

Antitrust Law Blog

Posted at 4:36 PM on December 6, 2010 by Sheppard Mullin

[EC Investigates Google for Potential Abuse of Dominance in Online Search Market](#)

In July 2010, Vice President of the European Commission (EC) responsible for competition policy, Mr. Joaquin Almunia, referred to the essential role that competition policy has in ensuring “market access and opportunities to all efficient players capable of delivering new value” in internet markets such as online search engines. Mr. Almunia recognized that the dynamics of these markets are complex because they are characterized by innovative business models that are constantly evolving and that market dominance on the internet is difficult to establish. However, he confirmed earlier press reports that the EC was in the preliminary stages of investigating allegations of anti-competitive conduct in relation to the EU's online search market, and stated that:

If companies do establish themselves in a strong position on a market, there may be risks that they will use this position to foreclose other markets. The fluid nature of the internet may make this more difficult to do than in other markets. Nevertheless it may be possible.

Less than six months later, the EC announced that it was opening an antitrust investigation into allegations that Google Inc. has abused a dominant position in the online search market, in violation of EU antitrust laws. The EC's press release stated that its investigation would focus on Google's:

- (1) alleged lowering of its ranking of competing online services specializing in providing users with specific online content such as price comparisons (so-called vertical search services) within its unpaid search results and according preferential placement to the results of its own vertical search services;
- (2) alleged lowering of the 'Quality Score' for sponsored links of competing vertical search services. The Quality Score influences the likelihood of an ad to be displayed by Google and its ranking. If two advertisers use the same key words, the site with the lower Quality score will have to offer a higher price to rank at the same place;
- (3) alleged imposition of exclusivity obligations on advertising partners, preventing them from placing certain types of competing ads on their web sites, as well as on computer and software vendors, with “the aim of shutting out competing search tools”; and,
- (4) alleged restrictions on the portability of online advertising campaign data to competing online advertising platforms.

On the same day of the EC's Press release, Mr. Almunia commented to a European Parliamentary committee, “[W]e will investigate in-depth potential concerns as regards Google's conduct, notably the way in which search results are set out. Vigorous competition of all players, including smaller and innovative ones, must be preserved for the future”.

Google also issued an immediate public statement stating that, “[G]iven our success and the disruptive nature of

our business, it's entirely understandable that we've caused unease among other companies and caught the attention of regulators... We respect [the EC] process and will continue to work closely with the Commission to answer their questions".

The EC is the third European antitrust agency to launch an official investigation of Google following an inquiry by the French Competition Authority into rules governing Google's online advertising service, AdWords, and the Italian Antitrust Authority's investigation of alleged unfair business practices relating to online advertising revenues. Both investigations were settled by Google agreeing to address the particular competition concerns.

The U.S. antitrust agencies, in particular, DOJ, have investigated Google's business practices in a number of different contexts, such the proposed book settlement agreement that would allow the creation of a vast digital library of out-of-print books by Google; the proposed search deal between Google and Yahoo; and, the current proposed Google buyout of airfare search software company ITA. However, they have not formally commented on the EC's investigation. Nevertheless, Assistant Director for Anticompetitive Practices at the FTC's Bureau of Competition, Ms. Melanie Sabo, speaking her own views and not of the FTC, at an online consumer conference in Washington D.C., recently stated that, the FTC will continue monitoring Google to determine if its behavior violates U.S. antitrust law, and may yet follow the EC's actions, "You may well see something soon from the U.S. agencies, but I can't promise anything".

The EC's initiation of its investigation does not imply it has proof of any infringements; it only signifies that it will conduct an in-depth investigation of the case as a matter of priority. The investigation and outcome will be closely scrutinized in light of the novel and important issues that they will raise in a fast, evolving digital landscape that is one of the main pillars of the global economic recovery.

Authored by:

[Neil Ray](#)

(619) 338-6595

NRay@sheppardmullin.com