Google antitrust investigation - key points

<u>The competition concerns</u>

Four types of business practices by Google which raise concerns from a competition point of view have been identified.

The first two concerns relate to so-called "vertical" search, such as specialised product, hotel, restaurant or flight search engines.

In its web search results, Google is artificially displaying its own vertical search services such as Google Shopping within the normal (or "natural") search results and in a more prominent manner than services of competitors without informing users. Google was thereby diverting traffic to its own services to the detriment of competitors' results which are potentially as relevant to the user as Google's own services.

Google has also been using content, such as user reviews, from competing vertical search services without their consent.

The two other concerns relate to online advertising. Google imposed exclusivity agreements to only use Google ads on publishers, such as online newspapers, who wanted to use its advertising programmes to display Google ads on their web-sites.

Google also imposed restrictions on advertisers who wanted to transfer their advertising campaign data to competing ad platforms.

Google has now made a proposal for a settlement (commitments) which would address these competition concerns.

<u>The proposed commitments</u>

As regards the <u>first concern</u>, the favourable treatment of its own vertical search services, Google has agreed to three important principles which would apply to its current but also to future services for the next 5 years, if these commitment proposals are made legally binding by the Commission:

First, Google would clearly label its own vertical search services so that users are aware that they are different form of search results.

Second, Google would separate its vertical search results from its "normal" (also called "natural") search results.

Third, whenever it promotes its own services, Google would present three rival vertical search services next to its own services and in a comparable visual format so that users can make informed choices.

Google has made far-reaching concessions as to the presentation of rivals on its pages. Although the commitments do not guarantee equal treatment between Google's services and its competitors' services, they require Google to make rival links visible to users and to present them in a display format which is comparable to that of Google's. For instance, if Google links have an image, rivals will have an image of the same size and quality. If Google links become richer, for instance with a video, rivals will also have a video.

This will give rivals the opportunity to attract traffic, to the extent that the service they provide matches users' needs.

Imposing strict "equal treatment" - in the sense that Google should apply the same algorithm to rank all search results including its own – would not be indispensable to remedy the competition concern identified by the Commission. Therefore it would not be justified under EU antitrust rules. It could mean imposing Google, in certain cases, not to display its own services on its own page. This would be an unprecedented constraint imposed on a company. It could also mean returning to the old world of Google displaying only ten undifferentiated search results - the so called "ten blue links". This would deprive European users from the search innovations that Google has introduced.

Of course, it is not possible to show all rivals in the same way, if only because the space available on screen is limited. So there needs to be an objective selection mechanism which ensures that users will see the best service.

Where Google does not charge merchants for inclusion in its vertical search service, such as in local search, rivals will not be charged to participate in the rival links. Instead, these links will be chosen based on their ranking in Google's "normal" search.

Where Google charges merchants for inclusion in its vertical search service, such as in Google Shopping, the three rivals will be chosen on the basis of a dedicated and transparent auction mechanism. The auction system will allow participants to bid on specific keywords and participants will only pay Google if their link is clicked on by the user ("pay per click"). The winners of the auction will not only be determined by their bids but also by the attractiveness of their offer to users ("predicted click through rate", PCTR). The combination of these two parameters (bid and PCTR) will ensure that high quality rivals will be displayed.

Only specialised search services are eligible to bid in the auction - merchants are not. This will reduce the pool of bidders and lower the price that has to be paid.

The auction will favour small and innovative companies by allowing them to focus their participation on those specific keywords where their offer is best positioned. Therefore, companies that have in the past been foreclosed by Google or which want to enter the market will now have a real opportunity to offer their products to users in a visible manner. Furthermore, Google's competitors will have full control of how they configure their offerings and what users see when they click on a rival link.

The auction will be supervised by an independent Monitoring Trustee in order to make sure that all participants have a fair chance to bid for valuable real estate on Google's site.

The auction will not create an additional revenue stream to Google, since payment is only involved in space where Google already monetises the space. The existence of an auction as a selection mechanism for rival links in those cases is only the recognition that Google will be obliged to cede to its competitors a space that it would normally have sold to its own customers.

As regards the <u>second concern</u>, Google will give content providers, including publishers, an extensive opt-out from the use of their content in Google's vertical search services if they so wish, without fear of retaliation on the results of natural search.

The proposed commitments do not address the concern raised by many publishers that Google is using copyright protected content illegally without making any appropriate payment. Whilst these concerns might be legitimate, they go beyond the scope of a single competition case. These concerns would need to be addressed in copyright law as has been done in Germany recently.

As regards the <u>third concern</u>, Google will remove the exclusivity requirements in its agreements with publishers for the provision of search advertisements.

Finally, on the <u>fourth concern</u>, Google will remove restrictions on advertisers so that they can run search advertising campaigns across Google's and competing search advertising platforms.

<u>Next steps</u>

After having carefully analysed Google's new proposals, Vice-President Almunia has come to the conclusion that the new offer is capable of addressing his concerns.

The Commission will now engage with the formal complainants in this case by outlining transparently and in detail in so called pre-rejection letters the reasons why it believes Google's offer can address the competition concerns that have been identified. Those letters will also explain why the Commission believes that other issues raised by complainants are unfounded. Complainants will therefore have the opportunity to submit their responses on these detailed arguments, not only on the commitments proposal.

These responses will then be examined in detail before the Commission decides whether to make Google's revised commitments legally binding. A commitments decision would allow the Commission to bring this investigation to an end rapidly and with tangible benefits. It would restore fair competition swiftly.

That would not, however, mean that Google would not be closely supervised by the Commission over the next five years.

One crucial point of Google's proposal is that Google’s compliance with the commitments would be supervised by an independent Monitoring Trustee. In case of non-compliance with the commitments, Google could be sanctioned severely. Last year, the Commission sanctioned Microsoft with a 561 million Euro fine for not complying with a commitments decision.

<u>The process</u>

The Commission services began the investigation of the case with a wide consultation which involved the sending of questionnaires to about one thousand market participants, and the analysis of over six hundred replies.

Vice President Almunia transparently explained the results of this analysis by setting out his competition concerns publicly in May 2012.

Google's initial commitments proposals were also widely consulted with the industry. The Commission analysed about 150 replies to the formal market test that was launched in April 2013 (NB: in a formal market test, the commitments proposals are published and all interested parties can send their comments to the Commission).

All complainants and all parties who replied to this market test were consulted again in October 2013 as regards Google's second proposal.

The Commission has also held many meetings with interested parties during the entire process.

Following the improvements obtained from Google following new discussions, and in light of the comments received in the two rounds of consultations, Vice President Almunia and the Commission's services have now come to the preliminary view that the proposal addresses the four competition concerns it had identified.

According to the Commission's best practices, a new market test is only required if the amended version of the commitments alters the very nature or scope of the commitments. In this case, there have been significant improvements in the sense that their effectiveness has been strongly improved, but these improvements do not change their structure. Moreover, the Commission must at a certain point exercise a judgement as to the potential effectiveness of any proposed remedies - otherwise, there would simply be a perpetual back and forth if revised remedies were market tested every time. The purpose of a market test is to help the Commission assess the effectiveness of proposed commitments, rather than ensure that every market participant is happy on every point.

The Commission will now engage with the formal complainants in this case by outlining transparently and in detail in so called pre-rejection letters the reasons why it believes Google's offer can address the competition concerns that have been identified. Those letters will also explain why the Commission believes that other issues raised by complainants are unfounded.

Complainants will now have the opportunity to submit their responses on these detailed arguments, as opposed to a mere "market test" in which the commitments proposal is simply published and interested parties can send their comments.

On the other hand, market players who are not complainants are not prevented from making their views known to the Commission since Google has published the commitments proposal.