

After years of talk, a regulator is willing to take on Google

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In Monopol-e-Commerce, who plays the hat, and who gets the boot? Credit: danielbroche, CC BY

The European Commission's decision to charge Google with abuse of its dominant market position in the search business in order to favour its own services has been criticised as [too narrow](#) in focus, [too superficial](#) for not dealing with the bigger problem of digital competition, [ill-conceived](#) for messing with the market, or [not focused on the real problem](#) of who owns our personal data.

While these are valid criticisms in their own way, they miss the most important point – that legal action has been taken at all. Whatever the result, this is a seismic and seminal move.

The US Federal Trade Commission (FTC) flirted with legal action in 2012 but withdrew, despite the conclusions of an [leaked internal investigation](#) that found that Google had "unlawfully maintained its monopoly over general search and search advertising".

The European Commission worked closely with the FTC on its investigation and, like the FTC, decided against launching action by 2013. Joaquin Almunia, head of the European Competition Commission between 2010 and 2014, tried and failed to reach acceptable negotiated settlements with Google on three occasions. But his successor, Margrethe Vestager, has chosen action over discussion.

When the FTC launched an antitrust case against Microsoft in 1998 it dragged on for years, cost the organisation huge amounts of money and effort, and arguably opened up the space for Google to expand and eat much of Microsoft's lunch. As journalist Charles Arthur writes in his book [Digital Wars](#), the FTC's action had a devastating impact on Microsoft's self-esteem and "reached into the company's soul".

The case against Microsoft also shows why the FTC and the commission were reticent to launch a case against Google. It was legally and technologically complex, with courts struggling to apply 19th century

antitrust law to the digital 21st century. Many people ended up dissatisfied with the result.

Hurdles could trip up either side

The case against Google has the potential to be even more complex and legally challenging. To demonstrate Google has abused its dominance the commission may need to call upon economists, engineers, investigative journalists and perhaps even sociologists.

It will need to define the markets in which Google acts. General search may be a relatively established market, but what about [vertical search](#), or social search? It will need to translate competition law to a digital environment, to understand how algorithms work, and the extent to which Google's algorithms favour the company, and to show evidence of abuse. It will also need to establish whether Google's actions have damaged "consumer welfare".

The European Commission will need to do all this while being intensively lobbied by some of the world's largest and most powerful corporations, for example through the Microsoft-sponsored Initiative for a Competitive Online Marketplace ([ICOMP](#)).

It's not a great surprise, therefore, that the commission is charging Google on narrow grounds, in this case on favouring its own comparison shopping product. Shopping ought to be relatively low-hanging fruit: a reasonably well-defined market that Google has tried (unsuccessfully) to enter on more than one occasion with previous products Froogle, Google Product Search, and Google Shopping. There are a number of [vocal, disgruntled competitors](#) such as Yelp, Expedia and TripAdvisor. And there is evidence upon which to build a case, compiled by the commission and the FTC since 2010.

The commission hopes that by narrowly focusing its action in the first instance it can create a precedent from which to build. It has already signalled where it may go next, having announced a formal investigation into Android, Google's mobile operating system, on the same day. Concerns over Google's web content scraping and its exclusivity agreements with advertising partners have also been [highlighted as potential areas of inquiry](#).

Legal ramifications

Whichever way the result falls, the repercussions will be pivotal. If the commission wins it will create a precedent with which the commission may choose to take on the dominance of other digital giants such as Amazon and Facebook. It may also trigger action by other governments and private actions. For Google it could lead to a crisis of confidence and loss of market lead similar to that experienced by Microsoft.

The consequences could be even more significant if the commission loses. Some will see it as evidence of the unchallengeable power of the global tech titans. Some will see it as confirmation that the [legal action](#) was merely European anger at US tech success. Few other democratic governments will be likely to take up cudgels and follow the commission's lead.

However, the most likely result is that Google will settle. Though, as has been pointed out [in reference to previous attempts](#) to negotiate with the firm Google, settlements could create a precedent too, which could make it difficult in the future to pursue Google for anti-competitive behaviour in one field having settled for the same in another.

In his landmark book [The Master Switch](#), Tim Wu outlined the stages of each information cycle. First a period of openness characterised by innovation, entrepreneurship and relative confusion. Then consolidation,

in which a small number of organisations grow dominant. And finally monopolisation of markets – and often subsequent government intervention. For the web, the commission's antitrust action against Google may well signify the start of the final stage of the cycle.

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