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Everything is amazing — and no one at the European Commission is happy
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Since the European Commission (EC) announced its first inquiry into Google's business practices in 2010, the company has been the subject of lengthy investigations by courts and competition agencies around the globe. Regulatory authorities in the United States, France, the United Kingdom, Canada, Brazil, and South Korea have all opened and rejected similar antitrust claims.

And yet the EC marches on, bolstered by Google's myriad competitors, who continue to agitate for further investigations and enforcement actions, even as we — companies and consumers alike — enjoy the benefits of an increasingly dynamic online marketplace.

Indeed, while the EC has spent more than half a decade casting about for some plausible antitrust claim, the online economy has thundered ahead. Since 2010, Facebook has tripled its active users and multiplied its revenue ninefold; the number of apps available in the Amazon app store has grown from less than 4000 to over 400,000 today; and there are almost 1.5 billion more Internet users globally than there were in 2010. And consumers are increasingly using new and different ways to search for information: Amazon's Alexa, Apple's Siri, Microsoft's Cortana, and Facebook's Messenger are a few of the many new innovations challenging traditional search engines.

Advertisers have adapted to this evolution, moving increasingly online, and from search to display ads as mobile adoption has skyrocketed. Social networks like Twitter and Snapchat have come into their own, competing for the same (and ever-increasing) advertising dollars. For marketers, advertising on social networks is now just as important as advertising in search. No wonder e-commerce sales have more than doubled, to almost $2 trillion worldwide; for the first time, consumers purchased more online than in stores this past year.

To paraphrase Louis C.K.: *Everything is amazing — and no one at the European Commission is happy.*

The EC's market definition is fatally flawed

Like its previous claims, the Commission's most recent charges are rooted in the assertion that Google abuses its alleged dominance in "general search" advertising to unfairly benefit itself and to monopolize other markets. But European regulators continue to miss the critical paradigm shift among online advertisers and consumers that has upended this stale view of competition on the Internet. The reality is that Google's competition may not, and need not, look exactly like Google itself, *but it is competition nonetheless*. And it's happening in spades.

The key to understanding why the European Commission's case is fundamentally flawed lies in an examination of how it defines the relevant market. Through a series of economically and factually unjustified assumptions, the Commission defines search as a distinct market in which Google faces limited competition and enjoys an 80% market share. In other words, for the EC, "general search" apparently means only nominal search providers like Google and Bing; it doesn't mean companies like Amazon, Facebook and Twitter — Google's biggest competitors.

But the reality is that "general search" is just one technology among many for serving information and ads to consumers online. Defining the relevant market or limiting the definition of competition in terms of the particular mechanism that Google happens to use to match consumers and advertisers doesn't reflect the substitutability of *other* mechanisms that do the same thing — merely because these mechanisms aren't called "search."

Properly defined, the market in which Google competes online is not search, but something more like online "matchmaking" between advertisers, retailers and consumers. And *this* market is enormously competitive.

Consumers today are increasingly using platforms like Amazon and Facebook as substitutes for the searches they might have run on Google or Bing. "Closed" platforms like the iTunes store and innumerable apps handle copious search traffic but also don't figure in the EC's market calculations. And so-called "dark social" interactions like email, text messages, and IMs, drive huge amounts of some of the most valuable traffic on the Internet. This, in turn, has led to a competitive scramble to roll out completely new technologies like chatbots to meet consumers' informational (and merchants' advertising) needs.

Properly construed, Google's market position is precarious

Like Facebook and Twitter (and practically every other Internet platform), advertising is Google's primary source of revenue. Instead of charging for fancy hardware or offering services to users for a fee, Google offers search, the Android operating system, and a near-endless array of other valuable services for free to users. The company's very existence relies on attracting Internet users and consumers to its properties in order to effectively connect them with advertisers.

But being an online matchmaker is a difficult and competitive enterprise. Among other things, the ability to generate revenue turns crucially on the quality of the match: All else equal, an advertiser interested in selling widgets will pay more for an ad viewed by a user who can be reliably identified as being interested in *buying* widgets.

Google's primary mechanism for attracting users to match with advertisers — general search — is substantially about *information*, not commerce, and the distinction between product and informational searches is crucially important to understanding Google's market and the surprisingly limited and tenuous market power it possesses.

General informational queries aren't nearly as valuable to advertisers: Significantly, only about 30 percent of Google's searches even trigger any advertising at all. Meanwhile, as of 2012, one-third of product searches started on Amazon while only 13% started on a general search engine.

As economist Hal Singer aptly noted in 2012,

> [the data] suggest that Google lacks market power in a critical segment of search — namely, product searches. Even though searches for items such as power tools or designer jeans account for only 10 to 20 percent of all searches, they are clearly some of the most important queries for search engines from a business perspective, as they are far easier to monetize than informational queries like "Kate Middleton."

While Google Search clearly offers substantial value to advertisers, its ability to continue to do so is precarious when confronted with the diverse array of competitors that, like Facebook, offer a level of granularity in audience targeting that general search can't match, or that, like Amazon, systematically offer up the most valuable searchers.

In order to compete in *this* market — one properly defined to include actual competitors — Google has had to constantly *innovate* to maintain its position. Unlike a complacent monopolist, it has evolved to meet changing consumer demand, shifting technology and inventive competitors. Thus, Google's search algorithm has changed substantially over the years to make more effective use of the information available to ensure relevance; search results have evolved to give consumers answers to queries rather than just links, and to provide more-direct access to products and services; and, as users have shifted more and more of their time and attention to mobile devices, search has incorporated more-localized results.

Competitors want a free lunch

Critics complain, nevertheless, that these developments have made it harder, in one way or another, for rivals to compete. And the EC has provided a willing ear. According to Commissioner Vestager last week:

> Google has come up with many innovative products that have made a difference to our lives. **But that doesn't give Google the right to deny other companies the chance to compete and innovate.** Today, we have further strengthened our case that Google has unduly favoured its own comparison

> shopping service in its general search result pages…. (Emphasis added).

Implicit in this statement is the remarkable assertion that by favoring its own comparison shopping services, Google "den[ies] other companies the chance to compete and innovate." Even assuming Google does "favor" its own results, this is an astounding claim.

First, it is not a violation of competition law simply to treat competitors' offerings differently than one's own, even for a dominant firm. Instead, conduct must actually *exclude* competitors from the market, without offering countervailing advantages to consumers. But Google's conduct is not exclusionary, and there are many benefits to consumers.

As it has from the start of its investigations of Google, the EC begins with a flawed assumption: that Google's competitors both require, and may be entitled to, unfettered access to Google's property in order to compete. But this is patently absurd. Google is not an essential facility: Billions of users reach millions of companies everyday through direct browser navigation, apps, email links, review sites and blogs, and countless other means — all without once touching Google.com.

Google Search results do not exclude competitors, whether comparison shopping sites or others. For example, 72% of TripAdvisor's U.S. traffic comes from search, and almost all of that from organic results; other specialized search sites see similar traffic volumes.

More important, however, in addition to continuing to reach rival sites through Google Search, billions of consumers access rival services directly through their mobile apps. In fact, for Yelp,

> Approximately 21 million unique devices accessed Yelp via the mobile app on a monthly average basis in the first quarter of 2016, an increase of 32% compared to the same period in 2015. **App users viewed approximately 70% of page views in the first quarter and were more than 10 times as engaged as website users**, as measured by number of pages viewed. (Emphasis added).

And a staggering 40 percent of mobile browsing is now happening inside the Facebook app, competing with the browsers and search engines pre-loaded on smartphones.

Millions of consumers also directly navigate to Google's rivals via their browser by simply typing, for example, "Yelp.com" in their address bar. And as noted above, consumers are increasingly using Google rivals' new disruptive information engines like Alexa and Siri for their search needs. Even the traditional search engine space is competitive — in fact, according to Wired, as of July 2016:

> **Microsoft has now captured more than one-third of Internet searches**.

> Microsoft's transformation from a company that sells boxed software to one that sells services in the cloud is well underway. (Emphasis added).

With such numbers, it's difficult to see how rivals are being foreclosed from reaching consumers in any meaningful way.

Meanwhile, the *benefits* to consumers are obvious: Google is directly answering questions for consumers rather than giving them a set of possible links to click through and further search. In some cases its results present entirely new and valuable forms of information (e.g., search trends and structured data); in others they serve to hone searches by suggesting further queries, or to help users determine which organic results (including those of its competitors) may be most useful. And, of course, consumers aren't forced to endure these innovations if they don't find them useful, as they can quickly switch to other providers.

Nostalgia makes for bad regulatory policy

Google is not the unstoppable monopolist of the EU competition regulators' imagining. Rather, it is a continual innovator, forced to adapt to shifting consumer demand, changing technology, and competitive industry dynamics. And, instead of trying to hamstring Google, if they are to survive, Google's competitors (and complainants) must innovate as well.

Dominance in technology markets — especially online — has always been ephemeral. Once upon a time, MySpace, AOL, and Yahoo were the dominant Internet platforms. Kodak, once practically synonymous with "instant camera" let the digital revolution pass it by. The invincible Sony Walkman was upended by mp3s and the iPod. Staid, keyboard-operated Blackberries and Nokias simply couldn't compete with app-driven, graphical platforms from Apple and Samsung. Even today, startups like Snapchat, Slack, and Spotify gain massive scale and upend entire industries with innovative new technology that can leave less-nimble incumbents in the dustbin of tech history.

Put differently, companies that innovate are able to thrive, while those that remain dependent on yesterday's technology and outdated business models usually fail — and deservedly so. It should never be up to regulators to pick winners and losers in a highly dynamic and competitive market, particularly if doing so constrains the market's very dynamism. As Alfonso Lamadrid has pointed out:

> It is companies and not competition enforcers which will strive or fail in the adoption of their business models, and it is therefore companies and not competition enforcers who are to decide on what business models to use. Some will prove successful and others will not; some companies will thrive and some will disappear, but with experimentation with business models, success and failure are and have always been part of the game.

> In other words, we should not forget that competition law is, or should be, business-model agnostic, and that regulators are – like anyone else – far from omniscient.

Like every other technology company before them, Google and its competitors must be willing and able to adapt in order to keep up with evolving markets — just as for Lewis Carroll's Red Queen, "it takes all the running you can do, to keep in the same place." Google confronts a near-constantly evolving marketplace and fierce competition from unanticipated quarters; companies that build their businesses around Google face a near-constantly evolving Google. In the face of such relentless market dynamism, neither consumers nor firms are well served by regulatory policy rooted in nostalgia.

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