

Ms Neelie Kroes
Commissioner
European Commission
Rue de la Loi 200

1049 Bruxelles

Ref.: CKU/2007223 /rsa

18 December 2007

Further observations on the proposed acquisition of DoubleClick by Google

Dear Commissioner,

In our letter to you of 27 June 2007, we expressed our concern that Google's proposed acquisition of DoubleClick is not in the interest of European consumers. Among other things, we noted that the acquisition would enable the two companies to combine their massive databases of information on Internet users, and eliminate competitive incentives the two companies otherwise would have to safeguard users' privacy. In the ensuing months, our organisation has identified additional concerns that we believe warrant your attention, and we have become even more convinced that approval of the merger would be harmful to European consumers.

While we believe the concerns expressed in our 27 June letter remain valid, we would like to bring to your attention additional risks to consumer welfare that the acquisition presents, in particular with respect to the price, degree of innovation, quality, and selection of online products and services that would likely be available to consumers following the merger. We would also like to describe in greater detail why we believe the privacy issues raised in our 27 June letter are detrimental to consumers' welfare and ought to be taken into account in the merger review process focusing on competitive harm. Knowing your commitment to consumer welfare as a bedrock principle of EU competition law, we respectfully urge you to take these concerns into account in your review of the proposed acquisition.

This merger is considered one the most important transaction affecting the market structure of the digital media—and ultimately all media as they embrace interactive distribution—for many years to come. How digital media publishing is funded is critically important, especially during this transition period to what will be a multi-media and multi-platform (PC, mobile, interactive TV) system. Given that online advertising is the fundamental and core business model for almost all online content (versus paid subscription), ensuring a competitive environment is key. Consolidation has occurred at an alarming rate in the online sector, with more than \$30 billion (US) spent in 2007 alone in mergers and acquisitions from already dominant firms. Microsoft, Time Warner (AOL), Yahoo! and WPP have made US and EU purchases of well-established interactive advertising companies. Of course, the most significant acquisition is Google and Doubleclick, given their dominance in the online advertising market. But understanding this merger in the context of growing consolidation is

essential to help ensure media diversity—of editorial and civil society related content; ownership diversity by views and ethnicity, etc.¹

I. The Online Advertising Market

When analyzing the likely effects of this proposed transaction, it is critical to bear in mind that advertising is to a great extent founding the Internet economy. While this has some specific negative aspects in itself, the Internet has benefited consumers enormously in recent years through unprecedented convenience and choice of online information and products.

Web sites are able to offer a vast range of content and services for free or at a reduced cost because online advertising allows them to generate revenue that can be reinvested in such offerings. This imposes various non financial costs on them, such as the intrusiveness of ads and the expropriation of users' personal data needed to target them.

Targeted advertising online provides advertisers with a sophisticated and efficient means, unmatched by any other form of advertising, of targeting consumers. Notwithstanding our general concerns about targeted advertising, the viability of the sector and its effectiveness in reaching consumers depend on vigorous competition that provides advertisers and web publishers with cost-effective choices among the companies delivering online ads.

A. The Google/DoubleClick Merger

The online advertising market will be placed in jeopardy if the Google/DoubleClick merger is allowed to proceed, because the combined company will dominate both major "pipelines" for online advertising - both the pipeline for search ads and the pipeline for non-search ads. Almost all online advertising today relies on these "pipelines" of complex software tools, linking advertisers, web publishers and search engines, which help ensure that the right ad is delivered on the right page at the right time. While some of these ads are sold directly by publishers, others (particularly those of the smaller web publishers) are sold through networks and ad exchanges.

As we noted in our 27 June letter, Google is already super-dominant in the search segment in many key Member States. Google's AdSense is also the leading ad network for non-search ads, serving over 60% of online ads served through such ad networks.

DoubleClick is currently the dominant provider of ad-serving tools for non-search ads to both publishers and advertisers. DoubleClick offers these tools on a stand-alone basis, meaning that they are not integrated into any particular network and that they interoperate with virtually all of the major ad networks. Nevertheless, DoubleClick tools are critically important because they are used by almost all top publishers to function as a kind of "spigot" for ad networks to access the inventory that publishers do not sell directly. In this way, DoubleClick in combination with those ad networks competes directly with Google AdSense for

¹ This past spring, for example, saw a number of startling merger announcements: Google-DoubleClick (\$3.1 billion); Microsoft-aQuantive (\$6 billion); Microsoft-Screen Tonic (undisclosed terms); Yahoo-Right Media (\$680 million); WPP Group-24/7 Real Media (\$649 million); AOL-Third Screen Media (undisclosed terms); More recently, AOL acquired the behavioral ad network Tacoda for \$275 million to form part of its new Platform A advertising network (comprising Advertising.com, the direct-response network AOL acquired in 2004; the video ad network Lightningcast; the mobile ad network Third Screen Media; AdTech AG, an international ad-serving company based in Germany; along with Tacoda).¹¹⁰ Other recent acquisitions include Zingku and Jaiku, by Google; AdECN, by Microsoft; and BlueLithium, by Yahoo. see discussion on industry consolidation in CDD's 1 November 2007 petition to US FTC:

http://www.democraticmedia.org/news_room/press_release/FTCSupplementalFiling

publishers' non-reserved inventory, and in particular for the first rights to sell the most valuable of that inventory.

If allowed to proceed, the transaction will enable the world's largest network for the sale of non-search online advertising (Google) to capture and use to its own benefit the dominant provider of stand-alone ad-serving tools (DoubleClick) used by web publishers to connect other networks to the non-search inventory which they need to survive and which is not already committed to Google. It will also eliminate nascent competition between the companies for both stand-alone ad serving tools and integrated ad networks, and will ultimately reinforce Google's super-dominant position in the market for search ads.

We are deeply concerned that consumers will suffer significant harm from the emergence of the monopoly that will be formed by merging the technologies and networks of Google and DoubleClick. Following the merger, there will be no real alternative to the combined entity for advertisers and web publishers. Google-DoubleClick's monopoly will give the company the incentive to seize for itself an increasing share of total online advertising spending, taking more from advertisers and giving less to publishers; to the ultimate detriment of consumers as it is explained further on.

Last but not least, Google is a publisher itself and could refuse its services to competing sites (free mail, maps, etc). This would further contribute to reduce choice for consumers.

B. Effects on Advertisers and Publishers

There are many ways in which Google, post-merger, could push up prices for advertisers. If allowed, the merger will give Google significant control over a vast amount of the total advertising inventory on the Internet (advertising space on web pages), allowing it to become the gateway to online advertising. Google/DoubleClick could also rely on its dominance to impose exclusivity provisions preventing advertisers from using tools produced by other companies to access its ad network. In both cases, Google, without meaningful competitive constraints, will be free to raise prices to advertisers.

Post-merger, web publishers would likely see a reduction in the revenue they receive from Google. For example, Google could prevent non-Google ad networks from interoperating with DoubleClick's publisher tools. Many web publishers prefer DoubleClick today precisely because they play an "honest broker" role, allowing publishers to deal with a range of ad networks on a level playing field. The loss of this honest broker through a merger with Google would likely lead to a reduction in the revenues Google shares with web publishers, because web publishers would have no effective alternative choice to Google.

II. Harm to Consumers

While Google's monopoly will mean higher costs for advertisers and lower advertising revenues for web publishers, it is consumers who will likely bear the ultimate consequences. They will face higher prices for the products, services and content they access online, encounter fewer choices, and experience less innovation and quality in online offerings.

A. Prices

If advertisers are forced to pay higher prices to Google, these costs will likely be passed on to consumers in a number of ways. The costs of products and services purchased from these advertisers may rise. In addition, higher online advertising prices may result in part of the advertising budgets shifting to other media, resulting in less revenue than initially forecasted

for web publishers. Such publishers might then be forced to charge users to access content in circumstances where they do not do so today.

B. Choice

In addition, the number of web sites available to consumers to use may decrease as Google assumes a larger share of the revenue available online. If Google charges advertisers more, they may, as noted above, advertise less online. This could force some web publishers out of business or prevent the development of new web sites, leaving consumers with fewer choices. In addition, if Google decreases the amount of advertising revenue it shares with web publishers, they may not be able to offer as much content as they do now, once again reducing consumer choice.

C. Innovation and Quality

As a result of innovation by online businesses, consumers today can purchase books, arrange trips, watch movies and conduct research with greater speed and efficiency than anyone would have imagined a decade ago. Web publishers that receive lower advertising revenues as a result of the merger will have less money to invest in creating such innovative content and services. Innovation, which has been a hallmark of the Internet and key to the benefit it brings consumers, will falter.

III. Privacy and Consumer Welfare

We are aware that privacy might be viewed as tangential to competition law analysis. We believe, however, that privacy issues may be highly relevant to such analysis in some circumstances, including where a merger combines two of the world's largest data bases of consumer preferences. This is particularly true given that European consumers are very concerned about their privacy, and the way that their personal data are used by third parties.

The Google/DoubleClick merger would harm consumer welfare by creating a structure that almost certainly will be less respectful of user privacy. A combined Google/DoubleClick will be a data collection colossus that combines information about consumers that Google collects through its search engine with the tracking data that DoubleClick collects about users as they surf the web.

Post-merger, Google will have the ability and incentive to engage in significantly more intrusive user tracking and profiling than exists today. This is because more intrusive tracking and profiling would enable Google to improve behavioural ad targeting and to attract web publishers that today prefer to sell their advertising space via their direct sales forces. However, because the merged entity will not be subject to any competitive discipline, the competitive constraints on its tracking and profiling practices will be fundamentally weakened, and quite likely, ultimately eliminated. The greater privacy intrusions that will result will constitute a much higher "cost" for consumers who obtain a good or service online. The point which we wish to emphasize here is that these privacy intrusions will be the direct consequence of the elimination of the competitive constraints on Google following its merger with DoubleClick.

In addition, the combination of Google and DoubleClick would further harm consumer welfare by reducing innovation to improve online privacy, thereby harming the quality of the service available to consumers. Privacy protection is a competitive differentiator between companies involved in the business of online advertising serving, especially with European audiences. Google itself has said that it is investigating new techniques to improve its

privacy practices. Indeed search companies are currently engaging in what the media has termed a "privacy race". But post-merger, there is a danger that Google will lose any incentive to continue innovating in this area due to its hugely dominant position in online advertising. It will be under considerably less competitive pressure to improve – or even maintain – the poor quality of its current privacy practices.²

Finally, another possible harm to consumers would derive from the fact that advertisers would be able, via the enhanced possibilities of profiling customers which the combined entity would offer, to discriminate customers on the basis of price or other commercial conditions. Should an advertiser have access to information of buying patterns of consumers, it may happen, for instance, that prices offered to an impulsive buyer would be higher than those offered to buyers whose profile tells that they usually visit different sites before purchasing. The combined entity, by merging the two databases, would allow advertisers to undertake this kind of behaviours more easily and accurately, to the detriment of the economic interests of consumers. We therefore also kindly ask the Commission to take this aspect into consideration.

Please find attached a Memo for your information.

If you should have any questions on the foregoing issues, BEUC would be pleased to provide additional information.

Thank you for considering our views.

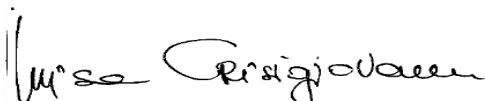
Yours sincerely,



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² In a report issued in the spring of 2007, Privacy International, the leading data privacy NGO in Europe, presented the initial findings of a study that ranked Google last among 23 leading Internet service providers in terms of their data privacy practices. Throughout its research, PI "found numerous deficiencies and hostilities in Google's approach to privacy that go well beyond those of other organizations." PI had in fact "witnessed an attitude to privacy within Google that at its most blatant is hostile, and at its most benign is ambivalent."