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THE CURRENT: What's behind the US Justice Department's antitrust case against Google?

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(MUSIC)

PITA: You're listening to The Current, part of the Brookings Podcast Network. I'm your host, Adrianna Pita.

This week, the Trump administration has opened a case against Google in what is the largest antitrust suit against a tech company since the Microsoft monopoly case of the late 1990s.

Here to explain the Department of Justice's case against Google and what this may mean for them and other major tech companies, is Bill Baer, visiting fellow in GS here at Brookings. Bill, thanks for talking to us today.

BAER: Glad to be with you.

PITA: So, the DOJ case against Google specifically is looking at how they've stifled competition in the area of some of their search algorithms, amongst other things. Maybe you could start us off by sort of summarizing the case that they're bringing up.

BAER: Sure, what DOJ is alleging is that Google, having been highly successful with its search algorithms took some steps to basically lock in a dominant or monopoly position. It alleges that Google paid Apple billions to become the pre-installed search engine on the Safari browser, which had the effect, the government says, of basically locking in iPhone and Mac users into Google's browser. It also, according to the government, put Android out there -- an open interface -- but once people started using it, it imposed restrictions on the Android operating system so that effectively, you had to continue to work through Google. So, it's a series of behaviors, the government says, that reinforce a dominant or monopoly position. The government doesn't say that the success initially of Google is problematic. It's saying that the behaviors that Google engaged in reinforce that dominant position in an unlawful way.

PITA: The idea of whether Google and the other major tech companies like Amazon or Facebook, whether the expanse of their reach over the market and as you say, some of the steps they've taken in pursuit of that reach, whether that constitutes a monopoly and what to do about it -- these are all ideas have been building over recent years. So, what was it that led the administration to issue their suit now?

BAER: Well that's a good question. The timing is suboptimal from the perspective of law enforcement being non-political, non-partisan. Why do this 13 days before an election? Reportedly, there are a number of state attorneys general headed up by Democratic attorneys general, who were supportive of a lawsuit, just not bringing it now. So unfortunately, the timing casts a little bit of shadow over the case. By the time this thing goes to court, goes to trial, the sunshine will have broken through those clouds. But it's unclear why, other than for some presumed political advantage, Bill Barr's Justice Department chose to bring the case this close to an important presidential election.

PITA: And these sorts of actions, these sort of cases, of course take a really long time to resolve. If I remember correctly with Microsoft, I think they started in about '98 or so, but it took until 2001 before it finally resulted in a settlement between Microsoft and the government. What are your thoughts about the sort of timeline that we're looking at, and what might be some of the outcomes?

BAER: I think those who are listening to this podcast should appreciate that this lawsuit is best viewed as the beginning of the beginning. There will be at least a year or more of motions practice before the district court judge in the District of Columbia is going to hear the case. There will be discovery of facts, there will be efforts to dismiss the case that Google will pursue, and ultimately there will be a trial. After the trial, there'll be a decision by the district court judge and then whoever prevails, there'll be an appeal by the other side, so, I don't anticipate that will actually be a trial even next year, 2021. It's more likely it's going to be 2022 and then the appeal process could take a year or more on top of all. So, this is a challenge to a problem the government sees as very serious today. Part of the challenge with taking on monopolization like this is it takes a long time to resolve. So, we're gonna have to watch this space, but you'll be able to sip coffee a lot while doing that.

PITA: What are some of the implications here for some of the other big tech companies like Amazon or Facebook, or any of the others, in terms of the government's willingness to make a formal antitrust case and their justifications in issuing it?

BAER: It's good you differentiate between willingness and justification. I do think it's fair to view this as a signal that the two antitrust enforcement agencies at the federal level -- DOJ antitrust and the Federal Trade Commission -- are willing to go after dominant tech platforms that they perceive to have behaved inappropriately. So, willingness, that's a good signal. In terms of when and whether they will go after other successful platforms like Amazon or Facebook or Apple, those are so fact-dependent. The firms share in common that they've been successful and have a huge market share. But the question will always be what did each firm do to shore up its dominance in their space and was that unlawful conduct?

PITA: Alright, so there's obviously a lot of other concerns about some of Google's practices beyond their market dominance, including issues about data privacy and a whole number of other issues. While this case is going on over the next several years, as you say, what are some of the other facets that regulators could and should be tackling?

BAER: I think there is a great concern in the Congress, in the public generally, about privacy. You know, some people think about Google and Facebook as free to the consumer. Well, they're free in the sense that we don't pay money to use these platforms, but we actually are providing our data in a way that these platforms can monetize and sell to advertisers. And those have led to concerns about whether our privacy is being violated. Congress is taking a hard look and should take a hard look at whether current law is adequate to protect our privacy. That will continue on independent of these antitrust investigations. And there are calls by some, including our colleague at Brookings Tom Wheeler, that agencies be empowered to basically set rules of the road that will prospectively channel competition and guarantee consumers that their data is being protected, and provide them with the opportunity to discontinue a platform and move to another platform with their data if in fact they don't think platform A is doing a good job.

PITA: Great. So lastly, Bill, what are you going to be sort of keeping your eye on in the next coming months, or maybe the next year, in terms of at this case as it starting to build. What would you

recommend that you and the rest of us, the consumers are the ones who use Google and maybe have concerns about these things, should be keeping an eye out for?

BAER: Well, two things. One is, what is Google's defense? What is it going to say to the court over the course of the next month and year about what its behavior involved and why it should not be seen as problematic under our antitrust laws? But a second thing, and this may be more practical for folks, is will Google change some of its practices while the lawsuit is pending in order to put its behavior in a more favorable light? Not just for the court, but for the consuming public who are obviously well aware now that Google is accused of being a monopolist and behaving badly with the market power it possesses.

PITA: Alright, sounds good. Bill, thanks so much for talking to us today and explaining this.

BAER: My pleasure, Adrianna. Take care.