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Google and Competition: Concerns Beyond the DOJ's Lawsuit

On October 20, 2020, the Department of Justice (DOJ) and 11 state attorneys general filed a lawsuit against Google LLC under Section 2 of the Sherman Act (15 U.S.C. § 2). The lawsuit alleges that Google unlawfully maintains “monopolies in the markets for general search services, search advertising, and general search text advertising in the United States through anticompetitive and exclusionary practices.” CRS Legal Sidebar LSB10544, *The Google Antitrust Lawsuit: Initial Observations*, by Jay B. Sykes provides an in-depth discussion of the DOJ lawsuit.

The DOJ lawsuit suggests structural relief—potentially involving divestitures of specific operations—as part of the potential remedy for Google’s alleged anticompetitive conduct. Because the lawsuit focuses on Google’s conduct in search services and search advertising, any structural remedies would likely focus on these services. For example, if the court finds that Google violated Section 2 of the Sherman Act, it could order the separation of Google’s search services and search advertising from its other products or only from specific products, such as the company’s mobile operating system Android and its browser Chrome.

Over the last two years, some Members of Congress have raised broader concerns about Google’s conduct in markets other than search services in congressional hearings and in a report issued by the House Subcommittee on Antitrust, Commercial, and Administrative Law, *Investigation of Competition in Digital Markets*. This In Focus explores some of these additional competition concerns that may not be addressed by the DOJ lawsuit.

Dominance in Other Markets

The DOJ lawsuit claims that Google unlawfully monopolizes the markets for search services and search advertising, but does not make similar claims about its other lines of business. Over the years, Google has become a major force in several other markets not directly related to search. For example, according to the report by the House Subcommittee on Antitrust, 80% of the navigation app market is controlled by Google’s apps—Google Maps and Waze.

The report asserts that Google can use its dominance in one digital market to gain an advantage and reduce competition in adjacent and unrelated markets. For example, Google’s video service YouTube generates revenue from the adjacent market of digital video ad services and requires advertisers to use Google’s advertising service. The report states that Google leveraged “control over YouTube to foreclose competition in digital video ad services, in part by excluding rival ad servers from having access to YouTube.” Dominance in one digital market could help Google

dominate a different market in the future. For example, Google’s alleged dominance in navigation apps might help it acquire a commanding position in software for driverless cars, which may rely on up-to-date mapping to reach their destinations. To prevent this conduct, the report suggests that Google and other companies active in digital markets could be required to divest or erect walls between certain operations or be prohibited from entering certain markets.

While these forms of restrictions could increase competition in some markets, they might simultaneously reduce it in others. The launch of Google Assistant, which uses Google’s search service to provide voice assistance, has arguably increased competition in a market in which Apple’s Siri and Amazon’s Alexa are major players. Google’s Chrome OS—a computer operating system—increased competition in a market that was previously dominated by Microsoft’s Windows and Apple’s MacOS. Restricting Google from entering digital markets could make it easier for other firms to dominate those markets.

Acquisitions

The House Subcommittee on Antitrust asserts in its report that Google has established its positions in several markets through acquisitions. According to the report, Google has “purchased well over 260 companies—a figure that likely understates the full breadth of Google’s acquisitions, given that many of the firm’s purchases have gone unreported.” The report contends that some of Google’s acquisitions have eliminated actual or potential competitors.

Under federal law, companies planning a merger or acquisition that is valued above a certain threshold are required to file a premerger notification with the DOJ and Federal Trade Commission (FTC). However, the DOJ and FTC have not blocked any of Google’s acquisitions, some of which may have been too small to meet the threshold for premerger notification. The DOJ lawsuit does not cite Google’s acquisitions as an aspect of its alleged anticompetitive conduct.

Google may be able to decrease and forestall competition through acquisitions. If the acquisitions involve small or nascent companies, their value may not meet the premerger notification threshold for automatic DOJ or FTC review. The acquired company may not yet occupy a large enough share of a product market to trigger competition concerns that could lead the DOJ or FTC to block the transaction.

Restrictions on Google’s ability to acquire existing businesses could reduce competition in some markets while increasing competition in others. The DOJ lawsuit alleges that Google used Android to maintain its dominance in search services and search advertising, in part by making

Google Search the default search engine on Android devices that come with other Google apps, including Google Play and Google Maps, preinstalled. However, Google's acquisition of Android in 2005 arguably increased competition among mobile devices and their manufacturers. Without the resources provided by Google, the Android operating system, launched in 2007, and the Android mobile device, first released in 2008, may not have been commercially successful.

Product Integration

The DOJ lawsuit asserts that Google's vertical integration has helped it maintain its dominance in search services. For example, Google Search is accessible through the address bar of its browser Chrome and is the default search engine. While the DOJ lawsuit may lead the court to consider whether Google's search service should be separated from other products such as Chrome, it does not address the integration of Google products other than search.

Google often integrates its products so that a user of one product can easily use others. Google may also make some of its products incompatible or more difficult to use with those offered by other firms. For example, the smart speaker Google Home can be directly connected to certain music streaming services, including Google's Play Music and YouTube Music as well as Spotify and Pandora. However, users who wish to stream music from Apple Music or Amazon Music need a separate device to connect to Google Home. Google Nest products—smart home devices such as thermostats, video doorbells, and cameras—can all be accessed from the same app, which does not accommodate other companies' products. Although users may benefit from accessing several devices from one app, those who have purchased a Nest product and installed the app may be deterred from considering smart home devices provided by other companies.

The integration of products and services could make it difficult for antitrust enforcers to define a market in which competition can be evaluated. In addition, implementing structural separations may be difficult when one product may not be viable without linkages to other products. For example, files created in Google Docs Editor—which includes a word processor, a spreadsheet, and other office software—are automatically stored on Google's cloud-based storage service Google Drive. Although users may be indifferent about where Google Docs are stored, the set of firms competing in the office software market is not identical to the set of firms competing in the file storage market. It is also unclear whether office software is the appropriate market for analysis, as some users might prefer to use the word processing program in Google Docs Editor while favoring a spreadsheet program from another source. Defining the market is also important in evaluating the likelihood of market entry by a potential competitor.

Consumer Data

Google's search service collects large amounts of data from the search terms users enter. These data enable Google to improve its search service, and also to build profiles of its users to improve its ad targeting. The DOJ lawsuit alleges that Google's access to large amounts of consumer data and its control of access points—such as Android and Chrome

browser—make it difficult for potential rivals to offer competitive search services and search advertising.

House and Senate hearings and the report by the House Subcommittee on Antitrust have suggested that Google's ability to combine data from its other products may hinder competition as well. The FTC and some Members of Congress raised concern that Google's acquisition of the online digital advertising company DoubleClick in 2007 would allow Google to dominate the advertising market. At the time, Google said that it would not combine data collected by DoubleClick with data from its other products, but it has done so since 2016. Even if the DOJ lawsuit were to reach a resolution that restricts Google from combining data from its search service with data from its other products, Google has used acquisitions to enter other markets, such as video games (e.g., Typhoon Studios) and educational software (e.g., Workbench). Depending on the level of user engagement across its products, Google may be able to continue combining data from these other products to run predictive models, develop artificial intelligence algorithms, and improve ad targeting.

It is not clear whether structural separations across its products would reduce any advantage Google derives from having access to more consumer data than other firms. Some websites operated by other companies allow users to sign in using their Google account, meaning Google may have access to some of the data collected by those websites. In addition, Google may be able to obtain large amounts of data by purchasing data from other companies.

Considerations for Congress

The DOJ lawsuit may not be the only antitrust complaint Google faces. Coalitions of state attorneys general are reportedly considering their own antitrust complaints, and the FTC has opened an investigation into all acquisitions by Google and other technology companies over the last 10 years. Subsequent lawsuits may address some of the concerns raised in Congress that are not addressed in the current DOJ complaint. However, these lawsuits may take years to resolve, during which time Google could continue its alleged anticompetitive conduct. Additionally, any resolution of lawsuits targeting only Google would not directly affect anticompetitive conduct by other companies operating in digital markets.

Enforcement actions by the DOJ and FTC may not be sufficient to address the concerns raised by Members of Congress about competition in digital markets. For example, new laws might be required if Congress seeks to keep all companies from using dominance of one digital market to gain a competitive advantage in another before the lawsuits reach a resolution. However, given the linkages across digital markets, legislation aimed at addressing competition in a particular product market may have unintended effects on competition in other markets and on consumers.

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