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The Importance of an Open Internet

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Microsoft

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Tim Wu's extensive background in net neutrality provides a ready platform to tackle equally important and related issues on the internet today. The net neutrality discussion focuses on one key principle: how to ensure an open internet for consumers in light of tensions faced by broadband access providers in managing networks constrained by bandwidth limitations and network congestion. The work in this area is of course ongoing, as other agencies such as the FCC continue to strike a path that seeks to balance these interests.

However, net neutrality is but one piece of the puzzle to ensuring an open internet. Broadband internet access is certainly the initial on ramp to the internet. But much like a freeway, what do you find once you are on? What paths are available, and to which destinations? How helpful are the directions and road signs in providing the places you're looking for? Broadband access can create a potential bottleneck, but unless the internet itself is open and competitive, any solutions to that issue may be pyrrhic at best.

By some estimates, the internet itself contains something on the order of 27 to 58 billion web pages.² In that massive sea of personal content, video content, commercial offerings, shopping sites, online auctions, news—you've been there and get the point—how do users find what they want? Simple: online internet search engines. Search engines are used by nearly every adult internet user to find the information they want on the internet. And search engines are the key component in a classic two-sided market. While users *looking* for information sit on one side, on the other side, search engines are the means by which online content publishers *find* consumers. For the majority of sites, if they are not surfaced to users through an online search, they effectively do not exist. No one will find them.

Because of this central role, search engines determine which destinations effectively are available on the internet and how users get to them. And search engines make inherent judgments about which sites are exposed. This happens in two forms. First, search engines use algorithms to determine site relevance. How those algorithms work—and where exceptions can be made to override the normal algorithms—determines what results are returned to users querying a given engine. Second, the design of a search site itself determines which sites are promoted. Sites may include “sponsored” or paid search results for which advertisers have purchased placement in prominent positions on the search results page. Or the search site may choose to hard-code certain results that the search provider has decided it wants to promote above the algorithmic results, making the two difficult to distinguish. In all of these cases, the search provider is making a judgment about what results are returned by: i) deciding what the algorithm will be; ii) deciding when or whether to override the algorithm; or iii) deciding how to choose, promote, and surface paid search results.

¹ Associate General Counsel, Microsoft Corporation. The views expressed in this paper reflect my personal views and not necessarily the views of Microsoft Corporation.

² <http://hubpages.com/hub/How-many-webpages-do-you-think-actually-exist-on-the-Internet>

As a consequence, a search provider can promote publishers (including its own properties) that it favors. Alternatively, it can demote and even eliminate publishers that it does not like. There is no “pure” search engine that returns the objectively “best” results. All engines make judgments as to both algorithmic results and paid results. That exercise of judgment grants a search provider, particularly one with market power, enormous control over how consumers use the internet and how every publisher dependent on internet search competes for user eyeballs. This condition should create a heavy burden for dominant providers to play fairly, given the significant opportunity for competitive and consumer harm, intentional or not.

In a competitive environment, competition would correct these issues as search engines compete to provide answers, or differentiation, that users wanted or perceived as “most” objective. In an environment where effective search competition does not exist and a single search engine is the dominant on-ramp to the internet content world, there is a much greater risk that standard economic forces will not correct search engine bias.

Such bias could include efforts by the dominant firm to advantage itself by foreclosing competition not only in search but in related areas, such as specialized vertical search (e.g., travel, restaurants), online video sharing, online books, news, email, health, finance, and local content. A search engine can use the methods described above to rank algorithmic or paid search results in order to direct users to its own services, even if other content and services are more popular with users. Without an adequate competitive check, a dominant firm has greater ability to direct consumers in this way. Consumers either will not notice (expecting the engine to be unbiased) or will notice but have little choice of alternatives.

Certainly one place to start to guard against abuse by a dominant search provider could be increased transparency. Simply knowing how these inherent judgment calls are made would have a prophylactic effect as to future decisions. Users and other participants in the online ecosystem would know whether a vertically integrated, dominant search engine is favoring its own content or that of favorite partners in algorithmic or paid search results over independent publishers. Antitrust agencies would understand what factors are, and are not, influencing the dominant provider’s search results and advertising placements and the extent to which the dominant provider makes judgments that impede effective competition in the online market. This is one sure way to at least detect abuse by the dominant provider. But a range of other possible solutions exists. For example, agencies could seek to transpose another concept explored in the net neutrality debate—non-discrimination—to this context as well.

Why should the antitrust agencies care about this topic? Let me explain why I care. First, in my daily work, I see how the internet continues to transform our global economy. There was a time, maybe both before and after Web 2.0, when many questioned the ongoing viability and usefulness of the internet. Fast forward to today and we have seen dozens of new solutions across the consumer and enterprise spaces that take advantage of the connectivity and power the internet offers. Consumers are using cloud services like email and video communications in record numbers. Enterprises are asking when, not if, they should move big parts of their IT workloads like data storage and productivity applications to the cloud. The internet infuses nearly everything to do with our social and economic lives and continues to evolve. The need to maintain an open internet is crucial to ongoing innovation.

Second, while Microsoft is investing and doing its best to avoid letting a pure monopolist take over search and search advertising, it has achieved just a dent in the U.S. market and even less than a scratch in the rest of the world. Without significant competitive constraints, a

dominant provider in this space requires close scrutiny. Most people simply view internet search as a terrific free service. And it is an incredibly important, valuable, and useful tool. But due to the lack of transparency, consumers often do not appreciate how search results can be manipulated by a dominant provider, how the advertising monetization model may create conflicting incentives (does the engine provide the most relevant result, or the one that makes it the most money?), and ultimately how much control a dominant internet search engine exerts over where users can go and what they can find.

In the physical world, if there were threats that, without notice, freeways would change to toll ways and exits would only go to cities owned by the operator, we would have much more than a call for transparency. In that same context, the internet search on ramp should be a priority for antitrust authorities here and abroad.