A Few Reflections on the FTC's Decision on Google

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The FTC's 5-0 decision to drop its investigation into Google's search-related practices is breathtaking. A number of companies had charged that Google was engaging in unfair competition by cooking its search results. Yet the Commission staff concluded that there was no significant evidence to support allegations that the "company biased its search to hurt competition" or that consumers, rather than competitors, were harmed. Three Democratic and two Republican FTC Commissioners, none of whom have been particularly bashful about pursuing companies they believe have violated the antitrust laws, supported that conclusion. For those who know the FTC Commissioners and staff, it is a bit hard to give credence to the hysterical complaints by some of Google's antagonists that the FTC fumbled the investigation.

There's not much more to say at least on the search case in the US for now. We'll have to wait to see what the EU concludes. So I'd like to reflect at bit on some of the broader questions this decision raises.

Should antitrust give the information-technology sector a rest?

Antitrust enforcers in the US, EU, and other parts of the world have invested a great deal of effort at going after a succession of information-technology companies beginning with IBM, continuing with Microsoft, and most recently with Google. Maybe some day the information-technology revolution will settle down; the pace of innovation will slow; and we'll really need to worry about anticompetitive behavior by firms that are living the quiet life of the monopolist or as part of cozy oligopoly.

In the last 50 years, however, every time we think that day has come to the information-technology sector, we quickly learn that it hasn't. Innovation soon upends firms that seemed dominant and almost unstoppable not that long ago. The threat that an unknown rival will introduce disruptive innovation keeps companies competitive while they are ahead.

That has certainly been the lesson of the last decade. In the early 2000s Microsoft was seen as a super-dominant firm that was essentially impossible to dislodge. Apple had been vanquished. Yet a decade later Apple has a market capitalization about double that of Microsoft's. The business press sees the great competitive battles of today being between Amazon, Apple, Facebook, and Google. Microsoft isn't a player.

Perhaps it is time for antitrust authorities to give this sector a rest. I'm not suggesting that anyone stop enforcing the antitrust laws towards these companies just because there is fast moving innovation. But given the history of this sector competition authorities should think twice about mounting massive assaults on the big player of the day.

Are antitrust authorities focusing their attention in the right places?

The recent scandals concerning manipulation of the Libor, the Euribor, and probably other 'bors by banks should make competition authorities question how they are spending their time. The evidence keeps mounting from the settlements that traders at banks were manipulating interest rates that affect many hundreds of trillions of dollars of contracts—from home mortgages to credit-default swaps—around the world. Some of this involved manipulation by individual banks. Much, though, also concerned the coordinated behavior that antitrust authorities should be going at. As Rosa Abrantes-Metz and I have argued, anyone with a basic understanding of antitrust economics should have known that the very public and well-known procedures being used by the bank rate-setting bodies could easily be used to facilitate coordinated manipulation of interest rates. This has been going on for years in plain sight.

How the competition authorities managed to miss this is a story many of us would like to hear. Ferreting out this sort of bad behavior seems like a much better use of time than, say, forcing Microsoft to release versions of its operating system that no one wants to license (the media-player-less version of Windows that was the remedy and the main result of the EU's tying case). Again, I'm not advocating anything radical like not pursuing exclusionary practice cases, but some thought needs to go into whether the resource allocation is right.

Do companies that invest in lobbying antitrust authorities to tie their leading rival up in knots get a decent return on their investment?

You would think the answer should be yes. It doesn't cost much within the scheme of things to hire a lawyer to write a few letters to a competition authority or to pay lobbyists to do their thing. If the competition authority bites it can impose massive costs on the rival and, even better, distract their CEOs. In the US, if a company can do this to its rival it can even take their executives out of business action while they are prepping for and having their depositions taken. (See my recent article for a longer discussion of opportunistic litigation against platform companies.)

Yet if you look at the results of companies that have made these investments, it isn't so clear that it did much for them. Perhaps Sun Microsystems got a little bit of extra life from the letter it lobbed across the Atlantic that set the Commission's Microsoft investigation off. On the other hand, perhaps Scott McNealy, Sun's CEO, and his team could have used their time and psychic energy on reviving the company. And then there's the sad story of Microsoft. Its not even clear they invested in attacking the right rival. As it turned out, after all these years obsessing about Google and search, they should have been worried about Apple and done a better job at innovation in operating systems for mobile devices.

Here's one lesson from the history of antitrust lobbying: shareholders and boards might consider decisions by CEOs to invest in antitrust complaints against their competitors at least as a warning sign that the CEOs don't have what it takes to really compete and innovate.