Google Suit Fails To Expose Monopolistic Practices

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Antitrust officials in the U.S. and Europe act as if they've found their next Microsoft and seem ready to party like its 1999. At a Senate hearing last year, former antitrust division chief Thomas Barnett, representing Google's competitors, accused Google of "using its extraordinary power to manipulate users and foreclose the ability of other sites to compete." Yelp cofounder Jeremy Stoppelman wondered "whether new ideas can compete fairly" against Google. (Apparently they can; several weeks ago, Yelp had a very successful IPO). Both the chairman and the ranking member of the Senate Antitrust Subcommittee support the current Federal Trade Commission investigation.

And, why shouldn't the authorities investigate? A lot of careers were made on the Microsoft case. But as tempting as a major Google case may be, the comparison to Microsoft falls apart on the facts and the law.

The principal allegation is that Google is competing unfairly against specialty sites like Yelp, Nextag, Amazon and Kayak, in order to maintain its own position—i.e., that Google is engaged in the same kind of practices Microsoft was convicted of a decade ago. So, is Google another Microsoft?

There were two essential elements to the Microsoft case, neither of which is present in the Google situation. First, Microsoft was a monopoly, with a 95-percent share of the market for desktop operating systems and no serious threat of new entry. Google has a 65-percent share of U.S. search queries which, while large, is a lot different than a 95-percent market share. Google's customers have alternatives—most notably, Microsoft's search engine, Bing—that are, as Google likes to say, just a click away. If one considers the many ways consumers obtain information online, Google faces vigorous competition from other major Internet platforms, including Facebook, Apple, Amazon and Microsoft, all of whom are trying to get into each other's markets.

Second, Microsoft was found guilty of practices that lacked any plausible pro-competitive justification. Microsoft viewed the Netscape Navigator browser as a mortal threat—a platform that could, as Bill Gates famously said, "commoditize" the desktop operating system. Instead of competing with Netscape on the merits, Microsoft leveraged its monopoly power by threatening PC manufacturers with the loss of their Windows license—without which they couldn't sell PCs—if they preinstalled or promoted the Netscape browser. Through such acts, Microsoft succeeded in removing Netscape as a viable competitor and a potential source of innovation. Consumers were harmed.

Microsoft was also convicted of other acts that lacked a plausible pro-competitive justification. For example, Microsoft told Intel that Microsoft wouldn't support Intel's next generation of microprocessors if Intel developed software that competed with Windows. Microsoft had somewhere else to go (AMD), but since there was no viable alternative to Windows, Intel didn't.

No evidence of comparable acts on Google's part has emerged. The main accusation against Google is that its searches are "biased"—that Google favors its own content. For example, when searching for travel information, Google now provides a list of the best flights in addition to referring searchers to other travel sites. Bing provides similar information in its search results. Both Google and Bing have discovered this is a service their users like—which justifies the practice on pro-competition and pro-consumer grounds.

While Google sometimes favors its own specialized search results, there is no evidence of excluding a rival in the way that Microsoft excluded Netscape. The openness of the Internet and the ease of switching make that kind of exclusion impossible. Indeed, the success of Yelp's IPO is evidence that competitors are not being foreclosed.

Google's attempts to improve its products and remain competitive are now increasingly under government scrutiny. Google's new personalized search product that integrates Google+ (its social network) into its search results has reportedly become part of the FTC investigation. But, Bing is doing something similar with Facebook. Again, both companies apparently believe that the integration into search of user information from social networks is something users will want.

There is legitimate debate concerning the wisdom of the Microsoft case, and whether it actually succeeded in promoting competition and innovation. But, if designing a remedy for Microsoft was difficult, it would be even more so for Google. Virtually any conceivable remedy would constrain Google's ability to improve its search results and be a vigorous competitor in the emerging interplatform competition. This would not serve consumers. As Microsoft found, and Google is now finding, second acts in the tech world are difficult enough without the government imposing roadblocks.