

Search engines and competition law

63rd GCLC Lunch Talk

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Outline

- What do search engines do?
- The importance of data for online search and advertising
- Market definition issues
- Search bias
- The FTC-Google settlement
- Uncertainties and their resolution

What do search engines do?

- Crawl and index web pages
- Match users' queries with (organic and sponsored) results
- Two-sided platform (searchers, advertisers)
- Money comes from advertising (not obvious): 94.8% of 2012 revenues for Google (Motorola excluded)

Data, data, data

- Algorithm to match queries with results
- Auction to match ads to query keywords
- Algorithm is unknown but huge statistical aspect: previous searches by others can be used to improve the average quality of the match
- Data about a specific user (past searches, other context-dependent data) can also be used (on both sides)
- So, key asset in the industry = accumulated data
- General goal in the industry is *data-driven, ever-more targeted advertising*

Market definition

- On a general level, all supports compete for consumers' attention and can be used as vehicles for ads
- TVs vs computer screens vs mobile phones vs billboards vs newspapers vs buses etc
- But market definition revolves around (precise) substitutability pattern
- Need for evidence on advertising side
- Standard tools (e.g. SSNIP test) must account for two-sidedness: Filistrucchi, 2008

Evidence: French sector inquiry

- Request by French Ministry for Economic Affairs on 18 February 2010 (pressure from website publishers and content providers)
- Detailed investigation in 2010
- Lengthy report in December 2010
- Two-sidedness of search platforms acknowledged but market for search queries not investigated
- Main evidence: survey sent out to advertisers; no econometrics
- Main economic issue: market definition on the side of advertising

French sector inquiry (2)

- National advertising markets (differences in language, culture, brands, consumption patterns)
- Online and offline advertising are not in the same market
- Specific *search-based* advertising market
- Google on a dominant position on this latter market
- Consensual but no actual case

Search bias

- A lot of the talk is about search bias: the possible incentive for a dominant search engine to distort organic results ranking in order to favor own services
- Vertical foreclosure issue (with a twist?)
- Incentive to provide consumer-preferred ranking? assuming that end-users know what their search is supposed to find
- Economic theories of distortions in search results: Hagiu and Jullien (RAND, 2011), Tarantino (Telecom. Pol, 2013)
- Two big problems: proof and remedy

FTC-Google settlement

- Announced on January 3
- Set of issues larger than market for online search advertising
- Consent order: commitment not to seek injunction against willing licensees so as to block use of standard-essential patent (Section 5: unfair competition)
- Pledge to make it easier to run ad campaigns on multiple search engines
- Opt-out possibility for content providers on Google vertical properties (without demotion)
- Closure of case on allegations of search bias (5-0, role of *intent*)

Uncertainty and its resolution

- Economic theory of two-sides markets or search products is nascent; many unsettled issues about competition between platforms ; but a lot is known already
- Recent cases: mix contract law issues, IP law issues, competition law issue and classical regulatory issues
- Recent cases: either tangential (*Google-DoubleClick*) or commitments (*Navx, FTC Google*)
- Economic value of enforcement is information production and deterrence: the law is clarified for the future

Uncertainties and their resolution (2)

- Commitment decisions avoid thorny issues and do not allow for clarification of the law
- It is the job of competition authorities to bring (reasonable) cases by making properly motivated decisions (which can then be challenged)
- For them to have the incentive for doing so, they must not be assessed on the fraction of cases they win or lose in court
- Both wins and losses have precedential/jurisprudential value