



April 16, 2024

The Hon. Jonathan Kanter  
Assistant Attorney General, Antitrust Division  
950 Pennsylvania Avenue NW  
Washington, D.C., 20530

The Hon. Lina Khan  
Chair, Federal Trade Commission  
400 7th St SW  
Washington, D.C. 20024

**Re: Request to Investigate Legal Implications of Google’s Decision to Block News in California**

Dear Assistant Attorney General Kanter and Chair Khan:

On behalf of the News/Media Alliance’s<sup>1</sup> member news providers, we respectfully request that your offices investigate the competition and antitrust implications, of Google’s unprecedented decision to block or impede the ability of some Californians to obtain access to our members’ news websites through its search product. This Google-imposed restriction on the news accessible to Californians was announced in a blogpost on Friday, April 12<sup>th</sup>. The move appears to be either coercive or retaliatory, driven by Google’s opposition to a pending legislative measure in Sacramento. In pertinent part, Google announced that:

[W]e are beginning a short-term test for a small percentage of California users. The testing process involves removing links to California news websites ... to measure the impact of the legislation on our product experience.<sup>2</sup>

As California Senate President pro Tempore Mike McGuire correctly observed in a statement issued after Google’s announcement:

This is a dangerous threat by Google that not only sets a terrible precedent here in

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<sup>1</sup> The News/Media Alliance is a nonprofit organization headquartered in the Washington, D.C. area that has existed for more than a century. Our members represent over 2,200 diverse publishers in the United States—from the largest groups and international outlets to hyperlocal sources, from digital-only and digital-first to print. Our members are trusted and respected providers of quality journalism throughout the nation.  
<https://www.newsmediaalliance.org/about-us/>

<sup>2</sup> <https://blog.google/products/news/california-journalism-preservation-act-puts-news-ecosystem-at-risk/>

America, but puts public safety at risk for Californians who depend upon the news to keep us informed of life threatening emergencies and local public safety incidents.<sup>3</sup>

Importantly, Google released no further details on how many Californians will be affected, how the Californians who will be denied news access were chosen, what publications will be affected, how long the compelled news blackouts will persist, and whether access will be blocked entirely or just to content Google particularly disfavors. Because of these unknowns, there are many ways Google's unilateral decision to turn off access to news websites for some Californians could violate federal laws.

### **False Advertising or Misrepresentation**

Google makes the following statement about how its products deliver information to users:

The search results that appear from Google's indices are indexed by Google's automated machinery and computers, and Google cannot and does not screen the sites before including them in the indices from which such automated search results are gathered.<sup>4</sup>

Google's Friday announcement directly contradicts this representation, possibly violating the federal Lanham Act which prohibits false advertising that "misrepresents the nature, characteristics, qualities, or geographic origin" of goods or services.<sup>5</sup>

We respectfully request that you investigate this apparently foundational contradiction between how Google represents its search function works and its announcement that it will, in fact, "screen [news] sites before including them in the indices" that some Californians will see.

### **Section 2 of the Sherman Antitrust Act**

Anticompetitive exclusionary conduct by a single corporation like Google with substantial market power is generally prohibited by Section 2 of the Sherman Act.<sup>6</sup>

First, to say that Google has substantial market power in search is an understatement.<sup>7</sup> It has more than a 90% market share, according to some experts:

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<sup>3</sup> <https://www.sfchronicle.com/politics/article/google-restricts-california-news-19399804.php>

<sup>4</sup> <https://policies.google.com/terms/archive/20020906?hl=en>

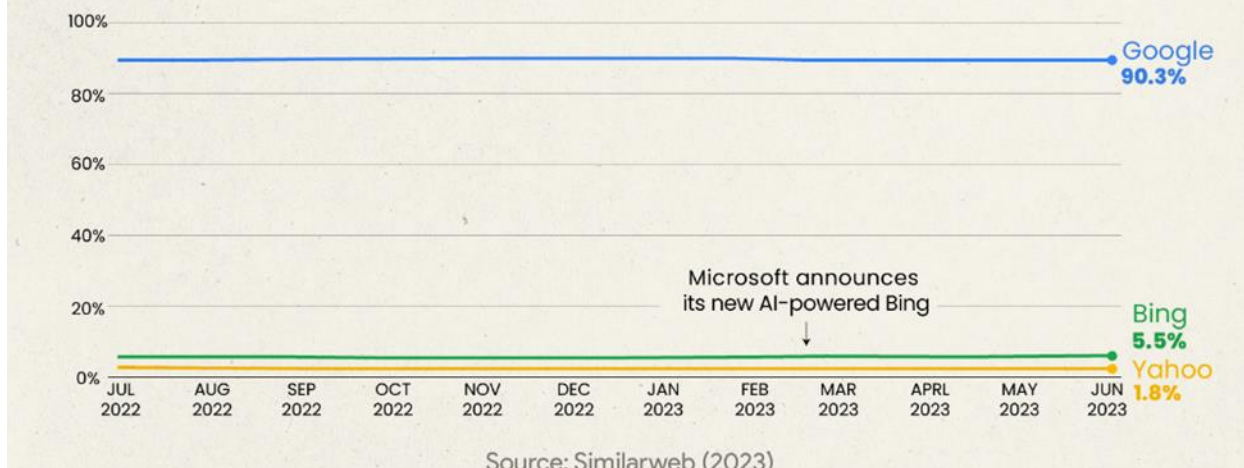
<sup>5</sup> 15 U.S.C. section 1125(a).

<sup>6</sup> 15 U.S.C. section 2.

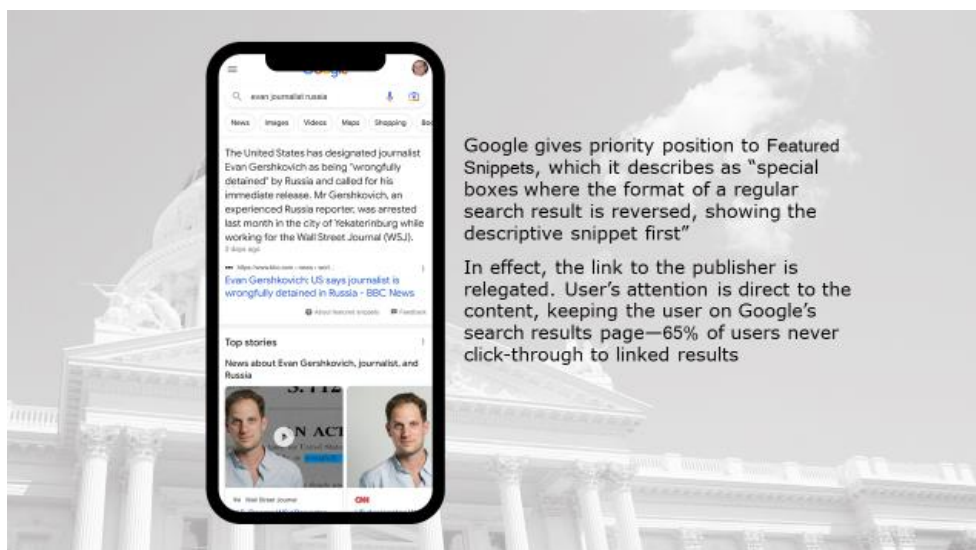
<sup>7</sup> Google's overwhelming market dominance in search is, of course, known to your agencies.

<https://www.justice.gov/opa/pr/justice-department-sues-google-monopolizing-digital-advertising-technologies>

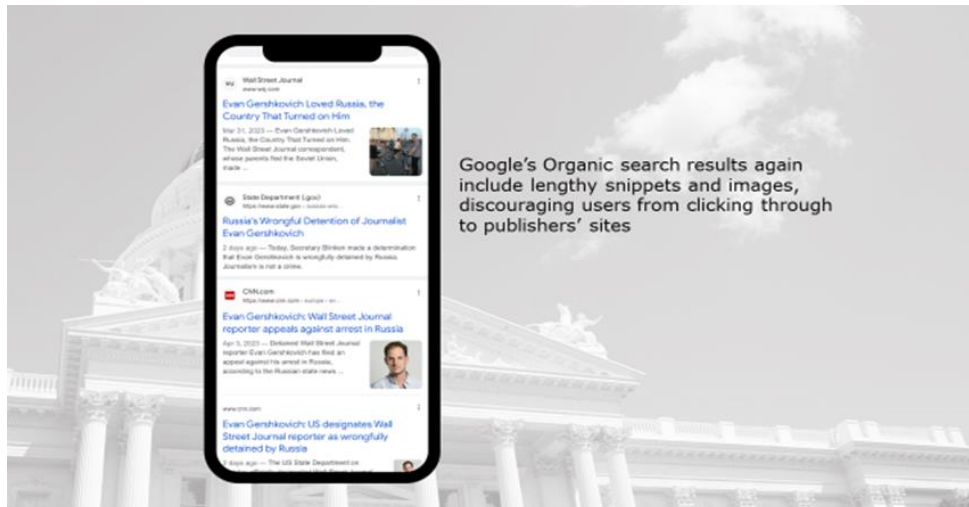
## U.S. Search Engine Market Share



Second, Google itself is properly seen as a competitor to the news publishers whose customers are being blocked from finding them through Google. This is because Google, in responding to a search for news, will, without permission or compensation, lift snippets of text from news websites and place it on its search results page. This permits Google to profitably display its ads to a user looking for news, in direct competition to and at the literal expense of the news websites that actually paid for the reporting whose ads are not seen. Some experts project that 65% of the time, those who search for news on Google never actually click through to the news website that depends on its ads being seen to pay for the news being reported.<sup>8</sup>



<sup>8</sup> Troy Masters, *The California Journalism Preservation Act is Our Best Bet to Protect Journalism*, SACRAMENTO BEE (June 29, 2023), <https://www.sacbee.com/opinion/article275859591.html>.



Indeed, Google is now going even further. Through its Search Generative Experience (“SGE”) feature, Google has introduced AI-generated news content to its search results pages. This news content is built upon and competes with third-party news publishers’ content that Google has in its search index. It is not clear from Google’s announcement whether it will also cease publishing AI-generated content on its search results pages in California. If it does not, then Google will be cutting off traffic to its news publisher rivals while promoting its own competing substitute content.

Thus, Google – a company with over 90% of the search market that is also providing news –will impede the ability of competing news publishers to reach California news consumers. This is the kind of anticompetitive, exclusionary conduct that is unlawful under Section 2 of the Sherman Act, and the undersigned respectfully request that you investigate that possibility.

### Unfair Competition

Section 5 of the Federal Trade Commission Act prohibits “unfair methods of competition in or affecting commerce.”<sup>9</sup> In 2022, the FTC issued a statement that “makes clear that Section 5 reaches beyond the Sherman and Clayton Acts to encompass various types of unfair conduct that tend to negatively affect competitive conditions.”<sup>10</sup> Among the general principles guiding the FTC’s determinations as to whether a business has engaged in competition that is unlawfully unfair is whether the conduct “goes beyond competition on the merits.” The statement explains:

There are two key criteria to consider when evaluating whether conduct goes beyond competition on the merits. First, the conduct may be coercive, exploitative, collusive, abusive, deceptive, predatory, or involve the use of economic power of a similar nature. It may also be otherwise restrictive or exclusionary, depending on the circumstances, as discussed below. Second, the conduct must tend to negatively affect competitive conditions. This may include, for example, conduct that tends to

<sup>9</sup> 15 U.S.C. section 45(a)(1).

<sup>10</sup> November 10, 2022 Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act Commission, p.1.

foreclose or impair the opportunities of market participants, reduce competition between rivals, limit choice, or otherwise harm consumers.<sup>11</sup>

Both “key criteria” appear to be met.

Likewise, in evaluating whether a method of competition is unlawfully unfair, the statement explains that the FTC:

examines whether the respondent’s conduct has a tendency to generate negative consequences; for instance, raising prices, reducing output, limiting choice, lowering quality, reducing innovation, impairing other market participants, or reducing the likelihood of potential or nascent competition.<sup>12</sup>

Again, it appears this benchmark for unlawful unfairness is met.

Google’s unilateral decision to block news access for Californians could thus meet the definition of “unfair” competition described above. The undersigned respectfully request you investigate whether that might be so.

**Conclusion.**

History too often repeats itself. At the turn of the 19<sup>th</sup> Century, the single corporation of the Southern Pacific Railroad dominated California’s economy. In 1872, for example, it threatened to build its railway lines outside the City of Los Angeles unless the City paid it then-enormous sum of \$600,000. The City paid. It realistically had no choice not to.

Perhaps not since that period has a single company so brazenly sought to impose its will on the residents of California, or any state. Californians have a compelling interest in freely accessing digital news, and enforcers should investigate whether Google is violating federal law in blocking or impeding their ability to find news that they rely upon for their business, their prosperity, their pleasure, their democracy and, sometimes, their lives.

Thank you, in advance, for your consideration of our request, and we remain,

Very truly yours,



Danielle Coffey  
President & CEO  
News/Media Alliance

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<sup>11</sup> Ibid, p.9,

<sup>12</sup> Ibid, p.10.