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The Italian Competition Authority starts a proceedings against Google Italy for an alleged abuse of dominant position against Italian newspaper and magazines editors (Federazione Italiana Editori Giornali/Google Italy)

Italy, Unilateral practices, Abuse of dominance, Essential facility, Relevant market, Internet, Information technology, Advertising

Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato), 26 August 2009, Cases n° 20224/09 and 20264/09 Federazione Italiana Editori Giornali v. Google Italy

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On the 26th August 2009 the Italian Competition Authority (the ICA) decided to start a proceedings against *GOOGLE Italy* (the Italian branch of the *GOOGLE Group*) for alleged infringement of article 82 of the EU Treaty (abuse of dominant position) [1].

The proceedings follows a complaint by the *Italian Federation of Editors of newspapers/magazines and Press Agencies* (hereinafter, *FIEG - Federazione Italiana Editori Giornali*) concerning the service, called "*Google news Italia*", by which news released in the Italian language on Editors' websites are collected, aggregated and indexed by *Google*. In particular, to provide such a service *GOOGLE* selects news from around 250 web-sites (referable to Italian Editors of newspapers/magazines and News Agencies), extracts titles and summaries through automatic information technologies and make them publicly available on the web-portal "*Google News Italia*", with hyperlinks to the web-pages of the Editors who host the content. All the news selected and reported in "*Google News Italia*" can usually be found by users of the *GOOGLE* search engine also in the (first) page of response to their queries and reference to them is also made in other web-sites of *GOOGLE*, such as "*iGoogle*", which is the home-page that *GOOGLE*'s users can create in order to easily access to all the services provided by *GOOGLE*. The *FIEG* alleged that (i) the "*Google News Italia*" determines unilaterally the degree of visibility of the content produced by each Editor by ranking it (relatively) by level of importance. In such a way, according to *FIEG*, *GOOGLE* damages on one side Editors and Press Agencies, discriminating between them, and on the other its own competitors in the market for on-line advertising; (ii) an Editor of news cannot control which of its contents are indexed and made available to *Google News Italia*'s users; more deeply, Editors have only two options: to make all their

content available to *GOOGLE* without any control, or to prevent *GOOGLE* from collecting information, but in this case the Editors' web sites would be excluded also from the *Google* Search Engine, thus obstructing the Editors' capability to attract returns from advertising that such activities indirectly produce. The ICA deems that the alleged conduct should be assessed mainly with regards to two markets: the market for on-line advertising and the market for intermediation to on-line advertising. Curiously, the ICA does not establish any dominant position on these markets, *i.e.* providing data on market shares. Implicitly following the analytical schemes adopted in the scrutiny of the so-called "multi-sided platforms (or markets)", the ICA considers sufficient at this initial stage of the proceedings the fact that *GOOGLE* is the most employed search engine in Italy (around 90% of all searches carried out by Italians users are through the *Google* Search service).

In particular, ICA argues that *Google* Search represents a fundamental device for all Editors and Agencies who want to make their own contents easily available and accessible and aim at attracting more on-line advertising on the basis of the amount of contacts. To the ICA, such an element contributes to determine a dominant position which can be used by *GOOGLE* to take advantage on the markets for on-line advertising (that is markets on other sides of the "platform"). Furthermore, the ICA underlines that by clicking on the links displayed on *Google* News Italia website the user gets access directly to the internal webpage of the Editor's website, thus by-passing the Editor's home page which usually represents, in the case of information websites, an important source of revenues coming from advertising. The proceedings started by the ICA promises to be very interesting, in that it will represent a benchmark analysis to investigate "multi-sided platforms" in rapid evolution. The fundamental issue identified by the ICA seems to be the fact that *GOOGLE* can exploit to its own advantage on other connected markets the leverage capability that comes both from its dominant position on the search engine market and from the existence of positive network externalities among the markets sharing the "platform". Should such a leverage capability be recognised by the ICA, and the possible anticompetitive (in particular exclusionary) impact due to the presence of network effects be confirmed, this would imply that not only the markets for on-line advertising, but also other possible sides of the "*Google* platform" need to be monitored. In other words, if such a theoretical reconstruction were confirmed in the proceedings, *Google* Search could even come to be considered as an essential facility. Consequently, the adoption (or the self-adoption) of specific structural or behavioural measures could be necessary in order to grant the producers of contents (Editors and Press Agencies) a fair and non-discriminatory access to *Google* Search. This means that a regulation (or a code of self-regulation) should impose alternatively 1) a functional (or even structural) separation between *Google* Search and other *Google* activities by which any incentive for *Google* to put in place anticompetitive practices (in particular the discriminatory ones) would be removed or 2) a so-called "line of business restriction" aimed at preventing *Google* from vertically integrating in the production/diffusion of contents, thus restraining *Google* from multiplying the possible sides (and hence the strength) of its platform. Concerning this aspect, the *Google* Books initiative and the approval of the associated "Amended Settlement Agreement" among *Google*, the *Authors Guild*, the *Association of American Publishers* and a handful of authors and publishers [2] must be seen under a new light.

[1] As of December 1st, 2009: Article 102 of the Treaty on the Functioning of the European Union.

[2] United States District Court Southern District Of New York, Case [1:05-cv-08136-DC](#).

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