FIRMS & MARKETS

Google's Practices Case Study

1. Introduction

Introduction

- A general challenge facing competition authorities in the digital era is learning **how to apply the traditional tools of competition policy in multi-sided platform environments**

- The **Android case** offers a great example

- **Mobile search** being the key gateway to access information, we should worry about **dominance** in this market for its potential distortionary effects on innovation and consumer outcomes across multiple other markets

- The European Commission's decision has **economic merit** and falls within established legal precedent

Google

2. Case Overview

Case Overview

- **April 2015 –** Opening of **Proceedings** by the European Commission concerning **Google's conduct** regarding the **Android operating system and applications**

- **April 2016 – Statement of Objections** sent to Google (and Alphabet)

- **July 2018 – €4.34bn fine** issued by the European Commission to Google for **abuse of market power** *"using Android as a vehicle to cement its dominance as a search engine"*

- **Central concern**: Google's contracts with smartphone manufacturers made access to its **Google Play app store contingent upon the manufacturers pre-installing Google's search app and making Google Search the default search engine** on their devices
  - ➤ **Limited the scope** for rival search engines to gain traction

Significant potential to negatively affect the vitality of competition in the markets for mobile search and mobile web browsers

Case Overview

Commissioner Margrethe Vestager, in charge of competition policy, said: "*Today, mobile internet makes up more than half of global internet traffic. It has changed the lives of millions of Europeans. Our case is about three types of* **restrictions** *that Google has imposed on Android device manufacturers and network operators to ensure that traffic on Android devices goes to the Google search engine. In this way,* **Google has used Android as a vehicle to cement the dominance of its search engine***. These practices have* **denied rivals the chance to innovate and compete on the merits***. They have* **denied European consumers the benefits of effective competition** *in the important mobile sphere. This is* **illegal under EU antitrust rules**"

- **Market dominance** is, as such, **not illegal** under EU antitrust rules. However, dominant companies have a **special responsibility not to abuse their powerful market position by restricting competition**, either in the market where they are dominant or in separate markets

- **Article 102** of the Treaty on the Functioning of the European Union (TFEU) and **Article 54** of the EEA Agreement **prohibit abuse of a dominant position**

Google's Strategy

- Majority of **revenues** from **Google search engine**

- **Shift from desktop PCs to mobile internet** starting in the mid-2000s represented a fundamental change for Google Search

- Strategy development to **anticipate the effects of this shift** and make sure that **users continue to use Google Search also on their mobile devices**

- **2005** – **Acquisition** of the developer of the **Android mobile operating system** by Google

- **Android's source code availability online** allows third parties to download and modify this code to create Android forks

- Device manufacturers wishing to obtain Google's proprietary Android apps and services need to enter into contracts with Google, who imposes a number of restrictions
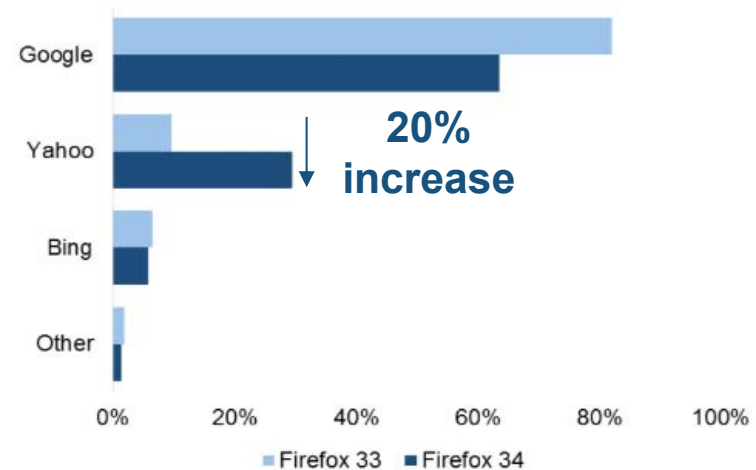
Google's Illegal Practices

Google's Android restrictions illegally protect its internet search dominance

Use of dominance elsewhere (Google Play app store) to entrench its position in search

Case Evidence

- Default application configuration is a key determinant of consumer choice

  ➢ >95% of search queries on Android made via the pre-installed Google service

  ➢ <25% of search queries on Windows made via Google service

  ➢ Google paid Apple $1bn for default status on the iPhone in 2014 and $3bn in 2017

- Tendency towards 'default bias' shown by consumer data

Yahoo paid Mozilla for default status in Firefox 34

20% increase

Default application configuration matters

Case Evidence

- Android manufacturers **cannot** compete effectively without **Google Play** (**'must have' feature**)

- It accounts for the **majority of app downloads** on the Android platform as well as a **large share of available apps**
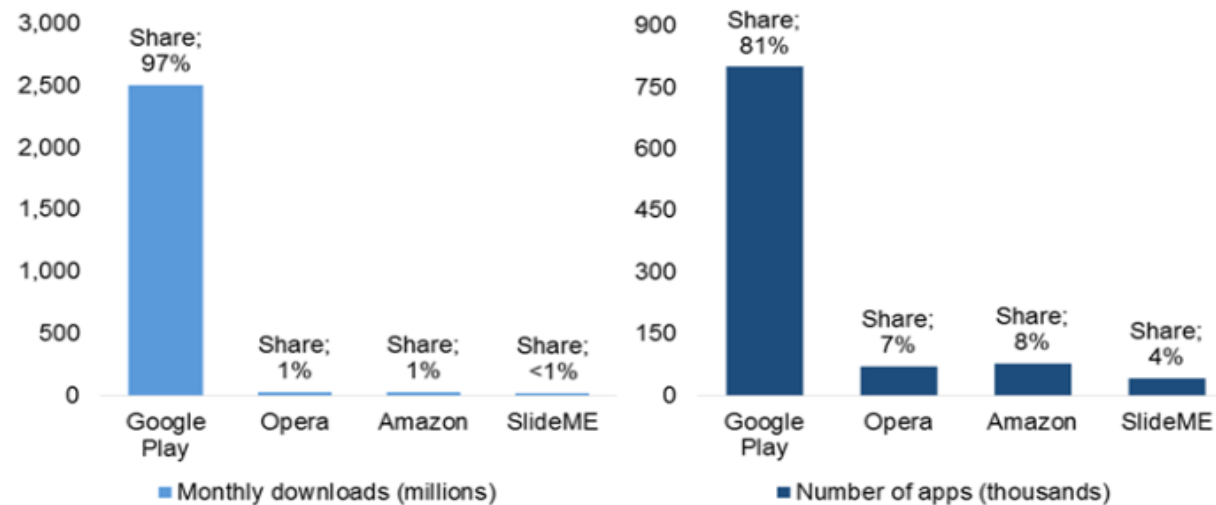
Google Pay is critical for manufacturers of Android smartphones

The Effects of Google's Illegal Practices

- **Google Play** is **not available** to consumers **through any other channel**

- Manufacturer (OEM) wanting to offer Google Play have to **agree to Google's terms**

- Even if a rival search engine was more efficient than Google, it would need to compensate manufacturers for the loss of Google Play

  - ➤ Too costly

- Dominance in this market causes potential **distortionary effects on innovation and consumer outcomes across multiple other markets**

- If manufacturers faced the true costs and benefits of choosing between operating systems and default search engines, it seems likely the outcome will be more competition and innovation

Significant potential to negatively affect the vitality of competition in the markets for mobile search and mobile web browsers

Google

3. Bundling and theories of harm

Bundling and Theories of Harm

Parallel between the Android case and Microsoft which was found to have illegally bundled the Windows operating system with its own web browser. Bundling was motivated to foreclose competition in the browser market to protect the primary monopoly, the Windows

≠ Google is leveraging the dominance of Google Play to achieve an unfair advantage in the more competitive markets for mobile search and web browsing applications, not to protect Google Play.

Can Google really profit from this kind of leverage strategy?

➢ **Chicago School line of reasoning** – if Google Play is so valuable to manufacturers, Google could simply license it at a high price and let them install the search engine and browser of their choice

➢ **Choi and Stefanadis (2001) & Carlton and Waldman (2002) –** Google's conduct is consistent with existing models of 'dynamic leveraging' in which a tie can increase barriers to entry and preserve an existing monopoly

➢ **Whinston (1990)** – anticompetitive bundling can be profitable when it deters the entry of potential rivals and allows the firm to charge monopoly prices. Google's main competitors for search and web browsing are large, well-established firms (such as Microsoft) that are growing rather than reducing their investment in the market.

➢ Search is a two-sided market where revenue is generated on the advertising side, a monopoly search engine would ideally want to pay users to use its service. This creates an incentive to use market power elsewhere to promote its search engine even to the detriment of more efficient rivals

A New Theory Of Harm

In a recent paper ("Upstream Bundling and Leverage of Market Power", De Cornière, A and G Taylor (2018)), economists have shown that **bundling** can be **profitable** by virtue of its effect on competition once one accounts for some of the key features of mobile app markets These **features** are:

- existence of **revenues** for developers when consumers use their applications

- **complementarity** between applications

Devices featuring Google Play sell more units → **competition** between search engine apps to be installed as default should result in **high fees paid to manufacturers**

With its bundle, Google deprives rivals from the potential complementarity and reduces their willingness to offer payments to manufacturers

➢ Manufacturer installing rival's application as default would come without Google Playand therefore sell fewer units.

➢ Facing less aggressive rivals, Google can offer smaller payments to manufacturers in exchange for being installed as default

The European Commission's theory of harm is economically well founded

Google's Response

The decision has been described as politically motivated, reflecting an ongoing 'techlash' by the European competition authorities against successful tech firms.

Google argues that:

- Requirement to install Google Search App and the Chrome browser but no obligation to make Google search the default – Possibility to preload other search services

- Barter arrangement good for both sides

- When Firefox made Yahoo the default search engine in 2014, its use initially increased. But as users realised what had happened, they switched back to their preferred search engine and Firefox search share declined

- Pre-installation of apps is the norm. Apple pre-installs39 apps, all of which are from Apple; most Android phones have 11 Google apps pre-installed and most OEMs install dozens more of their own

Google argues that bundling is not motivated by anticompetitive intent, but rather by the kinds of efficiency gains

- Users could easily hide pre-installed applications and download rival apps in seconds

Conclusion

Google Android case is an example of the **Commission carrying out the EU competition policy in the world of digital technologies** and proving **the relevance of the antitrust rules in the digital market.**

June 2017 – €2.42bn fine issued by the European Commission to Google for **abusing its dominance as a search engine by giving an illegal advantage to Google's own comparison-shopping service**

Would a ban on bundling restore efficiency in this market?

References

On the economics of the Google Android case, Alexandre de Cornière, Greg Taylor (*15-Aug-18*)

Google Android case: Milestone or millstone?, Hal Varian (*14-Aug-18*)

Google Android: European 'techlash' or milestone in antitrust enforcement?, Cristina Caffarra, Oliver Latham, Matthew Bennett, Federico Etro, Pierre Régibeau, Robert Stillman, (*27-Jul-18*)

Antitrust: Commission fines Google €4.34 billion for illegal practices regarding Android mobile devices to strengthen dominance of Google's search engine, (*18-Jul-20*)

Antitrust: Commission sends Statement of Objections to Google on Android operating system and applications, (*20-Apr-16*)

Appendix – Google AdSense

- The Commission also continues to investigate **restrictions** that Google has placed on the **ability of certain third-party websites to display search advertisements from Google's competitors.**
- In July 2016, the Commission came to the preliminary conclusion that **Google has abused its dominant position.**

Google's AdSense restrictions protect its dominance in search advertising