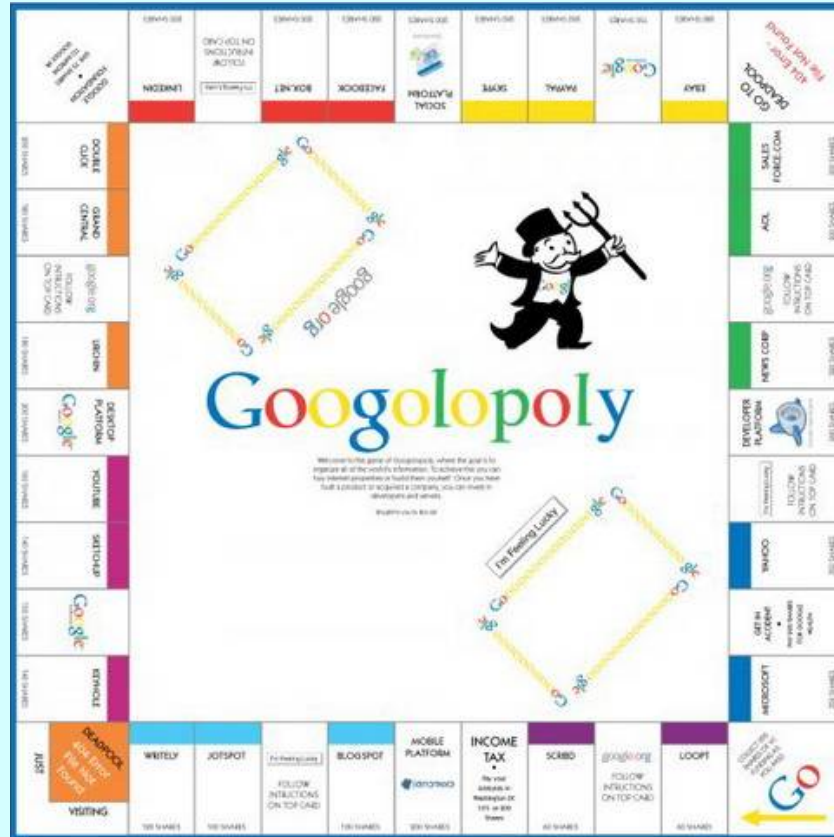


Monopoly Power



News: Crowdsourcing cybersecurity: Policy paper suggestion?

- <http://www.washingtonpost.com/blogs/innovations/wp/2015/02/05/crowdsourcing-americas-cybersecurity-is-an-idea-so-crazy-it-might-just-work/>
- <http://www.darkreading.com/analytics/crowdsourcing-and-cyber-security-who-do-you-trust/a/d-id/1278747>
- Looking for creative ways to achieve public-private partnerships
 - Synack as an example company??? (<http://fortune.com/2014/04/24/for-crowdsourced-security-startup-a-carrot-and-a-hack/>)

Why discuss monopolies?

- When discussing the prisoner's dilemma, the tragedy of the commons, and network externalities, we began talking some about the roles of government vis-à-vis regulation..

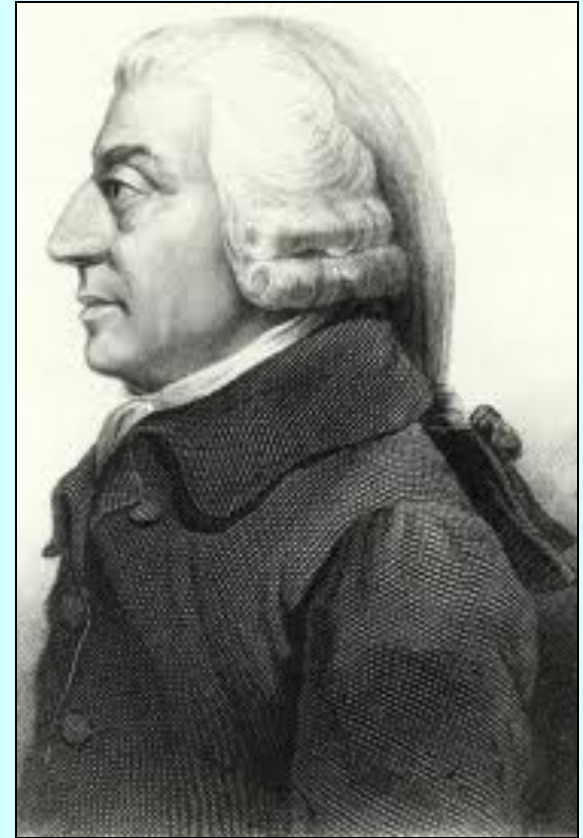
Outline

0. Adam Smith on monopolies
1. Brief history of monopoly regulation
2. The Microsoft case
3. Is Google a monopoly?

Adam Smith on Monopolies

A monopoly granted either to an individual or to a trading company has the same effect as a secret in trade or manufactures. The monopolists, by keeping the market constantly understocked, by never fully supplying the effectual demand, sell their commodities much above the natural price, and raise their emoluments, whether they consist in wages or profit, greatly above their natural rate.

—*The Wealth of Nations*, 1776



Adam Smith (1723-1790)

Part I

A Brief History of Monopoly Regulation



The Gilded Age

- The period between the American Civil War and the end of the 19th century was marked by growing industrialization and concentration of the economy. Mark Twain called it “The Gilded Age.”
- In the early years following the war, *laissez-faire* capitalism was the dominant ideology and drove enormous expansion.
- The absence of regulatory controls gave rise to boom and bust cycles. The United States endured significant depressions in 1873, 1877, 1883, 1893, and 1896.
- Unchecked monopoly power led to vast concentrations of wealth.
- Large-scale immigration and lack of labor regulations resulted in a vast economic underclass.

Early History of Monopoly Regulation

1870s U.S. begins massive industrialization

1880s Railroads, banks, steel, and oil industries develop monopoly power, threatening other sectors of the economy

Protest organizations such as the Grange and the Independent Farmers Association begin to agitate for an end to monopoly control

1890 Sherman Act adopted

1914 Clayton Act adopted

Chief Provisions of the Sherman Act

The first two sections of Sherman Antitrust Act of 1890 hold:

§1 Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony. . . .

§2 Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony. . . .

Part II

The Microsoft Case



Timeline: Department of Justice v. Microsoft

- 1991 FTC begins investigation of Microsoft
- 1994 Microsoft signs consent decree
- 1995 Microsoft's acquisition of Intuit blocked
Microsoft integrates Internet Explorer into Windows 95
DoJ charges that such integration is anticompetitive
- 1997 Preliminary injunction against IE
- 1998 Microsoft releases Windows 98 with IE in place
DoJ opens antitrust case
- 1999 Judge Thomas Penfield Jackson issues Findings of Fact
- 2000 Judge Jackson issues Conclusions of Law
Jackson orders breakup of Microsoft into two companies
- 2001 Jackson's ruling overturned by Court of Appeals
DoJ reverses course and backs away from breakup order

Alleged Anticompetitive Practices

- Tying
- Bundling
- Predatory pricing
- Refusing to deal (*essential facility* doctrine)
- Making proprietary APIs unavailable to third parties
- Issuing “Vaporware” announcements

Monopoly Ruling in the Finding of Fact

- *Market share.* “Microsoft possesses a dominant, persistent, and increasing share of the world-wide market for Intel-compatible PC operating systems. Every year for the last decade Microsoft’s share of the market for Intel-compatible PC operating systems has stood above ninety percent.”
- *Barriers to entry.* “Microsoft’s dominant market share is protected by the same barrier that helps define the market for Intel-compatible PC operating systems.”
- *Lack of alternative.* “Microsoft’s market share and the applications barrier to entry together endow the company with monopoly power in the market for Intel-compatible PC operating systems is directly evidenced by the sustained absence of realistic commercial alternatives to Microsoft’s PC operating-system products.”

Issues Raised in the Finding of Fact

- Actions to counter the browser threat
 - Contractual arrangements with OEMs
 - Free distribution of IE to ISPs
 - Arrangements with other companies not to compete
- Actions to counter the Java threat
 - Creating incompatible extensions to Java
 - Encouraging developers to use Microsoft version
 - Prevent Intel from developing cross-platform interfaces
- Attempts to gain monopoly power in secondary markets

Summary of the Proposed Remedy

- Microsoft must divide into two companies to effect a “separation of the Operating Systems Business from the Applications Business.”
- Following the breakup, both companies are prohibited from:
 - Merging or otherwise recombining
 - Entering into cross-licensing agreements with the other
 - Providing to the other any APIs, communications interfaces, or technical information that is not made readily available to others
 - Taking or threatening any action adversely affecting any OEM
 - Entering into restrictive agreements with OEMs
 - Taking any action to interfere with or degrade the performance of any non-Microsoft middleware
- Microsoft must release its APIs and other relevant technical information to other software developers in a timely manner.

Discussion Question

As you look over Judge Jackson's findings, what is your impression of the level of technical understanding displayed by the courts in this case? Are there any aspects of the findings that appear technologically naive?

A Piece of Courtroom Drama



December 19, 1997 11:50 AM PST

Judge uninstalls IE in 90 seconds

By Dan Goodin
Staff Writer, CNET News

The judge hearing the Justice Department's case against Microsoft (MSFT) today set a hearing for January 13 on whether the software giant should be held in contempt of court for allegedly violating an order issued last week.

At a scheduling conference this morning, U.S. District Court Judge Thomas Penfield Jackson set the hearing to consider Justice allegations that Microsoft's plans to offer two separate versions of Windows 95 "flouted" last week's preliminary order forbidding "any Microsoft personal computer operating system software" to be bundled with "any Internet browser software.

"In comments that may indicate a growing impatience with Microsoft, Jackson remarked today that his clerk had been able to uninstall Internet Explorer 3.0 in some 90 seconds. "Windows 95 functioned flawlessly" with the Web browser removed, he said. "If it's not that simple, I'd like to have it refuted.

A Microsoft spokesman acknowledged that a utility shipped with Windows 95 will remove visible portions of the browsing software, but he stressed that the "deinstall" program deletes only a small percentage of the IE

Timeline: EU vs. Microsoft

- 1993 Novell Corporation files a complaint with the EU charging Microsoft with anticompetitive practices.
- 1994 Microsoft negotiates a settlement by revising its licensing.
- 1998 Sun Microsystems and RealNetworks file a new complaint.
- 2003 The EU orders Microsoft to offer Windows without Media Player and fines the company €497m (\$690m).
- 2004 Although it pays the fine, Microsoft appeals the ruling and is slow to implement its terms.
- 2006 The EU fines Microsoft an additional €280m (\$390m).
- 2007 Microsoft loses its appeal and declines to take further action.
- 2008 The EU imposes a new fine of €899m (\$1.25b) for failure to comply with earlier antitrust decisions.
- 2009 The EU accepts Microsoft's plan offering a menu of browsers.

Part III

Is Google a Monopoly?



The Battle of the Giants

The New York Times

— February 6, 2008

Who's the 800-Pound Gorilla?

When it comes to the lucrative search market, Google, not Microsoft, is the 800-pound gorilla. Last December, nearly 6 out of 10 searches in the United States were conducted on Google sites, according to comScore. Only 23 percent were done on Yahoo sites and 10 percent on Microsoft sites. Google's share of worldwide searches was even greater. Google's online advertising revenue vastly outstrips that of Yahoo and Microsoft combined. By this count, a merger between Microsoft and Yahoo would boost competition, creating a more effective competitor to challenge Google's dominance. . . .

It took regulatory pressure to convince Microsoft to drop its latest efforts to hustle users toward its MSN engine—and shut all others out. That certainly suggests regulators must remain eternally vigilant against Microsoft's baser instincts. If Google can support specific arguments about why a combination of Microsoft and Yahoo would be anticompetitive, it should make them. Vague insinuations about the threat from the bad boys from Redmond just sound like so much empty whining.

Steve Ballmer's opinion

"Google does it. They have, dare I say, a monopoly. We are the only company on the planet still trying to compete with it....This [search] is a scale game because the market for advertising is auction-based economics. If we have exactly the same quality of algorithms but less scale in search advertising we get less revenue per search than Google which means they have more money to pay for distribution on Samsung or Apple. Rumor is they pay each \$1 to \$3 billion a year for distributing their search products. We have to generate volume to step up. I believe that Google's practices are worthy of discussion with competition authority. And we have certainly discuss them with competition authorities."

Bundling?

- Search with Google Maps and Youtube?

Google versus the FTC

- The FTC investigated, and ultimately did not file suit against Google

The EU Again Leads the Way

The Daily Telegraph

Google under investigation for alleged breach of EU competition rules

By Kamal Ahmed, City Editor (Sunday Telegraph)
February 24, 2010

In a post last August on its site, Foundem said: “Google has always used various penalty filters to remove certain sites entirely from its search results or place them so far down the rankings that they will never be found. . . .

Google has dismissed the claims, saying that its search algorithms are aimed at pointing people to the best sites and that it does not pick and choose favourites. Company sources argued that Foundem struggled on Google search because it had little original content.

In a post published on Wednesday morning, Google said: “We’ve always worked hard to ensure that our success is earned the right way, through technological innovation and great products, rather than by locking in our users or advertisers or creating artificial barriers to entry.”

More recently

- EU concerns about advertising and search (i.e. is Google favoring sites from its advertisers?)
 - – <http://www.nytimes.com/2015/08/29/technology/european-publishers-play-lobbying-role-against-google.html>
 - – <http://www.nytimes.com/2015/06/20/technology/european-regulators-lay-out-demands-and-fines-in-google-antitrust-case.html>
- – Is Google's split in Alphabet (where advertising is separated from search) enough?