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THE ONLINE MAGAZINE FOR GLOBAL COMPETITION POLICY

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Google's proposed acquisition of DoubleClick generated significant controversy when it was announced in early 2007. Complainants (many of whom were competitors of Google) raised a number of superficially plausible but inaccurate claims. One of the most prominent was that the two firms were "horizontal competitors" in online advertising. The combined company, critics claimed, would end up dominating the industry. However, what these critics failed to recognize, and what the U.S. Federal Trade Commission (FTC) and European Commission correctly concluded, was that the two firms were at best potential competitors in each other's markets, and that those markets were already robustly competitive and becoming more so each day.

Many of the complaints were based on a lack of understanding of what Google and DoubleClick actually do. While Google is a household name, few people had ever heard of DoubleClick or "ad serving" before the acquisition was announced. "Ad serving" is the technology that delivers and reports on ads on websites. DoubleClick is one of many companies that provide ad serving to advertisers and publishers that engage in online display advertising. In particular, it provides technology to serve and report on

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the effectiveness of so-called “display” (or “graphical”) ads. Google has a very different business. In contrast to DoubleClick, Google actually *sells* online ads (primarily search and context-based “text” ads) on its behalf and that of its publisher customers. Companies have historically been reluctant to use Google to satisfy the graphical portion of their online advertising needs because its technology, while excellent for search and context-based text ads, did not meet the reporting needs of advertisers and publishers.

Notwithstanding the differences between Google’s and DoubleClick’s businesses, confusion about the markets in which they operate enabled commentators, sometimes for self-interested purposes, to make facially plausible but ultimately inaccurate claims that Google and DoubleClick were horizontal competitors. A study released by Robert W. Hahn and Hal J. Singer of the AEI-Brookings Joint Center for Regulatory Studies (and often referenced by complainants in the investigations) serves as an example of this phenomenon.¹ Hahn and Singer conducted an economic survey purporting to show that advertisers would switch from display ads to text ads sold by Google if DoubleClick increased the price of its display ad serving technology offering by a small amount.

Opponents of the proposed deal used this report as evidence that a basic application of the small but significant non-transitory increase in price (“SSNIP”) test showed Google and DoubleClick compete in the same antitrust market. However, the survey confused three separate services:

1. display ad *serving* services provided by companies like DoubleClick;
2. *text ad sales* provided by companies like Google; and

¹ See ROBERT W. HAHN & HAL J. SINGER, AN ANTITRUST ANALYSIS OF GOOGLE'S PROPOSED ACQUISITION OF DOUBLECLICK 24 (AEI-Brookings Joint Center Related Publication, No. 07-24, Feb. 2008), available at <http://ssrn.com/abstract=1016189>.

3. *display ad sales*, which are primarily provided by companies like Microsoft, Yahoo! and AOL, but, in reality, neither DoubleClick nor Google (in any meaningful way).

It overlooked the question of whether an increase in the cost of DoubleClick's display ad serving services would cause customers to switch to a competitor's ad *serving* offering. It also failed to ask whether an increase in the cost of *display* ad sales would cause customers to switch to *text* ad sales. Rather, it assumed that the answers to both of the questions was "yes" and instead asked whether an increase in the cost of DoubleClick's ad serving services would cause customers to switch both their ad sales and their ad serving to text ads. In fact, even when advertisers switch among display ad serving technology providers, this decision is unlikely to have any impact on whether they use text or display ads. This is because the cost of display ad serving is orders of magnitude *smaller* than the total cost to an advertiser of placing a display ad. Antitrust regulators in the United States and European Community recognized the flaw: a significant non-transitory increase in the price of ad serving would be too tiny to cause an advertiser to shift from buying display ads to text ads.

Other commentators simply assumed the existence of a single online advertising market and used questionably calculated market share estimates to argue that a combined Google/DoubleClick would dominate the industry. However, market shares are rarely an accurate proxy for market power in bid competition markets and are particularly inaccurate in rapidly evolving industries like online advertising. Within the months following the parties' merger announcement, it was clear that the industry was

undergoing dramatic transformation. While Google's proposed acquisition of DoubleClick remained under regulatory review, dozens of similar acquisitions were announced and closed, resulting in millions of dollars in deal activity. These acquisitions included Microsoft's acquisitions of aQuantive and AdECN, Yahoo!'s acquisitions of RightMedia and BlueLithium, AOL's acquisitions of ADTECH and Tacoda, and WPP's acquisition of 24/7 Real Media. Significantly, in their statements surrounding the clearance of the deal, both the FTC and the Commission highlighted these transactions as evidence that the existing competition in the marketplace would only increase after Google acquired DoubleClick.

The Google/DoubleClick merger review highlights the importance of careful investigation on the part of regulators, especially in complex and dynamic industries. The case teams received a significant amount of information from the parties, including millions of pages of documents produced to the FTC and extensive written responses to the Commission. The approach taken by regulators on both sides of the Atlantic, both with the parties and in coordination with each other, is a model for future mergers. In the end, both the FTC and the Commission cut through the fog of the complaints surrounding the proposed merger to get to the right answer, namely that Google and DoubleClick operate in different, already competitive markets, and that their complementary services, when combined, will not harm competition in any relevant market.