EC Android decision to offer consumers Chinese options, questionable benefits – analysis

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- Former FTC official says no market change would suggest EC got Android decision wrong
- Academic says biggest problem for Android case is getting remedy right
- Austrian agency chief says Google's rivals face challenge of dissolving lock-in effect

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The European Commission's (EC) most recent fine and prohibition decision against **Google** is poised to offer European consumers dubious benefits but to give Chinese search engines a foot in the door in Europe, some of the bloc's antitrust law officials have told *PaRR*.

The EC's competition directorate **imposed** the largest-ever single company fine of EUR 4.34bn on Google for abusing its dominance in its Android operating system on 18 July. The agency found that Google imposed illegal restrictions on Android device manufacturers and mobile network operators since 2011 to cement its dominant position in general internet search.

The Brussels-based antitrust watchdog found the tech giant to be dominant in markets for general Internet search services, licensable smart mobile operating systems and app stores for the Android mobile operating system. Specifically, it found Google to be dominant in the national markets for general Internet search throughout the European Economic Area (EEA), with a share of more than 90% in most EEA member states.

The EC concluded that Google illegally required manufacturers to pre-install the Google Search app and Chrome browser app as a condition for licensing its Google Play Store, made payments to certain large manufacturers and mobile network operators on the condition that they exclusively pre-installed the Google Search app on their devices, and prevented manufacturers wishing to pre-install Google apps from selling even a single smart mobile device running on alternative versions of Android that were not approved by Google – so-called Android forks.

Google has been ordered to end this conduct within 90 days or face penalty payments of up to 5% of the average daily worldwide turnover of its parent company Alphabet.

While some serving and former competition law enforcement officials *PaRR* spoke with supported the EC's decision and others were opposed, none was prepared to predict the likely effects of the remedy imposed on Google.

John Yun, a former acting deputy assistant director in the US Federal Trade Commission's (FTC) antitrust division told P*a*RR that if there is no "discernible difference" in market outcomes two or three years after the remedy is implemented, "it would strongly suggest that the EC got the Android decision wrong rather than suggesting the EC needed a stronger remedy".

"The reality is that a world with the remedy will be different from the world without the remedy," Yun said, adding that it is incredibly hard to predict any policy changes Google might make.

Yun said that if Google's return from Android decreases, which he predicted to be a "likely possibility post-remedy", then the company's investment into Android will decrease.

"Additionally, it is a distinct possibility that the prices that consumers pay for Android devices will increase if Google begins to charge a licensing fee for the operating system," the former FTC official said, while warning that this effect will hinge largely on whether Google Search remains the primary default app installed by manufacturers of handsets and other original equipment manufacturers (OEMs).

Should OEMs move away from Google apps, Android's commercialisation will fundamentally change and result in less investment by Google and higher prices. "Both are bad results for final consumers but might be good results for competitors," Yun said.

An official from a national competition agency in southern Europe told PaRR on condition of anonymity that the EC's remedy could facilitate the expansion of Chinese players into European markets, taking into account the significant role Chinese smartphones already play in Europe.

"China is an example of a market in which there are significant alternatives to Google apps and Appstore," the official said, adding that this could provide European consumers with a real alternative to Google apps.

The official however refrained from commenting on the effectiveness of the Google remedy saying it was "too early to make predictions".

An academic familiar with the case also told *PaRR* on condition of anonymity that the remedy posed the greatest problem in this case.

"It is by no means obvious what the answer to the Google 'problem' – assuming one exists – is," the academic said.

While the obvious "nuclear" option would be to try to force the company to divest either the search engine or the applications business, that is "pretty much unthinkable from a political perspective", he said.

"And so, something behavioural will have to be tried, but of course it may not work," the academic said, flagging the risk that consumers will simply continue to download Google apps of their own volition.

He said that even if consumers are informed that they are behaving “irrationally” in market terms, if they choose to continue with the same behaviour, there is not much any regulator can do.

Theodor Thanner, director general of the Austrian Bundeswettbewerbsbehorde (BWB), welcomed the decision. He said the question of how the specific markets would look today had Google had never started "bundling" its suite of apps on the Android OS is a hypothetical that is difficult to assess.

Thanner said that while the EC's decision will allow new or existing innovators to provide products for customers, the challenge for competitors will be in dissolving the lock-in effect Google may have on customers and offering sufficient incentives for switching.

"Competition law enforcement cannot remove such dynamics from the market, but it should protect the competitor's possibilities to react and win customers," he added.

Yun criticised the EC's decision as "heavily influenced" by the notion that OEMs and consumers might make "neutral" choices aside from considering whether there is a valid economic justification for such preferences.

He explained that if Google continues to develop Android at the pace expected regardless of the EC's decision and if Google's share in search services remains unchanged, then it seems fairly clear that Google's conduct was not hindering competitors. "More relevantly, [it was] not harming consumers, but rather conforming to market preferences," Yun added.

Yun said he hoped that if that transpires the EC would have some "regulatory humility" and acknowledge its error in the decision rather than doubling-down and suggesting more "draconian remedies" such as breaking up Google.

He added that one could posit scenarios where there exists vibrant competition with lower Android prices, alternative mobile search engines and one in which Google’s investment into Android is not adversely impacted by the EC’s decision. “But we need sound mechanisms and bases for these predictions, and I'm not entirely sure I see that,” Yun noted.

EU competition commissioner Margrethe Vestager earlier this year in an interview with *The Times* **said** she did not rule out breaking up Google in response to a question about whether the move would be the only solution to the US company's dominance.

She however appeared to have **reconsidered** the notion more recently when she said: "I don't know if it would serve the purpose of more competition to have Google broken up."

"What will serve competition is for more players to have a go to be able to reach more consumers, so we can use our choice to find what suits us the best," she told reporters in June while announcing the record fine decision.

by Khushita Vasant in Brussels