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U.S. Antitrust Move Has Google Fighting on Two Fronts

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SAN FRANCISCO — Google may soon be fighting antitrust battles on two fronts.

The [European Commission](#) has been looking for two years into whether the search giant abused local competition laws, and it is expected soon to either file formal charges or achieve a significant settlement.

Now the Federal Trade Commission, which began examining Google last year, is starting its own antitrust inquiry. The commission hired a former federal prosecutor this week to lead any potential case.

“The European Commission and the F.T.C. are investigating the same things,” said Keith N. Hylton, a Boston University law professor. But, he added, Google faces a tougher situation in Europe, where courts have a lower threshold for assessing market dominance. Also, antitrust regulators in Europe are much more powerful than they are in the United States. For instance, they do not need a court order to impose sanctions.

The move by the F.T.C. could help embolden the European Union’s competition commissioner, Joaquín Almunia, to send Google a formal charge known as a Statement of Objections, experts said Friday.

“The antitrust authorities in Europe may have grown wary of being seen as being too tough on successful U.S. technology companies like Microsoft and Google,” said Nicolas Petit, a law professor at the University of Liège in Belgium. “So the appointment of a seasoned litigator to head the investigation in the United States could help Mr. Almunia to move a bit faster with his case.”

Google acknowledges that its prominence invites scrutiny, but says that its search service — which it points out is free to users — does not stack the deck and that there are competing search engines.

“Our success rightly generates interest, which is why we’ve worked hard to explain how our business works,” a spokeswoman said Friday. She added that Google, which she said was cooperating with the Federal Trade Commission, knew that “there’s always room for improvement.”

Google's share of the search market is more than 90 percent in some of the largest markets in the European Union. That is significantly higher than in the United States, where Google's market share is less than 70 percent.

Any decision on filing a case in the United States is likely to be many months away. But bringing in Beth A. Wilkinson, a partner with the firm of Paul, Weiss in Washington, was widely interpreted as a signal by the trade commission that it meant business.

"It would seem to me to be highly unlikely that they would hire a litigator unless they had some very strong prospect of litigating," said Albert A. Foer, the president of the American Antitrust Institute. "If they were planning to close the investigation, I think that would be handled internally, without any saber rattling."

The agency has been investigating Google's behavior since last spring. Regulators have taken depositions and issued subpoenas involving Google and some of its competitors, according to people who have been contacted by the trade commission.

The commission is looking at whether Google has abused its dominance in Internet search and advertising, giving its own products an advantage over those of others while maintaining that it offers a neutral, best-for-the-customer result.

Antitrust lawyers say that proving a case of unfair competition against Google will be difficult, because it will not be enough simply to show that some search results rank lower when Google changes its algorithm. The trade commission will have to prove in part that the changes were purposely designed to disadvantage competitors.

The issues raised by the inquiry have come into sharp focus in the example of niche search sites. If a user searches for airfares to Los Angeles, for instance, the first result that comes up is from Google flight search, which lists airlines on the route and ticket prices. Other travel companies selling tickets are farther down the results list.

Studies of Internet user behavior show that consumers rarely look beyond the first few results of a search. If Google has purposely changed the way it ranks results to make its own product show up at the top of the list, even if it is not the best result for the user, that could be interpreted as anticompetitive conduct.

The same theory would apply to the advertisements that appear on the right-hand side of the Google results page. If Google changed how it determines which ads appear at the top in a way that makes it less likely that an ad for a competitor ranks at the top, that could be anticompetitive behavior.

Google says the changes it makes are to make its search engine more useful.

"We don't trap our users," Eric E. Schmidt, Google's executive chairman, told a Senate

committee last fall. “If you don’t like the answer that Google Search provides, you can switch to another search engine with literally one click.”

The trade agency is also looking at whether Google made exclusionary agreements with other companies to have a “powered by Google” search box on their own Web sites, and whether it strong-armed phone manufacturers using the [Android](#) operating system to offer only Google search on their phones, sources close to the investigation said.

The search company, which did not exist when the antitrust case against Microsoft was first developed nearly two decades ago, is now a commanding presence in the tech world. It has been embroiled recently in numerous investigations.

In just the last week, Google officially responded to a [Federal Communications Commission](#) complaint that it had obstructed an investigation into its Street View project, its plan to photograph every street of the inhabited world. Google denied obstructing the inquiry but agreed to pay a \$25,000 fine. It also said that Street View had been investigated by the Justice Department, which did not pursue a case. The Justice Department declined to comment.

If the trade commission files an antitrust suit against Google, Gary Reback can claim a share of the credit. Mr. Reback, a Silicon Valley antitrust lawyer, represents several companies who have complained to the government about Google. He was also the primary instigator of the federal government’s case against Microsoft.

Mr. Reback said the search giant was able to succeed only because Microsoft was hobbled. Competitors need room to breathe, he said.

“If we’re going to have the next-generation Google, the next-generation Facebook or Zynga, you need Son of Microsoft filed in district court,” Mr. Reback said. With the trade commission’s hiring of Ms. Wilkinson, he said, “they now have someone competent to do that.”

Investors do not appear worried about this possibility. Google shares scarcely budged on Thursday and Friday.

David Streitfeld reported from San Francisco and Edward Wyatt from Washington. James Kanter contributed reporting from Brussels.

