
Guest Column: Google Is Biden Antitrust Chief's 'White Whale'

December 20, 2023

Call him the Captain Ahab of the antitrust world. And Google is his white whale.

When the Biden administration's trial of the search engine giant kicked off this fall, it was the culmination of years of work by anti-monopoly crusader Jonathan Kanter. President Biden tapped Kanter to lead the Antitrust Division at the Department of Justice, which immediately ramped up its confrontational approach to monopoly-related cases.

The federal government claims Google bribed tech companies like Apple to make its widely popular search engine the default choice on web browsers. Google CEO Sundar Pichai denied that last month, characterizing the deal as making it easier "for users to use our services." He added people used Google search because, "If you make the user's experience better, they would use the web more."

Kanter's problems with Google date back to his work in private practice. He opposed Google's purchase of DoubleClick in 2007. Kanter also represented TradeComet and MyTriggers in antitrust cases against Google in 2008 and 2009.

In 2012, Kanter accused Google of bad behavior against rivals including telling advertisers that they can't "coordinate ad campaigns across multiple platforms."

Long before conservatives accused Google of censorship, Kanter claimed it manipulated search results to hide potential rivals. He told the Washington Legal Foundation the federal government had an easy case against Google because executives know users won't leave the platform even when it starts offering "an inferior experience."

Before taking over antitrust, Kanter represented a series of Google rivals, including Magnite Inc., OpenX Ltd., Roku Inc., News Corp. and the News Media Alliance, a trade association representing more than 2,000 news publishers. It adds up to millions made by Kanter while advocating antitrust actions against Google on behalf of competitors.

That has critics wondering why Kanter was chosen to lead the government's legal charge against Google.

"The optics are terrible, certainly," said Robert H. Bork Jr. His father, the late Judge Robert H. Bork, created the consumer welfare standard that Kanter wants to set aside.

“It doesn’t make any sense,” said Carl Szabo, vice president and general counsel at NetChoice. “Once upon a time, I worked at the U.S. Office of Government Ethics. We have a saying there, and it’s part of the mantra — public service is a public trust. And here you have a prosecutor who, as an opponent of what he is doing, can make a legitimate claim that he’s not bringing this case in the best interest of the American people, but in the best interest of his former clients that made him very, very rich.”

One former Google executive sees Kanter’s involvement in the Justice Department’s lawsuits as an example of his previous loyalties.

“It just looks like there’s very little difference between his private practice focus in his practice as head of the antitrust division,” said Adam Kovacevich, founder and CEO of the Chamber of Progress. He was previously Google’s senior director of U.S. policy. “The optics have always been bad because it shows that Kanter had a decade-plus ax to grind against Google, and he has brought that into his role as a government enforcer.”

But a federal judge brushed aside complaints that Kanter’s anti-Google résumé makes him a biased prosecutor. Calling it a “red herring defense,” Judge Leonie M. Brinkema said there was no evidence of a vendetta. “This is an enforcement action that is being brought by the entire Department of Justice.”

Szabo found that reasoning ridiculous because “pretty much any one of the other 20,000 attorneys ... at the Department of Justice” could run the case. To Szabo, the Justice Department’s lawsuits aren’t about the law or justice. “This is more about an individual ego and an individual conviction.”

There’s a belief that the Justice Department and Kanter won’t win in the consumer access case against Google. Critics suggest that the government wants to punish Google for having the best product on the market. They point out that Google’s biggest competitor, Microsoft, benefits the most from any decision against Google because of its \$2.5 trillion pocketbook.

“There simply isn’t a case for breaking up Google,” Bork said. “Kanter is swinging for the fence, but he will strike out, or at least he should. ... The government showed that Google made a lot of money, but there is nothing illegal about that, and Google’s history is one of constant improvements to quality consumer value.”

Judge Amit Mehta has set the date for closing arguments in the first case for May 2024. Mehta has reportedly said he has “no idea” how he will rule in case.

Bork hopes the cases suffer quick defeats. “(They) never should have been brought.”

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