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## The Microsoft Case and the Boomerang Effect

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## **i. Introduction:**

Today we live in an economic system that is in constant competition due to the presence of multiple companies. Throughout the years, this economic evolution has developed numerous markets composed of firms that hold different shares. These percentages/market power go from the company that is the strongest and most dominant to others that represent a minority. Due to this fast growing globalization, the creation of many companies has increased the level of competition. All over the world today there are companies that compete with each other in trying to give the best product and services at different prices and quality to their target of consumers. Our economy is growing so fast and in the past 20 years there has been a boom in research and innovation concentrated in satisfying the requests of an innovative bloodthirsty consumer side.

Companies have worked hard in giving themselves a good and well known image worldwide inducing consumers to choose one product of one company from the same product of another. Microsoft has done all this by holding the major part of its market of competence and becoming the world leading company in the production of PC operating systems inducing all the other operating system companies to become less chosen by the consumer. By being the dominant company in its sector, it receives all the positive rewards going from high incomes to excellent company image. On the other hand, a dominant position brings negative aspects such as having multiple enemies in a competing market.

Microsoft is so dominant in that today when we buy a computer the operating system most present is Windows, which is the operating system produced by Microsoft. This presence has brought Microsoft to be world leader in its sector reducing the share of power to all the other competitors. This wonderful success reached by Microsoft has brought up some doubts on the way Microsoft has gained this success and dominance in its market of competence. All of this led competitors to take legal actions against Microsoft by forwarding complaints to the anti-trust commission in America and not only since also the European Anti-Trust Commission took action in investigating Microsoft anti-competitive attitude towards other competitors and accused of dominating the market by trying to destroy competition by using its global market power reached.

This paper has the purpose to analyze and explain what Microsoft has done to bring other companies and anti-trust commissions to start the Microsoft persecution leading to the famous Microsoft Case.

The European Microsoft Case started in 1998, while the American Microsoft Case started back in the 1990s.

The European Commission, begun its case when there was an investigation on Microsoft's conduct in refusing to deliver crucial information to other companies necessary for them to interoperate with Microsoft's PC operating system. Microsoft's operating system is the most dominant operating system present on PC's in the world as of today. In December 1998 there was the first complaint issued from Sun Microsystems which accused Microsoft of refusing to supply this information necessary for the two systems to interoperate.

Microsoft was accused of anti-competitive infringement by first the American Anti-Trust Commission which later followed the investigation from the European one. The two abuses are:

1. The refusal to supply to competitors interoperability information necessary for their products to interoperate with Windows<sup>1</sup>;
2. Tying Windows Media Player to Windows (operating system)<sup>2</sup>.

Microsoft has gained a very strong advantages and market power in the PX operating system market making it world leader in this sector. The main problem is that Microsoft in these years has been creating a strong dominance in the market, having all this dominance brought many conflicts with other operating system producers or other companies producing programs.

The operating systems are intended to interoperate between each other as for example a person having a PC with Windows on it or a person owning a MAC with Apples operating system running on it. Operating Systems are also intended to complement and to be able to make cohabitation possible with third-party products.

Microsoft's was accused of using this market dominance to eliminate competition not quickly but with a clear trend to monopolize the market step by step. By conducting this

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<sup>1</sup>*European Commission,*

<http://ec.europa.eu/competition/antitrust/cases/microsoft/investigation.html>

<sup>2</sup> *Id.*

monopolistic behavior trying to destroy competition, Microsoft received another blame on new products/innovation being that, everything was in the hands of Microsoft's technical developments, which limited and slowed down the innovative process. The main problem was that with Microsoft's interference in the competitive process, the benefits that consumers had with quicker innovative cycles present in a competitive process were all eliminated. All of this is called foreclosure of competition.

A quote explains this concept:

*“Microsoft interferes with the normal competitive process which would benefit users by ensuring quicker cycles of innovation as a consequence of unfettered competition on the merits”* (para. 1088 of the Judgment).<sup>3</sup>

From this quote we can see how the rise of an hypothesis that Microsoft in these years has limited innovation through its market dominance. The main problem that arises from this fact of limiting innovation is that in a monopolistic market, when a separate product is introduced in its market of competence it does not improve that product in any possible way.<sup>4</sup>

Consumers had no choice leading Microsoft's tying abuse since there was dominance in tying products being the PC with the operating system. Since they were not two separate products the customer in the store had no choice when buying.<sup>5</sup>

This paper's main objective is to explain the entire Microsoft Case, focusing on the European Case Study with some correlations with the American Case Study in all its details explaining what has brought to these complaints by competitors and to the antitrust infringements with all the various investigation results, an explanation on the various reactions all counter parties had, then followed by how Google's participation in the case on antitrust which is crucial in explaining how later in the years received Google the same treatment (The Google Case) explaining the boomerang effect.

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<sup>3</sup> *Dr. Buhr Carl-Christian, DG Competition and European Commission, The European Commission's Microsoft Case: Analysis and Principles, OpenExpo Bern/1, April 2009, Slide #24.*

<sup>4</sup> *Id, See Slide #26.*

<sup>5</sup> *Id, See Slide # 20 and # 24.*



## ii. Analysis:

### 1. The case and Investigation by the commission (Historical Analysis):

This first part of the analysis will explain all the investigation by the commission with the hearing, the obligations and fines that Microsoft received:

Everything started with the complaint issued in 1998 by Sun Microsystems that accused Microsoft of refusing to supply their company with the necessary information of interoperability that permitted Sun Microsystems to interoperate with the most prevailing PC operating system owned by Microsoft.<sup>6</sup> This complaint followed an investigation by the anti-trust commission in February 2000. The investigation was focused on the tying of the PC operating system with the program Windows Media Player. But Windows Media Player was not the only problem as Microsoft was accused also in automatically tying Internet Explorer web browser to its Windows operating system computers. Windows products being Windows Media Player and Windows Explorer are two separate products produced by Microsoft, which are tied to its operating system.

Microsoft then received by the European anti-trust commission in August 2000 a document of complaints stating that they refused to supply this information for the working of the product to the various competing companies and also accused of trying to eliminate competitor's market power by neglecting crucial interoperability information.

Still in the month of August the anti-trust commission holding the various complaints by other companies sent a second note of complaints (Statement of Objections), which confirmed that Microsoft was accused of tying two products being the Windows operating system and the known program called Windows Media Player, secondly it was also accused of conducting an anti-competitive conduct towards other companies, and third the commission also confirmed to Microsoft the accuse of neglecting crucial interoperability information to other work groups in their share of market.<sup>7</sup> At this moment Microsoft was in a very complicated situation in which it saw its

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<sup>6</sup> *European Commission*,  
<http://ec.europa.eu/competition/antitrust/cases/microsoft/investigation.html>

<sup>7</sup> *Id.*

dominant position in the operating system market attacked by not only its competitors but also with an entire anti-trust commission investigating on their attitudes and actions. All of this followed a Third Statement of Objections and of complaints of the anti-trust commission, which confirmed all the above allegations.

Microsoft had to do something in its defense so they provided their response asking for a hearing by the court. The request by Microsoft was granted and the legal hearing was organized for November 2003. Nothing was really concluded with this hearing since there was a situation of stall. The investigations and all the information that was to be analyzed were not concluded just yet. This brought to an extension of the hearing since the investigation by the anti-trust commission was concluded in the following year, 2004. The anti-trust commission after finishing the investigation came to the conclusion that Microsoft had taken advantage of their dominant position in the market since the most used PC operating system was of their property. These allegations were as known: refusing to give competitors the crucial information and data absolutely needed so that the competitors operating systems could interoperate with Windows one.<sup>8</sup> This information was crucial and so needed by the competitors to survive in their market of competence. After the hearing Microsoft was given 120 days to accurately compose a detailed information pack to permit competitors to interoperate with the windows operating system and to deliver it to all the various competitors in the same market of competence.<sup>9</sup> After the hearing Microsoft was also forced within a 90 days term to eliminate its tying issue and to separate the program Windows Media Player from Microsoft's Windows operating system.<sup>10</sup> But it was not over yet, Microsoft in these 90 days not only it had to separate the program from the operating system, but in these 90 days it also had to come up with a new and updated version of Windows operating system with a system that did not have this tying issue.

One would think that the case would be over and that Microsoft would accept the sentence and complete its obligations towards what the commission had declared and towards the other companies. This did not happen as Microsoft came up with many remedies to suspend what the court declared. It appealed to the Court of First Instance (CFI), so on the date 25 June 2004 Microsoft appealed to the CFI to try and suspend the decision of the court since Microsoft presented the various damages it would in counter if this decision was applied. CFI responded by suspending

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<sup>8</sup> *Dr. Buhr Carl-Christian, DG Competition and European Commission, The European Commission's Microsoft Case: Analysis and Principles, OpenExpo Bern/1, April 2009, Slide #2*

<sup>9</sup> *European Commission,*

<http://ec.europa.eu/competition/antitrust/cases/microsoft/investigation.html>

<sup>10</sup> *Id.*

the courts outcome. Microsoft remedies to suspend the court decision accepted in the first place by the CFI stated that Microsoft would suffer serious damages.

These damages claimed by Microsoft were:

**First,**

1. Interference of commercial freedom: stating that Microsoft had the right to do what was in her power to let her product prevail in the market. This could be true but companies do not just have the freedom to do everything only because they think it right to do it;
2. Serious harm to Microsoft's intellectual property: stating that what created by Microsoft remained of Microsoft's property to keep the domain in the market. Microsoft being the leading company in that share of market, it must create a situation to give the opportunity to the people to chose what they prefer maybe even with another company, otherwise this would be a monopolistic market;
3. The third harm is that these decisions would harm the markets conditions: would affect the domain in the market that Microsoft had imposed.

**Second,**

For the tying issue Microsoft came up with two remedies, which were:

1. Alteration of the companies organization system in giving this program "Windows Media Player" together with the Operating System. Microsoft had its own design concept for the service given to its consumers giving this program together with the operating system, separating the two would mean that a consumer would have the operating system but with the choice of having a different media player. This would be good because it gives the possibility to consumers to choose instead of being obliged to use Windows Media Player. This was just a cheap excuse to make its program a customer's only option.<sup>11</sup>
2. The second damage or harm would be the image that Microsoft had would be altered with a new negative view by consumers. Microsoft recognized itself as a company producer of high quality software's and this situation would hit the company's image.<sup>12</sup>

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<sup>11</sup> *European Commission,*

<http://ec.europa.eu/competition/antitrust/cases/microsoft/investigation.html>

<sup>12</sup> *Id.*



Due to what Microsoft had presented to the CFI a new hearing was organized at the end of 2004 before any more actions could be taken by the CFI. After the hearing on the 22<sup>nd</sup> of December 2004 the CFI rejected Microsoft's appeal and so the decision of the commission were not suspended any more. The President of CFI rejected Microsoft's complaints because Microsoft had not really demonstrated how the decision of the court in the hearing would cause irreparable damages to the company. So due to these new events Microsoft was then obliged to put in action the decisions taken by the commission. Microsoft also had a fine of 497 million euros to pay because of the damages made by the company to other companies and conducting an anti-competitive act.

In September 2007, the CFI delivered new findings stating that the commission's decision on an abuse of Microsoft's power in the competing market was correct. The court reported that with the commission's decision on the fact that there should be interoperating information from Microsoft to other companies was correct and that other companies programs or operating systems should have had the possibility to interoperate with the Windows programs and operating systems. All this was correct to let other companies compete in the market and to be equally weighted as Microsoft. On the tying issue the court stated that the commission was correct on the fact that tying the program to the operating system would reduce competition, favoring Microsoft. Due to these new findings and to the investigation done by the court the amount fined to Microsoft being 497 million euro remained and that Microsoft was obliged to pay, since the decision was taken.

To conclude, this explanation of the facts, at the end of the commission's investigation and of the courts sentence Microsoft's obligations are reported to be that the Commission's Decision of March 24, 2004 ordered Microsoft that in 120 days, to work on and deliver a detailed information pack which would allow other competitive companies to interoperate with the Windows operating system, and to make that information available on reasonable terms without making the rival companies wait too much.

On the tying issue, within 90 days Microsoft had to separate the program Windows Media Player from the Windows operating system. Plus they had to deliver on the market a new operating system that did not include Windows Media Player as a preset program in the operating system. Microsoft also had to untie the fact of having its web browser to its operating system giving the consumers the possibility to choose which browser they would prefer to use.

The problem with the web browser arose when companies like Google with "Google chrome", Mozilla Firefox and Apple Safari were not present as a possible choice and that Windows

Internet explorer was the only pre-determined choice consumers had on their PC's. After the hearing a monitoring trustee was issued with the role to help the commission in controlling if Microsoft was putting in act the decisions taken by the court and the commission. The monitoring trustee that was appointed was Professor Neil Barrett. This professor had to make sure that the obligations that Microsoft had towards the other companies and to the court were being done. Before choosing this monitoring trustee, Microsoft made a list of possible candidates that could be appointed. Neil Barrett, which is a computer scientist, was in the list of candidates that Microsoft had proposed.

A very important decision was taken in March 2009 by the commission, which decided to eliminate the role of the monitoring trustee.<sup>13</sup> This was concluded since Microsoft was releasing information on the fact of interoperability and so the monitoring office was not needed any more. This was a clear act on how Microsoft's behavior was changing which brought to this decision.

But was this really the case...

A new input from the Commission's technical advisers and a market test was made to see if Microsoft was doing what it was obliged to do. The Commission took act of this information from the market test and from these new inputs and decided to conclude with a very warning decision. The result was that Microsoft was not facing its obligation to supply complete and accurate interoperability information; and second make that information available on reasonable terms to the competitors. The decision taken by the commission was a warning to Microsoft. The warning was that if Microsoft did not complete its obligation as predisposed by the court, it would face a daily penalty payment of up to €2 million. This was a big problem since Microsoft was not keeping up with the timetable that was decided by the commission and the court.

By the 15<sup>th</sup> December 2005 Microsoft had not still made the interoperability information possible to access by the other companies, so due to these new events Microsoft received a statement of obligation on 21 December 2005 and on the 30<sup>th</sup> of March 2006 a new hearing was fixed for the Microsoft. This hearing was based on the fact that the information supplied by Microsoft was not complete and as detailed as the court had disposed. Microsoft was given the opportunity to explain this act, but the commission and the court were not satisfied by the excuses presented by Microsoft. This seemed more an act by Microsoft to continue in taking actions of showing even more how anti-competitive the company was.

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<sup>13</sup> *European Commission*,  
<http://ec.europa.eu/competition/antitrust/cases/microsoft/investigation.html>

By June 2006, the commission with valid basis and given the new events decided to take up a new decision, which was to penalize Microsoft with a penalty payment of euro 280.5 million for not complying with its obligations towards the court and the other competing companies. This payment was divided to euro 1.5 million per day starting from the period 16<sup>th</sup> of December 2005 to the 20<sup>th</sup> of June 2006. After this penalization, a new rule was imposed to Microsoft, that if did not start collaborating and keeping up with its obligation from the 31<sup>st</sup> of July 2006 and so on the penalty payment would have risen to euro 3 million per day from that date on. Looking at these new rules on the various obligations Microsoft could be in a very serious economic problem since these new economic penalizations could harm the well and positive economic being of the company, plus incentivize the constant negative image that the company had been giving in this turbulent period. One would think that Microsoft would finally start completing its obligations in supplying detailed information for the interoperability of the PC operating systems. Microsoft instead decided to appeal for a new hearing and presented a new statement of objections on the 23<sup>rd</sup> of April 2007. This was really wrong but on the other hand it was in the rights of Microsoft to appeal for a legal hearing.

After the hearing, the things did not change much, so in this case the commission was even more determined in penalizing Microsoft by inducing a new penalty payment of euro 899 million. This decision was taken on the 21<sup>st</sup> of October 2007 after Microsoft had not complied with its obligations to deliver detailed interoperability information to other companies in reasonable terms.<sup>14</sup> So from the 27<sup>th</sup> of February 2008 the commission notified Microsoft of the new penalty fee to pay due to the fact that Microsoft did not keep up with its obligations.<sup>15</sup>

After the various hearings, penalized fee payments, and Microsoft's various obligations we can now construct a summary of what had happened in the Microsoft case. The main issues were that Microsoft had automatically tied its web browser "Internet Explorer" and the program "Windows Media player" to its operating system. This would give less choice to the consumers and would have resulted in fewer innovative products in the market.

This resulted in many legal hearings but positive outcomes came when Microsoft proposed a commitment to remove these barriers to competition. Knowing this the commission made it an obligation for Microsoft for a period of 5 years and so making it legally binding to Microsoft's obligations. Other changes were also the fact that by March 2010 the operating system that

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<sup>14</sup> *European Commission,*

<http://ec.europa.eu/competition/antitrust/cases/microsoft/investigation.html>

<sup>15</sup> *Id.*

Microsoft produced “Windows” would have given the choice to the consumers on the browser to use on their PC. These changes would bring many benefits to the European population giving them the choice to choose which browser, plus to choose which media player to use, as for example, many people like to use VLC rather than Windows Media Player. Very important changes, as giving these opportunities to the consumers, would give other companies the possibility to use other products giving also these other companies more economic utilities to constantly innovate their product. All of this would have brought to more competition between these companies which would have brought more innovation in the technology and software content delivered to the consumer. For the browser the Choice Screen imposed on Microsoft’s operating system will be available for 5 years as imposed by the commission and Microsoft will be obliged to keep it or it will encounter other anti-competitive actions by the commission.

It seems that from the original case and hearings many things have changed as Microsoft has changed its model of business. Some changes have been done to make more competition possible at the expenses of Microsoft market domain. This has made it possible for other companies to innovate and publicize their products at the same level of Microsoft products.

In relation to Google,

Google was one of the companies that went against Microsoft because of the fact that Google came up with its own web browser “**Google Chrome**” so in this case it was in their interests to want people to use their web browser. Since Microsoft had automatically imposed its domain in the web browser business with its Internet Explorer, Google was penalized by the fact that consumers when buying a Windows pre-disposed PC did not have the choice of the browser. Google wanted things to be equal so the Choice screen update imposed to Microsoft was a win for Google, which wanted Google Chrome to have more view in the consumer choices of a web browser. Later in this paper we will see the Microsoft and Google divergences.

## 2. Explanation of the Key aspects of the Microsoft Case:

Microsoft faced at least 10 different cases. The US Microsoft case was the first, which later followed with the European Microsoft Case (Multiple allegations going from the US trial to the European trial and investigation). Even though the two cases had the same allegations but they were handled on different basis. In the United States the only changes that Microsoft had were more concerned on behavior and contractual remedies. Microsoft had to ensure the commission that they would have not discriminated upstream and downstream market players. Then they had to supply interoperability information so that other brand products could interoperate with the Windows operating system. In the European case the change was much more drastic in a way that the aim was not only punish Microsoft for their behavioral aspects, but also change the Microsoft structure. Microsoft had to re-design its operating system so that it would have not been sold with the product Windows Media Player. Microsoft had to render public its server operating system, and that all information had to be given to rivals in the server market. All this to give other companies and rivals the opportunity to have products able to interoperate with the Microsoft operating system.

The main aspects of the European Microsoft case are the fact that Microsoft used its dominant market power in the PC operating system market and the fact that operating systems present in the market are intended to interoperate and are intended to be complemented with other third-party products and services.<sup>16</sup>

From the paper “THE EUROPEAN COMMISSION’S CASE AGAINST MICROSOFT: FOOL MONTI KILLS BILL?” (Roberto Pardolessi and Andrea Renda) we can find important information referring to various systems of interoperability. From this paper (pg. 16) we can cite a phrase that illustrates what the main objectives of interoperability are and how they are created:

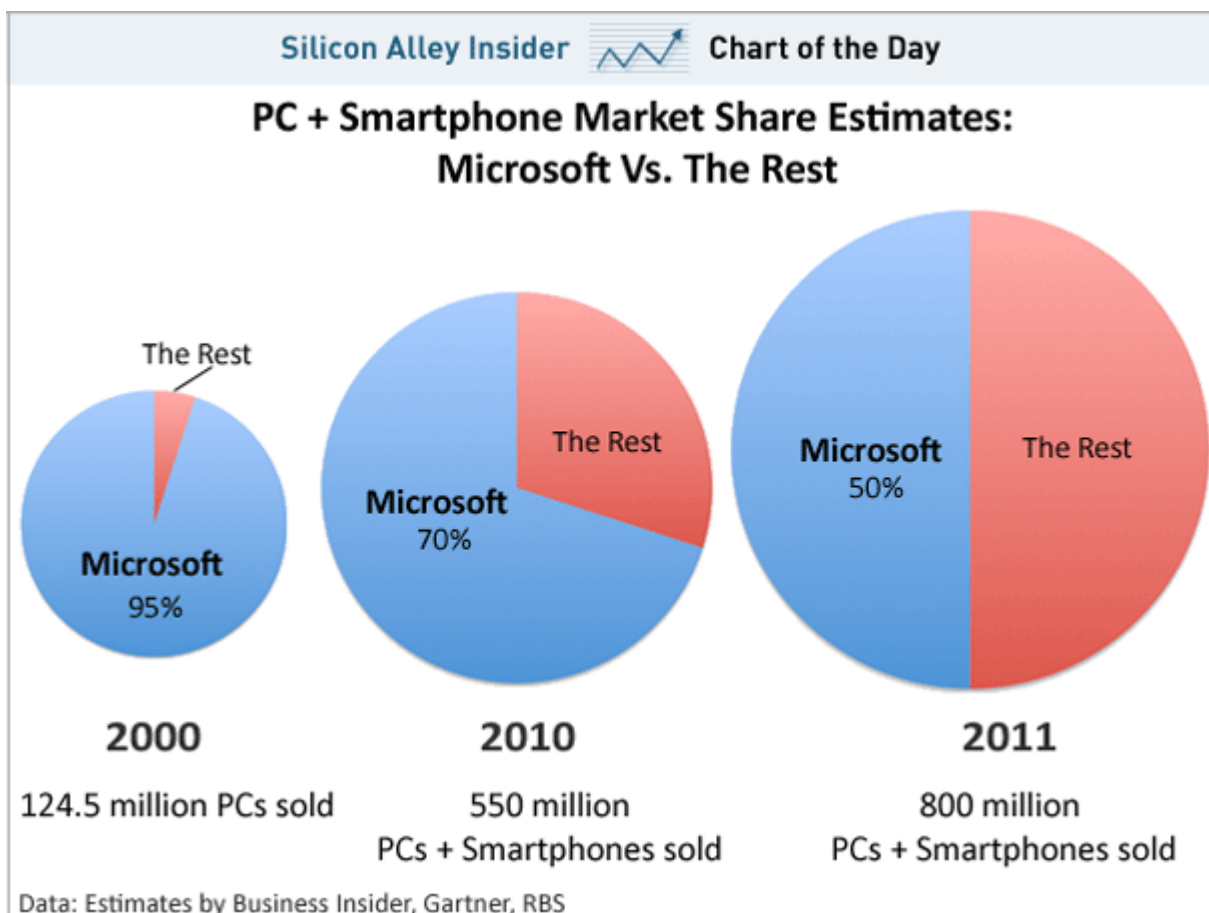
*“In a digital system good, each module is linked to adjacent layer through technical specifications known as interfaces. When two complementors belonging to adjacent layers “talk” to each other. When two complementors belonging to adjacent layers talk to each other, computer scientists normally define them as “interoperable”. Interoperability is a key issue whenever complementors are not produced by the same firm.”<sup>17</sup>*

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<sup>16</sup> Dr. Buhr Carl-Christian, DG Competition and European Commission, *The European Commission’s Microsoft Case: Analysis and Principles, OpenExpo Bern/1, April 2009, Slide #12*

<sup>17</sup> Pardolessi Roberto and Renda Andrea, *The European Commission’s Case Against Microsoft: Fool Monti Kills Bill?, LE Lab Working Paper AT-07-04, 19 August 2004, Pg. 16.*

From the quote above we see why interoperability is so important not only for the various companies but also for the services that a consumer consumes, since, it possible that a person may hold technology that derive from different companies and they should have the possibility to interoperate between each other. Microsoft has created a very dominant position in the PC operating system market. It holds a very stable market share making it the world leading company in the production of PC operating systems. As of today Microsoft's largest competitors are Linux and Apple in the PC operating system, there are some other secondary companies too. With this dominance, Microsoft created very high barriers to entry being the high developing costs for a production of a PC operating system.<sup>18</sup> Another barrier to entry for an emerging company would be applications to barriers, which are indirect network effect. Microsoft is present everywhere when we talk about computers and operating systems. Microsoft's can be very happy for its market share, which is the highest market share for this type of company. The graph below shows the market power and share of Microsoft in the operating systems market:



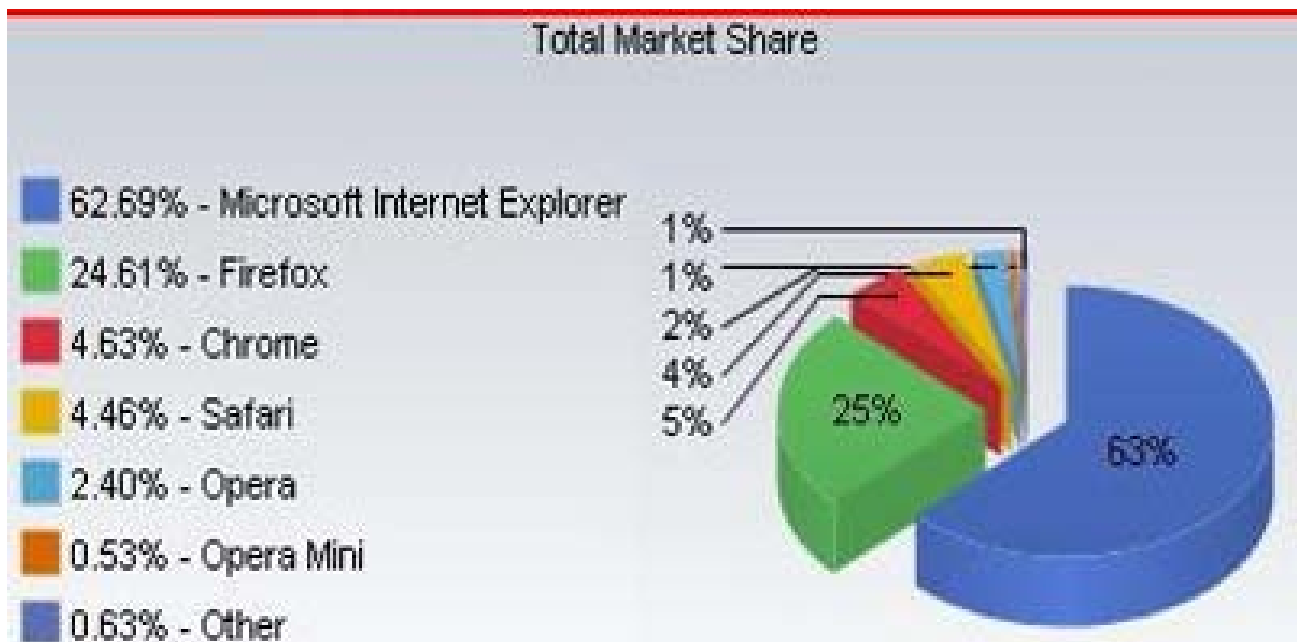
<sup>18</sup> Dr. Buhr Carl-Christian, DG Competition and European Commission, *The European Commission's Microsoft Case: Analysis and Principles*, OpenExpo Bern/1, April 2009, Slide #23-24

**(Source of the Pie graphs):**

[http://articles.businessinsider.com/2010-06-03/tech/30089114\\_1\\_pc-market-smartphone-market-steve-ballmer](http://articles.businessinsider.com/2010-06-03/tech/30089114_1_pc-market-smartphone-market-steve-ballmer)

These pie graphs show the dominance of Microsoft in the PC operating systems plus the smartphone share estimates from 2000 to 2010. These graphs also show how there has been a trend due to the Microsoft case on how with an anti-competitive attitude Microsoft created a monopolistic market but with the various obligation imposed to Microsoft by the court and commission their market share started a decline as other competitors gained more market power.

The following pie graph shows the market power for Internet browsers:



**(Source of the Pie graph):**

[http://www.mondoinformatico.info/analisi-market-share-google-chrome-supera-safari-e-android-entra-nel-settore-mobile\\_post-28172.html](http://www.mondoinformatico.info/analisi-market-share-google-chrome-supera-safari-e-android-entra-nel-settore-mobile_post-28172.html)

The pie graph above, shows clear evidence that Microsoft had a share of 62.69% in the browser market share. The only other browser, possibly close but still faraway is Firefox. From this data we can see how Microsoft had created by 2008 a dominant monopolistic market power in the presence of its Internet browser in use for the millions of consumers around the world.

After seeing this data as evidence on the market power of Microsoft, let's go back to the facts of the case. Microsoft refused to give enough information to other competitive companies in the same market of competence causing a situation of interoperability between the various operating systems. The first to complaint about this was as stated in the historical analysis, Sun Microsystems, which had a crucial need for operating systems operability from Microsoft to compete in the Work Group Server (WGS)<sup>19</sup> operating system market. A brief explanation, WGS operating systems are made at its best for user administration tasks. Used for file and printing, manly for what a person needs in a PC operating system. So the main problem was that there was interoperability between Sun's WGS which is installed manly on cheaper servers and Window's PCs. So to be clear and direct, Microsoft manly blocked the WGS operating system market by using its dominance in letting its PC operating system become the first of the class.

There was no competition between Microsoft's operating system and other WGS operating systems, which became secondary in the operating system markets to the eyes of the consumers. Thanks to the commission and the court some remedies were found to stop all this, which hold that Microsoft had to supply the other competitors with the interface information on their operating system to let all the systems operate between each other. In these documents supplied by Microsoft there is all the information needed to administrate operability but there are little innovative contents and if there are, they are protected by Microsoft's patents and rights.

The legal aspects of the case showed how Microsoft refused to give crucial information to competitors for the interoperability of the various operating systems, elimination of the competition in the market and no justification in their illegal actions.

A very important aspect of the functions of servers is that servers cannot function if they are isolated. They need to interoperate between each other and between the various clients, as for example two individuals one with a PC operating with Windows and another individual with a MAC operating on the Apple operating system. Microsoft having all this market power has imposed its technology in the market, which means directly to the client inducing a decrease in innovation by other companies.<sup>20</sup> This is like a country under a dictatorship in which the information and the news are controlled by the regime making the population know only what they wanted them to know, this is like with Microsoft, having the monopoly and the power to put on the market the technology they

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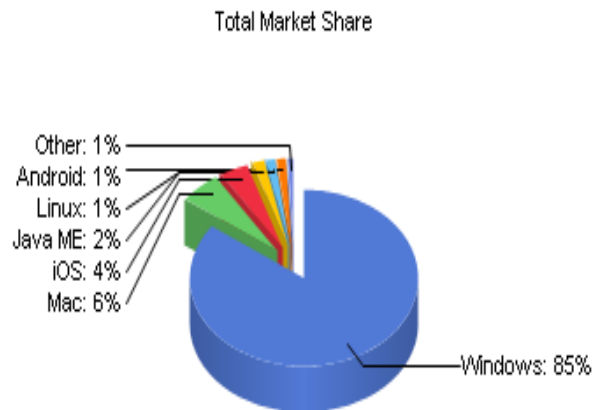
<sup>19</sup> *Dr. Buhr Carl-Christian, DG Competition and European Commission, The European Commission's Microsoft Case: Analysis and Principles, OpenExpo Bern/1, April 2009, Slide #7-9.*

<sup>20</sup> *Id, See Slide #16.*



owned, prevented any other producer to come up with other innovative ideas and products so that consumers could have the possibility to use them. By doing this Microsoft has induced in its own will a slow elimination of competition by imposing barriers they constructed.

As of today, in the year 2012, Microsoft's operating system market share is:



**(Source of Pie Graph):**

<http://marketshare.hitslink.com/operating-system-market-share.aspx?qprid=8>

From the data above we can see how the market share for Microsoft in 2012 is of 85%. This leads to the next problem, which is, the fact of an entrance of a new product. Limitations of technical development, which, with this market power is very high. The result of this is elimination of competition and denial of consumer choice. If Microsoft's market power is of 85%, this means that the probability of a consumer to interact with a Microsoft operating system or program is of 85% and the remaining percentage of the cake is divided by a very high number of other competing companies. A question we can ask ourselves is that how can there be a reduction in innovation if Microsoft does research and comes up with new products?

The answer is that there is a reduction in innovation because it is limited mostly to the research and development of Microsoft and that their products are the most present in the consumer market share. Other companies not having the possibility to produce more incomes due to a difficult situation with the dominant leader of the market have a more difficult time in producing innovative programs or operating systems since, they are blocked by Microsoft.<sup>21</sup> A quote that's shows this is

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<sup>21</sup> *Pardolesi Roberto and Renda Andrea, Kill Bill Vol.2, Pg. 3.*

(written in Italian): “*impedire l’emersione di un nuovo prodotto, per il quale via sia una potenziale domanda dei consumatori.*”<sup>22</sup>

Rivals cannot clone or copy any product produced by Microsoft and Microsoft has no reduction in incentives to innovate, but it is still innovation that comes from one company. If more companies had the opportunity to have high visibility it would create more incentives and possibilities to innovate.

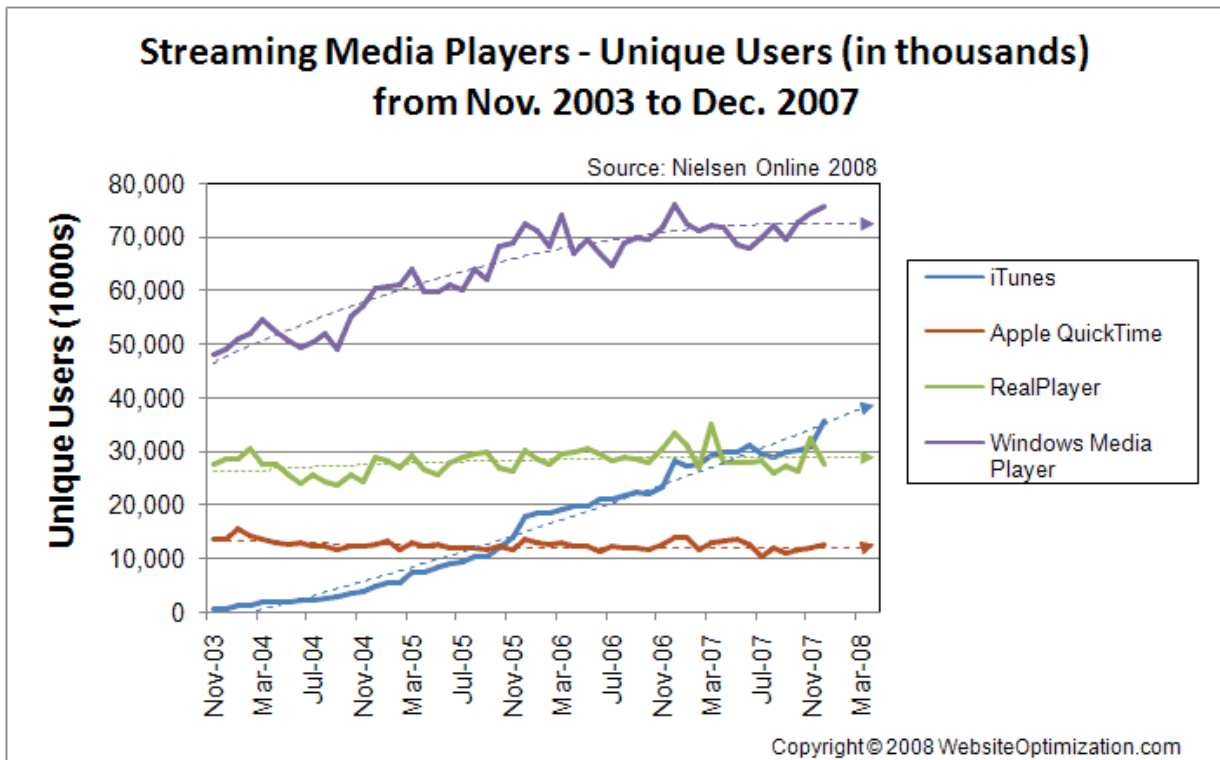
Moving on, let’s now see in debt the tying issue that Microsoft had to face with the fact of supplying its Windows operating system with Window Media Player products and the Windows Internet Explorer browser. By tying two products and making it a single one shows an anti-competitive foreclosure plus it gives no choice to the consumers of these types of products. Having the dominance in the market, gives Microsoft the dominance in tying two products that should be separate. It would create a desktop ubiquity for its middleware products, hence protecting its position in the market.<sup>23</sup>

To show the market dominance of Windows Media Player the next graph shows very interesting information:

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<sup>22</sup> *Pardolesi Roberto and Renda Andrea, Kill Bill Vol.2, Pg. 3.*

<sup>23</sup> *Pardolesi Roberto and Renda Andrea, The European Commission’s Case Against Microsoft: Fool Monti Kills Bill?, LE Lab Working Paper AT-07-04, 19 August 2004, Pg. 59.*



**(Source of the Graph):**

<http://tech.fortune.cnn.com/2008/01/31/itunes-now-no-2-in-streaming-media/>

The above table shows how from 2003 to 2007 the number of Windows Media Player users are about 2 even 3 times the users of other media products. This shows how the fact that Windows Media Player was incorporated in Windows operating system induced people in using it more than other media players on the market. The market dominance by Microsoft made all this possible but it also reduced the competition of other companies which were not so popular within the use of the consumers because they had a way smaller market dominance in software and operating system production.

In the European Microsoft case the commission came up with an analysis that Microsoft had no reason to tie the two products. This meant that no technical reasons to match the two products. If Microsoft did not include Windows Media Player in the operating system as the default media program it would have not brought a malfunction of the operating system, so there was no justification in doing all of this.<sup>24</sup> If a person wanted to buy Windows it could not be bought

<sup>24</sup> Elgar Edward, *Microsoft on Trial: Legal and Economic Analysis of a Transatlantic Antitrust*, Edited by Luca Rubini University of Birmingham UK, Pg. 427-428.

singularly because it had to be sold with Windows Media Player, plus it was not free, Windows Media Player influenced the price of the Windows operating system. Microsoft also made the tying of the two products contractual and technical even though this was not the case. Sometimes, companies match to products to make it more convenient to consumers to buy two at a lower price, the problem with Microsoft is that Windows Media Player was not sold separately plus it increased the price of the Windows Operating System price since it was incorporated in the pack. By tying the two, Windows Media Player has a constant presence in the PCs. This reduces competition and does not make the product better. A very interesting quote states that:

*“Microsoft’s competitors are a priori at a disadvantage even if their products are inherently better than Windows Media Player”, (para. 1088 of the judgment)<sup>25</sup>*

This is due to the fact that there is a block in the innovation cycle as also shown in the first quote in the introduction. What Microsoft has done is very simple and that is to induce software developers and content providers to the Windows Media Player platform by an indirect network, which affects the mechanism, simply inducing others artificially in making decisions. By integrating the two products does not benefit the consumer or alter the working of the operating system, but “Windows could not be obtained without Windows Media Player”.<sup>26</sup> So tying is not necessary for the benefit of the platform, it should not be induced by the dominant market leader, which in this case is Microsoft.

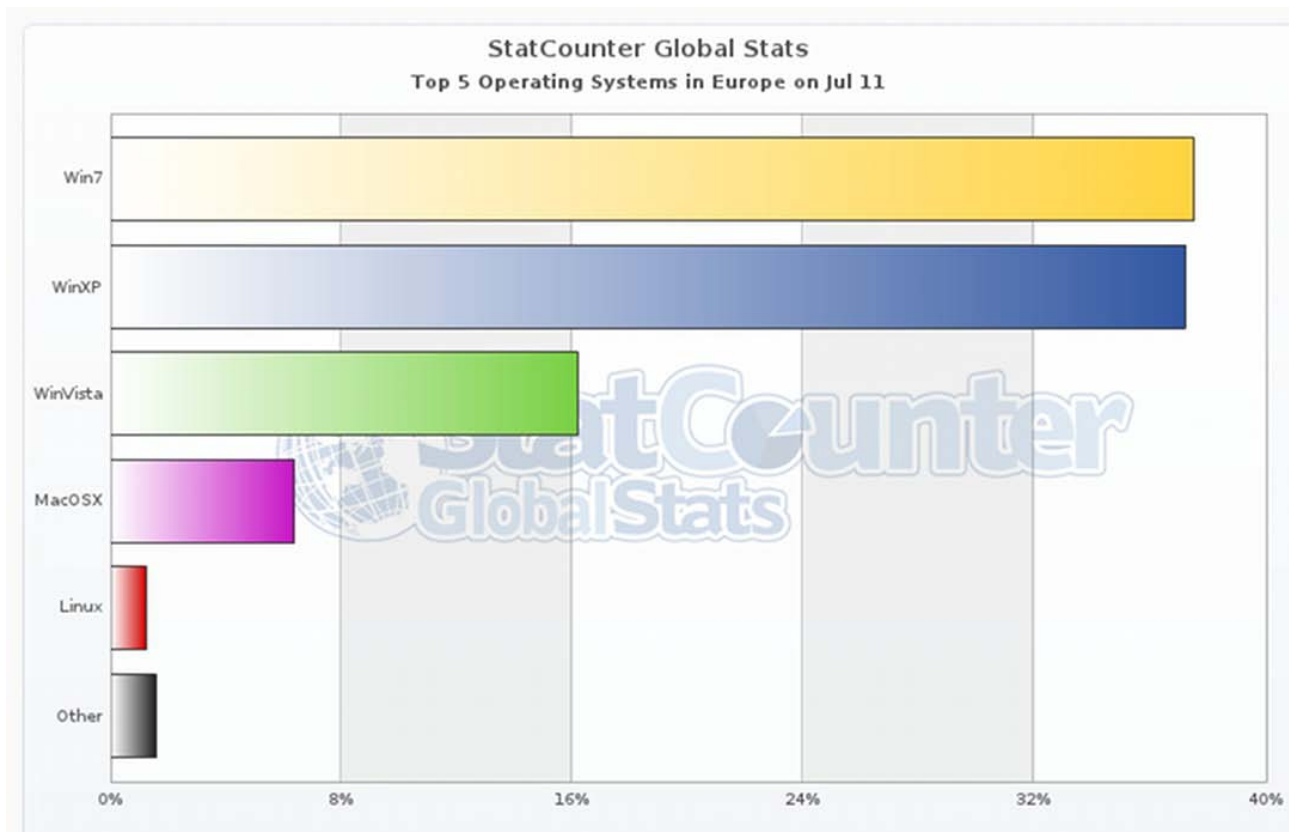
What Microsoft has done hurts innovation because they just add new things to already existing software’s that Microsoft already produces. The refusal of Microsoft to supply interoperability information to other companies prevents innovative products. Tying reduces talent and capital innovation.

The data in the graph below shows how innovation can be blocked since the most present operating systems are always different versions of Windows:

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<sup>25</sup> Dr. Buhr Carl-Christian, DG Competition and European Commission, *The European Commission’s Microsoft Case: Analysis and Principles*, OpenExpo Bern/1, April 2009, Slide #23.

<sup>26</sup> Dr. Buhr Carl-Christian, DG Competition and European Commission, *The European Commission’s Microsoft Case: Analysis and Principles*, OpenExpo Bern/1, April 2009, Slide #22.



**(Source of Data Graph):**

[http://www.freesoftwaremagazine.com/articles/road\\_browserchoice\\_eu](http://www.freesoftwaremagazine.com/articles/road_browserchoice_eu)

The data above shows how out of six operating systems three versions are of Windows. This just means that the operating system is the same there are only different versions of them with some updates and modifications, but no actual innovative factors that would increase the innovative aspect of the operating system.

Another thing to point out is how Microsoft could achieve control in the OEM market. To explain this concept we can use this quote:

*“Microsoft upholds technological integration of different products as a strategy aimed at achieving desktop ubiquity for its middleware products, hence protecting its paramount position in the client OS market.”<sup>27</sup>*

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<sup>27</sup> Pardolesi Roberto and Renda Andrea, *The European Commission’s Case Against Microsoft: Fool Monti Kills Bill?*, LE Lab Working Paper AT-07-04, 19 August 2004, Pg. 59.

The quote above shows and explains how by tying different products as for example Internet Explorer with one version of Windows 98 and Windows Media Player with another version of Windows 98. This shows how Microsoft created its dominant position, plus work to keep this position.

By doing this you give consumers less opportunity to choose between a variety of products causing “consumer harm.”<sup>28</sup> But we could see all of this in another perspective in which the commissions seemed to protect competitors and not competition. It could be that integration between two products may bring some advantages to the consumer. This would be the case if it would induce to better prices, it would reduce consumer risk, plus it would respond to the quality of the product tied to the operating system. On the other hand we think about how people would be induced maybe with a pack to make it seem more convenient to use only Microsoft products and this is wrong for the other producers that do not have the space to promote their product.

The remedies that were found did not really satisfy any one has it posed a limit especially in the US Microsoft case.<sup>29</sup> Adequate remedies on the consumer harm were not really found. “*The US Microsoft Case was problematic in this respect as there was no a direct link between the antitrust liability story of maintenance of monopoly and the forward-looking remedies adopted.*”<sup>30</sup> The harmed consumers were divided between the two cases: “*The maintenance of monopoly story in the US case and the leveraging story in the EC case.*”<sup>31</sup> This is why the view on the case and the remedies taken were different between the two cases. One has to see how the consumers were harmed and how innovation was harmed during the investigation and the progress in the case study. From this quote:

“*The problem cannot be solved by the characterization of the Microsoft case as strictly a ‘tying’ case. The classification of abuses under Article 82 EC is not a clear-cut exercise and there is always a fine conceptual line that distinguishes different categories of abuses, if one takes an effect based approach.*”<sup>32</sup>

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<sup>28</sup> Elgar Edward, *Microsoft on Trial: Legal and Economic Analysis of a Transatlantic Antitrust*, Edited by Luca Rubini University of Birmingham UK, Pg. 428.

<sup>29</sup> *Id*, See Pg. 460.

<sup>30</sup> *Id*, See Pg. 460.

<sup>31</sup> Elgar Edward, *Microsoft on Trial: Legal and Economic Analysis of a Transatlantic Antitrust*, Edited by Luca Rubini University of Birmingham UK, Pg. 460.

<sup>32</sup> *Id*, See Pg. 462.

The quote above shows how having many different ways of handling the case made it very difficult too actually analyze and see in what ways the two anti trust commissions, US and EC, persecuted Microsoft. It also shows the limitations in finding remedies for Microsoft's conduct. It is not just a tying abuse as the quote says, but it must be seen in how really Microsoft has harmed consumers, limited innovation and prevented any competitors move to gain more market power (foreclosure on competition).

Other views came out as for example, the fact that at Microsoft was asked to render public information on their operating system to competing companies. These companies would use this information to actually stop Microsoft and interoperate with them.<sup>33</sup>

Microsoft has probably conducted a anti-competitive behavior causing multiple damages to consumers and to other competitors. The fact is that maybe different accuses should have been treated with different remedies: "*We do not criticize the remedy as such, which could perhaps prove to be effective, in terms of reinvigorating competition in the web-browser market, but rather the apparent mismatch between the consumer harm story and the remedy.*"<sup>34</sup> This quote does not show or mean that Microsoft was not guilty, it was, the problem is that the court and commission probably made some evaluation problems in dividing the harm to single persons/ consumers to a much more technical abuse/harm as the one with tying Windows Media Player or the problem with the web-browser.

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<sup>33</sup> *Pardolesi Roberto and Renda Andrea, Kill Bill Vol.2, Pg. 4.*

<sup>34</sup> *Id, See Pg. 461-462.*

### 3. The Google Case and the correlation with the Microsoft Case:



The Google case mainly started when Google became one of the most important online advertising intermediaries. The success of Google in the web browser business made it possible to acquire high level of market shares plus giving Google the opportunity to enter new markets. Google entered new markets in many different ways. With the acquisition of YouTube in 2006, Google had 80% of the market shares in the video content streamed on the web. A very important aspect to note is that YouTube after Google is the most used search engine by people on-line as of today. There is a correlation between Google and YouTube because there is an exclusive dealing with YouTube. When doing a research, when typing the name of a famous actor or singer on Google you will find a YouTube video, which results to be among the first results of the search done by Google.

If the same search is done on another search engine as for example Yahoo, the results are different in the way that a YouTube result would come out only in the second or third page. This means that the data looked is controlled by the owners of the search engines. Google owning YouTube has more interests in putting a YouTube result for a research in the first results that appear on the screen. As this data seems to be controlled, it may mean that Google has archives of all of the people that surf the net, Google knows you better than you do. In this case it knows that you are looking for a video content. In 2010, with the acquisition of Admobile<sup>35</sup>, a platform for mobile services Google insured its passage in a new market, so that their search engine would be installed on mobile platforms. Google was moving very fast and it was looking ahead in gaining more market power not only with a search but trying to enter new markets as the one of mobile phones and PC.

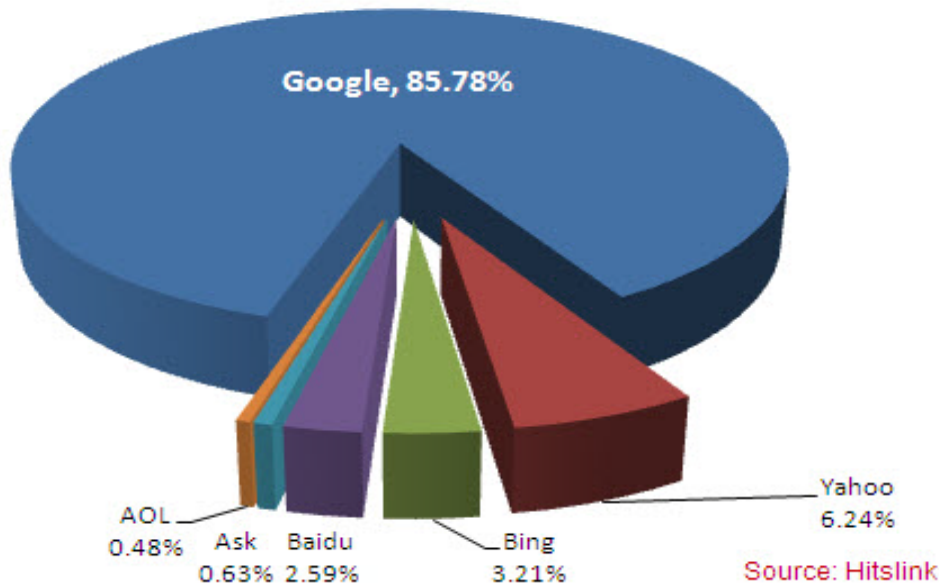
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<sup>35</sup> Renda Andrea, *Class Notes-Law and Economics, (Google Part)*.



From the pie graph below we can see Google's market share.

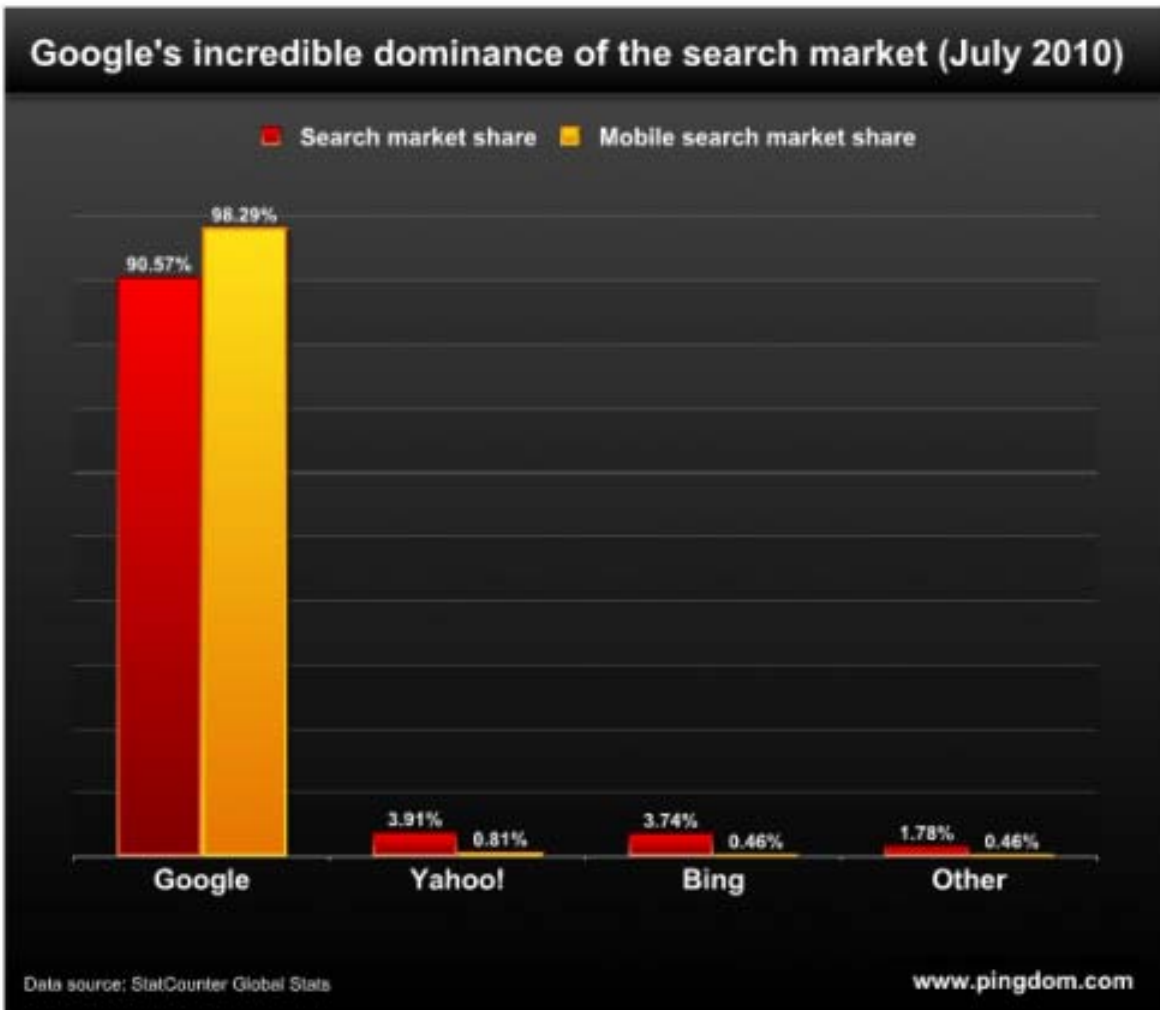
### Global Market Share



<http://www.surefiresearch.com/search-engines/yahoo-microsoft-union-approved-finally-some-real-competition-for-google/>

The market share that Google has is very important, it controls 85,78% of the market shares in the search engines market.

In 2010, Google not only dominated the search engine market, but also the mobile search since there is the correlation between the fact that Google was strong in the mobile market in 2010 and in the same year it had acquired Admobile. From the data below we can see the market power of Google in both markets.



**(Source of data):**

<http://searchengineland.com/estimate-google-mobile-market-share-near-100-47626>

The data above shows that Google in 2010 had an incredible dominance of the search market in Internet browsers and on mobile searches. The share for the other companies is almost not present as it is so little. There is clear no competition and no other company with the power to compete with Google and its market power.

Let's proceed with the explanation of the Google Business Model.

Google is a very important company present in many relevant markets. They are present in search/search advertising/search intermediation (greatest source of revenues), where Google is dominant with 95% of market shares. They do not do only advertising but also TV and radio. They are present also in mobile advertising (iPad/iPhone), in which Google imposed their search engine on everything that could connect online. Google signed an exclusive agreement with them. With this agreement Google would gain a monopolistic position in that almost everyone on PCs and cellphones would use Google as their search engine.<sup>36</sup>

The Google business model is a very successful one, its major source of profit derives from Google Adwords, which has the distinctive feature of providing value for free to whoever interacts and makes a search in their search engine. Another distinctive feature is the information advantage: Google has information on users' preferences, habits and knows what people want and how to gain people's attention, this slogan ("Google knows you better than you do!") derives from the fact that Google monitors all the people that interact with Google's search engine or simply people that go online so to make it possible to know what are the preferences of each one. This may seem as a good thing, but if we think about, we are actually spied and this goes against privacy. This creates network effects because if you (client) only rely in Google as search engine because you know that on Google you can find everything, all the firms looking for advertising will rely on Google because they want to reach the majority of people and know exactly what people want. This creates barriers to entry because Google would gain such power in that to create a monopolistic market, making it difficult to other competitors or other companies that want to enter the market to have a chance in gain a strong and competitive market power.

Revenues from advertising are collected through a system known as "click-through-rate".<sup>37</sup> Google places its favorites, the companies or advertisers who paid the most, on the top of the search engine results page (SERP). Google monetized keywords by using customer data and what they are most likely to search. Google collects the keywords you type which creates privacy problems because Google should ask you permission before virtually entering your private life. This may

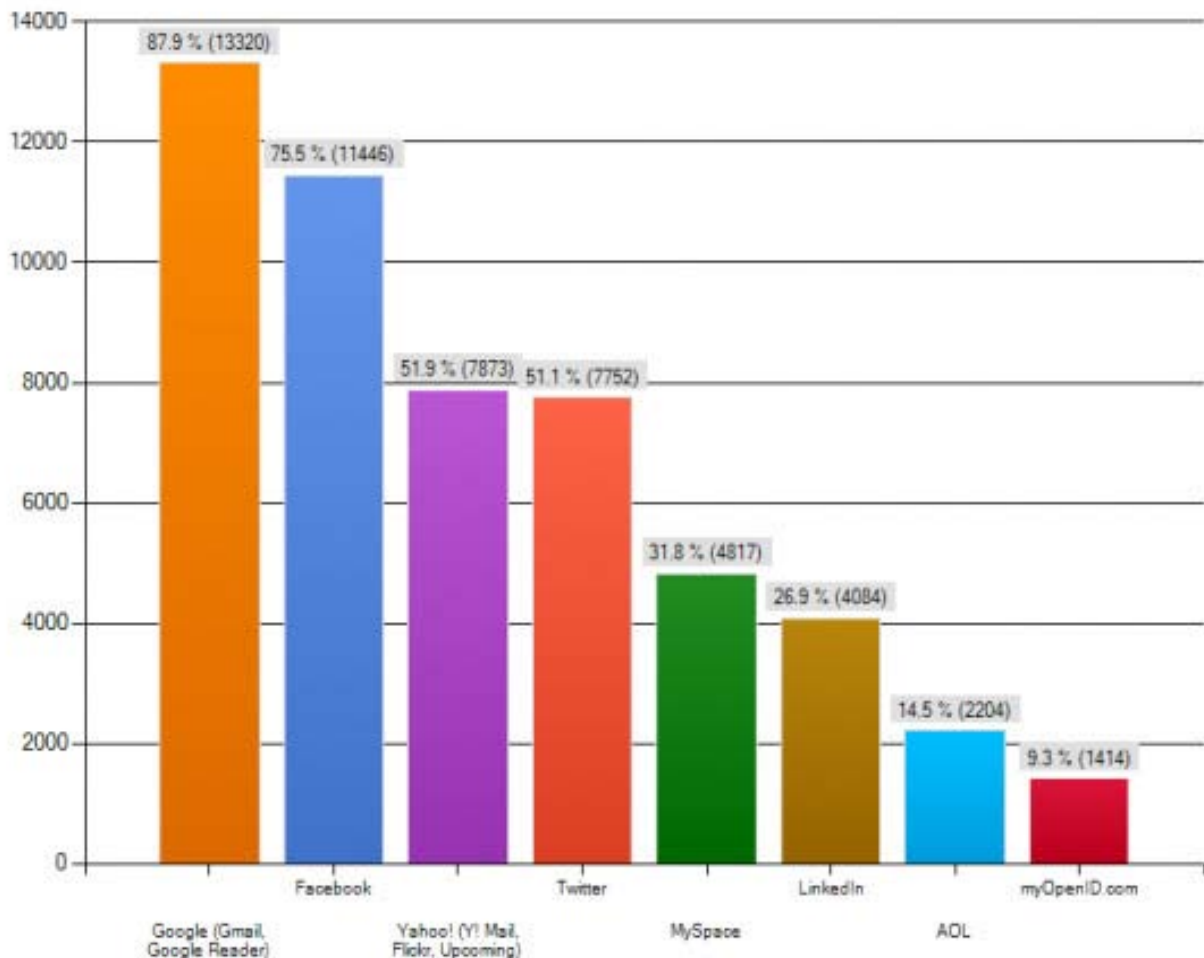
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<sup>36</sup> *Renda Andrea, Class Notes-Law and Economics, (Google Part).*

<sup>37</sup> *Id.*

create a problem as we could say of copyright, since if today we say a companies name in Television we have to pay them the advertising rights as for example, so should Google pay by using its customers private data.

Since Google is very popular, it is easy to for them to get their hands on this data since users when doing a search on the Internet use Google. Google is the most visited, the only one that may closely near Google and be able to compete with them, as number of users and visits is Facebook. Having this dominance, it is very simple for Google to reach and gain data on its users. Data, which it can resell to companies so that they can advertise when you search things of your preference. The bar graph below shows some data on the most used web sites, search engines, or social networks online:



**(Source for the Bar Graph):**

<http://savedelete.com/digg-will-now-have-twitter-anywhere-openid-oauth-and-google-for-logging-in.html>

The data above shows how Google with its search engine is very popular, but the search engine is not all since Google has Gmail and Google Reader. It has a share of visitors are 87.9% and the only other company that can keep up with this popularity is the well-known social network Facebook with 75.5%.

From this data it is very simple to see how people spend their time on Internet and what they prefer to use, and the data says that Google is the number one. A company that wants a good visibility and good publicity will go for Google since it's the most used one and also with their data tracking makes it very simple for companies to supply what people are actually looking for and to satisfy all the preferences for potential customers.

Let's move on with the analysis on Google's conduct.

According to the Document issued by the European Union in December 2008, the behavior of a dominant firm can be condemned as anticompetitive only if two conditions will occur:

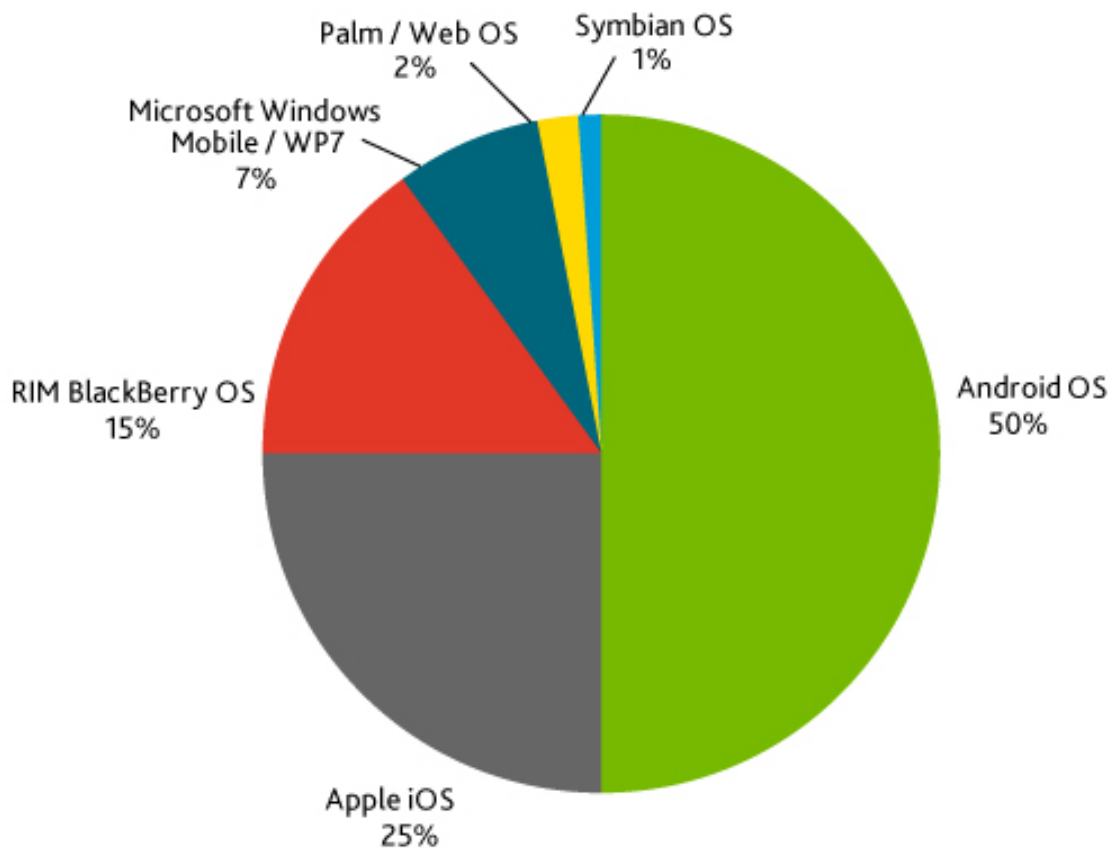
First,

Foreclosure of competitors, which means that if there should be evidence that, due to Google's conduct, competitors could not enter the market or that some competitors could not expand or were forced out of the market due to the dominant well-being of Google's market power. Google's competitors are big firms, which are active in many markets and example can be Microsoft due to the rivalry and competition between the two on Internet browsers, Google with Google Chrome and Microsoft with Windows Internet Explorer. Due to this market power by Google these other companies may to have the opportunities to expand in the market in which they have Google as a competitor. A very important example is the fact that Microsoft cannot expand in the market of mobile phones with its Windows Phone 7 because Google refuses to deal on this matter. Have a monopolistic market and economic situation, Google is blocking in some way Microsoft that is trying to gain a competitive position in the cell-phones operating systems and

services. Google is trying to protect its business from Microsoft since a strong position by Microsoft with Windows Phone 7 may somehow damage Google's mobile operating system Android. From the data below we can see how Google dominates the mobile market with its Android OS.<sup>38</sup>

## Smartphone market share - recent acquirers

March '11, Nielsen Mobile Insights, National



Source: The Nielsen Company.

**(Source of Pie Graph):**

[http://www.pcworld.com/article/226339/android\\_market\\_share\\_growth\\_accelerating\\_nielsen\\_finds.html](http://www.pcworld.com/article/226339/android_market_share_growth_accelerating_nielsen_finds.html)

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<sup>38</sup> Renda Andrea, *Class Notes-Law and Economics, (Google Part)*.

Android created by Google has 50% of the market and the only other company that can really compete is Apple with 25% of the market share. From this data we can see that Google now does not only hold a strong position in the search engine market, but it has a very strong and dominant position in the OS markets for cell-phones as Android is slowly taking over the market.

Second,

Some evidence of consumer harm;

This means that there should be evidence that Google's conduct prevented innovation and progress. For example, there should be a platform, which allows search among different types of search engines. Since in this way Google will lose market shares and its market dominance, we have good reason to think that Google's conduct has created obstacles to the development of newer and better products. A very important aspect to consider is whether such products could have existed and whether its introduction in the market is effectively prevented by Google's conduct.<sup>39</sup>

For what concerns the foreclosure of competitors, barriers to expansion are the charges involved in the Google case. The charges were very hard being that they had eliminated competition and prevented innovation in the sector. Google said that they didn't foreclosure any efficient competitors but what happened was just a sort of dominant situation in which there competitors exited the market because they were not as good or as efficient as Google was.

It is not simply to run an efficient competitors test because it is also difficult for commissions to pronounce themselves in this case. The only case/example we have is the Intel case, which is a more straightforward example. Back then, AMD was obliged to give a huge discount compared to Intel. This was done by AMD in order to convince retailers to refuse Intel's discounts. Intel had 80% of market shares, while AMD has only 20%. So for Intel it was much easier to offer discounts. The other thing that we should take into account is that there might be cases in which a competitor that is less efficient and has less market power than the dominant company might be protected by the commission, which would lead to antitrust remedy.

In this document we have a clear definition of what should happen, and it's a definition that apply more to AMD than to the Microsoft situation.

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<sup>39</sup> Renda Andrea, *Class Notes-Law and Economics, (Google Part)*.

The situation would be that a competitor is aggressive but is not as yet as efficient due to lack of economies of scale and its behavior determines the reaction of the dominant company. Dominant companies' status makes offers that retailers can't refuse because they are much more convenient for them and to replicate them is not sustainable for the small companies, this would happen because it would be too expensive for the smaller companies bringing them to price below cost which would bring a negative gain to the company.

Things are different in the Google case, because Microsoft is a very big company, which has large share in many markets, but cannot expand in a market in which it is not dominant. A thing to consider would be, what use or gain for Microsoft would have having their own search engine bring. A good answer would be that Microsoft wanted to create a Windows monopoly of products. People that used windows should have then used other service programs and software created by Microsoft. Another possible explanation would be that Microsoft wanted to control even what people searched by inducing people to use Windows Internet Explorer. There's has been a time where Microsoft was really successful. It was the pre-internet era. But Microsoft has lost this position also due to the Microsoft case. Microsoft was trying to resist the transition from the PC to the network computer. The attention would have shifted from the PC into any other place in which windows was not as dominant both in the browsers and then search engines markets. This suggests that Companies that chose the right business model may become dominant but then, competitors, customers and technology may change things since we live in a world is one in which you can become big and fall in a matter of seconds losing everything.

So far we have seen an upward movement, from operating systems to browsers to search engines. Next we can see another situation that due to the fact that people want to use content and applications. Applications have become very important in everyday life and people use hundreds of them on their smartphones. There should be applications and online environments that are interoperable between different systems, as for example there are application found for Android in their store or applications found in the App Store for Apple. Transition can take place in two ways: natural and induced as stated by the anti-trust. This could possible reduce Google market power and hit its dominant position.

All companies should have the opportunity to try and deliver their product to final consumers. The situation that occurred with Microsoft in the foreclosure of competition and a break



in the innovative cycle has occurred in the Google world. Google started off with a search engine, then it moved to its own web browser (Google Chrome) moving to the mobile market with the Android operating system. As this expansion occurred over the years, Google was just leaving burned land for any other company to try and compete against them.

If we ended up finding a number of conducts that have been intentionally put in place by Google with the only purpose of destroying competition we can be sure that Google would be found guilty and condemned.

If we find a number of conducts by Google that have a sort of efficiency and positive outcomes for Google and consumers, but on the other hand it has a negative effect on competitors we are in a difficult situation.

The EC should apply a cost/benefit analysis and verify if the efficiency compensate the negative effects created by the lack of competition over time.

The first evidence is the fact that there is difference in the quality of the result due to the fact that the more you search the more you get queries which brings to more a newer algorithms that can be improved over time. The fact that there is a degree of learning by doing also is a first mover advantage in regards of end users, all this to make a better and newer system which is the base of innovation.

The more a person uses the Google search engine the more he or she understands how you get a result. The second part had the purpose to point out the consumer harm. More competitors may boost innovation but we are not sure that more competitors will boost innovation in this case. This will disrupt Google Business Model since it would find more companies with the same objective, which would result in a loss in gains for Google and a loss in market power. This power by Google gives less consumer choice to people, but on the other hand it cannot be a price problem since Google does not charge its users, its economic gains come from publicity and selling information to companies. Now they have moved to the mobile business with their own operating system, which would bring more economic gains. The consumer harm would be focused on the fact that people are forced to use Google. A personal example would be the fact that when I bought my iPhone, the first thing I did was to go online, when I opened Safari on the phone the first page that came out was Google and so I used it without asking if this was correct or not, but people should have the choice to choose the search engine or web browser.

Moving on,

By applying the net neutrality concept the debate came out, Google was pro-neutrality. Google can be seen as a mega store. Isn't it good to have only one big mega store where you find everything? The answer would probably be no, this would cause bias information in the system. If Google has the power to place products they want they are not only discriminating other products, but they also cause bias information and place the information they prefer in the first results for any online research. When you "Google" something the first results that come out in the search are results that are sponsored by Google, these sponsored pages or web sites are not sponsored by Google because they are better or the best in what they do, but they are the ones that paid the most to Google to have their web-site as the first results. An example for this would be a big supermarket in which on the shelves there are different products, the most important and big companies get better shelf location or bigger shelf space. This happens because they are companies that might bring more profit to the store, being companies that have a more known brand view.

A nice example that can be given is Coca Cola against Pepsi. In the supermarkets Coca Cola was given a better shelf allocation, while Pepsi did not. This situation occurred because Coca Cola owned the supermarket chain that made the dispositions in the store. Back then, the actions done by Coca Cola were not considered to be anticompetitive because Coca Cola was the product and by owning the chain they could in some way let Coca Cola have a better shelf disposition. Let's consider though that Pepsi in this case would have a lower view to the consumers eyes. This is a big problem because of people had the chance to see more Pepsi or at least Pepsi at the same level as Coca Cola probably would have caused Pepsi to sell more and Coca Cola to sell less.<sup>40</sup> With Google the situation is different because there is evidence of anticompetitive attitude. Google in this case would be considered as the distributor and placing some products better than others would make things organized to make some companies have more publicity opportunities compared to other companies causing consumer harm because Google would be discriminating some to make others excel.

The accuse, moved against Google was mainly that Google was using its market power to discriminate and conduct anti-competitive behaviour. It used its enormous power to raise barriers to entry in many markets in which Google dominated. The size of Google was growing in such an

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<sup>40</sup> Renda Andrea, *Class Notes-Law and Economics, (Google Part)*.

exponential way that other companies could not compete with Google because their market share was too small.

Google also was accused of conducting an anti-competitive behaviour because it caused interoperability problems on various platforms because of artificial competitive advantage excluding agreements. Google would refuse to deal with some companies as for example with Microsoft with the mobile operating system debate.

Before Google, Yahoo was the dominant search engine on Internet. When Google came out, Yahoo and Google in 2000 signed an agreement of competition and cooperation. With this Yahoo lost almost all its market shares in no more than 4 years. Yahoo had the idea to buy Overture auction platform, Google in the same period was gaining huge market shares in online auctions and due to this they broke the deal and Overture failed since Google dominated the auction market. The cooperation between Google and Yahoo was over, but Google had already done what it had to do, destroy the market power that Yahoo had. Google also faced the problem with the exclusive agreements in which Google gave exclusivity to some third-parties rather than others. Many companies preferred to deal with Google and not Yahoo as for example because Google would have guaranteed an exclusive agreement.

With the exclusive agreement these companies would have known that shares would have grown higher and faster, and this is why Google was closing all the contracts while Yahoo was not. Google also signed publicity agreements and new contract with for example, EBay and Amazon. An example of an agreement with a distributor who publicize only through Google is Adobe. On Google's toolbar it is automatically installed. It is very hard to eliminate this tool bar and people usually don't care about it. Adobe is used by almost if not all customers that use a PC, making it available only through Google is a clear monopolization by Google since if almost all PC users have Adobe then to have it they will go to Google at not to anybody else.

Another problem is that Google prohibits interoperability between Ad words and other platforms. This means that companies may want to compare the different platforms, the different

click-through rate, but they cannot because Google blocks them. They should then link exclusively to Google because it is product that has to be in the operating system on the net, that imposes restrictions on platforms interoperability. The firm will then choose to stay with Google only and not go with any other company because it would cause problems of interoperability for them and for their users. Google behaviour is very negative in that it does not give choice to private users and to companies because they act in a way that or you search and work with them or you don't.

Google blocks access to rivals and competitors' by restricting their capability to crawl and index content. There is no possibility for other search engines to crawl the complete video directory of YouTube (20% of all European queries). The same applies with Windows Phone 7, Microsoft wanted to install a YouTube interface on the product they were about to launch. Google refused to provide it because the YouTube interface was characterized by an exclusive clause with iPhone and Android. This is an example of how Google manages to discriminate, on a market in which it is not active, the mobile phones market. This probably happened because there is competition between Microsoft and Google in the search engine market as Microsoft competes with Google with its search engine Bing. Something to add is that YouTube is owned by Google. Google having already signed an exclusive agreement contract with iPhone and Android would have never let Microsoft have what they were asking.

Something else to note is the search manipulation, because Google's result page is indexed in a very biased way. The results that are showed first, and receive more attention, are the ones related to Google's dedicated applications. If it turns out that Google is biased surely nobody will be willing to advertise on Google anymore and Google's reputation would be affected negatively. Google had the duty to inform customers that it's ranking was biased, but it did not do it. If this is proved, it will lead to evidence of consumer harm. This would be consumer harm because its data was biased, meaning it was controlled and the reputation that Internet has as whole for being unbiased and not affected by politics and externalities would be ruined.

Before Google became so popular, it sold the best research positions to companies and websites, in the following years as the Google market power grew they bought companies like YouTube and made their own applications, so when you search something, the first things that come out are all Google sponsored products. Google ranked first its own dedicated applications, for example Google maps was ranked first when a consumer searched some destinations. For the

shopping, Google's Froogle born in 2007, was ranked first in the search results. So it sponsors mainly its companies or other companies that have an exclusive agreement. Google is dominant in each of the relevant markets. Its conduct is an anticompetitive behaviour because of the characteristics of the markets concerned. There is no objective justification of Google's conduct and on the terms imposed it is all part of strategy to foreclose rivals and raise barriers to entry.

There seems to be a correlation between the Microsoft case and the allegations moved against Google. Google went against Microsoft during the Microsoft Case for the fact that Google had its own web browser with its search engine. Microsoft had a pre-disposed web browser, which was Windows Internet Explorer in its PC operating system. Microsoft was blocking many companies such as Google, that wanted to end this and so as we have stated above, Microsoft had to give the choice to consumers to choose their web browser, and Google slowly started its successful path in dominating the market. The same thing happened with Google when Microsoft was trying to enter the mobile market with its Windows Phone 7, and Google was blocking them. This boomerang effect will be explained below to show what happened between Microsoft and Google in the allegations moved against them and how they constantly competed to try and dominate the market and hold the highest market share.

#### 4. The Boomerang effect:

The situation was that Microsoft was accused of conducting an anti-competitive behaviour towards other companies in which one of these was also Google but on the other hand Google later then received the same treatment: “Don’t do to others what you don’t want other to do to you.” Google argued to have the right to comment on the Microsoft case. After Microsoft had already collaborated with the anti-trust commission to apply some modification the operating system’s search system, Google still hoped to influence other changes in the operating system that Microsoft had to put on the market with the obliged changes. Google was hoping to make these changes or to influence them to have personal gains. Google was now in contrast with Microsoft since Google asked the U.S. District Court for the District of Columbia to make them be a party regarding and influencing how search engines should change on PCs during the complicated situation that Microsoft was facing with the Microsoft Case.<sup>41</sup> This was a very intelligent move since Google had to position its search engine.

Google complained about the fact that there was a product discrimination, which had caused some disadvantages for them and disadvantages for the consumers, which had little or no choice in the matter of web browsers. Thanks to the anti-trust commission, which argued that third parties as for example, Google, must have the opportunity to explain their problems and complaints for the settlements of the Case. The main topic was to make some changes on the Vista desktop, these changes had to be made on the search aspects of the desktop. Microsoft was notified that by the court that they had decided on various changes on the Vista’s desktop basing these changes on the Google complaints. This was done to ensure that operating system Windows Vista would have its modification to make the search thematic to satisfy the complaints by the third parties. Google had the opportunity to add its modifications before the changes were applied and notified to Microsoft. In this case Google was very intelligent, because they acted as a hurt party and expected that their complaints would be heard and influence the courts changes. The problem in this case is that the court should have given the opportunity to third-parties, as for example Google to complaint and notify the court of the damages and the discrimination they had suffered in these years, but if the court based their sentence on the complaints placed by Google, the various modifications might have been biased. Google would have altered the sentence so they could benefit and give a greater view to their product.

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<sup>41</sup> Gohring Nancy, *Google Argues for Right to Comment on Microsoft Case*, IDG News, 2007, <http://www.pcworld.com>

Microsoft has to do something because this seemed as a direct hit. Microsoft presented a notification to the court stating that third-parties have the right to present their complaints, but they have to work with the plaintiffs on their complaints and not contact directly the court. Google was not directly conducting a lawsuit against Microsoft, but by acting as third-parties, they were behind the scenes and not in a court room against Microsoft. They hoped in changes by influencing the changes and obligations that Microsoft would face in the future only for personal gains. Microsoft had this complaint because they argued that Google was not an involved party in the anti-trust commission and they should not influence the court. Being that the case was solved and that Microsoft received its obligations by the court with the various changes that we have expressed in this paper after the Decision taken by the court, they could not understand and there was no issue regarding the presence of Google in trying to influence the final decision. Google was not a party in the case, it was a representative for the consumers being a company involved in the search engine market and that Microsoft was facing the issue with the fact that users did not have the opportunity in the operating system to choose a different web browser since Windows Internet Explorer was pre-disposed in the Windows PCs operating system. After the complaints presented by Microsoft, Google reported that they present an important part in this case in that it could give important information's and different types of views on the matter.

Being a search engine creator it could have given an opinion on how Microsoft's behavior was anti-competitive in the matter of web browsers and how the issues of the Windows Vista's desktop matter should have had the opinion of Google so that various changes could be applied.<sup>42</sup> Google also added that there opinion was important also in the case that if Microsoft's obligations were not as efficient and harsh, they should have had the opportunity to offer new perspectives to the court to reevaluate the changes in the Decision taken.

It depends on the relevance of Google's position. We can say that after the Microsoft case with the various decisions taken by the court that Microsoft had to apply the "Change Option" to the consumers, Google strengthened its position in the market becoming as of today a very important and dominant company in the matter of web browsers and search engines.

When we look at Microsoft and Google we see two different companies that actually operate in

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<sup>42</sup> Gohring Nancy, *Google Argues for Right to Comment on Microsoft Case*, IDG News, 2007, <http://www.pcworld.com>

different sectors. Microsoft is dominant on the desktop because it is the most important company in the production of PC operating systems.

On the other hand we have Google, which dominates internet and has a very important market power in the search engines sector. In this case we see how they are two companies in different sectors, but both companies have very ambitious plans being that Microsoft did not stop in the production of operating systems but it worked on the development of new software's and programs to apply to the operating system, as for example Windows Internet Explorer, Bing (search engine) and Windows Media Player. Microsoft was later on accused of tying in the Microsoft case for the Windows Media Player and Windows Internet Explorer. Microsoft also looked ahead with the development of Hotmail and MSN. Now Microsoft was looking in entering the mobile market with the Windows Phone 7 as a mobile operating system. Google had the same ambitions as it started with the search engine "Google" and then it moved on by making its own web browser called "Google Chrome", its own mail known as "Gmail" and with new applications as for example "Google Maps". Google made a gigantic step when it moved in the mobile market by first signing exclusive agreements for the search engine "Google" with almost all the mobile suppliers (ex. Apple's iPhone) and then moving in the market with the Android mobile operating system which is dominating the market and blocking Windows Phone 7. Thanks to these ambitions, Microsoft and Google have become competitors even if they belong to different sectors of the same market.

The boomerang effect can be now analysed since above there has been the explanation of the possible contrast between Microsoft and Google.

During the Microsoft Case, Google wanted to take advantage of the difficult situation that Microsoft was facing, because Microsoft's situation was very complicated because they had to bring many changes to their production and business model with the various obliged changes decided by the court. Microsoft had many rivals, actually if we take a moment and think, Microsoft had multiple enemies that probably wanted the entire case to make Microsoft suffer so to gain more market power. No one would have expected Google to enter with such arrogance in wanting to influence the decision of the court since they were only part of third-parties and not actual opponents in the case.<sup>43</sup>

Google played hard with Microsoft in the Microsoft case and took advantage of the suffering period, this was not nice of them but they probably found the right moment to hit the

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<sup>43</sup> Gohring Nancy, *Google Argues for Right to Comment on Microsoft Case*, IDG News, 2007, <http://www.pcworld.com>



MVP is the PC market so to gain more market power in the search engine sector and to launch their web browser Google Chrome.

Life is a turning wheel and what goes around comes around. Why this sentence one would think because the boomerang effect occurred and Google later in the years found itself in the same situation with the charge of conducting an anti-competitive behaviour, with the initiation of the Google case. Google mainly received the same allegations and found itself in the same pressure situation that Microsoft faced in its own case. After the Microsoft case, both Microsoft and Google had other divergences as for example the fact with the Windows Phone 7. The refusal to deal by Google decreased Microsoft ambitions on the new product to be launched. Since one of Google's allegation had to do with the fact of monopolizing the market with the use of no collaboration and the no dealing behaviour, probably Microsoft will take advantage of this for its Windows Phone 7 as Google did back then to Microsoft on the search engine and web browser situation. As talked before, don't do to others what you don't want others to do to you can again be brought up because Google received or will receive probably the same treatment and that the duel between Microsoft and Google will not be over just yet. They will continue to fight between each other to gain the best and most powerful market dominance. This situation is a clear example of a boomerang effect on how sometimes in life things turn against you and now Google will have to face the consequences of its allegations in the case as Microsoft did.

### **iii. Conclusion:**

To conclude, sometimes in life we find ourselves in the situation in which we have the opportunity to take advantages of others misfortunes. We can spend a lot of time in trying to figure out if what was done to Microsoft in both the European and US Microsoft Case Study was correct or not. The behaviour the court and the commission with the obligations induced to Microsoft could have been correct or not. We might just say that it was just a situation created to make Microsoft suffer damages. Microsoft did suffer some damages, but in the end it found it self steal strong and very competitive making them still the dominant company in the market.

Microsoft did conduct an anticompetitive behaviour and for this it paid. It made possible a difficult interoperability with other systems to protect their interests and for this it found it self in a difficult situation. Google tried to take advantage of this so to become a very dominant company which it is today, but it would be wrong to say that was Google is today is all given by the fact that it tried to make the commission make decisions that would favour them in the new reconstruction that Microsoft had to do.

During the American Microsoft case, Google took advantage of complaining that they had suffered from Microsoft's anti-competitive behaviour even though they were not the public persecution in court, but part of a third-party established to collaborate with the plaintiffs. They had the right to speak up and consult with the court and the public persecution. Google was just playing its cards and did well on what they were doing.

After all of this probably Google had in some way reached its objective in having changes in the Microsoft structure, as their search engine has become the most used and the most popular. When Google was exercising these behaviours, probably no one at Google would have thought that they would have found them selves in the same situation being accused of anti-competitive behaviour and in more than a situation attempting to create a monopolistic market. The allegations on the refusal to grant interoperability, to make it short, the same treatment and allegations presented to Microsoft before the Microsoft case. The boomerang effect shows exactly this. The boomerang effect shows how Google found it self in the same situation and facing the same allegations. There have been some contrasts between the two sides. Google refused to deal with Microsoft for the Windows Phone 7 in the Mobile market. Google passed from the accusing side to the accused one. What goes around comes around and now Google under investigation by The European Antitrust Commission will have to probably face serious consequences as they were imposed to Microsoft.

The Google anti-trust inquiry has begun and the allegations are has stated before which are very similar to the Microsoft Case allegations. Google's main allegation focuses on the fact that they have abused their position and Google's Chairman Eric Schmidt was summoned by the European Antitrust Commission to receive the various allegations directed against Google.<sup>44</sup> In the United States the Federal Trade Commission has promised a depth investigation on Google's conduct and business model.

Microsoft had to face numerous charges against them as the foreclosure of competitors, limiting innovation and abusive tying. Now the competition will have to prove the disadvantages they had suffered in the past with new products to be introduced. With more competitors in the market and the charges and obligations that Microsoft faced in its trial should be the right spark to let this market evolve even more. Microsoft has continued in its main objective to provide consumers the best possible service, now its up to competition to show the consumers and the world what they are capable of. Microsoft will have to fight competition to give consumers the best possible products and services they can offer. The Microsoft case has had pros and cons in competition policy making for the US case and the EC case. *“And this is yet another reason for considering the Microsoft saga as an all-time milestone for the many fallacies of European trustbusters.”*<sup>45</sup> Some errors have been made in the case study, but they have to be seen as a lesson for the future. In the end what really counts is that consumers always receive the best product or services. Companies and Antitrust Commissions must work hard to achieve consumer wellbeing by excluding any anti-competitive behavior and without causing consumer harm.

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<sup>44</sup> Arthur Charles, *Google antitrust inquiry: Eric Schmidt meets Europe's competition chief*, *The Guardian UK*, 2011, <http://www.guardian.co.uk>

<sup>45</sup> Pardolesi Roberto and Renda Andrea, *The European Commission's Case Against Microsoft: Fool Monti Kills Bill?*, *LE Lab Working Paper AT-07-04*, 19 August 2004, Pg. 69.

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