

Antitrust theatre

Google is fined €4.3bn in the biggest-ever antitrust penalty

But America's online giants have not much more to fear from regulators



Print edition | Business

Jul 21st 2018

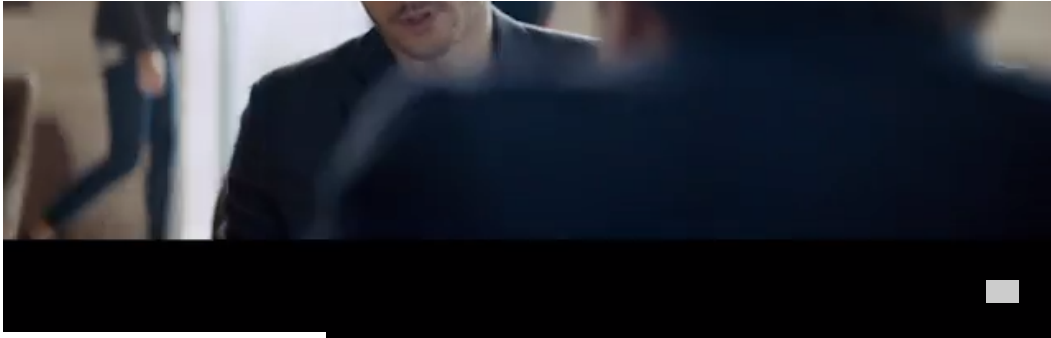
“THE making of a big tech reckoning,” blared one typical headline earlier this year. “The case for breaking up Amazon, Apple, Facebook and Google,” touted another. Based on media coverage alone it might seem as if the tech titans are in trouble. Add in the news, on July 18th, of a record €4.3bn fine for Google by the European Commission and that impression is strengthened. But if you look hard at where the regulatory rubber is actually hitting the road, the techlash seems much less brutal. Notwithstanding this week’s fine—which amounts to just over \$5bn and is the biggest antitrust penalty ever—the online giants are nowhere near being reined in.

To be sure, the mood has changed. In America a survey for Axios, a news website,

Subscribe: 12 weeks for €20

Get full access to *The Economist* via print, online and our apps.

Subscribe: 12 weeks for €20



inRead invented by Teads

Latest stories

What is a heat wave?

THE ECONOMIST EXPLAINS

Fiat Chrysler appoints a new boss

BUSINESS AND FINANCE

Richmond's monument commission says a statue of Jefferson Davis should go

DEMOCRACY IN AMERICA

See more

The shift in sentiment started earlier and has gone further in Europe, both because none of the companies have headquarters there and because of the region's sensitivities in regard to privacy and data protection. Google had already battled the commission, and lost, in "the shopping case", so called because it involves sites that involve comparison-shopping services. The firm was accused of having

discriminated against rivals by downgrading their search results and putting its own on top; last year the commission levied a €2.4bn fine and told Google to treat all comparison-shopping results equally.

The case that led to this week's fine carries even more weight, in part because it echoes another famous battle. The commission says that Google is doing pretty much what Microsoft did in the late 1990s: tying together pieces of software to cement its dominance. This case involves Android, Google's mobile operating system, and all sorts of related software and services, including Google Play, its app

In essence Google gives smartphone-makers and telecoms operators an all-or-nothing choice: if they want to install any of these programs on their devices, they have to install them all and show the icons in prominent positions. Since firms need at least the app store to make their products commercially viable, they have no choice but to comply. Nor does Google allow them to install competing versions of Android on any of their models. These practices deny “rivals the chance to innovate and compete on the merits” and “consumers the benefits of effective competition,” said Margrethe Vestager, the competition commissioner (pictured above).

Closing arguments

Google has clever ripostes. In the shopping case it argued that it wants to give consumers quick access to relevant information, rather than forcing them to click through to another search engine. Indeed, the commission was widely criticised in that case for failing to show that consumers were denied a superior service as a consequence of Google’s actions.

In the Android case the search firm insists that the restrictions are needed to make open-source platforms a success. The needs of everyone who uses them—not just consumers, but developers, device-makers and Google itself—have to be “painstakingly” balanced, in the words of Sundar Pichai, Google’s boss, in a blog post published after the commission’s ruling. The decision, he said, risks tearing apart this healthy open-source ecosystem by causing Android to fragment into incompatible versions and by making it less profitable for Google to invest in the software.

But the commission is on firmer ground. Being the provider of both internet search and of related services, with substantial market shares across the board (see chart), Google will always have an incentive to discriminate against rival offerings, notes Damien Geradin of Tilburg University. And few will sympathise with Mr Pichai’s warning on fragmentation. An open-source ecosystem is tricky to manage, but this does not entitle Google to stymie alternative ecosystems. Rules telling device-makers exactly where to place app icons seem draconian. Their aim, to protect Google’s search service from



Economist.com

competition, seems clear. And its restrictions have had an impact, for example in the case of Amazon's Fire phones, whose failure owed something to Google.

Yet the commission's remedies still fall far short of reining in Google. In both the shopping and the Android cases, it wants the giant to administer its own poison. "It is Google's responsibility to bring the infringement to an end," Ms Vestager said this week. The rationale is that further fines in case of non-compliance—up to 5% of the average daily worldwide revenue of Alphabet, Google's parent—will lead the firm to do the right thing. Yet Google could well judge that such fines are an acceptable cost of doing business.

Ms Vestager's approach is certainly not working in the shopping case. In September Google opted for a remedy of the sort that her predecessor, Joaquín Almunia, had rejected: auctioning off the slots for comparison-shopping results on its search engine. So far, the new offering has not attracted many bidders, most probably because they are loth to fork over a big part of their already meagre profits. Only about 6% of slots are now filled by rival offers.

At least in the Android case, the remedy seems more straightforward. Google has no choice but to drop the offending restrictions. But given how entrenched its Android ecosystem and most of its apps are, this is unlikely to lead to big changes in the mobile industry. To create more competition, the commission would have to demand tougher, more specific remedies. As it is, Google has every incentive to drag out a cycle involving an insufficient remedy followed by fines, meaning that it will take years to have a meaningful impact.

Despite the high fines and theatrical press conferences about antitrust, the commission may end up with not much more to show for its actions than trustbusters in America. There, despite lots of tech-bashing rhetoric, officials have shied away from doing anything of note. That many former Google employees worked in the administration of Barack Obama may have contributed to this inertia, but the real reason is America's forbidding jurisprudence, says William Kovacic of George Washington University, a former FTC chairman. It would be nigh-impossible to get any substantial measures past the courts, which view antitrust interventions suspiciously.

And the barriers to action are getting even higher. In June the Supreme Court backed the policy of American Express, a credit-card issuer, of stopping retailers from nudging customers to use cards with lower transaction fees. Regulators, the

majority of the court argued, should look at such two-sided business models more broadly: the firm may charge retailers higher fees but it provides cardholders with lots of rewards. In other words, anti-competitive practices in one market may be acceptable if they lead to consumer benefits in another—an argument that Google will certainly make about Android should it ever end up in an American court.

This article appeared in the Business section of the print edition under the headline "Antitrust theatre"

You've seen the news, now discover the story

Get incisive analysis on the issues that matter. Whether you read each issue cover to cover, listen to the audio edition, or scan the headlines on your phone, time with *The Economist* is always well spent.

Enjoy 12 weeks' access for €20