



# *State of Colorado, et al.* *v.* *Google LLC*

May 30, 2025

**Colorado Plaintiffs' Remedies Closing Argument**  
**Morning Session**

# **Inferences v. Factual Findings**

# Causation Standard Has Been Met

1. Heightened causation standard requires more than inferential standard.
2. Court's liability opinion *applied* inferential standard.
3. Court's findings *satisfy* both standards.

**Unlike *Microsoft*, this Court found:**

- a) Direct impact on in-market competitors
- b) Direct impact on prices, quality, and innovation

# Microsoft's Inference

- ✓ **Found:** out-of-market middleware “*could well have*” reduced applications barrier to entry.
- ✓ **Found:** conduct excluded out-of-market middleware (like browsers).
- ✖ **Inferred:** exclusion of out-of-market middleware harmed in-market O/S competition.

*Microsoft*, 98-cv-1232, ECF 508 at ¶¶ 68-78, 376-383, 406-412 (D.D.C., Nov. 5, 1999) (Findings of Fact);  
87 F. Supp. 2d 30, 40, 42-44

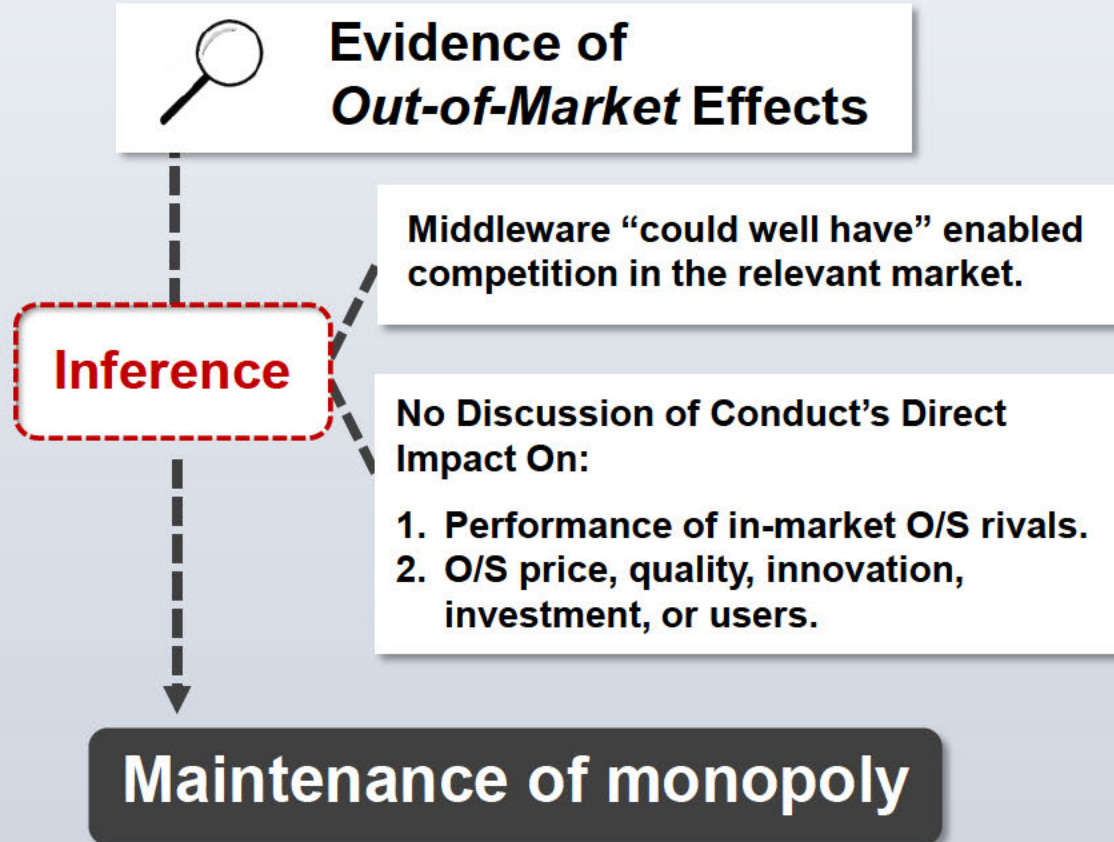


# The Court's Clearer Causal Connection

- ✓ "The Exclusive Agreements **Cause** Anticompetitive Effects in the General Search Services Market." Mem. Op. at 214
- ✓ "The Exclusive Agreements Have **Deprived Rivals** of Scale." Mem. Op. at 226
- ✓ "The Exclusive Agreements **Allow** Google to Profitably Charge Supracompetitive Prices for Text Advertisements." Mem. Op. at 259
- ✓ "The Exclusive Agreements **Have Allowed** Google to Degrade the Quality of its Text Advertisements." Mem. Op. at 263
- ✓ "The Exclusive Agreements **Have Capped** Rivals' Advertising Revenue" Mem. Op. at 264

# The Court's Causal Findings Exceed Those In *Microsoft*

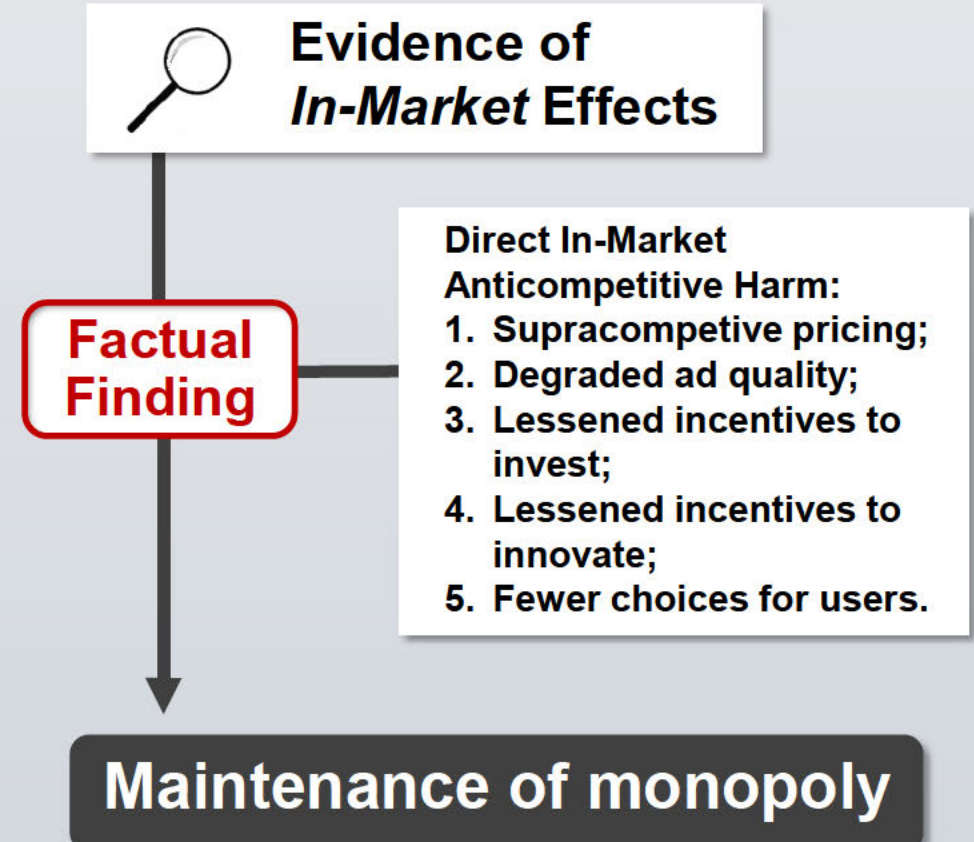
## *U.S. v. Microsoft*



☑ **Inferential** standard met

(87 F. Supp. 2d 30, 42-44; 253 F.3d 34, 55-65)

## *U.S. v. Google*



☑ **Heightened** standard met

Mem. Op. at 236, 259, 263; see 162-63 6



# Causation vs. Selecting Remedies

## Causation: Conduct → Dominant Position

- Plaintiffs' remedies are based on “a *significant causal connection* between the conduct and creation or maintenance of the market power.” *Microsoft*, 253 F.2d at 106
- “The exclusive distribution agreements thus have significantly contributed to Google's ability to maintain its highly durable monopoly.” *Mem. Op.* at 202

## Selection: Remedy → Eliminates Consequences

- The remaining question for today is simply whether each remedy represents “a reasonable method of eliminating the consequences of the illegal conduct” going forward.

# *Microsoft* Inferred Competitive Harm

- "[T]he 'anticompetitive effect' is either an incidence on [out-of-market] rivals or a bare inference from that incidence."
- Nowhere "does the court seem to be independently testing or evaluating the magnitude or likelihood of **any contribution of the defendant's conduct to a change in competitive conditions in the operating system market**".

Daniel Francis, *Making Sense of Monopolization*, 84 Antitrust L.J. 779, 805 n.165 (2022) (reviewing specific *Microsoft* findings)



# Effect on Monopoly Position: *Google vs. Microsoft*

## **Google Exclusive Agreements**

### **Direct Impact on In-Market Rivals**

- Significant Market Foreclosure
- “Deprived Rivals of Scale” (Mem. Op. at 226)
- “[I]mpair rivals’ opportunities to compete” (Mem. Op. at 226)

### **Direct, Identified Consequences**

1. Supracompetitive Pricing
2. Degraded Ad Quality
3. Less innovation/investment
4. Inability of entrants to offer alternatives to users

## **Msft (CADDC) Conduct re: Middleware**

“The anticompetitive effect is...that OEMS are not able to promote [out-of-market] browsers, which keeps developers focused upon [] Windows”.  
(253 F.2d at 62)

### **No Discussion of Conduct’s Direct Impact On:**

1. Performance of in-market O/S rivals
2. O/S price, quality, innovation, investment, or users

# Effect on Monopoly Position: *Google vs. Microsoft*

## Google Exclusive Agreements

### Direct Impact on In-Market Rivals

- Significant Market Foreclosure
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### Direct, Identified Consequences

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## Msft (DDC) Conduct re: Middleware

**Microsoft’s Conduct:** impeded “entrepreneurial efforts that...could well have enabled the introduction of competition into the [relevant] market.”

(87 F. Supp. 2d 30, 44; see also *id.* at 42-43;  
Findings of Fact ¶¶ 376-383, 406-12)

### No Discussion of Conduct’s Direct Impact On:

1. Performance of in-market O/S rivals
2. O/S price, quality, innovation, investment, or users