United States v Google—Implications of the Antitrust Lawsuit for Health Information

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On October 20, 2020, the US Department of Justice joined by 11 state attorneys general filed a stunning civil antitrust lawsuit in the United States District Court for the District of Columbia against Google (United States v Google). The complaint in this high-profile case is that Google engages in anticompetitive practices in the 2 principal components of its business, general internet search and advertising related to internet search, and maintains monopolies in violation of Section 2 of the Sherman Antitrust Act. Google’s monopolistic control over internet searches and related advertising extends into health information and advertising of health products. Although Google is not primarily a health entity, it is the largest provider of online health information to the public, and through its search algorithms and advertising policies controls much of the content of the health information, both noncommercial and commercial, viewed by internet users.

Implications for Health Information

How might Google’s monopolies affect health information? Google receives a staggering 1 billion health-related searches per day, or 70 000 per minute, accounting for 7% of its total searches. In many cases, searches for health information also result in the appearance of advertisements at the top of the search results. Consequently, Google controls a vast amount of health information sought by the public and distributed through online searches.

Google controls health information in multiple ways. It determines the order in which the search results are displayed, along with which search results appear on the first page and have highest visibility. By virtue of payments from advertisers, Google determines which advertisements will appear at the top of the page. In addition to the search results, Google has added Knowledge Panels to search pages, which provide summaries of search information and related search terms. Google decides which searches will be highlighted in Knowledge Panels and the information that is placed in them. Wikipedia and Wikidata are the principal sources of information for the Knowledge Panels, which may affect the quality of the information contained in Knowledge Panels. Recent research concluded that academic literature is limited on understanding the reliability of health information provided on Wikipedia.

Google’s monopolies over internet searches and the associated advertising, which have been underscored by the filing of United States v Google, have significant implications for the health information derived from searching the internet. From the standpoint of the consumer, is this the most reliable health information? A recent study concluded, “The vast amount of information that is possible to be retrieved makes it difficult to separate fact from fiction and interpret the findings, even for highly motivated individuals.” Even setting aside that health information derived from internet searches may not be highly reliable, the fact that a single entity controls the distribution of this information and influences its content adds another element of concern.

Google and Apple

How did Google establish, and how does it maintain, its search and advertising monopolies? Having a monopoly is not in itself illegal, but actions taken to sustain a monopoly may be. Google captures
distribution channels for information by making exclusive agreements with other entities to stave off
search competition in the use of its web browser (Google Chrome). For example, Google has made
agreements with Apple to pay the company between $8 billion and $12 billion per year for Google’s
web browser to serve as the default on Apple devices. The Apple agreement has the added benefit to
Google of keeping Apple out of the search market, including searches for health information. Google
also maintains a monopoly on search advertising, such that advertisers pay Google $40 billion per
year to secure prime placement of their advertisements on Google’s search results pages.

Google's Monopolies

As a result of this anticompetitive activity, Google controls nearly 90% of all general internet
searches in the US and fully 95% of searches made on mobile devices, particularly cellular phones.
Are consumers harmed by Google’s anticompetitive activities? By impeding the activities of
competing search engines (such as Microsoft Bing and DuckDuckGo), Google restricts consumer
choice and the potential for innovation in the search space. Also, Google is virtually the sole provider
of search information to consumers, which calls into question whether consumers are receiving the
highest possible quality information. Not every searcher sees the same results in response to the
same search terms. Google’s search algorithms may modify the search results on the basis of a
person’s search history and geographic location, among other characteristics. Google may also target
the spectrum of advertising that consumers see when they conduct internet searches.

Consumer Welfare

In conducting an antitrust analysis, experts in antitrust law typically consider consumer welfare in
making determinations of whether antitrust law has been violated. The consumer welfare standard
usually involves making a judgment about whether the alleged anticompetitive activity harms
consumers, particularly in the form of higher prices. Some antitrust experts believe that the
consumer welfare standard sets the burden of proof too high and that the focus should instead be
on concentrated power. In the case of Google’s monopolies, one price that consumers pay is that
online health information they retrieve is controlled by a single entity that has an enormous financial
interest in the advertising that accompanies health searches. If the Department of Justice prevails in
United States v Google and Google’s deal with Apple is ultimately negated, Apple might decide to
pursue its own internet search strategy and compete directly with Google. It can only be speculated
whether competition in this space would result in more innovation, but scholarship strongly
supports the idea that competition may promote innovation and benefit consumers.

Conclusion

The outcome of United States v Google will likely not be known for some time, assuming that the
Biden administration continues to pursue the case (which is likely). Legal authorities are divided on
the question of the relative merits of the case. Should Google prevail, its monopolies will survive, and
Google will remain the principal purveyor of online health information. But if the government
prevails, there may be a structural remedy, in which antitrust action could be taken to divide Google
up in some manner. This could theoretically allow more competitors in internet searches for health
information. Irrespective of its eventual outcome, United States v Google highlights why we should
be concerned about the quality of health information derived from the internet.

ARTICLE INFORMATION

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