



EUROPEAN COMMISSION

MEMO

Brussels, 25 April 2013

Commission seeks feedback on commitments offered by Google to address competition concerns – questions and answers

A) The Commission's concerns

Why does the Commission decide to intervene in such a fast-moving market, where the pace of innovation is rapid and a company that may be dominant today could be challenged or even replaced by another tomorrow?

In high-tech markets in particular, network effects may lead to entrenched market positions. Google has had a strong position in web search in most European countries for a number of years now. It does not seem likely that another web search service will replace it as European users' web search service of choice.

In this context, it is important for the Commission to intervene in order to ensure that Google's prominent market position in web search does not affect the possibility for other competitors to innovate in neighbouring markets, including in the long-term.

What is the Commission's position as regards Google's dominance?

The Commission's preliminary view is that Google is dominant in the European Economic Area (EEA) both in web search and search advertising. For instance, Google has been holding market shares in web search well above 90% in most European countries for several years now, a level which is higher than in many other parts of the world. There are also significant barriers to entry and network effects in both markets.

The Commission has also reached the preliminary conclusion that in four areas Google may be abusing its dominant position in the EEA (see below). Such abuses would be in breach of Article 102 of the Treaty on the Functioning of the European Union (TFEU).

Which competition concerns did the Commission outline in its Preliminary Assessment sent to Google?

The Commission outlined four competition concerns about Google's business practices in search in Europe.

1) Specialised search

The first competition concern relates to the way Google displays links to its own specialised search services in its web search results. In addition to its flagship web search service, Google also operates several specialised search services such as Google Shopping, which specialises in the search for products, or Google Places, which specialises in the search for local businesses.

Google prominently displays links to its own specialised search services within its web search results and does not inform users of this favourable treatment. Due to the favourable treatment of Google's own services, consumers are more likely to not make use of potentially more relevant competing services. First, users are not aware of the promotion of Google's offer within the search results. Second, competitors' results that are potentially more relevant are less visible and even sometimes not directly visible to users - they are more difficult for the user to find, for instance because the user has to scroll down the screen to see them or has to go to a subsequent search results web page.

The Commission is concerned that this practice unduly diverts traffic away from Google's competitors in specialised search towards Google's own specialised search services. It therefore reduces the ability of consumers to find a potentially more relevant choice of specialised search services. Since Google is an important source of traffic for competing specialised search services, this may reduce competitors' incentives to innovate in specialised search.

2) Content usage

The second competition concern relates to the way Google uses without consent content from competing specialised search services in its own offerings.

Google uses on its own specialised search services original material taken from the websites of its competitors, such as for instance user reviews. Google thereby benefits from the investments of competitors, sometimes against their explicit will. Competitors who have objected to the use of their information in Google's specialised search services have been told that the only way for their information not to appear in Google's specialised search service would be to opt out of Google's services, including Google's web search, which is not a sustainable business option for most web sites.

The Commission is concerned that the practice of using third party content to promote Google's own services may reduce competitors' incentives to invest in the creation of original content for the benefit of internet users. Indeed, if users know that Google's specialised search services contain all the relevant information that is posted on the web, their incentives to visit other sites which contain only a part of that information will be significantly reduced, even if these were the sites from which that information originates.

3) Exclusivity agreements with publishers for the provision of online search advertising on their web sites

The third competition concern relates to exclusivity requirements in Google's agreements with publishers (i.e. any third party web site such as newspapers) with regard to Google online search advertisements displayed on those publishers' web sites.

The Commission is concerned that these requirements oblige publishers to obtain all or most of their online search advertisements from Google.

- This means that publishers (web site owners) can display no or only a limited amount of online search advertisements from Google's competitors, which reduces the choice of online search advertisements they can offer to users of their web sites.
- In recent years, Google has enjoyed a very strong position on the European market for the provision of search advertising to publisher web sites ("search advertising intermediation"). In view of this strong position, the concern is that customers would have less choice and that Google's competitors would face reduced incentives to innovate since Google's conduct limits their access to customers.

4) Contractual restrictions on the portability and management of online search advertising campaigns across Google's AdWords and competing platforms

The fourth competition concern relates to Google contractually restricting the possibility to transfer online search advertising campaigns away from Google's AdWords and to simultaneously manage such campaigns on competing online search advertising platforms.

The Commission is concerned that these restrictions create artificial switching costs that discourage advertisers using Google's AdWords from running parallel online search advertising campaigns on competing platforms, thereby reducing consumer choice. These restrictions do not yield any benefits for advertisers or consumers, but stifle the development of innovative campaign management tools.

What specialised (vertical) search services are covered by the Commission's investigation?

All specialised search services of Google are covered by the Commission's investigation, as long as they are subject to a specific treatment in Google's web search results. This includes not only existing specialised search services but also potentially new specialised search services which Google would roll out in the future.

Within existing services, the Commission's investigation covers for instance Google Shopping, Google Places, Google Hotel Finder, Google News, Google Finance or Google Flights. It also covers Google Maps when maps are displayed in conjunction with local search results.

The US Federal Trade Commission investigated the way Google displays links to its specialised search services in its web search results and concluded that there was no competition issue with it. Why does the Commission come to a different view?

The factual and legal environments are different in the US and Europe. In particular, Bing and Yahoo represent a substantial alternative to Google in web search in the USA: their combined market share is around 30%. In contrast, Google has been holding market shares well above 90% in most European countries for a number of years. Web sites therefore rely more on traffic from Google in Europe than in the USA. Given the resulting commercial significance of Google for specialised search services, the way Google presents its web search results therefore has a much more significant impact on users and on the competitive process in Europe than it does in the USA.

Is the Commission not seeking to protect competitors rather than consumers?

The Commission does not act to protect competitors as such, but to preserve the competitive process for the benefit of consumers. It acts only when there is harm to competition with negative effects on consumers, in particular in terms of reduced choice and less innovation.

In particular, the Commission is concerned that the way in which Google currently presents its web search results limits the ability of European users to find their way to specialised search services competing with Google which contain information relevant to their query. Many such services might be potentially very innovative and Google's practices could therefore be limiting European consumers' opportunities to benefit from such innovative services. At the same time, it is for users to decide whether they wish to visit these sites based on their merits.

The other 3 concerns raised by the Commission also imply potential harm to consumers in terms of reduced choice, quality and innovation (see above).

Is the Commission not concerned with the demotion of certain services in Google search results, in particular as a result of the way Google's algorithm works?

The Commission has concerns with the promotion of Google's own specialised search services within general web search results. The Commission is concerned that this practice unduly diverts traffic away from Google's competitors in specialised search towards Google's own specialised search services, in particular because competing services may be less visible to users as a result.

It appears that the implementation of certain algorithms by Google may lead to both downward and upward movements in the ranking of specialised search services in Google's web search services. The Commission's objective is to make sure that competition in the entire market is preserved so that incentives to innovate remain and users can benefit from a real choice between competing alternatives.

What is the problem with Google using snippets of third party sites? If Google is infringing IP rights, can't third parties sue Google?

Intellectual Property law and competition law are two different bodies of law. Compliance with one does not necessarily imply compliance with the other, just like breaching one does not necessarily imply breaching the other.

The Commission has analysed Google's practice from the point of view of competition law. If Google's market position in web search gives it the ability to copy and use all relevant information available on the web on its own specialised search services, users may no longer have incentives to visit competing services. Competitors of Google may lose the incentive to innovate or invest in the generation of original content. This competition concern arises whether or not the information copied and used by Google is covered by IP rights.

Do the Commission's concerns cover the issue that Google does not return to news publishers a fair share of the advertisement revenue which Google generates using their content?

No. The Commission's concerns cover the fact that Google uses original third party information on its specialised search results services without prior authorisation, including the information of newspaper publishers. But they do not cover monetary considerations in this respect. The Commission considers that the issue of payment of third party content is more directly tied to Intellectual Property law.

B) The process

Is Google benefitting from special treatment by the Commission?

The Commission is exploring the possibility of a settled outcome with Google on its four competition concerns. The possibility for a company subject to an antitrust investigation to propose commitments which the Commission can decide to make legally binding was established in 2004 by Article 9 of the EU Antitrust Regulation (Regulation 1/2003). Since this possibility was established, the Commission has taken 30 decisions making such commitments legally binding on companies.

Using this possibility may be particularly useful to swiftly restore competitive conditions on a market, for example in fast-moving markets in the IT sector. In particular, the Commission has accepted commitments by Microsoft (see [IP/09/1941](#)), Apple (see [IP/12/1367](#)) and IBM (see [IP/11/1539](#)) and turned them into legally binding obligations.

What are the next steps?

The commitments are now subject to a market test of one month. Complainants, third parties and members of the public are therefore able to comment on the commitments, and the extent to which they address the Commission's four concerns.

If following the market test, the commitments form the basis for a satisfactory solution to the Commission's competition concerns, the Commission may make them legally binding on Google by way of a Commitments Decision (so-called "Article 9 procedure"). Such a decision does not conclude that there is an infringement of EU antitrust rules, but would legally bind Google to respect the commitments offered. If a company breaks such commitments, the Commission can impose a fine of up to 10% of its annual worldwide turnover.

The Commission will study all feedback very carefully and will take it into account in its analysis of whether Google's proposals address the four competition concerns. The Commission will in particular assess whether the commitments may need to be improved to adequately address the four competition concerns that have been identified.

What happens if the Commission concludes its concerns are not addressed?

The Commission would then continue its investigation through the normal antitrust procedure.

What about other Google-related allegations?

This process covers the four competition concerns that have been investigated as a matter of priority. The Commission is, however, thoroughly examining all other allegations brought to its attention by different market players with a view to deciding whether or not a further investigation of those issues is warranted. Google's Android related business practices are part of those issues.

Who can send the Commission observations on the commitments proposed by Google?

Anyone can send the Commission observations on the commitments proposed by Google.

How can I send observations?

The text of the proposed commitments will be published in full in English on the website of the Directorate-General for Competition at:

http://ec.europa.eu/competition/index_en.html

Observations can be sent to the Commission under reference number AT.39.740 - Google either by e-mail (COMP-GOOGLE-CASES@ec.europa.eu), by fax (+32 2 295 01 28) or by post, to the following address:

European Commission
Directorate-General for Competition
Antitrust Registry
B-1049 Bruxelles/Brussel

The deadline to send the observations to the Commission is one month from publication in the Official Journal of the European Union. Observations can be written in any of the official languages of the European Union.