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17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN FRANCISCO DIVISION**  
20

21 **IN RE GOOGLE PLAY STORE**  
22 **ANTITRUST LITIGATION**

23 THIS DOCUMENT RELATES TO:

24 *Epic Games Inc. v. Google LLC et al.*, Case  
25 No. 3:20-cv-05671-JD  
26  
27

Case No. 3:21-md-02981-JD

**AMICUS CURIAE BRIEF OF THE  
FEDERAL TRADE COMMISSION**

Judge: Honorable James Donato



**TABLE OF AUTHORITIES**

**Cases**

*California v. Am. Stores*,  
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*eBay v. MercExchange, LLC*,  
547 U.S. 388 (2006)..... 7

*Ford Motor Co. v. United States*,  
405 U.S. 562 (1972)..... 3, 4, 5, 11

*Fortner Enters., Inc. v. U.S. Steel Corp.*,  
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*FTC v. Nat’l Lead Co.*,  
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*In re Data Gen. Corp. Antitrust Litig.*,  
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*In re Google Play Store Antitrust Litig.*,  
No. 20-CV-05761-JD, 2022 WL 17252587 (N.D. Cal. Nov. 28, 2022)..... 9

*In re Intel Corp.*,  
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*In re Robert Bosch GmbH*,  
Dkt. No. C-4377 (F.T.C. Nov. 26, 2012)..... 14

*In re Silicon Graphics, Inc.*,  
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*In re Union Oil Co. of Calif.*,  
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*Int’l Salt Co. v. United States*,  
332 U.S. 392 (1947)..... passim

*Jacob Siegel Co. v. FTC*,  
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*Massachusetts v. Microsoft*,  
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1	<i>Mid-W. Paper Prod. Co. v. Cont'l Grp., Inc.</i> , 596 F.2d 573 (3d Cir. 1979).....	7
2	<i>Nat'l Soc. of Pro. Engineers v. United States</i> ,	
3	435 U.S. 679 (1978).....	4, 13
4	<i>NLRB v. Express Publ'g Co.</i> ,	
5	312 U.S. 426, (1941).....	2, 4
6	<i>Nw. Env'tl. Def. Ctr. v. Bonneville Power Admin.</i> ,	
7	477 F.3d 668 (9th Cir. 2007) .....	7
8	<i>Ohio v. Am. Express Co.</i> ,	
9	585 U.S. 529 (2018).....	9
10	<i>Optronics Techs. Inc. v. Ningbo Sunny Elec. Co.</i> ,	
11	20 F.4th 466 (9th Cir. 2021) .....	4
12	<i>Otter Tail Power Co. v. United States</i> ,	
13	410 U.S. 366 (1973).....	13
14	<i>Pacific Bell Telephone Co., dba AT&amp;T California, et al. v. linkLine Communications,</i> <i>Inc., et al.</i> ,	
15	555 U.S. 438 (2009).....	13
16	<i>Schine Chain Theatres v. United States</i> ,	
17	334 U.S. 110 (1948).....	4, 5
18	<i>Steves &amp; Sons, Inc. v. JELD-WEN, Inc.</i> ,	
19	988 F.3d 690 (4th Cir. 2021) .....	1, 8, 14
20	<i>United States v. Aluminum Co. of Am.</i> ,	
21	91 F. Supp. 333 (S.D.N.Y. 1950).....	6
22	<i>United States v. Am. Tel. &amp; Tel. Co.</i> ,	
23	552 F. Supp. 131 (D.D.C. 1982).....	1
24	<i>United States v. E.I. du Pont de Nemours &amp; Co.</i> ,	
25	366 U.S. 316 (1961).....	1
26	<i>United States v. Google LLC</i> ,	
27	No. 20-cv-3010 (APM), 2024 U.S. Dist. LEXIS 138798 (D.D.C. Aug. 5, 2024).....	9, 11
28	<i>United States v. Grails v. gw-3. 0-08DD0 /iD3...92(N)0.00ITc -0.00ITw 3</i>	
	<i>Schine Chain Theatres v. &amp; Chai-00 (APM) 02 U.S. Dist</i>	

1	<i>United States v. Paradise,</i>	
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2	<i>United States v. Paramount Pictures,</i>	
3	334 U.S. 131 (1948).....	12, 14
4	<i>United States v. Topco Assocs., Inc.,</i>	
5	405 U.S. 596 (1972).....	1
6	<i>United States v. U.S. Gypsum Co.,</i>	
	340 U.S. 76 (1950).....	2, 3, 6
7	<i>United States v. United Shoe Mach. Corp.,</i>	
8	391 U.S. 244 (1968).....	3
9	<i>Va. Ry. Co. v. Sys. Fed'n No. 40,</i>	
10	300 U.S. 515, 552 (1937).....	7
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1 Inside the Bureau of Competition (detailing work of the FTC’s Technology Enforcement  
2 Division), <https://www.ftc.gov/about-ftc/bureaus-offices/bureau-competition/inside-bureau-competition> ..... 2

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1 fashion relief based on the record evidence regarding the defendant’s conduct and the  
2 competitive dynamics of the industry at issue.<sup>3</sup>

3 The Federal Trade Commission (FTC or Commission) respectfully submits this *amicus*  
4 *curiae* brief to aid the Court’s consideration of the remedy for Google’s antitrust violations. The  
5 FTC takes no position on Epic’s specific remedy proposals, or the evidence cited by the parties  
6 in support or opposing them.

7 **Interest of the Federal Trade Commission**

8 The FTC’s mission is preventing unfair methods of competition and unfair or deceptive  
9 practices in the marketplace.<sup>4</sup> Through over 100 years of experience enforcing the U.S. antitrust  
10 laws, the FTC has developed expertise investigating and litigating cases involving  
11 anticompetitive mergers and conduct. In its adjudicative capacity,<sup>5</sup> the FTC crafts orders to  
12 remedy antitrust violations and vindicate the public interest.<sup>6</sup> The FTC’s enforcement authority  
13 covers a wide range of industries, including technology and digital platforms. The agency has  
14 significant legal and technical expertise dedicated to addressing competition and consumer  
15 protection issues in technology sectors.<sup>7</sup>

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18 <sup>3</sup> *Zenith Radio Corp.*, 395 U.S. at 133 (“We see no reason that the federal courts, in exercising  
19 the traditional equitable powers extended to them by § 16, should not respond to the ‘salutary  
20 principle of (f)1 (ed)6 (eb-2 (te(if)5 (icT



1 Not only has the FTC investigated and litigated matters concerning many areas of  
2 technology, but it has also conducted studies

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1 Regardless of the particular theory of antitrust harm, adequate relief should serve these remedial  
2 goals and “put an end to the combination and deprive the defendants of any of the benefits of the  
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1 harm were established only in relation to a patent pool in Canada.<sup>18</sup> Recognizing courts' power  
2 to order fencing-in relief, the Court noted that "when the purpose to restrain trade appears from a  
3 clear violation of law, it is not necessary that all of the untraveled roads to that end be left open  
4 and that only the worn one be closed."<sup>19</sup>

5           Second, injunctive relief is not limited to proscribing specific types of anticompetitive  
6 conduct. Instead, a district c

1 Third, injunctive relief should restore lost competition in a forward-looking way. The  
2 Supreme Court has said that when considering remedial provisions that are “designed to restore  
3 future freedom of trade, courts should give weight to [a jury finding and] the circumstances  
4 under which the illegal acts occur.”<sup>24</sup> In other words, the goal is to “effectively pry open to  
5 competition a market that has been closed by defendants’ illegal restraints,” and not merely to  
6 end the specific illegal practices.<sup>25</sup> Therefore, fashioning an effective equitable remedy in an  
7 antitrust case requires courts “to see to it that effective competition shall be established . . . not  
8 only for the present but for the foreseeable future as well.”<sup>26</sup>

9 Fourth and finally, “adequate relief in a monopolization case should . . . deprive the  
10 defendants of any of the benefits of the illegal conduct.”<sup>27</sup> If antitrust violators ultimately reap  
11 the advantages secured through unlawful conduct, that will only serve to incentivize similar  
12 behavior by other market participants. In developing an appropriate remedy, a district court  
13 should therefore strive to ensure the monopolist is not continuing to reap the

1 conduct.<sup>28</sup> Even outside the specific context of private antitrust suits, courts can exercise  
2 similarly broad remedial power in other types of private cases that involve the public interest.<sup>29</sup>

3 Here, the remedy in Epic’s case against Google implicates the public interest. Like in  
4 *Zenith Radio*, Epic’s request for injunctive relief seeks to create “an open, competitive Android  
5 ecosystem for all users and industry participants.”<sup>30</sup> In fact, Epic is not seeking monetary  
6 damages in this action or preferential treatment for itself to the exclusion of other developers.<sup>31</sup>  
7 As detailed in its complaint, “Epic seeks to end Google’s unfair, monopolistic and  
8 anticompetitive actions in each of [the markets alleged], which harm device makers, app  
9 developers, app distributors, payment processors, and consumers.”<sup>32</sup> To that end, the remedial  
10 “goal” of Epic’s injunctive relief proposal is to “open up to competition the two markets found  
11 by the jury” for the benefit of developers and users.<sup>33</sup> The public interest in restoring lost  
12 competition

1 equitable remedies in this private suit to restore competition for the benefit of the public and not  
2 merely the plaintiff.<sup>34</sup>

3 **II. Crafting Effective Antitrust Remedies in Digital Markets Requires Accounting for**  
4 **Network Effects, Data Feedback Loops, and Other Key Features of Digital Markets**

1 operating systems,<sup>36</sup> app stores,<sup>37</sup> and payment platforms like credit cards.<sup>38</sup> In either case,  
2 network effects mean that demand for the platform grows exponentially as more users join the  
3 platform.

4 Network effects can confer a powerful incumbency advantage to dominant digital  
5 platforms, creating barriers to entry and to competition.<sup>39</sup> Users are often less likely to switch to  
6 competing platforms given the presence of large numbers of developers on the incumbent  
7 platform, and developers who may otherwise offer their products on a competing platform are  
8 often less likely to do so because the competing platform lacks a viable customer base. The  
9 incumbent platform operator—which had been motivated to attract both users and developers by  
10 offering innovative, low-cost services before establishing dominance—may become less  
11 incentivized to compete after it achieves market power and builds a moat insulating itself from  
12 competition. Once users and other stakeholders are locked in, the dominant operator is often less  
13 incentivized to invest in the platform by adding features or lowering the costs of using the  
14 platform for paying participants like developers. As the D.C. Circuit explained in *United States*  
15 *v. Microsoft*, such network effects create a “chicken-and-egg situation” in which dominant digital  
16 platforms become difficult to dislodge.<sup>40</sup>

17 In addition to network effects, dominant digital platforms can also insulate their market  
18 positions through data feedback loops. When consumers use digital platforms to interact with  
19 other users or stakeholders, the platform operator typically retains important data about users and  
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21 <sup>36</sup> See generally *United States v. Microsoft Corp.*, 253 F.3d 34, 55 (D.C. Cir. 2001).

22 <sup>37</sup> *In re Google Play Store Antitrust Litig.*, No. 20-CV-05761-JD, 2022 WL 17252587, at \*5  
23 (N.D. Cal. Nov. 28, 2022) (“Dr. Singer posits, without objection by Google, that the Android  
24 App Distribution Market is a two-sided market in that it ‘matches buyers (in this case  
25 consumers) and sellers (in this case app developers). Two-sided platforms benefit from ‘indirect  
26 network effects,’ meaning that each additional buyer makes the platform more appealing to  
27 sellers.”).

28 <sup>38</sup> See generally *Ohio v. Am. Express Co.*, 585 U.S. 529 (2018).

<sup>39</sup> See *United States v. Google LLC*, No. 20-cv-3010 (APM), 2024 U.S. Dist. LEXIS 138798, at  
\*372-73 (D.D.C. Aug. 5, 2024).

<sup>40</sup> *Microsoft Corp.*, 253 F.3d at 55 (“[D]espite the limited success of its rivals, Microsoft benefits  
from the applications barrier to entry.”).







1 In particular, a remedy may need to ensure that potential competitors can overcome the  
2 lock-in advantages of network effects and data incumbency. This could include remedies that  
3 ensure that a dominant platform is sufficiently interoperable with competitor platforms to give  
4 the rivals a meaningful chance to attract a sufficient network of users, developers, and other  
5 stakeholders to compete effectively in the market. Further, to reduce the barriers associated with  
6 data feedback loops, a remedy may include provisions ensuring data interoperability, so that  
7 users are less “locked in” and can more freely take their data to a competing platform.  
8 address unlawfully acquired scale or unlawfully erected entry barriers, in the context of a  
9 single product or across lines of business, a remedy may involve structural relief. Forward  
10 looking provisions like these are necessary to dislodge barriers a monopolist has accrued from  
11 network effects and data feedback loops in order to overcome a platform monopolist’s network  
12 and data-driven market power and open the market to competition risks prolonging a market  
13 where defendants continue to enjoy the “fruits of monopolistic practices or restraints of trade.”

14 III. The Foregoing Remedial Principles Apply to Google’s Objections and Proffer

15 Applying the principles described above, the FTC offers the following views about  
16 certain aspects of Google’s Proffer Concerning Epic’s Proposed Remedy (“Proffer”) and  
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1 of any requirement that Google provide access to its Application Programming Interfaces (API)  
2 to noncustomers for free.<sup>52</sup> But courts have wide latitude to impose these sorts of requirements  
3 on monopolists when crafting remedies to restore competition. *Massachusetts v. Microsoft*  
4 the D.C. Circuit recognized a court's authority to award this type of relief when it affirmed an  
5 injunction requiring Microsoft to share its proprietary APIs with competitors to "facilitate[e]  
6 the[ir] entry . . . into a market from which Microsoft's unlawful conduct previously excluded  
7 them." 373 F.3d 1199, 1215-18 (D.C. Cir. 2004).

8 In its objections, Google relies heavily on *Pacific Bell Telephone Co., dba AT&T*  
9 *California, et al. v. LinkLine Communications, Inc., et al.*, 555 U.S. 438 (2009) and *Verizon*  
10 *Communications Inc. v. L. Offs. of Curtis V. Trinko, LLC*, 540 U.S. 398 (2004) to support its positions  
11 concerning the administrability of Epic's proposed remedy. Here, unlike *Trinko* and *LinkLine*, a  
12 jury has already found that Google violated the antitrust laws.<sup>53</sup> Neither case



1 remedies for Google's antitrust violations

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3 Dated: August 12, 2024

Respectfully submitted,

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