



SEARCHING A RATIONALE FOR SEARCH NEUTRALITY IN THE AGE OF GOOGLE

PROF. VALERIA FALCE – PROF. MASSIMILIANO GRANIERI
ITALIAN ACADEMY OF THE INTERNET CODE

VIENNA EALE 2015

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)