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Scrutinizing Google’s Reign

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Google’s slogan may be don’t be evil, but a growing chorus of antitrust regulators in the United States and Europe want to know if the company has lived up to that creed.

This week, those concerns — especially whether Google gives its own businesses preferred placement in search results, thwarting competition and harming consumers — will have their most public airing to date, when Google’s chairman, Eric E. Schmidt, testifies before a Senate antitrust panel. Some of Google’s competitors will also testify.

The Senate proceeding is just one of an array of inquiries into Google’s behavior by various federal and state authorities in this country, as well as by regulators in Europe and Asia. And though the company and the times are different, there are echoes of a hearing before the same Senate body, the Judiciary antitrust subcommittee, 13 years ago and the last sweeping antitrust investigation of an American technology powerhouse, Microsoft. Later, the federal government, joined by 20 states, filed suit against Microsoft.

“Google is a great American success story, but its size, position and power in the marketplace have raised concerns about its business practices, and raised the question of what responsibilities come with that power,” said Senator Richard Blumenthal, Democrat of Connecticut, who is a member of the antitrust subcommittee and who as the attorney general of Connecticut played a leading role among the states that sued Microsoft.

Today Google, like Microsoft then, is both admired and feared. Google has used the riches from its dominance in search and search advertising to expand into video distribution with YouTube, smartphone software with Android and Web browsers with Chrome. It has added online commerce offerings in local retail and restaurants, comparison shopping and travel, and folded them into its search engine, prompting complaints that Google is giving its businesses preferred placement in search results.
Google executives have consistently replied that its search results are the product of extensive user testing, and do not favor its own offerings. If users become dissatisfied with Google search results, the company argues, they will go elsewhere, to rival search engines like Microsoft’s Bing, sites that focus on specific products or services like Yelp, or social networks like Facebook.

“Using Google is a choice,” Amit Singhal, a senior engineering manager at Google, wrote on the company’s blog in June, after the Federal Trade Commission began its investigation. “And there are lots of other choices available to you for getting information.”

Competitors disagree. Yelp, the popular Web site for user reviews and recommendations for restaurants and other businesses, has noticed a difference in search rankings since Google established its own online businesses, said Jeremy Stoppelman, co-founder and chief executive of Yelp, which gets half its traffic from Google searches.

Two years ago, Google offered to buy Yelp, but the talks broke down. Last year, Google introduced Places, a Yelp-like service for listing businesses and collecting consumer reviews. A Google search for a restaurant often displays the Places entry — linked to a map, user reviews and other services — ahead of Yelp.

“Google develops its own in-house properties and it preferences those, so it’s leveraging its dominance in Web search,” he said.

Mr. Stoppelman, who is scheduled to testify at the Senate hearing on Wednesday, added, “When it comes to Web search, Google says you have great content, you rise to the top and that’s historically been true for us. But we do feel like that world is changing because Google has decided it’s not enough to own and dominate Web search.”

This month, Google acquired Zagat, the restaurant listing and review service, to strengthen its local commerce offering. Yelp is Zagat’s leading online rival.

Google, legal experts say, presents some challenges for the traditional doctrine of antitrust. The Microsoft case, too, required adapting antitrust principles to modern technology, and the complaint filed against the company was filled with technical computing terms like “cross-platform middleware” and “application programming interfaces.”

Yet Microsoft’s dominant product — the Windows personal computer operating system — was something consumers and companies paid for, as with any conventional good.

Google’s search service, by contrast, is “free and anyone who wants to use it can use it,” said Herbert Hovenkamp, an antitrust expert at the University of Iowa College of Law, so higher prices for consumers — a hallmark of competitive harm — is not an issue.

But in other ways, the accusations against Google fit comfortably into antitrust.

“If it is proven that Google discriminates in favor of its own online properties, you certainly have an antitrust issue,” Mr. Hovenkamp said.

While the technical ingredients may be different, the Google recipe is the same one used by Microsoft years ago, said Gary L. Reback, a lawyer at Carr & Ferrell who represents some of Google’s rivals.

The Microsoft case revolved around Netscape, maker of the first commercially successful Web browser, and the bullying tactics Microsoft used to thwart the threat it represented.

The browser was a new layer of software, running on top of a personal computer operating system, and developers wrote software to run on the browser. Thus the browser took on some functions similar to an operating system, potentially undermining the role and value of Windows.

“Web sites like Yelp and others in travel and shopping that help people find things are partial substitutes for Google in the same way that Netscape was a partial substitute for...
Google’s expansion strategy beyond search is an effort to grab more online advertising dollars. Google pockets more than three-fourths of all search advertising dollars in the United States, and a higher share in many European markets.

Its share of total online ad revenue in America, including spending on larger graphic and video ads, is 41 percent, followed by Yahoo with 11 percent, Facebook with 7 percent and Microsoft with 6 percent, according to eMarketer, a research firm.

Advertising revenue, analysts say, is the prize on the Internet — the fuel that sustains services, competition and innovation.

Much of the economy may be languishing, but not in Silicon Valley, where start-ups are being created at a torrid rate, flourishing, it seems, in Google’s shadow. Facebook and Twitter, for example, are becoming powers in their own right.

“The similarity between Google and Microsoft years ago is the potential for harm, the risk that a dominant company uses its power to disadvantage others,” said Mitchell Kapor, a longtime Silicon Valley technologist and investor. “But Google was born on the open Internet, and things are just generally far more open to innovators and start-ups than in the Microsoft era.”

And, as proof of the rapid turn of fortunes in technology, Microsoft is now the underdog, trailing well behind Google in search and search advertising, urging government officials to take action. Microsoft has met regularly with antitrust investigators in America and filed a complaint against Google in Europe this year.

“We appreciate the irony,” Brad Smith, Microsoft’s general counsel, said in an interview earlier this year.