

# Microsoft Files Antitrust Complaint with European Commission Against Google

**AntitrustConnect Blog**

April 5, 2011

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*Please refer to this post as: Jeffrey May, 'Microsoft Files Antitrust Complaint with European Commission Against Google', AntitrustConnect Blog, April 5 2011, <http://antitrustconnect.com/2011/04/05/microsoft-files-antitrust-complaint-with-european-commission-against-google/>*

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Microsoft Corporation has filed a formal complaint with the European Commission (EC) against Google Inc. as part of the EC's ongoing antitrust investigation into the search engine company. In a March 30 blog post, Brad Smith, Microsoft Senior Vice President and General Counsel, said that the software company and search engine rival wanted to register its concerns with the EC over Google's control of the European search market. Google "shouldn't be permitted to pursue practices that restrict others from innovating and offering competitive alternatives," Smith said.

Smith offered a half-dozen examples of "actions that Google has taken to entrench its dominance in the markets for online search and search advertising to the detriment of European consumers." Microsoft contends that "Google has engaged in a broadening pattern of walling off access to content and data that competitors need to provide search results to consumers and to attract advertisers."

For instance, Smith said that, following its acquisition of YouTube, Google put in place technical measures to restrict competing search engines from properly accessing content for their search results. Smith added that Microsoft was concerned that "Google discriminates against would-be competitors by making it more costly for them to attain prominent placement for their advertisements."

In recent years, Microsoft has called for a level playing field with respect to

antitrust enforcement. The software company was the focus of a lengthy antitrust case that was filed by the government in the late 1990s. The company is still bound by the terms of a final judgment that was extended most recently in 2009 (2009-1 Trade Cases ¶176,581).

Professor Herbert Hovenkamp of the University of Iowa College of Law has suggested that it may be more difficult to establish an antitrust violation by a search engine company than by a software company with a monopoly over PC operating systems. Professor Hovenkamp was quoted in a recent New York Times article, entitled "Antitrust Cry From Microsoft," as saying: "You do need to show consumer harm. That becomes more difficult with search engines, where it is easy for consumers to switch to another search engine. That is different than in PC operating systems in the Microsoft case, where the technological lock-in was more obvious."

## **EC Investigation**

Last November, the EC announced that it had opened an in-depth antitrust investigation into Google's method of displaying search results. At that time, the EC said the investigation would look into whether Google abused a dominant market position in online search by: (1) lowering the ranking of unpaid search results of so-called vertical search services and by according preferential placement of its own vertical search services; (2) lowering the "Quality Score" for sponsored links of competing vertical search services and thereby influencing the price paid for advertising and the corresponding rankings; (3) imposing exclusivity obligations on advertising partners that prevent certain types of competing ads; and (4) restricting the portability of online advertising campaign data to competing online advertising platforms.

## **U.S. Congressional Inquiry**

The Microsoft complaint could result in pressure on the U.S. antitrust agencies to take a closer look at Google's conduct. Google is already on the radar of the U.S. Congress.

The Senate Judiciary Committee's Antitrust, Competition Policy and Consumer Rights Subcommittee intends to look into Google's dominance over Internet search in the current session. Senator Herb Kohl (Wisconsin), the subcommittee's chair, announced in March that Google and competition in the online search market were

on the subcommittee's agenda for the 112th Congress.

Following Microsoft's announcement of the EC complaint filing, Senator Kohl said in a March 31 statement that Microsoft's allegations would be examined closely as preparations were made for an antitrust hearing. "We continue to investigate the fairness of Google search results and allegations that competitors are being unduly disadvantaged on the Google search platform," he noted.

Senator Chuck Grassley (New York), Ranking Member of the Senate Judiciary Committee and a member of the antitrust subcommittee, said in a March 31 statement regarding the Microsoft antitrust complaint: "It's critical for our economic well-being that companies compete in a fair manner, so that consumers can enjoy more choices and lower prices for goods and services. Vigorous enforcement of the antitrust laws by regulators will help create and maintain an open, fair and competitive marketplace. I expect our regulators are monitoring the antitrust complaint brought forward by Microsoft against Google and will act accordingly if a similar complaint should be raised in the United States."