

June 25, 2020

Makan Delrahim
Assistant Attorney General for Antitrust
950 Pennsylvania Avenue, NW
Washington, DC 20530

RE: Roadmap for a Monopolization Case Against Google Regarding the Search Market

Dear Assistant Attorney General Delrahim:

Public Knowledge urges you to consider a new research paper by Professor Fiona Scott Morton of the Yale School of Management and David Dinielli of the Omidyar Network as you investigate Google for potential antitrust violations. The paper presents a roadmap of what a strong antitrust case against Google in the search market might look like. Antitrust enforcers must investigate Google's market position and conduct in search to determine whether the company may have engaged in anticompetitive behavior that has violated antitrust law.

The paper is based on descriptions of Google's market position and conduct in the U.K. from the Competition and Markets Authority (CMA) Interim Report on "Online Platforms and Digital Advertising" and from European Commission decisions in the Google Shopping and Android investigations, as well as other sources. If the facts found by antitrust enforcers in your investigation look similar to the facts set forth in the paper, Google's conduct in search would likely be anticompetitive and illegal in the U.S.

Google appears to have set up a series of exclusive contracts with handset manufacturers and online content companies to be their default search engine. It paid dearly for these contracts because the benefit of preventing competitors from gaining a foothold in the market was much more valuable to Google than simply the value of each additional customer the exclusive would yield. Another category of exclusive contracts leveraged Google's power in the mobile phone operating system and app store to gain and maintain power in search. These contracts blocked companies that used the Android operating system or Google Play Store from partnering with competitors to Google for their search engine defaults. This meant a new search engine would also need to offer a successful mobile phone operating system and app store in order to compete effectively.

Google also appears to have structured the search engine results page to make it harder for specialized search alternatives to obtain customers. General search can be a gateway to specialized search. In what the paper calls "the Main Street threat," specialized search engines could potentially provide competitive pressure to a general search engine, as they could collectively take significant revenue even though the threat of each individual specialized search provider may not be significant.

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A lack of competition in search harms consumers and advertisers, as well as other search providers and potential entrants. It may also have important societal harms not considered by antitrust. Of particular interest to antitrust enforcers should be the harm to innovation. If faced with competition, Google would have had to build a better search engine. The search engine is such an important product that years of stagnation caused by a lack of competition have likely had harmful effects that are broad and difficult to quantify.

Thank you for your attention to this important new research and analysis. We welcome the opportunity to discuss these issues with you.

Sincerely,

Gene Kimmelman
Senior Advisor
Public Knowledge

Charlotte Slaiman
Competition Policy Director
Public Knowledge