Android antitrust investigation
Some thoughts on the new anti-Google (Android) complaint
http://chillingcompetition.com/2013/09/05/some-thoughts-on-the-new-anti-google-android-complaint-post-13/

Predatory pricing claims
http://chillingcompetition.com/2013/09/06/some-thoughts-on-the-new-anti-google-android-complaint-23-predatory-pricing-claims/
Bundling allegations


Android, Google and bundling: some follow-up thoughts

http://chillingcompetition.com/2013/09/16/android-google-and-bundling-some-follow-up-thoughts/
THOUGHTS IN BRIEF:

(i) A quick overview of the facts
(ii) Business considerations and background
(iii) The Law: (I) Dominance
(iv) The Law: (II) Predatory allegations
(v) The Law: (III) Bundling allegations
THE FACTS
Android is an open source OS licensed on a royalty-free basis. Licensees remain free to do whatever they wish with the code (e.g. downloading, distributing or modifying – forking – it).

- OEMs remain free to use Android with or without Google Apps (e.g. Nokia X).

- When OEMs wish to offer certain Google apps on top of Android they can enter into a MADA which requires them to (i) preload a minimum set of apps (GMS); (ii) place Search widget and GooglePlay icons in a certain way; and (iii) use Google Search as default engine for the search intent.

- OEMs (and users) remain at all times free to pre-install at any time any non-Google app (including a non-Google App Store) = no Google walled garden (room for intra-ecosystem competition).
A MATTER OF DIFFERENT BUSINESS MODELS
Essentially 3 different business models for mobile operating systems (OSs):

i. Apple’s vertically integrated model - Monetization via sales of devices.

ii. Microsoft’s licensing model - Monetization via licenses.

iii. Android’s free software model (Android is distributed for free under an open source license which enables licensees to do whatever they wish with the code) (also adopted by new market entrants (Ubuntu, Firefox OS, Jolla’s Sailfish, Tizen, Symbian) - Monetization via ancillary services.

Mobile ecosystem competition= All mobile OSs offer “out of the box” experiences - Android offers more freedom to OEMs, developers and users than any competing mobile OS.

An attempt to reverse the course of the business model proving more successful?
Are competition law authorities well placed to determine optimal level of modularity?
THE LAW (I): DOMINANCE?
Claim: “Google’s Android is the dominant smartphone operating system, running in 70% of units shipped at the end of 2012”

- Case specific possible caveats: shipments vs devices in use? Android v GSM? market shares attributable to the device manufacturer or to Google? smartphones and tablets? Is it possible to define a market for licenseable mobile OSs? (“Apple does not seem to hold a dominant position on the market for mobile operating systems” -Answer of VP Almunia to EP, 10 Feb 2014-).

- More general questions:
  
  (i) How should we measure market share where the service is provided for free?
  (ii) Do market shares reveal market power in these settings?
  (iii) Usage shares? Revenue-based shares? App downloads?
Value of shares in dynamic markets?

(Microsoft/Skype, para. 69): “a recent and fast growing sector which is characterized by short innovation cycles in which large market shares may turn out to be ephemeral. In such a dynamic context, high market shares are not necessarily indicative of market power”

Key question is: Is Android really not subject to competitive constraints?

Why is Android’s alleged dominance relevant?
THE LAW (II): PREDATORY PRICING ALLEGATIONS
Claim: “Google’s predatory distribution of Android at below-cost makes it difficult for other providers of operating systems to recoup investments in competing with Google’s dominant mobile platform“.

Query 1: Does this imply that allegedly dominant companies cannot adhere to the Free Software/Open Source model?

Query 2: Couldn’t the same theory of harm be brought against many other services that users get for free?

Query 3: Isn’t there an apparent contradiction between the pricing and the bundling allegations?

Query 4: What would the remedy be?
THE LAW (III): BUNDLING ALLEGATIONS
Claim: “Google is using Android as a Trojan horse” (...) “Android phone makers who want to include must-have Google apps such as Maps, Youtube or Play are required to pre-load an entire suite of Google mobile service”

Query 2: How do we define markets for the tying and tied products? + The challenge of identifying app dominance (“must have apps”?)
Query 3: Is there really a risk of likely foreclosure? Where does the artificial distrib-advantage lie?
   a) Non-Google apps can still run in other platforms
   b) They can also run in Android + GSM because there is no exclusivity obligations and users are willing and able to download competing apps (see Microsoft/Skype) and even App stores
   c) Available on the web as services
   d) Once competing apps are installed, G apps do not enjoy default preference

Reality check: Hangouts v Skype&Whatsapp?; Google + v Facebook?
Query 4: Objective justification?

Does the MADA bring about pro-competitive and pro-consumer efficiencies?

- Users obtain “out of the box” consistent experience and avoid problems related to Android’s fragmentation

- Developers know that they can rely on a basic set of apps

- Everybody does the same (meeting competition?)
THANKS!

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