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Economists warn Brussels faces tough task in proving case against Google

Ferdinando Giugliano in London

Google's rivals are celebrating Brussels' decision to press ahead with antitrust charges against the technology company. But for the European Commission to prevail, it will have to prove something elusive: that Google's practices have harmed consumers.

"Competitors often complain, but when something is bad for a competitor it is not necessarily bad for consumers," says Paul Seabright, a professor at the Toulouse School of Economics, who advised Microsoft in another landmark case against the European Commission.

It is but one contentious element of an antitrust case that enjoys broad political support across Europe but is stirring reservations among some economists.

The case is testing the limit of when it is legitimate for an antitrust authority to intervene, they say, with the risk of Brussels punishing a company for being successful while stifling the incentive to innovate.

"This is a very delicate case," says Chiara Fumagalli, a professor of economics at Bocconi University in Milan. "What are the limits of antitrust intervention and when does an authority unduly interfere with property rights?"

The commission is investigating whether Google abused its dominance in the search market unfairly to favour its own shopping services over those of its competitors. But experts warn such cases are among the hardest to prove in antitrust law.

As Massimo Motta, Brussels' chief competition economist, wrote in his book *Competition Policy*, "proving a company has engaged in exclusionary practices is not an easy task. This is an area of competition where it is difficult to adopt simple rules and where each case is often a special one."

There are three hurdles the commission must clear before it can conclude Google has indeed violated European rules.

First, it must show that Google is a dominant player in the search market. In theory, this is the easiest part of the case, as Google has a market share of more than 90 per cent in EU web searches.

But drawing the contours of the market in a highly innovative business such as online search is much harder than it seems.

"This is not a standard market," warns Mr Seabright. "The competitor to a company making washing machines is another company making washing machines. But competition to a search engine could come from many platforms, including social media such as Facebook, or websites such as Amazon".

Having established Google's dominance, the commission must prove the internet group is leveraging its position in the general search market to help its own in-house shopping services and penalise competitors.

Economists argue that the kind of product Google offers is bound to create winners and losers.

> Google is a monopolist in the market for search engines because it has created a successful tool
>
> - Chiara Fumagalli, professor of economics, Bocconi University
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"Discrimination is an integral part of how a search algorithm works," says Mario Mariniello, a research fellow at Bruegel, a European think-tank. "Saying that Google discriminates among products does not make a very strong case."

The commission could still find that Google has been picking and choosing from different shopping services to help its own business rather than offering a level playing field. But even this may be a legitimate practice.

"Google is not a regulated entity which needs to grant access to competitors on equal terms," says Ms Fumagalli. "To what extent can the European Commission interfere in the way a company uses its own product?"

The ultimate test may be the most challenging — to show that Google's behaviour has harmed consumers.

"The commission needs to show that consumers are worse off because Google is hurting competition and, as a result, consumers have less choice," says Mr Mariniello. "This is the trickiest part of the case".

Proving harm to consumers may require experiments to be conducted on evidence, for example manipulating results pages to see how consumers react to different formats.

Over the long term, some economists fear the risk of a finding against Google will be to punish companies for being successful.

"There is always a trade-off in antitrust intervention," says Ms Fumagalli. "When a company has created an innovative product, you want to facilitate competition. But this can destroy the incentive to innovate.

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