

Google faces moment of truth on monopoly probe

October 21 2012, by Rob Lever



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At least one member of Congress is warning the FTC to be wary of meddling in Google's business, but some of Google's rivals are pressing hard for action.

Critics point out that Google controls some 70 percent of the Internet [search market](#)—and the advertising that goes along with it—and may exert even more power in the mobile sector by controlling the Android operating system used on two-thirds of smartphones.

"These are practices which drive up prices and drive down competition," said Ben Hammer, whose Fairsearch.org coalition includes the [travel websites Expedia](#) and Kayak, [mobile phone maker](#) Nokia, and Microsoft, a company which faced its own antitrust case over a decade ago.

Google is accused of "scraping" content from other services like travel and restaurant reviews while keeping consumers on its own sites.

It is also under fire for allegedly promoting its own services—including travel, restaurant reviews and YouTube videos—in its [search](#) results.

Another of Google critics' concerns is the way the company limits how advertisers can manage ads with Google and competitors.

"They remind me a lot of Microsoft in the 90s: massively arrogant, having the feeling they have the power to do anything they want," said [Rob Enderle](#), a [Silicon Valley](#) consultant and analyst.

"Companies that get this way eventually run afoul of the government,

sometimes catastrophically. They haven't been competing fairly for some time."

Google's problems are not limited to Washington.



This file photo shows a woman holding a Google Nexus 7 tablet computer. Critics point out that Google controls some 70 percent of the Internet search market—and the advertising that goes along with it—and may exert even more power in the mobile sector by controlling the Android operating system used on two-thirds of smartphones.

European data protection agencies have said Google's new privacy policy does not comply with EU laws and told the US firm to fix it within

months or face legal action. Google claims "that our privacy notices respect European law."

Google has also made proposals to regulators in the EU anti-trust probe into whether the [Internet search](#) giant had abused its dominant market position, which officials called "a good basis for further talks."

But in the US, a case from trade regulators would not be clear cut, say some analysts.

Danny Sullivan, who edits the blog Search Engine Land, said it is problematic for regulators to determine whether a search is "fair."

Even if Google searches favor its own sites, "it's probably not wrong," said Sullivan, who argued that the case offers a test of freedom of expression.

Sullivan said those seeking to impose "neutral" search results suggest a scary type of [regulation](#): "It's like saying the New York Times algorithm should be decided by a government committee. Nobody should question that the government should stay out."

Last year, Google chairman Eric Schmidt told a congressional panel he rejected charges that the company "cooks" search results to favor its own services, even though some lawmakers disputed the claim.

Glenn Manishin, a Washington antitrust lawyer who represented plaintiffs in the Microsoft [antitrust case](#), said a case against Google would be "uncharted" legal territory, and markedly different from the Microsoft case.

"There's a fundamental difference between an operating system which has the ability and technology to exclude rivals from the platform, and

Internet search or search advertising," he said.

"There's nothing locking users into using Google either for search or for advertising... it's not a single highway to get to where you're going. Windows was, because it was on 95 percent of PCs. Other companies can and do enter the search market."

Manishin said antitrust law is aimed at protecting consumers, not rival companies. He said the FTC could pursue Google administratively for "unfair competition," but added legal standards are vague and the agency has never won such a case.

"If you ask for the government to intervene, you don't know what's going to happen," the attorney said. "The government may decide it will be the arbiter of what's fair and unfair, and it may be a slippery slope toward government regulation."

US Congressman Jared Polis, in an open letter to the FTC, urged the agency not to act to "compromise the important service provided by Google."

"Competition is only a click away, and there are no barriers to competition," the lawmaker said.

"The [FTC](#) should tread carefully when reviewing Google, Facebook or any other tech company, given the dynamism of our tech industry."

Many legal experts say Google would lose in the marketplace if it failed to act in consumers' interest, but Mark Patterson, a Fordham University law professor specializing in antitrust, said consumers lack the information to know how Google operates.

"What you really need to look at is how much can they manipulate their

search results without consumers knowing," he said.

"Yes it's easy for consumers to switch. It's not easy for consumers to know why they should switch."

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