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Location, location, location: Google, AGs spar over venue in online ad antitrust case

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(Reuters) - Does an antitrust suit in which the attorneys general of Texas and nine other states accuse Google of monopolizing the market for online advertising belong in Texas, where it was filed? Or should the case — which does not include factual allegations of Google misconduct in Texas — be transferred to the Northern District of California, where Google and its rivals are based, and where Google is already defending private class actions asserting claims that overlap with the AGs' case?

The venue dispute will likely be one of the key early issues before U.S. District Sean Jordan of Plano, Texas, who is set to preside tomorrow over a preliminary scheduling conference. Texas and the AGs of Arkansas, Idaho, Indiana, Kentucky, Mississippi, Missouri, North Dakota, South Dakota and Utah filed their complaint ([2020 WL 7382404](#)) in December. Google's lawyers at Yetter Coleman, Axinn Veltrop & Harkrider and Freshfields Bruckhaus Deringer moved last month to transfer the AGs' suit. The AGs docketed their opposition on Tuesday.

Both sides agree that the venue issue should be decided under the multi-pronged test set out by the 5th U.S. Circuit Court of Appeals in 2008's [In re Volkswagen](#) (545 F.3d 304). The test weighs both the interests of private parties and of the public, based on factors including where evidence and witnesses are located; whether litigating in the plaintiff's chosen forum will create practical problems; and the relative interest of competing jurisdictions in the case's issues.

But Google and the AGs, as you would expect, offered starkly different assessments of the correct balance of interests. Google argued that Texas might be a more convenient venue for the Texas AG, but that California is just as convenient for most of the other nine AGs in the case. Their presence as plaintiffs, the company said, undercuts any assertion by Texas that a Texas court must protect the interests of Texas residents.

Meanwhile, Google said, California has a big stake in the case. Most of the conduct alleged in the AGs' complaint occurred in California (or New York), Google said. A "vast majority" of the Google employees who sent, saw or received communications cited in the AGs' suit are located in California. (None is based in Texas, according to the company.) Google and almost all of the other big tech companies discussed in the suit — including Facebook, Google's alleged partner in an agreement described in the AGs's complaint — are based in California. And California courts, Google said, are already overseeing class actions alleging the same broad claim that Google abused its power in the market for online advertising.

At least six of the eight Volkswagen factors, according to Google, weigh in favor of moving the AGs' suit to California. "Under these circumstances," the company told Judge Jordan, "no deference is due plaintiffs' choice to sue in this district."

The AGs told Judge Jordan that Google failed to give proper weight to plaintiffs' choice of a venue. The proper analysis, according to the Texas AG's office and its outside counsel from Keller Lenkner and the Lanier Law Firm, weighs against transferring a case unless the defendant provides clear proof that the alternative venue is more convenient.

It's not enough, the AGs said, for Google simply to assert that evidence is in California because the company is based there. In fact, the Texas brief said, Google's documents are stored in data locations across the country, including one storage center located just 50 miles from Judge Jordan's courtroom. Witnesses are similarly scattered across the country, Texas said. Even 87

of the Google employees who might serve as witnesses are closer to the Eastern District of Texas than the Northern District of California, the Texas brief said.

And, according to Texas, the ongoing class actions in California are a reason to keep the AGs' case in Texas – not, as Google argued, to move the AGs' case to the judge overseeing the private litigation. The California judge has set a tentative trial date for 2023. The AGs argue that their case, which is the product of a long investigation, can be litigated on a much faster track. Moving their suit to California, where judges have a heavier workload, will only bog down all of the litigation.

Venue has been a sticky issue in the sprawling antitrust litigation against Google. The Judicial Panel on Multidistrict Litigation is considering whether formally to consolidate all of the private cases, with Google and most plaintiffs pushing for California but some plaintiffs arguing that the litigation belongs in Washington, D.C., where the Justice Department's case is being litigated. (The Texas AG is also a plaintiff in the DOJ case.) It's no surprise that Google would like the cases to be concentrated in California. But as the AGs pointed out in their opposition brief, judges in the Eastern District of Texas don't always see things the way Google does.

The case is *The State of Texas et al v. Google*, No. 4:20-cv-00957 in the Eastern District of Texas.

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