Platform markets. What have we learned from the Italian “Google” case

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The case 1 of 2

- Google developed a Google news service where it would collect newspapers articles from which publishers could not ask to be excluded (the cost of the exclusion from Google news would be the exclusion from Google search).
- The cost to the publishers in remaining with Google news is the loss in income that otherwise they would have received if readers would have accessed the article by starting from the front web page of the newspaper.
- The benefit to the publishers in remaining with Google news is that readers would eventually get to know the newspaper and bypass Google news.
- As for Google Search, publishers pay nothing by receiving a service; Google gets its income by advertizers and so do the publishers. As for Google news the two sign a contract: Google provides the platform and publishers the content. No payment is involved.

The arguments used are one sided

- There is a right to be listed in Google for free and any income originating from the platform should be shared irrespective of the cost of the platform (which is a free good by assumption). (the income publishers receive from the use of the platform is not to be shared).
- According to the publishers, separating Google news from Google search would cost the publishers in terms of the ranking and would have a negative effect on their income. So all they want is a share in Google income

BUT

- Had it been in the contract that accepting to be in Google Search would give Google the right to use the content in Google news, the whole point would have been much weaker.

Exploitative abuse?

- The exploitation should be calculated as a difference between the net benefit publishers receive from Google News (the net extra traffic for which they do not pay) and the profits that Google is gaining by offering a news service.
- According to the United Brands first part test the amount of profits associated to Google news has to be much much higher than the net benefits received by publishers in order for the contract to be exploitative.
- It would have been interesting to see this analysis

Exclusionary abuse?

- The practice of providing Google news may be exclusionary of other news services.
- This is a much more serious possible violation but the Authority has not dealt with it

Accepted commitments

- Publishers could give up Google news but by so doing would not be excluded from Google search.
- Fairer deal.
- But is it a competition or a contractual issue?

The case 2 of 2

- Google has a system in place of revenue sharing with publishers of every income it receives from advertisers paying Google for every click that originates from the publisher's page.
- Publishers have no way to control whether Google respects the contract because the contract does not identify the specific share that would have to to go to the publishers.
- This has been corrected by the commitments.

- Also here it is difficult to conclude that it is an abuse of dominance. It is certainly a contractual problem.

Conclusion

- What we have learned is that commitments are often used strategically to cheaply solve contractual problems that have an unknown connection with substantive restrictions.
- Luckily these Google commitments are not harmful. But to avoid false positives a full analysis is always better.