

Insight: Google goes softly-softly on European antitrust

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(Reuters) - Google is searching for the answer to a four-billion-dollar question: can a new, gentler approach from a U.S. tech giant persuade the European Union to be more lenient in competition cases?

The world's dominant Internet search provider has been in the EU executive's crosshairs since November 2010, when the European Commission started an investigation after complaints it had abused its position to crush smaller firms, an accusation once reserved for rival Microsoft Corp. The Commission could fine Google up to 10 percent of global revenues - nearly \$40 billion last year - and order changes to its operations. The alternative, a long battle in EU courts, might harm its image.

Key decisions are likely within months, and all participants in the investigation hope they can do better than previous cases. In the past, companies campaigned aggressively and faced stiff fines. For its part, the Commission was criticized for being too slow in an industry that needed to keep innovating.

Competition chief Joaquin Almunia said last month he was keen to get a faster resolution than in the past. Google says it has learned not to be openly combative.

Almunia has said he has "concerns where Google business practices may be considered as abuses of dominance". These include the possibility Google's general searches direct users to its own specialist search services, away from smaller rivals. He said on Friday Google had until early July to come up with remedies - that is, to decide how much of its operational model it would be prepared to give up. In particular, Google might need to give away aspects of its search algorithms - its Web search instructions, a secret that some compare to the formula for Coca-Cola.

"WE GET IT"

The case marks a coming-of-age for the company which rose on the mantra "Don't be evil."

Since the EU investigation started, Executive Chairman Eric Schmidt has been on a campaign to show Google in a conciliatory light, highlighting the ways it benefits Europe. The company has sponsored studies, one of which found that the Internet created 2.6 jobs for each one it destroyed.

However, Google's European story-line now has much in common with those of other big American tech firms: they achieve market dominance and annoy competitors who complain the big company is ruining their business, and attack in

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Published on Electronic Component News (<http://www.ecnmag.com>)

the EU.

Microsoft was accused in 1998 of not giving rivals enough information to design products that could work with its dominant Windows PC operating system, a case broadened in 2000 to include video players. In 2004, it was fined 497 million euros and went on the attack, funding lobby groups to push its case. Bill Gates told reporters Microsoft's rivals were trying to use EU regulators to "castrate" his new operating system.

In 2008, EU regulators slapped Microsoft with the Commission's biggest-ever fine of 899 million euros for delaying changes it had demanded. (The record was beaten in 2009 by a 1.06 billion euro fine on chipmaker Intel.)

Schmidt told a U.S. Senate hearing in September it would not seek to antagonize regulators. "We get it," he told lawmakers, alluding to Microsoft. "By that I mean, we get the lessons of our corporate predecessors."

80 PERCENT

As well as being an important market for tech firms, the EU for some years has been a more promising arena for antitrust business than the United States.

The Commission is obliged to examine all complaints it receives, though it only opens formal proceedings on merit. According to Lars Kjolbye, a partner in the Brussels office of law firm Covington and Burling, U.S. courts and agencies have become quite conservative, whereas EU agencies have been much more willing to expand the limits of the law when they believe something harms the economy.

In Europe, the obstacles to saying, 'You've violated the law because you didn't give competitors access to information' have been gradually watered down over the last 10 or 15 years, he says. "Companies tend to go to Europe as plaintiffs in abuse of dominance cases because they're more likely to get traction with the agencies."

Google's competition includes Microsoft but is mostly small, specialist Internet services which argue the Silicon Valley giant is ensuring their names come low or don't even figure in searches.

In Europe, 80 percent of Web searches are run on Google, according to the most recent figures by comScore, compared with 67 percent in the United States. Its opponents say that means Google, which makes its money by advertising sales, can make or break a business by its ranking. They say Google is skewing the market to help its ventures in specialized searches such as travel.

Three firms originally complained to the Commission in early 2010. They included 1PlusV, which runs French legal search website Ejustice.fr, and British search firm Foundem, which helps users find low-cost household gadgets.

Foundem in 2011 published a narrative saying Google had become a strangler of start-ups. "Google crushed competition in price comparison, video search and

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travel," says Foundem CEO Shivaun Raff. "Many firms have died when shut out of Google results," she adds, citing a British online map service, streetmap.co.uk.

Opponents - the number later grew to 16 - also point out that Google has been launching new services such as Google+, a social network which encourages people to spend more time on Google's own services.

Almunia, who has had a team of around a dozen competition lawyers on the case, has alluded to this complaint. He also said he was concerned Google may be copying original material such as user reviews from rival websites such as Yelp; that it might be shutting out online advertising consultants and agencies; and that it might prevent users from reaching rival ad systems from AdWords, Google's auction-based advertising business.

For Google's enemies, the fact Almunia gave a public heads-up in May could herald punishments to come. "It tells us the commission thinks there is substance to a number of the complaints," said David Wood, a lawyer who represents I-comp, an industry group that is highly critical of Google. "Google needs to come up with something pretty substantial."

Google - which has boosted its antitrust team in Europe to five lawyers from three in the last two years - said it disagreed with Almunia's conclusions. Users are not locked in, it says, but can easily switch to Microsoft's Bing or an alternative, a crucial difference between cases where users can run only one computer operating system. It also says the complaints are basically a result of all companies wanting to turn up first in its search results.

"Not every website can come out on top, or even appear on the first page of our results," Susan Wojcicki, a senior executive for product management, and Udi Manber, vice president for Engineering, commented in a joint blog post on the EU probe. "So there will almost always be website owners who are unhappy about their rankings."

Moreover, Google says the small companies claiming to be its victims are linked to Microsoft. The third original complainant, Ciao.de, is a German travel search site owned by Microsoft. Several are also members of I-comp, whose most prominent member is Microsoft, and which produces position papers on subjects such as web market concentration. I-comp lawyer Wood acknowledges the organization is not independent, but says "our palette is much broader than Microsoft's."

SOCIAL MEDIA RIVALS

Google also points out that it faces increasing competition, online and on mobiles, from companies such as Facebook. "Competition on the web has increased dramatically in the last two years since the Commission started looking at this and the competitive pressures Google faces are tremendous," Google spokesman Al Verney said in a statement. "Innovation online has never been greater."

Meanwhile, it has been doing deals to try to appease complainants in separate

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cases and raise its image. It has agreed with several royalty collection societies to deliver payments for material played on its YouTube site, signed an accord with France's biggest book publisher Hachette Livre on out-of-print books, and blurred out photos of German homes on Street View after complaints over privacy. On one trip to [France](#) [1], Google boss Schmidt met then-President Nicolas Sarkozy and pledged to build a European cultural institute and a Paris R&D centre. Sarkozy in turn said he would launch a channel on YouTube.

It's not clear if all this can help.

In the United States, says Eric Goldman, Director of the High Tech Law Institute at Santa Clara University, the question is: "Is Google benefiting consumers? So long as they are doing a good job for consumers, we don't care that other companies are getting squeezed." But to establish an abuse in EU law it is not always necessary to prove consumer harm, according to an EU official.

Any disciplinary action could lead to more than a fine. An adverse EU decision may spark damages claims in other jurisdictions worldwide. Seven months after the EU announced its investigation, the U.S. Federal Trade Commission (FTC) launched its own probe into Google's business practices.

"The greater risk is to Google's business model," said Albert Foer, president of U.S.-based think tank American Antitrust Institute. "How will it have to be modified in order to satisfy a variety of regulators who reflect different laws, different economic factors, and different cultures?"

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