SEARCHING A RATIONALE FOR SEARCH NEUTRALITY IN THE AGE OF GOOGLE

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WHAT’S NEW

• Another case for the ‘new’ antitrust in high-tech markets (after IBM and Microsoft)
• New challenge for antitrust policy: dealing with search neutrality
• Quite polarized positions about Google’s conduct (good or evil)
• An occasion to review some of the tenets of modern antitrust policy and regulation
OUR APPROACH

• Statement of Objections not yet public

• Consider the proper framework of analysis (many contributions so far deal with the US case); 102 TFEU

• Do not be scared by economic complexity of the case (and about an effect based analysis)

• Consider other values at stake (control of information over the internet)

• Consider institutional differences and approaches (FTC v. EC)
MARKET DEFINITION: IS THE TWO-SIDED MARKET PARADIGM GOOD ENOUGH?

• Market for searches is two-sided: users on the one side, advertising company on the other, Google in between to operate the platform

• One side of the market accesses the service for «free» (whatever that means in a «freemium» based market)

• Is there any market power that Google can leverage?

• Are available alternatives really «one click away»?
SEARCH NEUTRALITY AND SEARCH BIAS: DEFINING THE ABUSE

• What is search bias? What is search neutrality? A definition needed for operational purposes

• Is neutrality technically possible? Do we have a normative standard to define «objective» search results?

• Results as «credence goods» (Patterson 2013)

• Search bias as a biased concept: «Nirvana Fallacy» (Manne & Wright 2011)

• Searching strategies of Google inspired by a (legitimate?) evolution of its business model (away from the «ten blue links» paradigm)
EFFECT-BASED ANALYSIS

• Is search bias abuse per se?

• Overlooking the effects of Google’s conduct means disregarding the fact that one party of the market receives the service for free (consumers welfare should be part of the analysis)

• Without effect-based analysis art. 102 used as a pseudo-regulatory tool

• FTC Chairman Leibowitz «[a]lthough some evidence suggested that Google was trying to eliminate competition, Google’s primary reason for changing the look and feel of its search results to highlight its own products was to improve the user experience». 
INSTITUTIONAL DIFFERENCES THAT MATTER: EU V. US

• Enforcement strategies very different in EU compared to EU

• High-tech industry probably require a different antitrust approach (timing is of the essence) that has been missing so far

• What is the real aim of the antitrust action of the EC?

• Who is damaged by Google search strategies and who bears the burden of proof?

• Competition or competitors? What is the true soul of EU antitrust policy?
CONCLUSIONS

• The whole framework of analysis still unclear

• Market definition still problematic

• Search bias «a malleable term that remains largely undefined» (Lao 2013)

• Goals of European antitrust still unclear

• A need for «a more technological approach» in antitrust analysis and focus on dynamic efficiency (Podszun 2014)