

Why the Google Antitrust Case Is a ‘Step in the Negotiation Process’

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Technology



In one of the biggest challenges to Google in recent years, the European competition commissioner Margrethe Vestager recently filed formal antitrust charges against the technological behemoth.

While it's not a major surprise — complaints have been ongoing for five years and Google has [faced allegations](#) in the U.S. as well — and possibly similar effects in Japan, Australia and New Zealand, and similar effects [in the U.S.],” says Eric K. Clemons, Wharton professor of operations and information management.

In the “statement of objections,” as the charges are called in Europe, Google is accused of deliberately delivering biased results from its own service over other rivals. Google Shopping is at the crux of the initial complaint. The shopping comparison site was launched in 2012 in the U.S. and in 2013 in Europe. Vestager explained in a news conference that the inquiry will look into whether “Google artificially favors its own comparison shopping service,” which would be considered abuse. Other grievances include accusations that Google restricts vendors from making advertising deals with other search sites and rival digital marketplaces are not displayed as prominently as Google Shopping results.

At the same time, a formal investigation into Google's smartphone software, Android, was also launched by the European Commission. According to Gartner, Android is the world's most popular operating system dominating 81% of the market versus Apple's 15% share. The case will examine whether phone makers are pressured into pre-installations of Android apps and services, bundling software and restricting software modifications.

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“The primary concern of monopolization of market power is that Google may have misused it — in the sense that they enhance or maintain a near-monopoly without efficiency, or future consideration of consumers,” says Joseph Harrington, Wharton professor of business economics and public policy.

In fact, the U.S. Federal Trade Commission, or FTC, was investigating the same allegations with Google Shopping. “Google Shopping was one of the issues that the FTC considered. The staff described it as a close call and recommended not going ahead with antitrust charges [in regard to] Google Shopping. They saw other places that were basically [related to] the same kinds of practices,” adds Harrington. In a FTC report obtained by *The Wall Street Journal*, Google “sought to demote all comparison shopping websites” and then released an update in 2007 to bias results to merchant sites.

In 2013, the FTC dropped its charges against Google after the company agreed to loosen its advertising and patent licensing policies. The FTC commissioners chose not to move ahead, even though staffers demonstrated some of their practices were possibly antitrust, notes Harrington. It is “open to speculation” whether the FTC will reopen investigations as a result of what the European Commission is doing, says Harrington. “A change in administration means a change in FTC commissioners. As a general sweeping statement, a Republican administration would less likely intervene than a Democratic one. What you could imagine is that the European Commission puts in behavioral remedies that would be pro-competitive and good for consumers. And then the U.S. could respond to that information.”

‘Don’t Be Evil’

Clemons says it was a mistake that FTC commissioners did not pursue antitrust allegations with Google. “All of the harm — and there is harm — is indirect. The argument that Google is free and consumers love it has a great deal of resonance with the members of the FTC,” he adds.

At issue is not the dominance of Google, but whether its dominance harms users. Over 90% of the web searches in Europe are conducted through Google, while only 64% of the web searches in the United States are through Google, according to digital research firm Statista. “By law, if you’re a dominant firm like Google with a near-monopoly, you’re held to a higher standard. The real issue is that it’s fine to pursue activities that enhance your dominance as long as it benefits consumers. If you reduce the value of the results for the consumers, then you start thinking of monopolization,” says Harrington. The European Commission stylizes its own competition laws based on Section 2 of the Sherman Act used in the United States, notes Harrington.

“It’s fair to say the European Commission is more aggressive toward exclusionary activities. It’s not too surprising they would take this on and the U.S. authorities wouldn’t do it. If it was the reverse, it would be surprising,” says Harrington. “Europe is less generous on monopolies” than the U.S., adds Clemons.

But why now? “Google isn’t doing anything that they weren’t doing five years ago,” notes [Kevin Werbach](#), Wharton professor of legal studies and business ethics. The main driver of the formal charges is the new European competition chief, Vestager, who took office in November. “In Europe, commissioners rotate, which is little bit different than when you have changes in administration [like in the U.S.]. Intergovernmental organizations change in different patterns. A lot of it has to do with personalities that wind up in these positions,” explains Werbach.

What Vestager is investigating is whether Google edges out rivals unfairly. Clemons notes that the “nature of abuse is indirect,” but certainly not benign. In a speech, Vestager said she is aiming to establish “future-proof” principles to set out fair-play rules, not to alter Google’s algorithms. Once the principles get laid out, the investigation could expand to

restaurants, travel and mapping services offered by Google.

What's at Stake

Technically, Google could be fined up to 10% of its revenues, or \$6.6 billion, though many experts believe that is unlikely to happen. In Europe, Intel paid a record \$1.44 billion for its computer chip monopoly and Microsoft has paid more than \$3 billion after four rounds of fines.

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As it stands, Google has up to 10 weeks to respond to the charges. The company can also ask for a hearing in a procedure that could last two years and end in the Court of Justice of the European Union in Luxembourg.

In an internal company memo obtained by *Re/code*, Google officials said the company has a “very strong case” against the European Commission charges because its search algorithms save time for consumers. Also, the increasing popularity of mobile apps, like Yelp and Amazon, bypass dependency on Google searches. Seven out of every eight minutes on a mobile device is spent browsing within apps. However, Harrington notes, “Certainly, Google would argue they would be adding to the product they deliver. The evidence is really questionable. It’s not clear in Google Shopping that they’re not disadvantaging other sites and services.”

Amit Singhal, senior vice president of Google Search, wrote in an [April 15 blog post](#) that while companies including Expedia, TripAdvisor and Yelp have said Google’s inclusion of its own specialized results (from Google Maps, for example) have harmed their businesses, “their traffic, revenues and profits ... tell a very different story.

“While Google may be the most used search engine, people can now find and access information in numerous different ways,” he noted.

In an interview with *The Financial Times*, Ebay CEO John Donahoe added weight to one of Google’s counter arguments by agreeing that his company is a strong competitor of the search giant’s in the online shopping sector.

Meanwhile, some have claimed that the charges against Google are part of the backlash against American technology giants, especially in light of Edward Snowden’s leaks that the National Security Agency is monitoring communications, like emails. Werbach notes that parties in Europe “concerned with American tech companies intensified with the Snowden revelations — [there are concerns] that these companies are in league with the U.S. government in relation to surveillance.”

However, others have accused American companies, like Microsoft, of leading and even bankrolling the charge against Google in Europe. The initial list of complainants does include Microsoft and a lobbying group called the Initiative for a Competitive Online Marketplace, or Icomp, which receives sponsorship from Microsoft, according to *The New York Times*. Others on the list include TripAdvisor, Yelp, Expedia, a French legal search engine and German publishers.

Werbach adds: “Microsoft has been pushing antitrust [against Google] for a long time. It’s not a great secret. I wouldn’t contribute this action to funding from Microsoft. They’ve had a long-running professional rivalry.”

A week after the Google charges were filed, antitrust charges were launched against Russian national gas company, Gazprom, which provides up to one-third of the natural gas supply for Europe. Apple’s music-streaming services may be targeted by the European Commission later this year.

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“There might a larger pattern that Europeans will be ratcheting up the concern [about competition]. Other companies will be affected by that,” notes Werbach.

A Different Animal

The digital marketplace in Europe is a different animal than the American online shopping arena. The kind of shopping across U.S. state borders doesn’t happen readily across country borders in Europe for several reasons. According to *The Economist*, only 15% of consumers shop online across country borders. Bureaucratic hurdles, such as differing tax systems, remain a barrier.

Werbach adds that, at the end of the day, people in Europe want access to these services from American technology companies. One challenge is geography and another is regulatory environments. There are positives to those things but they can also make it more difficult and challenging for start-ups. It’s not quite the same start-up culture with VCs and communities like Silicon Valley, says Werbach.

In what could be a drawn-out process, there won’t be a sudden change in Google’s dominance in Europe. “My guess, as often happens, is that this is a step in the negotiation process,” says Werbach.

It’s possible to have different remedies for Europe and America. For example, the “Right to Be Forgotten,” a process to eliminate any digital references to someone or something, is valid in Europe and doesn’t take place in the U.S. “It’s technologically feasible to do different things” in various regions, says Harrington. “Google did comply [with the Right to Be Forgotten], and they have a process that allows people to remove links from search engines. It’s not like Google refuses to change conduct,” adds Werbach.

“Certainly, making markets more competitive is the intended object of these activities. That’s a good thing for economies,” says Harrington. “When it comes down to execution, the decision should be based on analysis and improving competition and protecting consumer welfare. Bad remedies can do a lot of harm and constrain innovation.”

Werbach adds, “It’s possible that we would see some changes. At this point, it’s unlikely that any of these steps will dramatically cut into Google’s market share. It’s not as if European search engines will get listed and that they will have 40% to 50% of the market share. This will unlikely lead to any dramatic changes.”