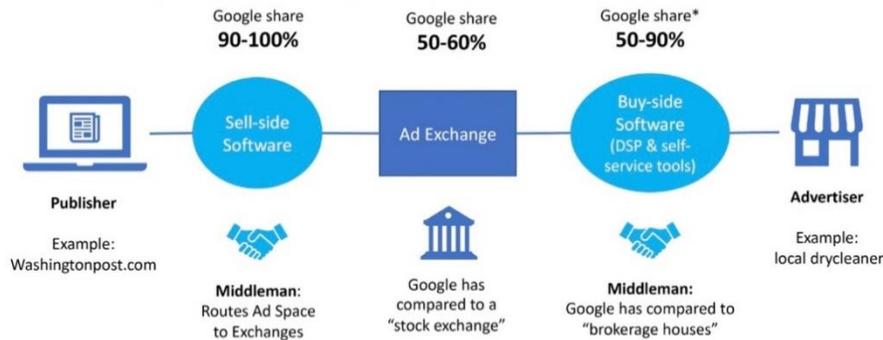


ADVERTISING MIDDLEMEN ENDANGERING RIGOROUS INTERNET COMPETITION ACCOUNTABILITY ACT

I. How does digital advertising work?



When a web user visits a website or opens an app, a real-time auction serves an ad on the website or app. The auction takes place in a fraction of second, in much the same way that electronic securities trading functions. Billions of times every day, publishers use supply-side brokers and advertisers use demand-side brokers to connect with one another in the ad exchanges, which is a real-time auction marketplace. As Google’s own employees have said “[t]he analogy would be if Goldman or Citibank owned the NYSE.”¹

II. Competition Problems in Ad Tech

Digital advertising is dominated by Google and Facebook. Google, in particular, is the leading or dominant player in every part of the ad tech stack: buy-side, sell-side, and the exchange that connects them. For example, Google Ad Manager is used by 90% of large publishers, and in the third quarter of 2018 it served 75% of all online display ad impressions. Google uses its pervasive market power across the digital advertising ecosystem, and exploits numerous conflicts of interest, to extract monopoly rents and stack the deck in its favor. These monopoly rents function as a tax—upwards of 40%—on every ad-supported website and every business that advertises online, collectively a huge segment of the modern economy.

Examples of conduct Google is alleged to engage in include:

- Giving its own ad services information and speed advantages over competitors
- Steering bids to its own services to the detriment of its customers and competitors
- Using information about its competitors’ trading activity to give its own properties an advantage
- Coercing publishers to license Google’s ad server
- Using its control over publisher ad serving to block competition from other ad exchanges
- Manipulating auctions to exclude competition from competing ad services
- Hiding anticompetitive behavior behind opaque and non-transparent practices
- Using its control over the ad stack to punish publishers and competitors that try to develop new competitive alternatives to circumvent Google’s abuse

Google is not the only company that operates on both sides of the ad tech market, however. Rules to address its bad acts need to apply broadly to avoid replacing one abusive monopolist with another.

¹ [Google’s Alleged Scheme to Corner the Online Ad Market](#), WIRED (1/14/2022)

III. How does this legislation fix the problems?

The Advertising Middlemen Endangering Rigorous Internet Competition Accountability (AMERICA) Act restores and protects competition in digital advertising in two ways:

1. The AMERICA Act prohibits large digital advertising companies from owning more than one part of the digital ad ecosystem if they process more than \$20 billion in digital ad transactions.
 - a. Ad exchange owners cannot own supply-side platform or demand-side platform.
 - b. Supply-side platform owners cannot also own a demand-side platform, and vice versa.
 - c. Buyers and sellers of digital advertising cannot own a demand-side platform or supply-side platform (except to sell their own advertising inventory).
2. The AMERICA Act requires medium-sized and larger digital advertising companies that process more than \$5 billion in digital ad transactions to abide by several obligations to protect their customers and competition. The key obligations include the following:
 - a. They must act in the best interests of their customers, including by making the best execution for bids on ads.
 - b. They must provide transparency to their customers so that those customers can verify they are acting in their best interest.
 - c. If allowed to operate on both sides of the market, the company must erect firewalls to prevent abuse and conflicts of interest.
 - d. They must provide fair access to all customers with respect to performance and information related to transactions, exchange processes, and functionality.

These restrictions and requirements mirror those imposed on electronic trading in the financial sector—an industry to which Google itself has compared its technology.²

The AMERICA Act would be enforced by the Department of Justice and state attorneys general. It also includes a private right of action for violations of the best interest, transparency, and other requirements imposed at the \$5 billion threshold when committed by companies over the \$20 billion threshold.

IV. Impact

If enacted into law, this bill would most likely require Google and Facebook to divest significant portions of their advertising businesses—business units that account for or facilitate a large portion of their ad revenue. Amazon may also have to make divestments, and the bill will impact Apple’s accelerating entry into third-party ads.³ Several smaller ad tech competitors would also fall under the best interest and transparency requirements, but industry experts have confirmed that any compliance burden would not impair their ability to compete.

V. Further Reading

- [Google’s Alleged Scheme to Corner the Online Ad Market](#), WIRED (1/14/2022)
- *Texas, et al. v. Google*, [Third Amended Complaint](#) (1/14/2022)
- Dina Srinivasan, [Why Google Dominates Advertising Markets](#), 24 STAN. TECH. LAW REV. 55 (2020)
- [Should Google’s Ad Market Be Regulated Like the Stock Market?](#), WIRED (8/31/2020)
- [How Google Edged Out Rivals and Built the World’s Dominant Ad Machine: A Visual Guide](#), WSJ (Nov. 7, 2019)

² *Id.*

³ [Apple’s ad business sees windfall; is accused of breaking its own privacy rules](#), 9TO5MAC (10/18/2021).