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Google deal tests e-frontiers

By Spyros Pappas
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An online advertising deal between Google and Yahoo! will force the European Commission to re-establish itself as the world's primary regulator, writes Spyros Pappas

The next big transatlantic skirmish for the European Commission seems likely to be with the giant internet search-engine Google, a prospect which will surely raise a smile at Microsoft headquarters in Seattle.

Google's failed attempt to swallow Yahoo! earlier this year left behind a contentious and eventually untenable face-saving deal, one with profound implications for the growing market for online advertising.

A recent study of the much-criticised deal by SearchIgnite, a consultancy specialising in search-engine technology, predicted that the overall price of keyword advertising could rise by as much as 22%, with the price of more popular pay-per-click keywords likely to rise much more.

Microsoft counsel Brad Smith claims that the deal will give Google control of 90% of online advertising.

As internet users are increasingly aware, Google is watching us and selling information on our interests and preferences, resulting in a constant, if silent, bombardment of user-sensitive advertisements.

Under the Google-Yahoo! deal, Google can, for up to ten years, sell all or part of such search and contextual advertising on Yahoo!'s network and certain affiliate sites. Advertisers pay Google directly for every click on Google search results.

Google will then pay Yahoo! as much as 90-95% of advertiser spending. But the deal will apply only to the US and Canadian markets.

Apart from the impracticality – in truth, impossibility – of erecting such frontiers in cyberspace, this is a fundamental challenge to the European Commission's de facto position as the primary global regulator, especially in areas relating to consumer protection.

It is one of the Commission's largely-unsung success stories to have answered the unrelenting demand for legal certainty, as much from industry as from consumers.

Manufacturers find it simpler to be bound by the toughest regulatory system in the supply chain, and consumers have benefited in numerous ways, from safety standards for Chinese-made toys to, closer to home, the ceiling imposed on roaming charges for mobile phones.

In the case of Google-Yahoo! there can be only one reason for the narrow geographical limit put on the deal: to escape the scrutiny of the Commission, which is unlikely to look upon such a mega-monopoly with friendly eyes.

Even with a looming global economic downturn, companies are spending some €410 billion worldwide on brand recognition. Online's share is around 12%, growing fast, with 500,000 new internet users a day, increased connectivity of mobile devices and even TV, websites' ever-greater reliance on advertising to generate revenue, and the lure of reaching target groups with ever-greater precision.

Search online advertising currently represent the largest share of all online advertising, at more than 40%. Google and Yahoo! dominate the US paid keyword search market, with a combined share of over 90%. Google is thus in a position to set the price for advertising on both Yahoo! and Google. Competition for advertisers between Google and Yahoo! will inevitably wither away and prices just as inevitably rise.

What is to be done? Attempting to define national boundaries on the internet is an anomaly, given that it is by its nature one of the spearheads of globalisation. Even if the tenuous geographical limitation of the deal is taken at face value, the Commission could argue it has jurisdiction since the arrangement can – inevitably does – affect European businesses.

The Commission's line is clear: "Even mergers between companies based outside the European Union may affect markets in the EU if the companies do business in the EU…these rules apply to all mergers no matter where in the world the merging companies have their registered office, headquarters, activities or production facilities."

The precedent is well-known, the exorbitant fines (repeatedly) imposed by the Commission on Microsoft, a US company targeted by a lawsuit brought by other American companies. This time, it seems, it is Google which finds itself in the Commission's sights.

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