court found Google liable for violating Section 2 of the Sherman Act. Mem. Op., *United States et al. v. Google LLC*, 20-cv-3010 (APM), ECF No. 1032, at 276 ("Mem. Op."). With the benefit of the Court's opinion on liability and in an effort to present the Court with an approach to remedies that is legally and factually sound, while balancing the important public interests at stake, Plaintiffs respectfully request sufficient time to engage with market participants and industry experts, conduct remedy discovery, and evaluate the spectrum of appropriate and effective remedies as provided for in the bifurcation order before making a formal remedy recommendation to this Court. Plaintiffs' proposed schedule balances the need

for additional discovery with the importance of working expeditiously to restore competition in the monopolized markets.

As detailed below, Plaintiffs propose to submit a written remedy framework on October 15, 2024, that will help identify the proper scope of remedy discovery. Based on that discovery, Plaintiffs further propose to submit a detailed remedy proposal to the Court in February 2025 with an evidentiary hearing on remedies on or about April 7, 2025, or at the Court's convenience thereafter.

B. The Court Has Broad Power To Order A Comprehensive Remedy To Restore Competition

Following a months-long bench trial, the Court held that Google "violated Section 2 of the Sherman Act by maintaining its monopoly in two product markets in the United States—general search services and general search text advertising—through its exclusive distribution agreements." Mem. Op. at 276. The Court found that today, "Google has no true competitor" and its "monopoly in general search has been remarkably durable"—"Google's dominance has gone unchallenged for well over a decade." *Id*. at 1, 200. Google's exclusionary conduct "thwarted true competition by foreclosing rivals from the most effective channels of search distribution," thereby "deny[ing] rivals access to user queries, or scale, needed to effectively compete." *Id.* at 202, 226. The Court found that, "[a]t every stage of the search process, user data is a critical input that directly improves quality," *id.* at FOF ¶ 90, and "[n]o current rival or nascent competitor can hope to compete against Google in the wider marketplace without access to meaningful scale, especially on mobile," *id.* at 234. The Court further found that Google "exercised its monopoly power by charging supracompetitive prices for general search text ads;" that "there is no evidence that any rival constrains Google's pricing decisions;" and that "Google in turn has used these monopoly profits to secure the next iteration of exclusive deals through

higher revenue share payments." *Id*. at 4, 260, 261.

The general search services and general search text advertising markets are of enormous significance to businesses across the U.S. economy and to the ability of individuals to find information and make decisions about their lives. It is vital that the remedy for Google's illegal monopolization (i) unfetter these markets from the harm that Google's exclusionary conduct caused, (ii) deny Google the fruits of its statutory violations, and (iii) ensure there remain no practices in place during the judgment period that are likely to result in Google monopolizing these markets in the future.

Having established a violation of the antitrust laws, the Court has broad power to fashion a remedy that "prevent[s] future violations and eradicate[s] existing evils." *United States v. Microsoft Corp.*, 253 F.3d 34, 101 (D.C. Cir. 2001) (quoting *United States v. Ward Baking Co.*, 376 U.S. 327, 330–31 (1964)). Any remedy requires a "comprehensive," "unitary framework" to restore competition with provisions "intended to complement and reinforce each other." *New York v. Microsoft Corp.*, 531 F. Supp. 2d 141, 170 (D.D.C. 2008). To that end, the Court enjoys "large discretion to model [its] judgment[] to fit the exigencies of the particular case," such as the importance of scale. *Int'l Salt Co. v. United States*, 332 U.S. 392,400–01 (1947). Relief in this case must "effectively pry open to competition" those markets that have been closed by Google's illegal conduct. *Id.*, at 401. Otherwise, Google will continue to benefit from its unlawful conduct, which is antithetical to the antitrust laws. *United States v. Grinnell Corp.*, 384 U.S. 563, 577 (1966) ("[A]dequate relief in a monopolization case should . . . deprive the defendants of any of the benefits of the illegal conduct.").

For example, the Court may "restrain acts which are of the same type or class as unlawful acts which the court has found to have been committed or whose commission in the future,

unless enjoined, may fairly be anticipated from the defendant's conduct in the past." *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 132 (1969) (preventing conduct in additional markets not adjudicated in underlying proceedings) (internal citation omitted). In constructing a remedy, the Court may also restrict conduct, which might otherwise be lawful, in order to "preclude the revival of the illegal practices." *FTC v. Nat'l Lead Co.*, 352 U.S. 419, 430 (1957). The Supreme Court has recognized that "decrees often suppress a lawful device when it is used to carry out an unlawful purpose." *Id.* "[T]hose caught violating" the antitrust laws "must expect some fencing in." *Otter Tail Power Co. v. United States*, 410 U.S. 366, 381 (1973) (quoting *Nat'l Lead Co.*, 352 U.S. at 431).

The Court is not limited to restraining future acts. It can also require Google to take affirmative measures to restore competition in the markets. *See, e.g.*, *Massachusetts v. Microsoft*, 373 F.3d 1199, 1215–18 (D.C. Cir. 2004) (affirming remedy that required Microsoft to disclose certain proprietary interfaces and protocols even though the "non-disclosure of this proprietary information had played no role in [their] holding Microsoft violated the antitrust laws"). The Court can also fashion forward-looking remedies aimed to restore competition. *Int'l Salt*, 332 U.S. at 401; *United States v. Aluminum Co. of Am.*, 91 F. Supp. 333, 392 (S.D.N.Y. 1950) ("[T]o see to it that effective competition shall be established . . . not only for the present but for the foreseeable future as well."). The Court can also order remedies to address "the fruits of monopolistic practices or restraints of trade." *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 152 (1948).

Ultimately, adequate relief must not only halt Google's unlawful conduct and ensure that it does not recur, but also restore competition in the general search services and general search text advertising markets. *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 697 (1978);

Ford Motor Co. v. United States, 405 U.S. 562, 573 (1972); *United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 326 (1961); *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 250 (1968); *Grinnell*, 384 U.S. at 577.

C. Plaintiffs' Proposed Schedule for Remedy Proceedings

Plaintiffs take seriously their obligation to assist the Court in identifying effective remedies. With the above considerations in mind, Plaintiffs respectfully request sufficient time to conduct the discovery necessary to propose a remedy, while moving expeditiously to an evidentiary hearing. Plaintiffs propose a remedy schedule that includes the articulation of a remedy framework on October 15, 2024 and concludes with an evidentiary hearing beginning on April 7, 2025. Plaintiffs' proposed schedule (i) sets forth a framework to identify the appropriate scope of remedy discovery, (ii) allocates time for the Court to consider the Parties' remedy proposals and impose comprehensive relief, and (iii) ensures that a remedy is entered expeditiously. Plaintiffs seek the following remedies schedule:

Disclosure of Plaintiffs' Remedy Framework identifying, at a high-level, potential remedies	October 15, 2024
Fact discovery begins	October 15, 2024
Fact discovery closes	February 14, 2025
Plaintiffs submit Proposed Final Judgments	February 14, 2025
Defendant submits Proposed Final Judgment	February 21, 2025
Parties exchange expert reports/declarations	March 14, 2025
Expert discovery closes	April 4, 2025
Evidentiary hearing begins	April 7, 2025

After the Court establishes a schedule for remedy proceedings and Plaintiffs submit their remedy framework, the Parties can better gauge the needs of discovery and the remedy hearing.

At that time, the Parties can meet and confer about the appropriate scope of discovery, any additional discovery that then appears warranted, or hearing-related deadlines and, if necessary, seek the Court's assistance.

III. Google's Position Statement

Google submits that Plaintiffs' proposed schedule for the remedies phase of these cases is deficient in several notable respects. As explained below, Plaintiffs should be required to more timely submit an actual proposed ***order*** that embodies their proposed remedies, as well as disclosures of the witnesses they intend to call and the subject matter to which they will testify at a remedies hearing. Plaintiffs' proposal leaves until February 2025, just before their proposed date for an evidentiary hearing, for the disclosure of their actual remedy—after the parties have presumably completed both fact and expert discovery. Such a proposal obviously is unworkable. Until Plaintiffs provide their actual proposed remedy and identify the witnesses who will support it, Google cannot negotiate a schedule that takes account of the preparations for a remedies hearing, much less adequately take discovery and prepare for a remedies hearing. After Google has had a reasonable time to review Plaintiffs' actual proposed remedies and the witnesses they intend to call in support of them, the parties then should meet and confer about a proposed schedule. If the parties cannot reach agreement, they will promptly submit their competing proposals for the Court's consideration.

First, Plaintiffs propose to submit only an "initial remedies framework" on October 15. When pressed during a meet and confer earlier this week as to whether this framework would consist of the actual remedy order that Plaintiffs would seek, Plaintiffs indicated it would not. Instead, Plaintiffs suggested that it would be a description of an array of potential remedies that Plaintiffs were considering, but without committing to what would or would not be included in an actual remedy order. Plaintiffs apparently still do not know what remedy they will finally

seek because they claim to need discovery before committing to a final remedy—even though they previously represented to the Court that any remedy-phase discovery would simply be a "factual refresh" that would not constitute "a tremendous amount of re-do." Nov. 30, 2021 Status Conference Transcript at 43:3-11. Given the enormous discovery that already has transpired in this matter, Plaintiffs surely can submit a proposed remedy order before the eve of the actual remedy hearing after discovery has closed.

Putting aside for the moment why Plaintiffs need almost 10 weeks from the Court's August 5 opinion to make this submission, Plaintiffs should be required to submit their actual proposed remedy order—not a "framework" that postpones disclosure of an actual remedy order until February 2025 (the eve of the remedies hearing they propose). Plaintiffs also should make disclosures regarding any witnesses, including experts, that they intend to call at a remedies hearing in support of their proposed remedy, as this will allow Google to evaluate the scope and breadth of discovery that will be required. Google cannot meaningfully assess the reasonableness of any proposed remedy schedule, much less defend itself in a remedies hearing, without advance disclosure of what Plaintiffs are proposing in terms of actual remedies and witnesses. Those disclosures will inform the scope and timing of further discovery and evidentiary hearings.

Second, Google submits that Plaintiffs should serve both their proposed remedy and their disclosure of witnesses, including the subject matter that fact witnesses and expert witnesses will testify about, on September 20, 2024. Google will promptly review that information and meet and confer with Plaintiffs soon thereafter regarding a more detailed and final schedule.

Third, Google proposes that the parties submit a Joint Status Report on October 11, 2024, where they will report on whether they have agreed upon a schedule and, if not, will submit their

respective schedules for the Court's consideration. The parties may then appear at a status conference at the Court's convenience after October 11. Google also will submit its proposed remedy to Plaintiffs on October 11, 2024, and its disclosure of witnesses on that same date.

Google submits that this earlier phased disclosure of information is necessary for Google and the Court to meaningfully assess and determine a fair schedule for the remedies phase of these cases.

Dated: September 4, 2024

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