**Competition Policy in the EU Case Study: Google**

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| **EXTRACT A**  **Google and the art of monopoly maintenance**  The Financial Times - Tuesday April 19, 2016 6:45 pm  **Brussels is right to draw parallels with the celebrated Microsoft case**   |  |  | | --- | --- | | European antitrust cases against Google seem to be like London buses. You wait ages for one to arrive and then they all come along at once.    When Margrethe Vestager took over as antitrust chief at the European Commission at the end of 2014, Brussels had spent the previous five years locked in inconclusive negotiations with the US search giant over a series of competition disputes. It took her just a few months to open the first formal case: into whether Google abuses its 90 per cent share of search traffic to squeeze out rivals unfairly.  Now Ms Vestager is poised to widen the attack. She is expected to launch a second case, possibly as early as today, this time looking at Google’s mobile platform, Android. It will examine whether Google leverages its high market share in mobile operating software to push its apps on to customers whether they want them or not.  Ms Vestager’s concerns are understandable. Google has come under fire from rivals for taking advantage of customers’ desire for pre-installed apps ready for use as soon as the smartphone is taken out of the box. Its tactics include ensuring a suite of its own apps placed on each pre-installed phone, and excluding those it does not wish to distribute. |  |   In a speech this week, Ms Vestager drew an explicit parallel between Android and the commission’s marathon case against Microsoft. It is an apt comparison. Just as the software giant threw in free internet browsers and media players with its PC operating software, Google freely distributes Android software to phonemakers and mobile operators. It then offers them incentives to install its apps on their phones.  Google can argue that it gives space on its system for rival products such as Amazon and Facebook, and that it provides a valuable free service to millions of users around the world. There is however another parallel with Microsoft, namely the dominant position Google enjoys in mobile operating systems, which makes its self-promoting tactics questionable. Apple might have a stronghold at the top end of the market but Android supplies its software platform to more than 80 per cent of smartphones.    A great deal rests on the commission’s investigation. Google is promoting its products to consumers in order to deepen its already dominant control of online search: a process known in the US as “monopoly maintenance”. This could leave Google with a vice-like grip on digital services.  It is better for Google that these questions are decided in the open. Before Ms Vestager’s arrival, the commission’s probe into the company was plagued by suggestions of political interference and lobbying by French and German media companies. Due process will allow the US tech giant to make its case.    Ms Vestager is right to pick this second fight with Google. Ducking another bruising battle with the internet giant might seem the less stressful course but anything short of a robust approach would only weaken innovation. In the long run, that could leave consumers with a worse service than would otherwise be the case. |

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| **EXTRACT B**  **Why does Brussels have Google’s Android in its sights?**  Financial Times – 19th April: Christian Oliver in Brussels  The EU is poised to open a new front in its showdown with Google as early as Wednesday by announcing formal charges in relation to the company’s mobile operating system, Android. The case would represent a fresh chapter in Brussels’ efforts to combat the alleged abuses of US technology companies, and has already drawn comparisons with its clash with Microsoft a decade ago.    ***Has the EU not already charged Google with anti-competitive behaviour?***  Yes, this would be a second charge sheet, known as a statement of objections. The first accused Google of abusing its dominance of online search to promote its own shopping services unfairly. Google denies the charge and the case is ongoing.    ***How dominant is Android as the operating system on smartphones?***  Very. More than 80 per cent of smartphones globally use Android’s open-source system, which can be used free of charge by anyone. By contrast Apple’s own iOS operating system, used in the iPhone and iPad, represents only about 13 per cent of the market, according to data from Gartner.    ***Is being so dominant illegal?***  No, but EU rules mean that Google faces special requirements not to crush market entrants because of its overwhelming market share.    ***Why does the commission think Google could be harming other companies?***  Margrethe Vestager, competition commissioner, says she is concerned that Google is forcing phonemakers and operators to enter contracts that preload Google apps on to smartphones. This means that Google could be stifling smaller, innovative app makers and service providers, who will find it hard to reach the market unless they are promoted on Android.  ***Was this problem of pre-installed software not at the heart of EU’s epic Microsoft case?***  There are some similarities. Microsoft was bruised by its years of antitrust conflict in Brussels and was found to have abused its dominance of PC operating systems to force its media player on consumers. The case closed in 2007, with more than €2bn in combined fines. But the digital world has changed. Microsoft was making money by selling the software itself. Android is free of charge. Google is monetising the platform in a far more complex way, by harvesting data on users to target them more effectively with advertising and selling its services to them with different apps.    ***Do we expect any other charges on Wednesday?***  The investigation has focused on two other areas. Brussels has said it is examining whether Google prevents smartphone makers from developing their own modified versions of Android, called “Android forks”. Ms Vestager will also probably have to broach the difficult subject of “tying” — weighing up whether Google illegally hindered rival apps by establishing digital connections that automatically push Android users towards Google’s own services.  ***What does Google say?***  The company denies all wrongdoing. It says its app networks have given consumers more choice than ever before. It flatly rejects any suggestion by the commission that it is trapping customers into using its apps. The company says that its competitors’ apps — from the likes of Facebook, Amazon, Microsoft and Expedia — are easily available with Android. Samsung’s mobile phones are pre-installed with apps from Google’s rivals. Companies including Nokia and Amazon have also used versions of Android without pre-installing Google apps.  ***Why is Apple’s closed iOS operating system not under the spotlight too?***  That returns us to the issue of dominance. Google is feeling the heat because its market share is so much bigger than Apple’s and it is therefore under greater pressure to change its behaviour.  ***What is the potential remedy if the commission does conclude there has been wrongdoing?***  The commission is keeping its cards close to its chest. Some lawyers close to the case think the most likely course is that Brussels will seek to revise the contracts between Google and phone companies, looking to restrict Google’s ability to determine the extent to which its apps are used on Android.    ***Will Google have to pay a fine?***  If the commission finds wrongdoing, it can technically impose a fine of up to 10 per cent of the previous financial year’s turnover, which was $74.5bn in Google’s case. Most people involved find it implausible that any ultimate fine could be anywhere near the maximum. |

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