



Law

E D H E C

G R A N D E

E C O L E

EDHEC 2 **Academic year 2009/2010**

Final exam

European Competition Law

Written exam
Duration : 90 minutes

*Students can bring paper
documents*

Prof. Cédric MANARA

In January 2010, the European Commission has written to Google a series of questions over how its search functions operate. It also questioned the way it sells advertising. It acted after it received complaints from the UK search site Foundem, Ciao, and ejustice.fr. For the moment, the European Commission has not opened formal investigation. It is just reviewing the complaints.

Foundem, a British price comparison site, claims that Google, which has a 90% share of the search market in the UK, has been removed from Google search results. According to the company: *“Whereas these penalties used to be reserved for spam, or sites caught attempting to cheat Google’s algorithms, they are now increasingly targeted at perfectly legitimate vertical search and directory services. It may not be coincidence that, collectively, these services present a nascent competitive threat to Google’s share of online advertising revenues.”*

Ejustice.fr is a French site which details legal cases and solicitor services, and lets users search for legal resources in France. The site attracted up to 20,000 visitors, and contends the traffic suddenly plunged when Google stopped indexing its pages for inclusion in Google’s search engine. It says it now only has 700 users a day.

Ciao offers online price comparisons on the German market. It complains about Google standard terms and conditions.

Google says it penalizes some, but not all, vertical search engines because they are essentially spam, gathering content and links from other sites to generate traffic and ad revenue: *“In order to maintain the high quality of Google search, we flag or remove sites that we detect have malware and viruses or don’t comply with Google’s quality guidelines. The guidelines under which we will take action are publicly documented, and this is standard industry practice among search engines”.*

→ After reading the documents below, do you think there is, or not, anticompetitive behavior by Google, and why?
Whatever your answer is, if the European Commission decides an investigation should be opened, would it handle the case(s) itself, or would it be under the jurisdiction of national competition authorities?

The New York Times

December 28, 2009

Op-Ed Contributor

Search, but You May Not Find

By ADAM RAFF

London

As we become increasingly dependent on the Internet, we need to be increasingly concerned about how it is regulated. The Federal Communications Commission has proposed “network neutrality” rules, which would prohibit Internet service providers from discriminating against or charging premiums for certain services or applications on the Web. The commission is correct that ensuring equal access to the infrastructure of the Internet is vital, but it errs in directing its regulations only at service providers like AT&T and Comcast.

Today, search engines like Google, Yahoo and Microsoft’s new Bing have become the Internet’s gatekeepers, and the crucial role they play in directing users to Web sites means they are now as essential a component of its infrastructure as the physical network itself. The F.C.C. needs to look beyond network neutrality and include “search neutrality”: the principle that search engines should have no editorial policies other than that their results be comprehensive, impartial and based solely on relevance.

The need for search neutrality is particularly pressing because so much market power lies in the hands of one company: Google. With 71 percent of the United States search market (and 90 percent in Britain), Google's dominance of both search and search advertising gives it overwhelming control. Google's revenues exceeded \$21 billion last year, but this pales next to the hundreds of billions of dollars of other companies' revenues that Google controls indirectly through its search results and sponsored links.

One way that Google exploits this control is by imposing covert "penalties" that can strike legitimate and useful Web sites, removing them entirely from its search results or placing them so far down the rankings that they will in all likelihood never be found. For three years, my company's vertical search and price-comparison site, Foundem, was effectively "disappeared" from the Internet in this way.

Another way that Google exploits its control is through preferential placement. With the introduction in 2007 of what it calls "universal search," Google began promoting its own services at or near the top of its search results, bypassing the algorithms it uses to rank the services of others. Google now favors its own price-comparison results for product queries, its own map results for geographic queries, its own news results for topical queries, and its own YouTube results for video queries. And Google's stated plans for universal search make it clear that this is only the beginning.

Because of its domination of the global search market and ability to penalize competitors while placing its own services at the top of its search results, Google has a virtually unassailable competitive advantage. And Google can deploy this advantage well beyond the confines of search to any service it chooses. Wherever it does so, incumbents are toppled, new entrants are suppressed and innovation is imperiled.

Google's treatment of Foundem stifled our growth and constrained the development of our innovative search technology. The preferential placement of Google Maps helped it unseat MapQuest from its position as America's leading online mapping service virtually overnight. The share price of TomTom, a maker of navigation systems, has fallen by some 40 percent in the weeks since the announcement of Google's free turn-by-turn satellite navigation service. And RightMove, Britain's leading real-estate portal, lost 10 percent of its market value this month on the mere rumor that Google planned a real-estate search service here.

Without search neutrality rules to constrain Google's competitive advantage, we may be heading toward a bleakly uniform world of Google Everything — Google Travel, Google Finance, Google Insurance, Google Real Estate, Google Telecoms and, of course, Google Books.

Some will argue that Google is itself so innovative that we needn't worry. But the company isn't as innovative as it is regularly given credit for. Google Maps, Google Earth, Google Groups, Google Docs, Google Analytics, Android and many other Google products are all based on technology that Google has acquired rather than invented.

Even AdWords and AdSense, the phenomenally efficient economic engines behind Google's meteoric success, are essentially borrowed inventions: Google acquired AdSense by purchasing Applied Semantics in 2003; and AdWords, though developed by Google, is used under license from its inventors, Overture.

Google was quick to recognize the threat to openness and innovation posed by the market power of Internet service providers, and has long been a leading proponent of net neutrality. But it now faces a difficult choice. Will it embrace search neutrality as the logical extension to net neutrality that truly protects equal access to the Internet? Or will it try to argue that discriminatory market power is somehow dangerous in the hands of a cable or telecommunications company but harmless in the hands of an overwhelmingly dominant search engine?

The F.C.C. is now inviting public comment on its proposed network neutrality rules, so there is still time to persuade the commission to expand the scope of the regulations. In particular, it should ensure that the principles of transparency and nondiscrimination apply to search engines as well as to service providers. The alternative is an Internet in which innovation can be squashed at will by an all-powerful search engine.

Adam Raff is a co-founder of Foundem, an Internet technology firm.



Committed to competing fairly

Tuesday, February 23, 2010 at 7:42 PM ET

Posted by Julia Holtz, Senior Competition Counsel

As Google has grown, we've not surprisingly faced more questions about our role in the advertising ecosystem and our overall approach to competition. This kind of scrutiny goes with the territory when you are a large company. However, we've always worked hard to ensure that our success is earned the right way - through technological innovation and great products, rather than by locking in our users or advertisers, or creating artificial barriers to entry.

The European Commission has notified us that it has received complaints from three companies: a UK price comparison site, Foundem, a French legal search engine called ejustice.fr, and Microsoft's Ciao! from Bing. While we will be providing feedback and additional information on these complaints, we are confident that our business operates in the interests of users and partners, as well as in line with European competition law.

Given that these complaints will generate interest in the media, we wanted to provide some background to them. First, search. Foundem - a member of an organisation called ICOMP which is funded partly by Microsoft - argues that our algorithms demote their site in our results because they are a vertical search engine and so a direct competitor to Google. ejustice.fr's complaint seems to echo these concerns.

We understand how important rankings can be to websites, especially commercial ones, because a higher ranking typically drives higher volumes of traffic. We are also the first to admit that our search is not perfect, but it's a very hard computer science problem to crack. Imagine having to rank the 272 million possible results for a popular query like the iPod on a 14 by 12 screen computer screen in just a few milliseconds. It's a challenge we face millions of times each day.

Our algorithms aim to rank first what people are most likely to find useful and we have nothing against vertical search sites -- indeed many vertical search engines like Moneysupermarket.com, Opodo and Expedia typically rank high in Google's results. For more information on this issue check out our guidelines for webmasters and advertisers, and for an independent analysis of Foundem's ranking issues please read this report by Econsultancy.

Regarding Ciao!, they were a long-time AdSense partner of Google's, with whom we always had a good relationship. However, after Microsoft acquired Ciao! in 2008 (renaming it Ciao! from Bing) we started receiving complaints about our standard terms and conditions. They initially took their case to the German competition authority, but it now has been transferred to Brussels.

Though each case raises slightly different issues, the question they ultimately pose is whether Google is doing anything to choke off competition or hurt our users and partners. This is not the case. We always try to listen carefully if someone has a real concern and we work hard to put our users' interests first and to compete fair and square in the market. We believe our business practices reflect those commitments.



This stuff is tough

Thursday, February 25, 2010 | 9:43 AM

Yesterday's news that the European Commission has opened a preliminary inquiry into competition complaints from three companies has generated a lot of questions about how Google's ranking works. Here, Amit Singhal, a Google Fellow responsible for ranking, who has worked in search for almost 20 years, explains the principles behind our algorithm.

Pop quiz. Get ready. You're only going to have a few milliseconds to answer this question, so look sharp. Here goes: "know the way to San Jose?" Now display the answer on a screen that's about 14 inches wide and 12 inches tall. Find the answer from among billions and billions of documents. Wait a second - is this for directions or are we talking about the song? Too late. Just find the answer and display it. Now on to the next question. Because you'll have to answer hundreds of millions each day to do well at this test. And in case you find yourself getting too good at it, don't worry: at least 20% of those questions you get every day you'll have never seen before. Sound hard? Welcome to the wild world of search at Google. More specifically, welcome to the world of ranking.

Google ranking is a collection of algorithms used to seek out relevant and useful results for a user's query. There's a ton that goes into building a state-of-the-art ranking system like ours. Our algorithms use hundreds of different signals to pick the top results for any given query. Signals are indicators of relevance, and they include items as simple as the words on a webpage or more complex calculations such as the authoritativeness of other sites linking to any given page. Those signals and our algorithms are in constant flux, and are constantly being improved. On average, we make one or two changes to them every day. Lately, I've been reading about whether regulators should look into dictating how search engines like Google conduct their ranking. While the debate unfolds about government-regulated search, let me provide some general thinking behind our approach to ranking. Future ranking experts (inside or outside government) might find it helpful. Our philosophy has three main elements:

1. Algorithmically-generated results.
2. No query left behind.
3. Keep it simple.

After nearly two decades, I've lost count of how many times I've been asked why Google chooses to generate its search results algorithmically. Here's how we see it: the web is built by people. You are the ones creating pages and linking to pages. We are utilizing all this human contribution through our algorithms to order and rank our results. We think that's a much better solution than a hand-arranged one. Other search engines approach this differently -- selecting some results one at a time, manually curating what you see on the page. We believe that approach which relies heavily on an individual's tastes and preferences just doesn't produce the quality and relevant ranking that our algorithms do. And given the hundreds of millions of queries we have to handle every day, it wouldn't be feasible to handle each by hand anyway.

This brings me to the next point: leaving no query behind. Usually once I've explained to people the thinking behind algorithmically-generated results, some will ask me, "But what if you do a search, and the results you see are just plain lousy? Why wouldn't you just go in there by hand and change them?" The part of this question that's valid is in terms of lousy results. It happens. It happens all the time. Every day we get the

right answers for people, and every day we get stumped. And we love getting stumped. Because more often than not, a broken query is just a symptom of a potential improvement to be made to our ranking algorithm. Improving the underlying algorithm not only improves that one query, it improves an entire class of queries, and often for all languages around the world in over 100 countries. I should add, however, that we do have clear written policies for websites that are included in our results, and we do take action on sites that are in violation of our policies or for a small number of other reasons (such as legal requirements, child porn, spam, viruses/malware, etc.). But those cases are quite different from the notion of rearranging the page you see one result at a time.

Finally, simplicity. This seems pretty obvious. Isn't it the desire of all system architects to keep their systems simple? We work very hard to keep our system simple without compromising on the quality of results. This is an ongoing effort, and a worthy one. Our commitment to simplicity has allowed us innovate quickly, and it shows.

Ultimately, search is nowhere near a solved problem. Although I've been at this for almost two decades now, I'd still guess that search isn't quite out of its infancy yet. The science is probably just about at the point where we're crawling. Soon we'll walk. I hope that in my lifetime, I'll see search enter its adolescence.

In the meantime, we're working hard at our ongoing pop quizzes. Here's one last one: "search engine." In 0.14 seconds from among a few hundred million pages, our initial results are: AltaVista, Dogpile Web Search, Bing and Ask.com. I guess I'd better get back to work.

Posted by: Amit Singhal, Google Fellow