Google case

Questions and Answers

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Why BEUC has submitted the complaint?

BEUC has been granted 3rd party status in the case since April 2013. Previously, we have not felt compelled to directly intervene as we had been encouraged by Vice President Almunia's repeated public statements over the past two years that the Commission will invite Google to propose remedies which fully address competition concerns.

However, we feel that consumer welfare considerations have not been adequately taken into account in the investigation and the settlement will be detrimental to consumers. This is why we have requested a status of formal complainant in the case.

Why the settlement is not acceptable from consumer perspective?

It is unacceptable Google is allowed to continue manipulating search results and displaying links to their own vertical services in preference to rival services which could be more relevant to consumers. There is no evidence to suggest Google's own vertical services are the best on merit or the most relevant to consumers. Even if Google claims that with the new commitments, it will place the rivals (albeit only 3 of them) in a comparative way to its own results, this is still discriminatory, as Google will place their own results in a most 'hot' place where most consumers click (on the left side of the screen for computers and right side for smartphones). This has been consistently demonstrated by eye-tracking studies conducted by Google as well as independent third parties.

In addition, Google remains unaffected in how it displays 'organic' results and is free to continue manipulating and discriminating there.

Is the auction mechanism as proposed by Google an effective remedy?

The auction procedure is not an acceptable way to rank search results, as the results will not be based on merit or consumer relevance. Consumers will not see the results which most correspond to their query, but the offer of a company who has paid more for display.

The auction method of displaying results is likely to result in higher prices to consumers for goods and services they find through online search. As vertical search services will have to pay to be visible there is a high risk they will no longer place their cheapest offers at the top of their list for consumers, but rather the ones which secure the biggest revenue margin. So for instance a consumer searching for a particular camera would no longer see the cheapest offers for that camera, but rather the more expensive ones. Furthermore, the raising of rivals' costs would logically exclude the lowest margin competitors, who often offer the lowest prices. There are already various studies done to demonstrate that consumers will indeed be presented with more expensive offers.

It will also stifle innovation, as existing vertical services will have to give all their profits to Google through the auction procedure, and the new entrants will not be able to compete. No matter how good or relevant their services to consumer queries, to compete with Google and its main rivals they will firstly need the financial means to compete in the auction mechanism.

Is the auction not the objective way to select the rival links that consumers will ultimately see alongside Google results?

We firmly believe that an auction is not a substitute for consumer choice, as the results will not be based on merit or consumer relevance. Consumers will not see the results which most correspond to their query, but the offer of a company who has paid more for display. The fact that in the auction the bid of a rival is combined with the predicted click through rate (pCTR), does not make the auction more merit-based: pCTR does not directly demonstrate the relevance and is determined (by Google!) based on a number of criterions.

If rival links are presented alongside Google's own links in a comparable way, is it not enough to ensure consumer choice?

No, if it is done in the way it is suggested in the settlement proposals. Firstly, the 'comparative way' of display is only limited to visual features. But to provide real competition, rival links need more than just "comparable" pictures. The rival links need the same technical features as the Google merchant product listing ads, like dynamic linking, in order to challenge the high prices in the Google Shopping.

Secondly, the comparative presentation of results is not ensured for all kinds of vertical search. For instance, in the travel search, the presentation of Google's own results (Flight finder or Hotel finder) differs dramatically from the rival links.

Thirdly, it has been proven by multiple eye-tracking studies that consumers are driven to click on certain spots of the page much more than on the others. So for the results to be presented in the non-discriminatory manner, Google has to allow rival links to get access to those parts of the page as well. This could for instance be done in a rotating manner with Google's own results.

Will there be an increase of prices to consumers as a result of the commitments?

There is a high risk that the commitments, if implemented, will result in higher prices for consumers. Firstly, as vertical search services will have to pay to be visible, they will no longer place their cheapest offers at the top of their list for consumers, but rather the ones which secure the biggest revenue margin. So for instance a consumer searching for a particular camera would no longer see the cheapest offers for that camera, but rather the more expensive ones.

Secondly, the studies show that prices in Google Shopping itself (formerly, Google Product Search) and Google Product Listing Ads are higher than on competing shopping verticals.

Commissioner Almunia seems to believe that Google is entitled to be 'compensated' for giving away the access to its search services to the competitors, hence the proposal of the auction. Can it be organised otherwise?
There is an argument that Google cannot be forced to share the space on its search results page with the competitors for free. However, even if that would be true, the auction is not the only way to include the competitor links – for instance, they could pay a flat-rate fee and then be ranked according to consumer relevance.

What will happen to the algorithmic search?
It is unfortunately not clear from the commitments how the algorithmic search, where consumers were used to see the 'neutral' results, will be affected. Will Google only use that space for including the links to their own products and the original organic search, which was most valued by consumers, will disappear?

Can the Commission impose the principle of non-discrimination?
The overarching principle guiding the remedies is that Google must be even-handed. It must hold all services - including its own - to exactly the same standards, using exactly the same crawling, indexing, ranking, display and penalty algorithms.
Adherence to this principle would immediately end any systematic favouring by Google of its own services by preferential placement and differing display formats in Universal Search. Adherence to this principle would also end Google's ability to systematically penalise, demote or exclude its competitors.
In addition to this overarching non-discrimination principle being the central means of restoring competition and ensuring effective consumer choice, it has an obvious precedent in the form of regulation of computerised reservation systems (CRS) for air transport products (principally purchases of scheduled flights) (Council Regulation (EEC) No 2299/89 of 24 July 1989 on a code of conduct for computerised reservation systems, (OJ 1989 L 220). This regulation places obligations on a system vendor to prevent its parent carriers benefiting from preferential treatment in the operation of the CRS which, either separately or jointly, they own or effectively control.

Is this case unique?
The similarities of this case with the Microsoft Internet Explorer case are as disturbing as they are remarkable. Google is similar to Microsoft in using its dominance to leverage its market power from one market to another. In Microsoft the dominance in desktop operating systems was abused to push Internet Explorer; with Google the dominance in the online search is being used to push vertical services. However, the handling of the case by the European Commission is diametrically different. We see no rationale to this difference. It is crucial that the European Commission uses its powers conferred by the Treaties to sanction Google for infringing EU competition rules.

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