

States massive Google antitrust probe will expand into Google's corrupt search and Android businesses

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Key Points

- The 50 attorneys general investigating Google are preparing to expand their antitrust investigation into the company's search and Android businesses, people familiar with the matter tell CNBC.
- So far, the investigation, which is being led by Texas' attorney general, has only explicitly focused on Google's advertising business.
- The development comes as politicians on both sides of the aisle, including President Donald Trump and Sen. Elizabeth Warren, increasingly tee off on Silicon Valley.

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Kara Swisher: Have to investigate search and Android when it comes to Google

WASHINGTON – The 50 attorneys general investigating [Google](#) are preparing to expand their antitrust probe beyond the company's advertising business to dive more deeply into its search and Android businesses, people familiar with the matter tell CNBC.

The development comes as politicians on both sides of the aisle, including President Donald Trump, increasingly tee off on Silicon Valley. Meanwhile, Democratic presidential candidate Sen. Elizabeth Warren has called for Big Tech companies to be broken up.

The attorneys general – who represent 48 states, Puerto Rico and Washington, D.C. – will write up subpoenas known as civil investigative demands, or CIDs, to support the inquiries, the people said. One of the people cautioned that the subpoenas may not be served imminently.

So far, the investigation has explicitly focused on Google's advertising business.

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50 state attorneys general to expand Google antitrust probe

Texas Attorney General Ken Paxton, who is leading the probe, announced the investigation during a September news conference that [emphasized Google's dominance in the ad market and use of consumer data](#).

The state has already served Google with CIDs for more information relating to the company's advertising business.

But at a recent meeting of several attorney generals participating in the probe, Paxton expressed his support for expanding the probe's purview into Google's search and Android businesses. Other states will carry out the investigations of search and Android separately, the people said. It wasn't clear which states would look at those businesses, however.

A spokesman for the Texas attorney general, asked about the scope of the probe, referred CNBC to a comment that had been issued in early October, "At this point, the multistate investigation is focused solely on online advertising; however, as always, the facts we discover as the investigation progresses will determine where the investigation ultimately leads."

Google declined to comment. Ahead of Paxton's announcement of the probe in September, Google's senior vice president of global affairs, Kent Walker, wrote a [blog post](#) that said the company will cooperate with government investigations.

The development in the states' investigation highlights how broadly the states and their attorneys general intend to scrutinize the tech conglomerate, said the people familiar with the matter.

States can be more aggressive in antitrust investigations than federal regulators, because they are less constrained by the lobbying and political forces that consume Washington, D.C. States are also typically more strained for resources than the federal government, though the [states have committed to sharing resources](#) in the Google investigation.

Google's parent, Alphabet, has a market capitalization of more than \$900 billion, [making it one of the most valuable companies](#)

[in the world](#). Because much of its offerings are free to the user, it can be difficult to prove antitrust violations, which are typically shown by a clear impact on pricing. The Justice Department's antitrust chief, Makan Delrahim, has indicated in public speeches that quality, innovation and other factors could be considered.

The DOJ, which is conducting its own antitrust probes of Big Tech, has served CIDs relating to "prior antitrust investigations in the United States and elsewhere," Google said in a [securities filing](#) this summer.

Prior federal investigations into Google have ended with a whimper. The FTC in 2013 completed a nearly two-year investigation into Google, culminating in an agreement where the company said it would remove restrictions on its ad platform to make it easier for advertisers to manage campaigns across rival platforms. In 2010, the government closed an investigation of its deal to acquire mobile advertising network company AdMob, concluding the deal was [unlikely to harm](#) competition in mobile advertising.

But more recently, politicians on both sides of the aisle have cast a new spotlight on Big Tech. Warren, who is one of the leading Democratic candidates for president, [has vowed to break up the giants of Silicon Valley](#). Trump, a Republican, in August [tweeted without evidence that Google "manipulated" votes in the 2016 election](#).

Search is the heart of Google's business, through which Google collects both advertising revenue and data. It also, argues critics, uses the function to promote its own products and services. The internet giant has rolled out a number of features over the past few years, like reviews, maps and travel bookings that benefit

from internet traffic. The EU slapped Google with [\\$2.7 billion fine](#) in 2017 for giving favored treatment to its “Google Shopping” service. Google is appealing the decision.

That fine, though, hasn’t slowed Google’s expansion into new offerings. The company is pushing further into health care with its proposed acquisition of Fitbit, and earlier this week announced it [will begin to offer checking accounts next year](#).

Google’s Android mobile operating system, meanwhile, is its foothold in the mobile market. Google requires phone and tablet makers that use Android to also pre-install Google’s app store and other apps like Gmail, Google Maps and the Chrome web browser, putting competing services at a disadvantage. Roughly 80% of smart mobile devices run on Android, [according to the European Commission](#).

After a record [\\$5 billion fine](#) from EU regulators over Android antitrust abuse, Google said it will [let EU users select their default search engine when setting up their Android device](#) and [stop bundling its apps on Android phones](#).

With that track record, the attorneys general investigating Google likely already have a broad vision of the case they wish to pursue against Google. They will use their CID requests to seek materials like emails and strategy documents to support that view, while looking for evidence of clear anti-competitive behavior. The requests can be a means of filling in holes in evidence, or a tactic to build up pressure on a company in hopes of forcing a settlement.

Sometimes, investigations and requests can dig up incriminating material. The prior FTC investigation into Google’s search

practices found evidence it skewed results to favor its own products, according to documents previously [inadvertently given](#) to The Wall Street Journal in 2015.

Google is already pushing back against the first CID request from Texas. The company [filed an order against Texas](#) requesting protections from disclosing certain confidential information requested. Google said it worries that outside consultants brought on to help with the investigation had ties to Microsoft and may use the confidential information to aid its rivals.

I'm the Google whistleblower. The medical data of millions of Americans is at risk

[Anonymous](#)

When I learned that Google was acquiring the intimate medical records of 50 million patients, I couldn't stay silent

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▲ 'I was worried too about the security aspect of placing vast amounts of medical data in the digital cloud.'

Photograph: Lionel Bonaventure/AFP via Getty Images

I didn't decide to [blow the whistle on Google's deal](#), known internally as the Nightingale Project, glibly. The decision came to me slowly, creeping on me through my day-to-day work as one of about 250 people in Google and Ascension working on the project.

When I first joined Nightingale I was excited to be at the forefront of medical innovation. [Google](#) has staked its claim to be a major player in the healthcare sector, using its phenomenal artificial intelligence (AI) and machine learning tools to predict patterns of illness in ways that might some day lead to new treatments and, who knows, even cures.

Here I was working with senior management teams on both sides, Google and Ascension, creating the future. That chimed with my overall conviction that technology really does have the potential to change healthcare for the better.

But over time I grew increasingly concerned about the security and privacy aspects of the deal. It became obvious that many around me in the Nightingale team also shared those anxieties.

After a while I reached a point that I suspect is familiar to most whistleblowers, where what I was witnessing was too important for me to remain silent. Two simple questions kept hounding me: did patients know about the transfer of their data to the tech giant? Should they be informed and given a chance to opt in or out?

The answer to the first question quickly became apparent: no. The answer to the second I became increasingly convinced about: yes. Put the two together, and how could I say nothing?

So much is at stake. Data security is important in any field, but when that data relates to the personal details of an individual's health, it is of the utmost importance as this is the last frontier of data privacy.



Google's secret cache of medical data includes names and full details of millions – whistleblower



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With a deal as sensitive as the transfer of the personal data of more than 50 million Americans to Google the oversight should be extensive. Every aspect needed to be pored over to ensure that it complied with federal rules controlling the confidential handling of protected health information under the 1996 HIPAA legislation.

Working with a team of 150 Google employees and 100 or so Ascension staff was eye-opening. But I kept being struck by how little context and information we were operating within.

What AI algorithms were at work in real time as the data was being transferred across from hospital groups to the search giant? What was Google planning to do with the data they were being given access to? No-one seemed to know.

Above all: why was the information being handed over in a form that had not been “de-identified” – the term the industry uses for removing all personal details so that a patient’s medical record could not be directly linked back to them? And why had no patients and doctors been told what was happening?

I was worried too about the security aspect of placing vast amounts of medical data in the digital cloud. Think about the

recent hacks on banks or the 2013 data breach suffered by the [retail giant Target](#) – now imagine a similar event was inflicted on the healthcare data of millions.

I am proud that I brought this story to public attention. [Since it broke on Monday](#) several Congress members have expressed concerns including the Democratic presidential candidate Senator Amy Klobuchar of Minnesota who said the deal raised “serious privacy concerns”.

A [federal inquiry](#) has been launched into whether HIPAA protections have been fully followed.

I can see the advantages of unleashing Google’s huge computing power on medical data. Applications will be faster; data more accessible to doctors; new channels will be opened that might in time find cures to certain conditions.

But the disadvantages prey on my mind. Employees at big tech companies having access to personal information; data potentially being handed on to third parties; adverts one day being targeted at patients according to their medical histories.

I’d like to hope that the result of my raising the lid on this issue will be open debate leading to concrete change. Transfers of healthcare data to big tech companies need to be shared with the public and made fully transparent, with monitoring by an independent watchdog.

Patients must have the right to opt in or out. The uses of the data must be clearly defined for all to see, not just for now but for 10 or 20 years into the future.

Full HIPAA compliance must be enforced, and boundaries must be put in place to prevent third parties gaining access to the data without public consent.

In short, patients and the public have a right to know what's happening to their personal health information at every step along the way.