

## Fair competition between Internet search engine and online press - Why newspaper and magazine publishers have turned to antitrust authorities when it comes to Google



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In December 2009, the German newspaper and magazine publisher associations BDZV and VDZ have asked the German Federal Cartel Office [*Bundeskartellamt*] to assess whether the Internet company Google is abusing its dominant market position in the online markets. In December 2010, the EU-Commission opened an official investigation against Google and took responsibility for the German publishers' complaint. Other European publishing associations are also considering approaching the cartel authorities concerning Google. – What's the issue? Is it rearguard action on the part of the old print industry because it has failed to compete with modern Internet companies, all in the hopes that the authorities will rescue the sinking ship of its current business model? Closer analysis shows that the conflict has less to do with the economic interests of a few ailing press publishers and more with matters of principle involved in securing competition throughout the media and the diversity of opinions on the Internet.

Google started off as an Internet search engine, its prime mission "to organize the world's information and make it universally accessible and useful." The importance of this role as an intermediary in what would otherwise be a confusing and disorienting Internet is undisputed. One major reason for Google's great success is, not least, its superior technology. Processing 9 in 10 search queries, the company dominates the German search engine market. Yet Google has long since parted ways with its role as a mere intermediary, having added its own content and additional services (GoogleMaps, GoogleVideo, YouTube etc.). In addition to content from other websites, Google now offers not only newspaper articles purchased by press agencies; but also TV broadcasts, radio interviews, infographics, blogs, maps, images and videos – without the need for users to access classic media sources first (TV, radio, newspapers, magazines) in order to gain access to the content. In this way, Google is evolving into the central, first and increasingly the only place referred to for content of all types. As a result, Google now does far more than just present content originating from other providers, and instead is increasingly becoming a substitute for these providers altogether. The emerging competition in the media content markets – in the online ad markets Google has been competing with website operators since day one – creates an economic incentive, and without any specific regulation there is a real danger that Google will use its power in the search engine market as a lever to gain a strong foothold in the related content and ad markets.

Against this backdrop, it must be ensured that Google does not give its own content and additional services priority on the search engine result page, or "SERP". Such prioritisation would result in other ad-financed content providers receiving a lower page rank and would therefore put them at a disadvantage within the competition for ad revenue. In this respect, the publishers demand that, as gatekeepers of the Internet, search engines list search results in a neutral and fair manner ("fair search").

In light of the competition in the online ad markets, it is also problematic if search engines use their own sites to reproduce high-quality content created by others and cash in on related advertising without sharing the revenues with the creators of the content. In Germany, Google's annual ad turnover is currently estimated at EUR 1.2 - 1.5 billion. This means that Google's online advertising turnover is five times greater than all press publishers combined. Google generates such high ad revenues by reproducing professionally created content without any counter-performance (thus using this content to sell ads). As a consequence of their dependency on traffic generated by Google, online press portals are practically powerless in preventing Google from not only searching through and indexing their websites but also from reproducing the content without any counter-performance. Those who are not listed on Google are virtually invisible on the Internet. There are no feasible technical solutions that force a search engine to index a page without also replicating its content. The prohibition of abuse under antitrust law could require Google to set the price for the reproduction of premium content above "zero" and to offer content providers reasonable remuneration. The publishers therefore demand a fair share of the ad revenues generated by Google. This is the only way in which editorially produced content can continue to be offered to users free of charge on online press portals.

The questions raised are of key importance for competition within the media. Companies that dominate markets have a special responsibility for the structure of these markets. What will have to be assessed is whether the competitive structure of the media markets is threatened by the practice of a market-dominating search engine using content created by others to bring in ad revenues while the content providers themselves walk away empty-handed. Effective competition in the media markets can only be guaranteed by protecting the economic foundation of both: the content *intermediary* and the content *creator*. In addition to strong copyright law, antitrust law can also play an important part.

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