

COMPANIES

Antitrust chief holds all the aces

Interview

Joaquín Almunia
EU competition commissioner

The long-running case against Google will form a central part of the regulator's legacy, writes Alex Barker

When US antitrust authorities gave Google's search engine a clean bill of health, it naturally appeared a setback for Europe's own probe of the internet company.

Yet to Joaquín Almunia, the EU's competition chief, there is a bright side. Speaking in an interview with the Financial Times that sheds new light on his two-year long Google investigation, Mr Almunia insists that the Federal Trade Commission decision will be "neither an obstacle [for the European Commission] nor an advantage [for Google]".

"You can also think, well, this European authority, the commission, has received a gift from the American authorities, given that now every result they will get will be much better than the conclusions of the FTC," he said with playful confidence.

"Google people know very well that they need to provide results and real remedies, not arguments or comparisons with what happened on the other side [of the Atlantic]."

Mr Almunia is also busy on other fronts. He is investigating Gazprom, Samsung, Apple and alleged Libor cartels, and last year shot to prominence in the US by blocking the NYSE-Deutsche Börse tie-up.

But the Google search case has long been the world's antitrust cause célèbre and its conclusion in Brussels – which could come in a draft settlement this month – will be central to his legacy as competition commissioner.

He insists there is no bad feeling over the FTC judgment and stresses how well the US-EU antitrust watchdogs work together. On most issues they see eye to eye. But there is no hiding the differences on the most contentious and important allegations against Google's core search engine.

What Mr Almunia is determined to change – ideally within months, through a voluntary deal – is the way Google presents its own services in general search results, allegedly to the detriment of consumers and its rivals in restaurant, weather, maps and comparison shopping.

"We are still investigating, but my conviction is they are diverting traffic [to their own services]," said Mr Almunia, casting it as a potential abuse of dominance.

The view in America is different, partly because of legal culture and partly because Google holds a tighter, 90 per cent-plus market share grip on the EU market, compared to 67 per cent in the US. "The way the US looks at abuse of dominant position is different than the European one," he said.

As important perhaps is that – unlike the complex politics and disparate power centres in Washington – on antitrust matters in Europe Mr Almunia holds all the cards.

In the US "there is a game of five commissioners coming from the two political parties with a different role for Capitol Hill vis a vis the FTC, so this can also have some influence," the commissioner said.

To Mr Almunia, the problem is "the way the things are presented"

Almunia's greatest hits



Joaquín Almunia
EU competition commissioner
Photo: EPA

Decisions



NYSE
Blocked the \$9bn tie-up between Deutsche Börse and NYSE Euronext to create the world's largest equities and derivatives exchange

Universal
Forced the Vivendi-owned music group to sell the lion's share of EMI's European recorded music business as a condition of buying the UK label

TV cartel
Hit electronics groups including Philips and LG Electronics with a record €1.47bn fine for rigging prices of cathode ray tubes that were used in TV and computer monitors

Investigations



Libor
Multiple cartel probes alleged collusion by banks to rig interest rate benchmarks. Mr Almunia said the evidence he had uncovered was 'quite telling'

Gazprom
Mr Almunia has opened a formal investigation into suspected market abuse by the Russian energy giant

UPS
Brussels has raised strong concerns about the US delivery group's proposed takeover of its Dutch rival TNT

Source: FT research FT graphic

'The way the US looks at abuse of dominant position is different than the European one'

in Google search results. It signals the settlement will cover the form and labelling of the Google search page in order to "restore the level playing field".

This is not just a matter of rivals being hurt; consumers are being deflected from "the service that will offer them the best results for the user" towards Google's own commercial services, he claims.

But this analysis notably stops short of the sweeping curbs the small army of anti-Google complainants are demanding. Mr Almunia makes clear that any Google settlement – or indeed formal charges – will not interfere with the inner workings of its search engine. "We are not discussing the algorithm," he says.

Will Google offer viable settlement terms to head off a legal war with the commission? At a December meeting with Eric Schmidt, Google's executive chairman, Mr Almunia

made clear he wanted a decisive settlement offer presented at the end of January or he would be "obliged" to take action.

There remain differences, but the odds of a pre-charge deal are looking high. The December meeting was "more positive, more constructive than in previous occasions but now they have to present the concrete proposals", he said.

For Google, a settlement does not require it to admit wrongdoing and avoids years of legal warfare and the potential of a hefty commission fine, which can be up to 10 per cent of turnover. The commission, meanwhile, wins legally binding commitments on Google's future behaviour. In principle, Mr Almunia says "it's better, it's quicker, it's simpler and everybody will benefit from the solutions".

This won't necessarily best please the complainants, led by Google's arch rival Microsoft. They will have

an opportunity – along with others – to feed comments back to the commission in a "market test" of the settlement. But Mr Almunia will probably prove hard to move.

He admits the Google talks have not been "easy", particularly given they are dealing with a "moving target" – Google changes its algorithm 500 times a year and its search results presentation varies from country to country.

But he is ready to gently praise Mr Schmidt's handling of the investigation, saying he clearly headed the lessons from Microsoft's decade-long battle with Brussels. "Google has learnt the way these kind of cases should be done," he said. "This does not mean it's an easy interlocutor but they have tried to distinguish their tactics from the original Microsoft tactics."

Will this settlement mean users of Google see a tangible difference? "I hope so," he says.

Hostile deals hit 10-year low on lack of confidence

GENERAL FINANCIAL

By Anousha Sakoui
in London and
David Gelles in New York

Hostile takeovers have fallen to a decade low, highlighting how lack of confidence among corporate leaders is reining in deal-making.

Global hostile dealmaking volume reached \$100.6bn in 2012, down 33 per cent from 2011, the lowest volume since 2003, according to data provider Dealogic.

"One of the pre-requisite conditions for a hostile bid is a high degree of confidence that a company can get financing, confidence in the value of the target and confidence in getting regulatory approval," said Frank Aquila, co-head of Sullivan & Cromwell's global corporate practice. "What we have had over the past 12 months has been a lack of confidence at all levels in dealmaking."

A hostile approach or offer is one made to shareholders despite the target board's opposition. However, some dealmakers have broader definitions of hostility to include any unsolicited, public offers – sometimes termed "bear-hugs" as they pressure management into accepting the offer. This is the route Indian Hotels used in pursuing Orient-Express Hotels.

While the fall in the volume of hostile offers is in line with the overall global decline in M&A last year, the proportion of such bids fell another 20 per cent year on year, down to 4 per cent, the lowest proportion since 2002. Last year's larg-

est bear hug, cosmetic group Coty's \$12.8bn bid for Avon, was withdrawn. Mining companies saw the most hostile bids.

"There were headwinds to hostile activity in 2012," said Jim Woolery, co-head of North American M&A at JPMorgan. "The continuing unrest in certain regions was a factor, and Europe was not fertile ground for folks to play offence."

Growing agitation among activist investors, notably in the US, meant acquirers have been able to avoid hostility. "The rise of activist bidders need less often to use a hostile bid to force a target into talks as now there is often shareholder pressure to sell themselves," said Mr Aquila.

Earlier this week, First Quantum, the Toronto-listed miner, was the first company of the year to go hostile by taking its C\$5.1bn (US\$1.6bn) bid for rival Inmet direct to shareholders in its attempts to gain control of its rival's project in Panama.

And satellite television provider Dish on Tuesday made an unsolicited offer to take full control of wireless provider Clearwire, intensifying the fight for position in the US telecoms sector.

Some bankers say hostile approaches have been less successful, with staggered boards making it harder to replace reticent directors. "The big variable, and it's a large one, is the quality of the defence," said Mr Woolery. "With a staggered board, it's difficult."

In addition, a change in UK takeover rules has given target boards greater ability to rebuff offers.

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● **Walmart faces fresh scrutiny over Mexico issue**
Walmart is facing fresh scrutiny over corruption allegations in Mexico after US lawmakers released confidential company documents that they said contradicted the retailer's public statements. The documents are claimed to show Mike Duke, Walmart's current chief executive, being briefed by email in November 2005 about allegations Walmart had paid bribes to secure permits to open stores in Mexico. Although two congressmen said the email contradicted Walmart's previous claims, the retailer firmly disputed that. "The fact is the chronology of

events relied upon in their letter is inaccurate," Walmart said.

● **Hollywood stems fall in home viewership**
Hollywood studios have stemmed a six-year decline in home entertainment sales, a key industry revenue stream, by selling films online several weeks before their release on discs. DVD sales have fallen sharply since 2006, but figures show total home entertainment sales were flat in 2012, due in part to strong growth in download sales. The studios say younger consumers with tablet devices are more inclined to buy electronic versions of films.

UPS move on TNT poses concern

UPS's attempted takeover of TNT Express poses serious competition problems that are "not easy" to resolve, the EU competition chief has said, while leaving open the door to an 11th-hour solution to save the proposed deal from being blocked, writes Alex Barker.

The US delivery group is trying to sell France's DPD a swath of TNT assets that are sufficient in quality and scope to convince Brussels that competition in the express delivery market is maintained.

The proposed remedies are still being reviewed by the European Commission. But Joaquín Almunia, the EU competition commissioner, made plain the difficulties of compensating for the takeover of one of Europe's four integrators, which combine ground and air transport.

"The elimination of competitors such as TNT, that is an integrator, requires... an alternative integrator or someone who will play the same role from the competition point of view with equivalent competitive pressure," Mr Almunia said in an

interview with the Financial Times.

He added that finding such a remedy was "not easy", particularly given that DPD has no air transport of its own. However, by noting that the creation of an "equivalent competitive pressure" – rather than a full-blown global integrator – could be sufficient, Mr Almunia appears to be keeping his counsel on a DPD option.

"What I have told UPS, what you have to present is an equivalent," he said. "Everybody who knows this market is convinced today DPD is not an equivalent. It depends how this situation can be changed but it will not change just for saying I want to change. We need to receive assurances."

He added, with reference to air capability: "To be express delivery you cannot go with horses, you need also to have not only capacity in the point of delivery of the sender of the parcel but delivery close to the receiver."

The commission sees a potential sale to FedEx as a simpler option, because the US group has its own airline and a more developed network in Europe.

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