



Competition Challenges in the Internet Economy

Thomas Vinje

Partner

Chair, Global Antitrust Practice

Head, Information Technology Sector Group

Clifford Chance LLP

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Overview

- The importance of data and scale
- Competition issues related to data and scale
- The Google investigations

Data

- The Economist: "[d]ata are becoming the new raw material of business: an economic input almost on a par with capital and labour"
- One can distinguish between “static” and “dynamic” data
- “Static” data cases: data/information as such
 - Data as an input for economic activities
 - Firm may control data due to gatekeeping/originating role and/or IP protection, e.g.:
 - *Magill* (broadcasters created and owned copyrighted TV listings as a by-product of their broadcasting activities)

“Dynamic” data cases: data and scale

- Typically occurs in multi-sided markets/platform, where a “virtuous circle” might arise: the more data, the more stakeholders attracted to the platform, thus resulting in even more data, e.g.:
 - Search results
 - Targeted advertising
- European Commission has recognized these issues, e.g.:
 - *Microsoft/Yahoo!*
 - *Google/DoubleClick*

Competition issues

- Having access to data and scale can be a significant competitive advantage
- Not having access to data can be a significant, even prohibitive entry barrier
- Virtuous (or vicious) circle: while there are many different uses for the data, due to virtuous/vicious circle, there may be a tendency for only a few sources to be able to collect and serve as gatekeepers
- The gatekeepers can leverage their data advantage into adjacent markets reliant on such data, thereby potentially foreclosing the service providers not having access to such data

The Google Investigations

Pending investigations

- Investigations into abusive conduct are being conducted in several countries around the globe:
 - **U.S.** – U.S. State Attorneys in several states are investigating whether Google uses its dominant position to harm rivals by manipulating search results and paid search advertisements. In addition, the U.S. FTC is preparing a full-scale antitrust investigation into Google's dominance in the Internet search industry
 - **South Korea** - the South Korean Fair Trade Commission is investigating Google's business practices, specifically in mobile search, and raided Google's offices in September 2011 and May 2012
 - **India** – The Competition Commission of India (CCI) is investigating Google's alleged abuse of dominant position with its AdWords business. In July 2012, CCI launched a fresh inquiry into allegations of Google's anti-competitive practices
 - **Argentina** – The Argentinian Competition Commission is investigating Google's search and search advertising practices

Pending investigations

■ The EU Investigation:

- The world's first formal investigation into Google's practices was opened by European Commission in November 2010
 - More complainants than any other Article 102 case ever investigated by the EC
- In addition to the formal complainants, numerous industry participants and consumer groups have voiced concerns about Google's conduct

Dominance

- Dominant position both in search and search advertising
 - Google has had durable search market shares of over 90% in Europe and similar shares in other geographies – with a 90.5% share in Latin America
 - Google's share has survived multi-billion investment by Microsoft and Yahoo!
 - Rivals keep disappearing: Yahoo! had to merge its search business with Microsoft, Ask has exited
- Scale is key to the question of dominance in horizontal search market, and Google far outpaces all others as to scale

Dominance in Mobile-related markets

- Globally, Google has an estimated 97% share of all searches conducted on mobile devices and a 96% share of mobile search advertising
- Google is also dominant in the market for (licensable) smartphone operating systems (circa 70%)
- Google is also dominant in a number of other mobile markets (*e.g.*, maps and navigation services)
- Google possesses significant market power over all mobile participants including
 - OEMs
 - Advertisers
 - App developers
 - Component suppliers
 - Network providers

Potential Abuses of Dominant Position

- Four main areas of concern have been identified by the EC in online search
 - Google 'penalizes' (demotes) competing services in its ranking algorithm, thus reducing competitors user traffic dramatically, and simultaneously preferences its own services
 - Google copies content from competing vertical search services and uses it in its own offerings, sometimes without attribution
 - Google concludes agreements with partners on the websites of which Google delivers search advertisements which result in de facto exclusivity
 - Google puts restrictions on the portability of online search advertising campaigns from its platform AdWords to the platforms of competitors

Further areas of concern

- The EC is also investigating other issues, which include Google's conduct in mobile markets
- Potential concerns include:
 - Google's engagement in predatory strategies with respect to its mobile operating system (Android) its mobile applications
 - Tying of Android with its dominant search engine as well as its other core mobile services
 - Imposing exclusivity restrictions in its Android licensing agreements to maintain and expand its dominance

Commitments / Remedies

- In early October, Google seems to have proposed a remedy to the EC, under which Google would put its brand on any of its own maps, stock quotes, airline flight details or other pieces of information returned with search results
- Many believe such a remedy would fail to address the Commission's concerns and would not protect consumers, as such a remedy would not prohibit Google from engaging in exclusionary conduct, e.g. burying or excluding results from vertical competitors and preferencing its own.
- Some have called for Google to subject its in-house services to the same search criteria as those applied to other sites on the Web, ensuring that it cannot unfairly corner the online audience

Conclusion

- Online and mobile commerce, and more generally online/mobile activities, are vital to today's economies
- Data is central: Competition authorities should take into account the significance of data and the market power yielded by scale in data
- Ensuring robust competition in the online and mobile markets is a central obligation for competition authorities worldwide, and we can expect a new generation of antitrust cases in this area



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