

# Microsoft-Yahoo deal to face tough antitrust probe

July 29 2009, By CHRISTOPHER S. RUGABER , AP Economics Writer

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Vendor Patrick Porter works on a laptop marked with the logo for Bing, Microsoft's recently upgraded search engine, in a cafeteria at Microsoft in Redmond, Wash., Wednesday, July 29, 2009. The extended reach Microsoft Corp. is gaining with its new partnership with Yahoo Inc. will let it introduce Bing to more people. (AP Photo/Elaine Thompson)

(AP) -- The Internet search partnership between Microsoft and Yahoo faces a tough antitrust review in the U.S. and overseas, with approval likely hinging on whether the marriage would foster more competition with market leader Google.

The deal, announced Wednesday, may have a better shot at success than the proposed pact last year between [Yahoo](#) Inc. and [Google](#) Inc. That agreement fell apart after the Justice Department threatened to block it, ultimately leading Yahoo to revive talks with [Microsoft](#) Corp.

Yahoo's alliance with Microsoft could have an easier path because

[antitrust regulators](#) are tougher on deals involving the top two companies in an industry, said Evan Stewart, an antitrust lawyer at Zuckerman Spaeder. Google is by far the leading search engine, with two-thirds of the U.S. [search market](#), according to comScore Inc.; Yahoo is well ahead of Microsoft for the next two spots.

Even so, a key lawmaker on antitrust issues said Wednesday that the agreement "warrants our careful scrutiny."

Sen. Herb Kohl, a Wisconsin Democrat, said lawmakers would review the deal "because of the potentially far-reaching consequences for consumers and advertisers and our concern about dampening the innovation we have come to expect from a competitive high-tech industry."

Meanwhile, the Obama administration's antitrust enforcers have promised to subject deals to more rigorous review than the previous administration.

"I'm expecting tough scrutiny in the U.S., and even tougher" in the European Union, said Herbert Hovenkamp, an [antitrust law](#) professor at the University of Iowa. He noted that European regulators have historically taken a harder line against Microsoft than their U.S. counterparts in their reviews of the software company's dominance in other products, like Windows and Internet Explorer.

A Justice Department spokeswoman, Gina Talamona, would say only that the department is "aware" of the deal. Peter Kaplan, a spokesman for the [Federal Trade Commission](#), which also enforces antitrust law, declined to comment.

Under the agreement announced Wednesday, Yahoo will use Microsoft's search engine, Bing, on its Web portal, significantly expanding Bing's

reach. In return, Yahoo will keep 88 percent of the revenue from search ads for the first half of the 10-year deal.

The deal isn't expected to close until early next year, and Yahoo and Microsoft said in a joint statement that they expect the agreement to be "closely reviewed by the industry and government regulators." They insist their partnership will lead to better choices for consumers and advertisers.

A key issue, according to Hovenkamp, will be whether regulators accept Microsoft CEO Steve Ballmer's argument that the deal will create a stronger competitor against Google.

"In the past, that defense hasn't worked all that well," Hovenkamp said, and courts have shot down deals between the second- and third-largest players in other industries.

But Stewart said the deal should pass muster because it will provide "real competition" to Google.

Separately, privacy advocates came out against the agreement.

The Center for Digital Democracy, an online privacy advocate in Washington that opposed the Google-Yahoo partnership last year, called for an examination of the partnership's consumer data collection policies, as well as privacy and online ad business practices.

The U.S. Public Interest Research Group also came out against the deal, as it had the Google-Yahoo partnership.

"The Microsoft-Yahoo deal should serve as a red flag," said Amina Fazlullah, media and telecom legislative counsel for the Washington, D.C.-based group. "When we lose independent search competitors, then

we lose the ability to have multiple competitors working to preserve privacy."

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AP Technology Writer Jessica Mintz in Seattle and AP Business Writer Deborah Yao in Philadelphia contributed to this report.

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