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AG SLATERY SUES GOOGLE FOR VIOLATING ANTITRUST LAW

Bipartisan Coalition of States Say Google Illegally Maintains an App Store Monopoly; Unfairly Edges Out Competition

Nashville- Attorney General Herbert H. Slatery III, along with a coalition of 37 attorneys general, has filed a lawsuit against Google in California. The suit alleges exclusionary conduct relating to the Google Play Store for Android mobile devices and Google Play Billing. This antitrust lawsuit is the latest of many legal actions asserting that the tech giant uses illegal, anticompetitive, and unfair business practices. The States accuse Google of using its dominance to unfairly restrict competition with the Google Play Store, conduct that harms consumers by limiting choice and driving up app prices.

“Google’s ‘play’ was the long game-enticing manufacturers and operators to adopt Android by promising to remain open,” said General Slatery. “Now that digital doorway is closed- if you want in, you’ve got to do it Google’s way. You essentially have to use its app store, use its payment processing system, and pay its unreasonable commissions for digital purchases. All of this harms consumers, limits competition and reduces innovation. Tennessee and 36 other states are no longer on the sidelines.”

The focus of the lawsuit is Google’s exclusionary conduct, which substantially shuts out competing ways for consumers to get apps. Google also inserts Google Play Billing as an unwelcome and overpriced middleman between app developers and consumers, for apps installed from the Play Store. This arrangement, which ties a payment processing system to an app distribution channel, forces consumers to pay Google’s commission—up to 30%—on in-app purchases of digital content. This commission is much higher than what consumers would pay in a competitive market.

The lawsuit alleges that Google works to discourage or prevent competition, in violation of federal and state antitrust laws. Google had promised app developers and device manufacturers that it would keep Android “open source,” allowing developers to create compatible apps and distribute them without unnecessary restrictions. The lawsuit says Google did not keep that promise.

Google Closed the Android App Distribution Ecosystem to Competitors

When Google launched its Android operating system, it originally marketed it as an “open source” platform. By promising to keep Android open, Google successfully enticed “OEMs”—mobile device manufacturers—such as Samsung, and “MNOs”—mobile network operators such as Verizon—to adopt Android, and more importantly, to forego competing with Google’s Play Store at that time. Once Google had obtained the “critical mass” of Android OS adoption, Google moved to close the Android OS ecosystem—and the relevant Android App Distribution Market—to any effective competition by, among other things, imposing on OEMs and MNOs contractual and other restraints. These contractual restraints disincentivize and restrict OEMs and MNOs from competing (or fostering competition) in that market and



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shuts down further innovation. The lawsuit alleges that Google's conduct constitutes unlawful monopoly maintenance, among other claims.

The AGs allege that Google also engaged in the following conduct, all aimed at enhancing and protecting Google's monopoly position over Android app distribution:

- Google imposes technical barriers that strongly discourage or effectively prevent third-party app developers from distributing apps outside the Google Play Store. Google builds into Android a series of security warnings (regardless of actual security risk) and other barriers that discourage users from downloading apps from any source outside Google Play Store, effectively foreclosing app developers and app stores from direct distribution to consumers.
- Google has not allowed Android to be truly "open source" for many years, which has cut off potential competition. Google forces OEMs that wish to sell Android to enter into agreements called "Android Compatibility Commitments" or ACCs. Under these "take-it-or-leave-it" agreements, OEMs must promise not to create or implement any variants of Android that deviate from the Google-certified version.
- Google's contractual requirements foreclose competition by mandating that the Play Store and many other Google apps be "pre-loaded" on essentially all devices designed to run on the Android OS, and that they be given the most prominent placement on device home screens.
- Google "buys off" its potential competition in the market for app distribution. Google has successfully persuaded OEMs and MNOs not to compete with the Play Store by entering into arrangements that reward OEMs and MNOs with a share of Google's monopoly profits.
- Google forces app developers and app users alike to use Google's payment processing service, Google Play Billing, to process payments for in-app purchases of content consumed within the app. Thus, Google is unlawfully tying the use of Google's payment processor, which is a separate service within a separate market, for payment processing within apps, to distribution through the Google Play Store. By forcing this tie, Google can extract an exorbitant processing fee as high as 30% for each transaction- which is more than ten times what other payment processors charge.



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This effort is led by Utah Attorney General Sean D. Reyes, New York Attorney General Letitia James, North Carolina Attorney General Josh Stein, and Tennessee Attorney General Herbert H. Slatery III. States joining the lawsuit include Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Idaho, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, and West Virginia.

To read the complaint, click here:

<https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2021/pr21-24-complaint.pdf>

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