

US Regulators move on anti-competition Google

by Thomas Catan & Amir Efrati via nano - WSJ *Friday, Jun 24 2011, 10:04am*

international / mass media / other press

Nailing arrogant Google is step in right direction

Federal regulators are poised to hit Google Inc. with subpoenas, launching a broad, formal investigation into whether the Internet giant has abused its dominance in Web-search advertising.



The civil probe, which has the potential to reshape how companies compete on the Internet, is the most serious legal threat yet to the 12-year-old company, though it wouldn't necessarily lead to any federal allegations of wrongdoing against Google.

While Google has faced several antitrust probes in recent years, the U.S. has limited its investigations largely to reviews of the company's mergers and acquisitions. The new inquiry, by contrast, will examine fundamental issues relating to Google's core search-advertising business, its biggest money maker, said the people familiar with the matter.

Many policy watchers think the Google probe ultimately could be as much of a watershed event for antitrust policy as the Justice Department's landmark lawsuit against Microsoft Corp. in the 1990s.

Microsoft avoided being broken up, but industry and antitrust experts say the legal assault on the company—and its aftermath—helped check Microsoft's ability to exploit its dominance in personal-computer operating systems to control other technology sectors. The long-running case also distracted the company from its operations and tarnished its public images—risks that might also face Google.

Google wouldn't be an easy target for prosecution, antitrust lawyers say. Under U.S. antitrust law, it isn't illegal to have a monopoly—only to acquire one unlawfully or abuse it. And courts have significantly narrowed the scope of antitrust law in recent years, further raising the bar for the Federal Trade Commission, which is handling the probe, to bring a successful case.

The people familiar with the matter said issues in the FTC probe are expected to include whether Google searches unfairly steer users to the company's own growing network of services at the expense of rival providers. Some companies complain about the way that Google ranks its own services in its "natural" search results, or the amount it charges them for placing ads, claiming its market power gives it the ability to determine whether businesses succeed or fail.

"Google engages in anticompetitive behavior...that harms consumers by restricting the ability of other companies to compete to put the best products and services in front of Internet users, who should be allowed to pick winners and losers online, not Google," said Fairsearch.org, a group

representing several Google critics, including Microsoft and travel services Expedia Inc., Kayak.com, and Sabre Holdings.

Those companies said that Google's anticompetitive practices include using other companies' content without their permission, deceptive display of search results, manipulation of search results to favor Google's products, and buying up competitive threats to its dominance.

Google—which handles about two-thirds of all U.S. Web searches, according to comScore Inc., and more than 80% in many parts of Europe—has denied doing any of these things. It argues that users can easily navigate to other choices on the Web. In statements, the company has said it "built Google for users, not websites, and our goal is to give users answers."

In November, the European Commission, the European Union's executive arm, opened its own formal investigation into allegations by several companies that Google had violated European competition laws. The Texas attorney general has also opened a probe.

The FTC's five-member panel of commissioners is preparing to serve Google with civil subpoenas within days, the people familiar with the matter said. They said other companies are likely to receive official requests for information about their dealings with Google at a later stage.

Google has drawn public complaints from travel sites like Expedia and TripAdvisor, health site WebMD.com and local-business reviews sites Yelp.com and Citysearch.com, among others. They claim Google promotes links to its own services—such as local-business information pages—depriving their sites of potential traffic.

Google is quickly expanding its array of services that seek to directly answer users' queries, departing from its original strategy of sending them quickly to the most relevant site. Since 2009, for example, Google has directed people who search for mortgages or credit cards to its own marketplace for such offers.

Independent websites have complained publicly that Google doesn't subject its specialized sites, such as Google Places, the company's local-business information pages, to the same rules that cover their sites, and so Google's own sites often show up atop its search results, regardless of their quality. Google has used Google Places as a launching pad to sell ads to local businesses who want to promote offers to Google Web-search users.

"They should compete on fair terms, but they're not subjecting their own content to the same standards by which they judge ours," said Jay Herratti, chief executive of CityGrid Media, a unit of IAC that operates Citysearch.com, Urbanspoon.com and InsiderPages.com. "They always guarantee themselves the top position with products that are largely built on other publishers' content," he said.

He said earlier this year he had discussions with Google but they have become "tone-deaf to publisher concerns and are proceeding with their own agenda."

Another example is the "comparison ads" that Google introduced in 2009, in which users can enter information to judge advertisers' products against each other. Google then charges a fee for a detailed business referral to, say, a mortgage lender or an airline.

Google has insisted that it is merely providing a service to users, who want answers rather than just links to other services. But that format isn't open to services such as LendingTree or Kayak, which

already provide referrals.

"I think there's an excellent argument to be made that, given Google's large market share, the antitrust laws require it to treat its own content on an equal basis with the content of its direct competitors," said Jonathan Grossman, an antitrust lawyer at Cozen O'Connor in Washington, who isn't involved in the dispute.

Other companies contend Google is abusing its dominance in search ads to extend its control to other markets, from mobile phones to online television, publishing and airline travel.

Many of the antitrust inquiries, Google has said, are sparked by companies that fear their business models will be upended by its entry into their market.

"Given 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," wrote two Google executives in a company blog post after the official European probe was launched in November.

Google has also suggested that many of the complaints about its behavior have been orchestrated by Microsoft, which in April filed its own antitrust complaint against Google with European authorities. Microsoft has said it isn't behind others companies' actions, but merely helps direct them to the proper authorities.

The FTC's preparations to subpoena Google are the first concrete signal that the agency's commissioners have decided there is enough evidence to move forward with a formal investigation. The probe is expected to take a year or more to unfold, and it won't necessarily lead to any charges.

But the FTC fought hard with the Justice Department to take the case, the people familiar with the matter said, and so is unlikely to walk away without taking any action. The FTC and Justice Department share responsibility for enforcing federal antitrust laws.

The FTC has been making informal inquiries about Google's business practices for several months, these people said.

They said Google lawyers have met with FTC officials several times to explain various aspects of the company's business. Some technology companies said privately that they have been contacted by the FTC in recent months, as it decided whether to open an investigation,

In addition to Texas, where a state investigation of Google was disclosed last year, the attorneys general of New York, California and Ohio have started preliminary probes of the company, people familiar with the matter said. Representatives of the New York and California officials declined comment; those in Ohio couldn't be reached. The Financial Times reported the additional state investigations Thursday.

Google also has faced pressure on privacy matters. In April, Google agreed to submit to independent privacy audits for the next 20 years as part of a legal settlement with the FTC of claims it violated users' privacy at its social network Buzz.

The same month, Google agreed to allow the Justice Department to oversee a slice of its operations in exchange for approval of its \$700 million purchase of travel-software provider ITA Software.

In 2008, the Justice Department blocked a Google advertising agreement with Yahoo Inc., saying it

would have controlled more than 90% of the relevant market.

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