

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STATE OF COLORADO, *et al.*

Plaintiffs,

v.

GOOGLE LLC

Defendant.

Civil Action No. ____-cv-_____

**PLAINTIFF STATES' MOTION TO CONSOLIDATE PURSUANT TO RULE 42(a)(1)
OF THE FEDERAL RULES OF CIVIL PROCEDURE**

Plaintiff States move this Court, pursuant to Rule 42(a)(1) of the Federal Rules of Civil Procedure, to consolidate the above-captioned action with *United States et al. v. Google LLC*, 1:20-cv-3010 (D.D.C.) (“DOJ case”). These two cases involve an identical defendant and common issues of law and fact. As a result, judicial efficiency would be served by consolidating the two cases for pre-trial proceedings and trial. If granted, both Complaints would continue to be separate, but the adjudication of both would be consolidated within a single discovery process and adjudication. Undersigned counsel has discussed this Motion with counsel for Google LLC (“Google”) and the Department of Justice (“DOJ”). Counsel for Google advised that Google will respond to any Motion to Consolidate after it has had the opportunity to review Plaintiff States’ Complaint. DOJ consents to consolidation for purposes of discovery and takes no position on consolidation for trial at this time. LCvR 7(m).

I. BACKGROUND

The United States and eleven States sued Google LLC for illegal monopoly maintenance in violation of Section 2 of the Sherman Act on October 20, 2020.¹ The DOJ Complaint alleges Google has: (1) willfully maintained and abused its monopoly power in general search services through anticompetitive and exclusionary distribution agreements; (2) willfully maintained and abused its monopoly power in search advertising through anticompetitive and exclusionary distribution agreements; and (3) willfully maintained and abused its monopoly power in general search text advertising through anticompetitive and exclusionary distribution agreements. DOJ Compl. ¶¶ 175, 182, 189. The DOJ's requested relief includes (1) judgment that Google acted unlawfully to maintain monopolies in general search services, search advertising, and general search text advertising; in violation of Section 2 of the Sherman Act; (2) structural relief as needed to cure any anticompetitive harm; (3) an injunction to prevent Google from continuing to engage in the anticompetitive practices described in the DOJ Complaint and any other practices with the same purpose and effect as the challenged practices; and (4) other preliminary or permanent relief necessary and appropriate to restore competitive conditions in the markets affected by Google's unlawful conduct. DOJ Compl. ¶ 194.

Plaintiff States filed the above-captioned action on December 17, 2020. Plaintiff States' Complaint similarly alleges Google has: (1) willfully maintained and abused its monopoly power in general search services through anticompetitive and exclusionary distribution agreements; (2) willfully maintained, abused, and extended its monopoly power in general search advertising through anticompetitive and exclusionary distribution agreements; and (3) willfully maintained,

¹ The State of California filed a Motion for Joinder as Plaintiff in the DOJ Case on December 11, 2020.

abused, and extended its monopoly power in general search text advertising through anticompetitive and exclusionary distribution agreements. Plaintiff States further allege that Google's unlawful conduct in these markets includes (1) operating its search advertising marketing tool, SA360, to limit the tool's interoperability with a competitor, disadvantaging SA360 advertisers; and (2) discriminating against specialized vertical providers in certain commercial segments that hinders consumers' ability to find responsive information. Plaintiff States' requested relief includes: (1) judgment that Google acted unlawfully to maintain monopolies in general search services, search advertising, and general search text advertising in violation of Section 2 of the Sherman Act; (2) relief to remove any ability of Google to harm competition by disadvantaging any current, potential, or nascent threat to its monopoly maintenance; (3) an injunction to prevent Google from continuing to engage in the anticompetitive practices described in the Complaint and any other practices with the same purpose and effect as the challenged practices; and (4) other relief necessary and appropriate to restore competitive conditions in the markets affected by Google's unlawful conduct.

II. THE ACTIONS INVOLVE COMMON QUESTIONS OF LAW AND FACT

Rule 42(a)(1) permits a district court to join for hearing or trial any or all matters at issue in separate actions when they involve "a common question of law or fact." Fed.R.Civ.P. 42(a). The purpose of Rule 42(a) is to "relieve [] the parties and the [c]ourt of the burden of duplicative pleadings and [c]ourt orders." *New York v. Microsoft Corp.*, 209 F.Supp.2d 132, 148 (D.D.C. 2002). Actions involving the same parties are appropriate candidates for consolidation. 9 FED. PRAC. & PROC. CIV. 3D § 2384. And courts have found consolidation particularly appropriate "when the actions are likely to involve substantially the same witnesses and arise from the same series of events or facts." *Hanson v. District of Columbia*, 257 F.R.D. 19, 21 (D.D.C. 2009).

Common questions of law and fact abound in the DOJ and Plaintiff States' cases. First, both cases identify Google as defendant. Second, both cases allege Google violated Section 2 of the Sherman Act, 15 U.S.C. § 2, because it illegally maintained its monopoly power in general search services and related search advertising markets. Third, there is considerable overlap in the factual allegations in both Complaints, which means that, if the cases were separate, substantial overlapping discovery would have to be undertaken. Specifically, the States and DOJ both allege that Google uses exclusionary agreements, among other conduct, to resurrect barriers to entry and expansion and foreclose competition in the relevant markets. Finally, both cases seek similar relief from this Court; specifically, that Google be enjoined from continuing to engage in the anticompetitive practices described in the Complaints and to enter relief to restore competitive conditions in the relevant markets affected by Google's conduct. This case is therefore particularly appropriate for consolidation.

III. CONSOLIDATION WILL PROVIDE CONSISTENCY, EFFICIENCY AND CONVENIENCE TO THE PARTIES AND THE COURT

Consolidation is within the broad discretion of the trial court. *Am. Postal Workers Union v. U.S. Postal Svc.*, 422 F.Supp.2d 240, 245 (D.D.C. 2006). In exercising that discretion, the court considers "the time and effort that consolidation would conserve against any inconvenience, delay or expense that consolidation would cause for the parties or for the court." *Hanson*, 257 F.R.D. at 22. The court must also consider the risk of inconsistent rulings on common factual and legal questions. *National Ass'n of Mortg. Brokers v. Board of Governors of Federal Reserve System*, 770 F.Supp.2d 283, 286 (D.D.C. 2011).

Under the circumstances present here, consolidation offers efficiency and convenience. Consolidation will result in one discovery process and one trial. This will save time and avoid unnecessary costs to Defendant Google, the government plaintiffs in both actions, witnesses who

would otherwise be required to testify in both cases, and this Court. Both cases are in their nascent stages, and any prejudice caused by delay in consolidation will be insignificant. *Hanson*, 257 F.R.D. at 22.

IV. CONCLUSION

Plaintiff States request this Court grant their Motion to Consolidate this action with the DOJ case and enter the Proposed Order. The Plaintiff States request that the Court retain the two separate complaints but consolidate the actions for purposes of pre-trial proceedings and trial.

Respectfully submitted,

Dated: December 17, 2020

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I HEREBY CERTIFY that on the 17th day of December 2020, I served the

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