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U.S. Tech Probe Nears End

(Please see Corrections & Amplifications item below.)

Several of the U.S.'s largest technology companies are in advanced talks with the Justice Department to avoid a court battle over whether they colluded to hold down wages by agreeing not to poach each other's employees.

The companies, which include [Google Inc.](#), [Apple Inc.](#), [Intel Corp.](#), [Adobe Systems Inc.](#), [Intuit Inc.](#) and [Walt Disney Co.](#) unit Pixar Animation, are in the final stages of negotiations with the government, according to people familiar with the matter.

The talks are still fluid, these people said, with some companies more willing to settle to avoid an antitrust case than others. If negotiations falter, both sides could be headed for a defining court battle that could help decide the legality of such arrangements throughout the U.S. economy.

Still, there are powerful incentives for both sides to settle the potential civil case before it reaches that stage.

The Justice Department would have to convince a court not just that such accords existed, but that workers had suffered significant harm as a result.

The companies may not want to take a chance in

court. If the government wins, it could open the floodgates for private claimants, even a class action by employees. A settlement would allow the Justice Department to halt the practice, without the companies having to admit to any legal violations.

Spokespeople for Google, Apple, Intel, Adobe and Intuit all declined to comment. Pixar had no immediate comment. A Justice Department spokeswoman also declined to comment.

The Justice Department's probe of hiring practices could reach beyond Silicon Valley.

During the course of its more than year-long investigation, the agency has uncovered evidence of such agreements in other sectors, according to the people familiar with the matter.

A settlement with tech companies—or a court fight—could therefore help determine what kinds of agreements are acceptable in other industries as well.

At stake are dueling visions of how far companies should be able to go in agreeing to limit the kind of headhunting that can help valuable employees increase their compensation.

The companies have argued to the government that there's nothing anticompetitive about the no-

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poaching agreements. They say they must be able to offer each other assurances that they won't lure away each others' star employees if they are to collaborate on key innovations that ultimately benefit the consumer.

Some economists believe that banning such agreements could harm Silicon Valley's open, collaborative model.

"The effect of the lawsuit would be to reduce innovation because companies would worry about exposing their employees to each other," said Paul Rubin, an economics professor at Emory University, who isn't involved in the case.

For the Justice Department, such agreements amount to an effort by companies to limit competition for talent, harming employees' ability to get the best jobs and wages and reducing the incentives for people to enter professions in high demand, according to people familiar with the matter.

The government could argue that the agreements constitute an effort by companies to fix the price of labor, and are therefore just as harmful as price-fixing or bid-rigging—automatic violations of antitrust law.

"In a free market economy, you want the best people getting the best positions, and presumably all the rewards that come with that," said Spencer Waller, a law professor at Loyola University Chicago, who has no connection to the case. "This agreement, if the government has the facts, suggests that market for talent is being depressed by collusion."

The agreements under investigation varied in their scope and details, according to the people familiar with the matter. In conversations with the Justice Department, some companies have maintained they didn't have agreements not to hire each others' employees, only agreements not to "cold-call" partners' employees.

However, people familiar with the matter say the Justice Department believes that cold-calling is an important way in which people are hired in the

sector. Even if the employees don't end up moving, their employer often has to sweeten their pay and conditions to make sure they stay.

After more than a year of investigation, the Justice Department antitrust division has concluded that many of these agreements have harmed people's ability to get better jobs or improve their conditions.

But proving that in court may be tricky, some antitrust lawyers said.

During the course of the investigation, more than a dozen tech companies have been questioned by the Justice Department, people familiar with the matter said. Those include [Yahoo Inc.](#), [Genentech Inc.](#) and [IAC/InterActiveCorp.](#)

However, some companies said they are no longer in the government's cross-hairs. "After a thorough investigation, the [Justice Department] antitrust division has advised IBM that it will not pursue a case against IBM," an [International Business Machines Corp.](#) spokesman said.

[Microsoft Corp.](#) also said it is no longer a target of the investigation. A Genentech spokeswoman said the Justice Department had relieved the biotech firm of the obligation to hold on to relevant information.

A Yahoo spokeswoman said the company fully cooperated in the investigation and believed its responses were sufficient. IAC didn't respond to requests for comment.

The agency has decided not to pursue charges against companies that had what it believes were legitimate reasons for agreeing not to poach each other's employees, said people familiar with the matter. Instead, it's focusing on cases in which it believes the non-solicit agreement extended well beyond the scope of any collaboration.

Corrections & Amplifications

A Justice Department spokeswoman had no comment Thursday on whether the agency is in discussions with several technology companies to resolve an investigation into industry hiring

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practices. An earlier version of this article omitted the spokeswoman's response to questions about the issue.

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