



The Google DoubleClick Merger: Opportunity or Threat?

Marco Pierani
Sophie in 't Veld
Wayne Arnold

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About the Speakers

Marco Pierani is Director of External Affairs for Altroconsumo, the Italian consumers' organization. He joined Altroconsumo in 2002, after working as a lawyer mainly on Internet law, e-commerce, and telecommunication. He specialises now in Telecommunication, Internet and Intellectual Property related issues. He maintains contacts with Regulatory Authorities, both Italian and European, and with operators.

Mr Pierani is member of the Working Group on competition issues of the European Consumer Consultative Group - DG SANCO European Commission as well as of the Special Commission on Intellectual Property and New Technologies at the Italian Ministry of Culture. He is also member of the Editorial Committee of the quarterly review *Consumatori, Diritti e Mercato*.

Marco graduated in Law at the University of Bologna and holds an LL.M. in European Business Law from the University of Nijmegen (NL). He is author of numerous articles on the Internet, e-commerce, telecommunication and consumer protection.

He is Member of Circolo dei Giuristi Telematici and On-line Mediator at Risolvionline of the Milan Chambre of Arbitration.

Sophie in'tVeld is a Member of European Parliament representing the Dutch social-liberal party D66. Although she is in her first term as member of Parliament, she was for several years secretary general of the ELDR-group in the Committee of the Regions.

Mrs In't Veld studied medieval history. From 1993 she worked as assistant to former MEP Johanna Boogerd. She is a Member of the Committee on Economic & Monetary Affairs and a Substitute member of the Committee on Civil Liberties, Justice & Home Affairs.

Wayne Arnold of the Institute of Practitioners in Advertising is undoubtedly one of the digital industry's most experienced practitioners. He implemented his first online campaign in December 1995 in Hong Kong. Together with his brother Daryl, he co-founded Profero in 1998 and has since grown the business to be one of the worlds largest digital agencies with offices in Europe & Asia.

As CEO Europe he has successfully supervised some of the UK's most memorable media and creative marketing campaigns for an enviable client list including Channel 4, Johnson & Johnson, MINI, Puma and Talk to Frank (COI Drug awareness). Wayne has expanded the Profero client base by carefully positioning Profero as the only full-service agency of its kind.

As a pioneer in the digital space, Wayne has helped to develop many of the advanced marketing models now widely adopted for the web and in 2006 was appointed Chairman of the IPA's Digital Marketing Group becoming the spokesperson for the digital advertising community.

Marco Pierani:

Thank you very much. Thank you for this invitation about this interesting topic. I am from a consumer association, an Italian consumers' association, but I think I can speak for the European consumer, because on this topic, the BEUC, the Consumer Association, based in Brussels, already wrote a letter to Commissioner Kroes this summer to ask for a deep scrutiny of this proposal of acquisition, and we came back to her in December, if I remember. So, there was consensus on this by all consumer associations, the bigger consumer associations in Europe. And we think that these acquisitions could be of detriment for consumer interest, in Europe. As a matter of fact, we think that we, as consumers, have quite an important feeling for data protection and privacy in Europe, and we think that this should be considered, even though now we are facing an acquisition. And, of course, the instrument the Commission has in dealing with this is competition law. As a matter of fact, we think that the Commission should take into consideration the privacy issues in doing her job.

What we are scared of is that the combination of this huge database this can take us to a situation – and also considering the very quick evolution of technology in this field. With these two databases, we cannot consider a situation as there is today with advertising online, because merging these two databases and the technologies that these two companies have

can bring us to a situation where the legal framework that we have now will be not in place to protect us from the use of our data.

As a matter of fact, not many consumers... as a matter of fact I use every day Google... half an hour ago... and everybody, I think, uses Google. And advertising online is the fuel for content online. We are speaking not only of advertising here, but we are speaking of information. I will not be long on this. And maybe, then, afterwards, there will be questions, and I will be happy to give answers.

But I just want to mention that I come from a country where we had, and where we are still having problems with the media – not the online media, but the analogical media. And the problem that we have is busy on the duopoly that, of course, brought us many problems on freedom of information, and still is doing this. Everything now is moving. And advertising is quickly moving from analogical to online. And the market is there, if we look at the numbers of this acquisition, but also Microsoft's, or somebody else's acquisition, the numbers are very huge. And I think that the instrument should be considered larger than what is written in the law of competition, at this moment.

We are speaking about privacy, but not only of privacy. We are speaking about freedom of information. We are speaking about choice and diversity, cultural diversity. Everything is inside, in this story. And if the Commission gives the approval, as the rumours were about yesterday, without even a statement of objection, without going more in depth and asking for some point of privacy, I think the Commission has the instrument to stand. And if everything goes as the FTC did, I think that we will lose very much in the future years here. And about what FTC did on this subject, I think that it was bad that they did not take very much into consideration in privacy, and although one of the members of the Commission voted against, and there was a statement where it was mentioned this. And we also have to think that the legal instruments, many times, are not ready to deal with the technology that goes more and more quickly. And so we have to think all that we have now to deal with.

Well, I will leave you with this, and maybe I can come back with other arguments.

Stephen Pollard:

Thank you very much for that. I think it gives us some of the broader context for this discussion. Sophie, if you would like to go next...

Sophie in 't Veld:

Yes. My name is Sophie in 't Veld. I am a liberal Member of the European Parliament on the Economic and Monetary Affairs Committee, as well as on the Civil Liberties, Justice and Home Affairs Committee. So, I have a kind of double interest in this issue because, in the Economic and Monetary Affairs Committee, I would look into competition issues, and in the Civil Liberties Committee, privacy is one of my main topics. So, I think this is a very nice, juicy case for me to look at.

Well, to start with, I am not going to say anything about this specific merger case, about the merger review, because that is simply not appropriate for the European Parliament, and I have no way of judging. It is the responsibility of the European Commission, and I trust that they will do that very well.

But to kick off maybe with the good news, there is recently... the European Commission put new legislative proposals on the table, which we call the E-Communications Package. An important strand in that package is consumer rights and privacy, and they are very emphatically put together. In the opening sentence of the part that deals with... I think it is actually universal access and privacy... the opening sentence is that in this whole sector of economy, that we should safeguard consumer rights, including privacy, or data protection, as we tend to call it, in Europe. So, I think that the Commission is beginning to get the focus. Whether that is on time for this particular case is another matter.

Now, we held a seminar on this issue in the European Parliament about a month ago, on the 21st of January, not particularly of Google and DoubleClick. But, of course, that was the case that triggered the whole thing. And it is unique because of its sheer size and the fact that it is the first merger of its kind. And there, we looked very much at the following issues:

One was: What is the relation between competition policies and data protection policies? And the message that we wanted to give to the European Commission was not, again, not on the merit of the merger review, but the message was: you cannot approach this case in the traditional way and just look at the economic criteria, and work down the list and see if, you know, there will be market dominance, and see if there will be sufficient competition, et cetera. Given that personal data have become a commodity – it is big business, personal data, so trade is directly linked to privacy issues. And you cannot dissociate competition from consumer rights, and the power of consumers to exercise those rights, and privacy. The three go together.

And, I think one recent example that illustrates this very well is that of Facebook. Facebook, I have to say, this is only hearsay because I am not on it, but apparently it worked like this: that if you are on a network, and you buy something -- say you buy a CD, which is fairly innocent and neutral – then Facebook would send an alert to all of your contacts and let them know what you had bought because, you know, they thought that was a really good service. Now, the trouble, of course, starts when it is not a CD, but something else. And indeed, one of the more innocent problems was somebody who had bought something, you know, a birthday gift for his girlfriend, who found out, which was not very nice. But you can think of worse cases. And what happened was there was a kind of user petition to Facebook. And within a month or so, they withdrew the whole thing. And I think that is a very good example of how consumers exercise their rights. I have read that, in the meantime, Facebook has lost about ten percent of its users, so it is being punished. I think that that shows very clearly how important it is that there is sufficient competition in order to exercise consumer rights, and also safeguard privacy.

So, that is what we tried to tell the Commission. We said: Okay, you do your traditional merger review, because that is the way the law works, the way we have it right now. And you cannot change the law during a procedure. But, please do take account of the privacy

aspects. And do it seriously. Do not say: this is just a regular merger review; we approve it with or without the necessary remedies; and then we just wait and see what happens. You have to take very serious account of this.

Indeed, the Federal Trade Commission in the United States has approved the merger, but at the same time, there were concerns over privacy. That was definitely an element of the debate. Now, of course, the issue is much wider than just the merger of Google and DoubleClick. There are other mergers and takeovers, which are being discussed, at the moment, such as Microsoft going after Yahoo, and then Yahoo running away and trying to hook up with Rupert Murdoch. And I recently read about a planned takeover by Reed Elsevier of another firm, whose name I have forgotten, but something having to do with medical data. So, this is a trend. So, I think it is wise that at this stage, we, as policy makers, take note of this and look at existing legislation.

Now, what should the conclusions be? I think threefold: One, yes, we should look at existing legislation, and whatever is in place and update it; adjust it to the needs of today. I always think that we should be careful not to over-regulate, because let's face it, you know, people may have their objections against the merger of Google and DoubleClick, and probably very justifiably so. But, at the same time, as you rightfully said, you know, this kind of business has brought us all a wide range of services and products that we all like. And we do not want to stop innovation, but we do want to protect consumer rights. And we do want to protect media pluralism; we do want to protect small and medium sized enterprises. So, regulation.

But, I think we should be talking to the industry, as well, and see how we can find solutions. And as long as there is, or one of the preconditions is, as I have illustrated with the Facebook example, is that consumers should be empowered. There should be sufficient competition. They should get adequate information. There should be things like opt-ins and opt-outs. There should be, for example, more possibilities to correct and delete your data, for example. People should be owners of their own, personal data. So, regulation is one issue.

The second thing is that should, of course, be in the form of global standards. Because it is pretty silly to be making laws for a national Member State, or even the European Union, when our data are available at the other side of the world. And, of course, many of these data are becoming available, not just in the United States and the European Union, but also, for example, in China.

And then, thirdly, and this is an aspect, which may be slightly beside the scope of today's debate, but is definitely a major concern for the European Parliament, is that we are, you know, when we had this seminar, there was a general sort of outrage saying: oh, we need to regulate the industry and that they are, you know, they are nasty and they are after our personal data, but you know... Actually, I do think that with light-handed regulation, you can discipline the companies, because they have a vital interest in consumer trust. If their users do not trust them anymore, they lose their clients, basically.

The bigger problem is the fact that governments actually gain, rapidly gain, limitless access to all the databases that are being created by these companies for commercial purposes.

Well, I just mentioned, for example, Reid Elsevier and this company dealing in medical data. If I give my medical data, for a particular medical service, to an online business, for example, I do not expect those data to end up, say, with the Federal Bureau of Investigation. And that is something that we need to look at urgently, and where, too, we need global standards, because, again, all your personal data and mine are available to, well, just about every government in the world, including China. And I am not just saying that by accident. I am talking about a very real case, which I will not go into, because I will pass on the microphone to you.

Thank you.

Wayne Arnold:

I will not talk about China, on this one. My name is Wayne Arnold. I have my own business called Profero, which I am the European CEO of. But also, I represent the IPA [Institute of Practitioners in Advertising] in the United Kingdom on all angles digital, which represents about eighty five percent of the media spent in the United Kingdom.

And since we are talking about digital and interactive, I think we should be a little bit interactive. Can everyone put his or her hand up, if you have used the Internet today? Okay. Keep your hand up if you have used Google today. Interesting. Okay. Interesting. Because the reason I asked that is because, at the heart of this, DoubleClick controlled roughly about eighty percent of the display advertising. So, eighty percent of the advertising you would have seen today was delivered by DoubleClick. And Google controlled round about seventy percent of the search market.

So, when I look at this, I think there are two areas, two big areas. And the heart of it is really the control of advertising, in the future, on the web. And two is the privacy issue we talked about. But, fundamentally, what comes under both of those is really the future of control and distribution of content, globally. We kind of forget that Google is only nine years old, and yet has grown from two guys in university to be the biggest distributor of content around the world.

Likewise, if I took advertising first – now, in the advertising industry, digital will be the future and the biggest sector in media advertising, full stop. Last year, it was worth thirty one billion dollars, globally. It grew six times faster than any other medium, last year, and will overtake radio this year. If you follow that trend, and you believe that everything will be distributed digitally, and television, radio, print – everything except for the written, printed word – will be delivered via electronic means, which means that will be delivered via digital channels, which means that, basically, advertising and the digital advertising industry will be the core factor.

You have only got to look at the poor results from ITV today, basically the lowest results they have had for the last five years, to see that this is where the big battleground is going to be. Although I agree that digital is quite a mature sector, I think it is at the starting point. I personally believe that although that Google is nine years old, what Google will look like in

two, three, five, ten years old will be very different. And this is all about planning for the future – not just today, but what is going to happen in five, ten years' time.

Now the Google and DoubleClick merger has some very interesting consequences and implications. First of all, Google is definitely the power in search. In some markets, as much as eighty five percent of all search revenues go via Google. They are making Yahoo and people like me look like small players. What it has failed to do is basically to do the same thing in display. YouTube and display advertising have not been as much of a success. So the merger of Google and DoubleClick allows it to have access, as we showed today, not just a search site, but also a display site.

What we have to be careful of is that, although Google uses examples... I am not here to... I think Google is an amazing company... I think what they have achieved is absolutely outstanding. But, what is quite interesting is when they talked about, basically, why it should go through, they sort of witnessed the small, SME businesses. Interestingly, small businesses are probably the most reliant on Google. So, if Google decided to change its pricing policy tomorrow, you know, suddenly make it more expensive for advertisers to get their clicks and traffic to the websites, the people who would be impacted the most would be the SME businesses. So, more than ever, those businesses are reliant on Google. And hence, why it is really important the Commission looks at this was, basically, they could potentially put businesses out of business, purely by the fact of changing their policies.

The second bit is, basically, the anti-consumer data that we talked about earlier. Between DoubleClick and Google, they arguably have the biggest databases in the world of consumer data. Now, they know exactly who is searching what when, and that is eighty percent of the population, and they basically know where we have been. Now, some of that is used to fantastic good use. And one of the big pros of this, in theory, makes advertising more effective, which means that customers and businesses can acquire more clients more cheaply. And that is a massive pro.

But, arguably, the reverse or vicious circle of that is, as they get more effective, they get a bigger market share, which means they become more dominant, which means they can buy more players, which means they become the bigger media beast. So, I think when it looks at this we have to look at not just what is happening today, but actually what the impact could be in three to five years' time.

A lot of talk, at the moment, is from Yahoo. From a personal point of view, for what it is worth, I think that that is not necessarily a bad thing, because I think it actually creates a stronger player against Google. But, if you can imagine, if Google bought DoubleClick, so it controls the search, it controls the distribution of advertising, and it suddenly went to an acquisition trail to buy the biggest display media players. And suddenly that becomes a bit of an issue, because not only are you controlling the gateway to the web, the search, and the distribution of content via DoubleClick, but actually where people are hanging out, as well. It would make someone like Rupert Murdoch look suddenly like a very small player, which would be an interesting fact.

So, in conclusion, on the advertising and on the merger side, the main point, I think is a very dangerous thing. I think that basically it will all go through, and I will explain why in a bit, but I think basically the argument that you will get better results is leading down a very dangerous path of one player having too much control.

The two other areas I want to touch on which are, quite often, overlooked. The future of the web is actually not so much about distribution of content as actually the use of applications and the way we work. So, as you have seen, Microsoft has become the dominant player, and basically, Microsoft Office, controlling every PC and Word, Excel, the kinds of things that we both loathe and hate, and somehow could not live without. The future of things like Word, and Excel, and PowerPoint is on the web. These will all become web-based applications. In five years' time, we will think it very archaic that we actually loaded a CD onto a machine to download a piece of software. Look at iTunes as a great example of how now that is distributed by the web. And going toward the future, it will all be web-based applications.

Now the power that you basically have, and one of the reasons that Microsoft and Yahoo want to get in bed together is, suddenly, they have a new distribution point to actually distribute kinds of work applications on the web. Now, obviously we have the Google DoubleClick, which basically gives them a greater reach and a greater way of channelling users. We have the distribution of Gmail, at the moment, and Google Maps, and there are Word applications out there, and Excel applications, as well. So, I think, that is one big area that we sometimes forget. We think that it is all about advertising. But, actually, the real future of the web is going to be about distribution, the way we work, and the way we access information.

The final one, and I do not have the answer for this one, I think that it is probably the most challenging for the Commission: How is our ability to keep up with the pace of change? Google is nine years old. Right? MySpace is now five years old. Interestingly, depending on how you look at the world, if MySpace were a country, it would be the sixth biggest country in the world, by pure population. Right? Facebook has been around for about five years, but it was kept within the student community. It is only in the last twelve months that it has completely gone bonkers... if you will excuse my English phrase... it has really grown. And suddenly, that is something like the tenth biggest country in the world, if you look at it by pure population.

Now, how do you legislate against this amazing pace of change? Because even the Google DoubleClick merger – acquisition is kind of old news. There will be something happening tomorrow. There will be something else happening in six months' time. Now, I do not have the answers. But it is interesting how you have the Facebook example, how users rebelled against it.

I do not know how many people here remember Netscape. There are two people in the back. Netscape was Internet Explorer. Died. Who can remember AltaVista? One person, here? Two people? Same two. You can see the earlier doctors. Alta Vista was the Google. Now there is a slight difference, we were talking about before the session... now, the slight difference is funds that Google has in its possession. So whereas AltaVista and Netscape did not necessarily have the buying power to go out and buy the future players, Google

definitely does. And it has done that with YouTube. And it is now doing it with DoubleClick. That is why, I think, somehow, whether it is a combination of consumer control and legislation, but basically let us face it; the Internet is very good because it is very self-regulated. Look at Wikipedia, an amazing example of that. But it is a combination of purely self-regulation and also legal regulation to make sure that the pace still maintains. But, basically, you do not get a sort of situation where, in three years' time, you are wishing you had done something you had not done.

Q and A

Q - Stephen Pollard:

Thank you very much for that. Well, three very thought provoking talks. If I could maybe begin before I open it up to the audience. You said, Wayne, in your remarks, about how, as mature as the industry is, it is, nonetheless, changing rapidly and, so on... I am particularly interested by the last topic, which, actually, all three of you touched on, really, which is the ability of legislation and so on to keep in touch with this hugely developing and changing industry. I was just wondering if maybe you could give us some thoughts on the sheer issue of competence. I mean, forget legislation. Do you think regulators actually understand the nature of this, sort of, new model that they are having to deal with? I mean, I do not – well, I am not a regulator – but, I find it hard to grasp precisely what is going on now, let alone... I mean, when one of the criteria the Commission have to look at, in taking these decisions, is whether a merger would prevent future competitors from emerging in the future. I mean, how do you, actually, how do you grapple with that? You know, it is a huge issue.

A - Wayne Arnold:

It is a really challenging one. I think that example that I gave was in 2000, the Commission was going to ban cookies. Cookies, for those who are not technical, are the little piece of software that remembers where you have been and what you have done. So, it has kind of huge, huge benefits... the fact that when you log into Amazon, it remembers your username and password. This is quite a good benefit: you do not have to log in every time. They were going to ban it because they thought it was secretly spying on us, and basically the consumers' privacy was being cancelled. Now, the reality was, they tried to ban it because people did not understand what the good things were and what the bad things were.

In fact, the European website actually dropped fourteen cookies on you the day you arrived. It was quite amusing, actually. They are banning it, but their website did exactly what they were trying to ban. So, I think that there was a huge, huge challenge, in terms of, one,

keeping up with the pace of change. But two, how do you get the knowledge of people to really understand what the potential consequences are when, quite frankly, the consequences could completely change in six months?

A - Sophie in 't Veld:

Well, the challenge is, for me, really, and a colleague of mine, who just walked in here, as a legislator, the answer is: I do not know. You are always legislating for the past, of course. It is very difficult to legislate for the future because you do not know what will happen, in particular, when developments are of such huge dimensions, and so rapid. And, you know, people tend to be very conservative.

As we were discussing, before the start of this debate, I tried to explain how incredibly difficult it has been to just get the issue onto the agenda of the European Parliament. I mean, just convincing our colleagues... We are trying to have a debate on the matter, now. I wanted to have it on the March plenary session, and everyone was like: ooh...ooh... maybe we should talk about it. And by the time they have decided to have a debate about it, we are already in the twenty second century.

So, I think... I do not know. The only thing I think you can do it to try and focus, as much as you can, on principles, because they will always apply, no matter what the circumstances. But, there will always be cases, as you rightfully pointed out, where you can simply not predict the consequences. After all, we are only human.

A - Marco Pierani:

Yes, well, it is difficult to answer. It is very difficult to approach these issues because they are very technical and it is a technology which evolves every day. I mean, technology is very interesting. Actually, Google allows us to do many things, and it is very important. I mean, we have a better life, now, because of this evolution of technology.

But, we can also have the bad aspects, and as I see, now today, legislators have not really understood what is at issue today. And in general, some try to... yes, okay. And it is very good; with the Parliament you spoke about this thing. And there is a big space for the Parliament to do activities on this, because awareness is important.

I mean, consumers should know what their data are used for, because if we speak about behaviour of advertising or targeted advertising, it is fantastic. But maybe if I, for example, like to drink Coca Cola, for now, maybe in a couple of years, I would like to drink beer, and I do not know if somebody will come up and steal Coca Cola from me. And this is only a tiny example, but that would be even worse.

Suppose I am somebody who, before I buy something on the Internet, I usually go to many websites to compare. To make my choice, I have a certain kind of behaviour, and Google knows, and DoubleClick knows, and everybody. If I go and buy and pay for whatever it is, I am another person. So, will they offer me different prices because I behave in this way? I do not know. These are very interesting things.

I think the market, just to conclude, I do not think that the legislator has the instrument, today, to approach this. I think the legislator and the public authorities have a duty to make the awareness go up. I do think that the market has something to do. If we have a market, then we can have the market forces to make life better, also for consumers.

I mean, if we have this acquisition now, there will be no more incentives for Google and DoubleClick to behave in a good way regarding privacy matters. If tomorrow they are only one company and they do work with a huge database, they do not have to compete and say to the world that they are also better in privacy. So, the market has something to do. But if we do not have any more market, then we are really lost.

A - Sophie in 't Veld:

I would just, if I may, add two things just to put things a little bit into perspective.

I just said, you know, you cannot legislate for the future, but, of course, apart from legislation, I mean, throughout history, governments have taken huge decisions with huge impacts on the world and people's lives, and sometimes it worked out well, and sometimes, it did not. I mean, we sent people to the moon, or we decided to abolish the postal monopoly, or whatever their big issues were. So, in that sense, it is not unique.

But, following on from what you said about basically exercising your consumer power. I also very much agree with that. I would, of course, as a liberal. But, I also think that, as citizens, we should be much more aware of our own behaviour. I mean, you do not walk down the street naked. Why do you put pictures of yourself, naked, on the Internet, assuming that it is an anonymous space? You know, you do not go out on the street and give people your bank account number and your PIN code. Why would you do that on the Internet without thinking twice? I mean, people need to be responsible, as well. And of course this is all fairly new, so people do not realize.

And I think that is my final point because you were talking about awareness of people. We talked about legislators. And I think what is very important is public opinion. Politicians always operate in the context of public opinion. That basically sort of determines the limits of what they want to do. Now public opinion is also influenced by, for example, organizations, NGO's, companies, you know, you name it. So, you have an important role to play there.

And I would say, you know, for example, you send a letter to the European Commission. Well, send a letter to all the MEP's. Make them aware of the fact that, you know, there is a consumer concern. I am always amazed that I get targeted by all sorts of lobbyists who try to convince me of something that I am already convinced of. Speak to those who are not aware yet. And, I think that this whole issue of privacy, which is a consumer issue, a consumer right, has basically been a very bad period for privacy, because since 9/11, you know, privacy was just not fashionable anymore. And, you know, people have just accepted so much with the argument of the fight against terrorism. Again, when we talked about the Google DoubleClick issue in Parliament, and we said that we want to look at the privacy

concerns, people say: oh, well, you, loony left, there you go again. People are becoming more aware. But, we urgently need to work on citizens' awareness.

A - Stephen Pollard:

Thank you. Let us open it up to questions. I mean, one thought, really, if we are talking about legislation and governments not being about to legislate for the future, as a think tank, the golden rule that I always observe is the law of unintended consequences, in whatever sphere we are talking about. But anyway, we will come back to that.

There are so many different areas we could talk about. Perhaps if we could try and focus the conversation a little bit by talking about the issues we have just been discussing, talking about competition and the Commission and competence.

Perhaps if people could say who they are first, and then where they are from, and then ask the question, please?

Q - Eva Lichtenberger MEP:

Well, I do agree that we get a big problem with legislation when it comes to the web, for several reasons. One is, in my view, we have a generation problem, because I would say that people over forty-five, more or less, use computers as a typing machine, making a print, maybe making sometimes a PowerPoint, but then it ends. If you come to young people, let us say twenty or twenty-five, you were mentioning the whole Facebook issue; they have a totally different behaviour towards the web, because out of the very nature of the web, we are getting very big, big problems. The people who are legislating that are mostly over, let us say, forty-five. Most of them have secretaries who use the computer for them. They do not do it themselves. Maybe they sometimes get in contact with their nephews or nieces, and so on, and learn something about it. But, that is all. So, I think that it would be very, very important to get people of that generation to know much more about the very nature, and the speed of the web. Because processes not only approach let us say the generation of a forty-five year-old is not only old fashioned, but not adapted to the speed of the development. And this is, of course, a very, very special thing to tackle.

But there is another thing. I think that consumers will become aware about the problems of, let us say Facebook, or of collecting data, having big information about everybody, sometimes linked, sometimes less linked. If more cases get well-known like that of this teacher who did not get the job because of her Internet presentation, that was found by the group that she was applying for. I think that when things like that will be heard, will be spread, also by the news, there might be a little bit of awareness for the people.

But, my colleague is perfectly right. We have, since 911, a big, big problem to talk about privacy. People become aware of that only when it touches themselves, like all of the stories that they told us about being stopped at airports and things like that. Then, it comes a point where they say we need a privacy debate, and so on. And you are also right that I miss a

little bit the voice of the consumers, in that sense, and I really would love a specialized task force in the Consumers' Organization, which I know exists, but should be heard much more. They should be present much more in the debate. And they should be heard by the Commission much more frequently. And this is what I really urge them, because this is an aspect that would lead to very difficult situations.

And, at last, I am coming from Austria. We have a special history. And therefore, big data masses, let us say, are of even more concern to us, because every political situation can change. And what another regime would do with all the data collected is not to be foreseen. And we see what authoritarian systems can do with data, concerning, China, Russia, and so on, and so on.

So, we have the examples already. And I think that a little more awareness would demystify the debate. Let it be debated, and it would get a little bit of a clearer view and a new development. And so, I think we need more debate on that, much more than we have right now because this is mostly ignored, and it is treated like a field for specialists. Nothing more.

A – Wayne Arnold:

To pick up on those two things in particular, the generation issue and the consumer awareness:

On the first one, I do not necessarily agree with you on the generation issue. It has more to do with mind set of the people who are making the decisions in the Commission. The reason I say is because if you take the most mature markets on the Internet, in the United States, the United Kingdom, Germany, increasingly France, you will find that actually one of the fastest growing populations online is the... what we call the silver surfers, the sixty-five plus. And the audience actually using the Internet the most, at the moment, are young mothers, so, mothers with kids. And I think that these people are really aware of what the Internet is, and what it could be. The basic little story was basically... my grandmother, eighty-five years old, I talked with her the other day, and she was like: I found this fantastic website! And it was about rhododendrons, okay. And there is a story to this... a reason for this. She basically went to this website, went to Google, did not know what the name of the website was, and said: It is fantastic! I have been back there three times! And the reason she had gone back, she went via Google, typed in rhododendrons, found this great website, saw a little comment, wrote in that comment, left her email address, went back, someone else wrote back to her, and she repeated three times. She did not have a clue that she was a blogger. Not a clue. But she was being incredibly sophisticated in the way she was using the web. And so, I do not think it is so much a generation issue. I think that it is more the people who are basically making these decisions, or who have to get their heads around these decisions to be aware of what the real data issues are, and what the real Internet issues are.

On the second one, the consumer awareness one, I do believe that there will be actually a consumer backlash against the Facebook type environment. Okay, there was an example, again, nine months ago, with David Cameron, you know, who wants to be the Prime

Minister, basically saying whether he took drugs or not. If it keeps going the way it is now, there will not be a debate. We will go into YouTube and see him taking drugs, right? We will go to his blog and see how he took cannabis, and how he took coke, or whatever it may be, okay. And I think that there will be this backlash where people suddenly realize, actually, the amount of data that people are putting out there. At the moment, it is fun; it is great. It is the fact that you can organize a party in five minutes. It is amazing.

But I think there will be a little bit of a backlash when people become more aware, and more self-conscious of whom they want to give information to, and whom they do not. I am sure that it is exactly the same as the early days of direct mail, where everyone was signing up to everything to get a free credit card... and suddenly you start going: well, what am I actually signing up to?

Q - Lee Philips, *European Union Observer*:

Wayne, you said that ultimately this merger is leading down a very dangerous path by putting too much power in one hand. I was wondering if you could give us a few more detailed scenarios of what you mean by that. We were talking, just beforehand, where you mentioned that... you talked about how everybody has a very, sort of benign view of Google, at the moment, and they have a very good sort of ... you know, everybody is wearing baseball caps, but they do not have a public image, the same public image of, say, Rupert Murdoch. And you said: what if Google were more like Rupert Murdoch, and how would people react to this sort of merger, in that case? If you could, sort of, give us a few more details on that...?

A - Wayne Arnold:

My thinking behind that was basically... at the moment, the search is driven by the online advertising sector. Something like sixty-five or seventy percent of all advertising goes via search, of which Google is the dominant player. Personally, I believe that in the next twelve months to three years, display advertising – so display being the visual banner ads, the sponsorships that you see – will become a much more dominant player in that space, mainly because the main areas of advertisers, like the FMCGs, have yet to invest heavily in this sector.

The real power behind this display advertising is going to be this thing called behavioural targeting. Without getting too complicated about it, it means that... so you saw an ad for Amazon, you went to the home page of Amazon, right, but you did not buy. Next time I see you on the web, basically, I know that you have been to Amazon; maybe I will give you a ten percent discount offer to encourage you to buy. Or conversely to the positive side, I see that you have bought ten books on Amazon in the last month, I will reward you now for your loyal custom: I will give you one book free next time you buy another book.

Now the behavioural aspect of it is very much reliant on understanding cookies and data, okay? Normally, for the benefit of the end consumer, normally, okay. But basically with Google combined with DoubleClick, it suddenly has a very strong power, not only in search,

but in the future of display advertising. And if Google and DoubleClick combined, it means that they will become the most dominant player in behavioural-targeted display advertising.

It becomes a bit of a circle. Now, you have to go to Google for your search, otherwise your business goes out of business, right? Because sixty percent of your sales come from there... and then basically the next, second most effective form of marketing or client display advertising, you have to go to Google DoubleClick because that is the most effective channel, so it suddenly becomes basically a bit of a spiral, where no one can catch up.

The second bit I was just alluding to before was the distribution of content. Google have incredible power over the content that we read and see. Again, how many people go beyond the first page of Google when you do a search? One or two people. Hardly anyone. So, in effect, joking aside, obviously Murdoch has his political alliances, yes, and basically decides whom *The Sun* is going to vote for in the next election. I am not saying that this would ever happen, and I am not implying that this would ever happen. Imagine what would happen if Google said: we slightly favour Obama rather than Hillary. And suddenly the amount of content that had been distributed could basically change. And likewise, from an advertiser's point of view, they do change their algorithms quite a lot. Which, you know, from our point of view, we see advertisers going from number one and driving loads of traffic to completely disappearing. And they have complete power over that. So, that is what I was alluding to.

Q – Jeremy Rollison, Policy Action (Brussels):

Hello, I guess you touched upon it just now, as a matter of fact. I wanted to know: What evidence do we have that these fears will be realised? I mean, like I said, you just talked about the increase in market share, and the dominant position that Google and DoubleClick could have. But the Internet, in particular, I think, has proven that there is no better and more responsive and reactive environment responding to those types of threats that a dominant player could have. The Internet is perfectly suited to react to that and consumers... I mean, you yourself mentioned the age of Google. It is only nine years old. MySpace only five years old. Facebook and the recent backlash and explosion in the past twelve months, and backlash, as well... I think that the Internet has proven that of any environment, it is best suited to respond immediately to any presumption or perception of a dominant player. So, I guess before we rush to legislate something like that, I think I would be a bit more curious to know what evidence we have over the twentieth century, even with Anti-Trust, that such a merger... the costs could be more than the benefits, I guess.

A – Sophie in 't Veld:

Well, I do not think that there is any talk of legislating against this merger. There is a merger review, which is existing legislation being applied. And of course, as it is, on one hand, it is a whole new area. So, it is difficult to predict how it would evolve. And yes, you are probably right. You know, we have seen plenty of examples of how the users, how the market would discipline certain businesses. On the other hand, you might say that the Internet is, of course, not disconnected from the real world.

We have other examples. Look at the media. We have laws on media concentrations. Now, we could all trust Mr. Murdoch to use his power responsibly. But, you know, trust is great. Control is better. We do have rules on this. There are certain limits, and not... there are no laws against mergers, for example, but we do say we have certain limits.

I think that the difficulty with a merger such as Google DoubleClick and maybe comparable mergers is that there is a kind of new entity that comes into being. It is not, you know, two competing companies, which are involved in the same activities. And then you can simply measure, you know, what their market share would be. It is a new entity. That, I think, is the difficulty here. And the question is, indeed, and again, this is the European Commission, and on the other side of the pond, it is the Federal Trade Commission deciding on this. I think that the important thing is that when they do their traditional merger review that they do take account of the – how shall I put this – of the features of the Internet, and new concerns that might not have existed previously, such as privacy, for example.

A - Marco Pierani:

Just two words: I do think that, even if we think to approach this on a legal instrument that we have on competition, we have to see that these two companies, in a way, at the moment, do not do the same job, do not do the same things. But, in the market, they are very much linked to each other. Search advertising and non-search advertising, as a matter of fact, Google does both of them, because it has the biggest network for non-search advertising. And DoubleClick has the tools to work for non-search advertising, and it is dominant. So, if we think that the Internet is a big market, why not apply the legal instrument that we have, because if we no longer have the force of competition in order to let them play the good job, to serve the consumer and the world, in general, then we will have problems? I think if we have this merger, this acquisition, do not take the consumer into consideration in this acquisition, but take into consideration, for example, the advertiser. Would you deal with a monopolist better? Or would you deal better with somebody who is in competition with somebody else? And if you were a publisher, would you deal better with the monopolist or something else?

A – Sophie in 't Veld:

Maybe one additional remark will put it more clearly. Yes, the Internet has remarkable self-regulatory and self-disciplinary characteristics. At the same time, again, the Internet is not some space out there. It is part of the real world. And, you know, Google, Microsoft, Yahoo, and all the rest of them are no longer the two maverick students in their, you know, attic room. It is big business. We are talking billions here. And I think that there is every reason to apply competition rules and possibly take into account new aspects.

Q - Dafydd Nelson, MLex:

Thanks. I am a competition law journalist. I think it was Ulrich Beck who, decades ago, wrote about the difficulty legislation has in terms of keeping up with current developments. And certainly this is evidenced with this merger. I think that, in terms of the Commission's competence, especially looking at it in terms of the European Community Merger

Regulation, it should be looked at in two aspects. One is the use of information, and that is: is privacy being abused by these companies? That is not something that the Commission would, and I think should look at. That is something that needs to be legislated, or at least to have guidelines.

However, there is another aspect to this, and it has been mentioned. And that aspect, which can be looked at under the European Community Merger Regulation, is the fact that this information is held by one company, whether in a competitive environment, the fact that a company holds so much personal information, it can then go on and raise prices, et cetera. So, there is one, the legislative aspect of use, in terms of abusing people's privacy. And then, there is more the commercial aspect. And I think, Sophie, you mentioned that information, personal information is now being seen as more of a commodity.

So, my question, in that respect, is: with the Internet, which is changing very rapidly, how would you view things such as barriers to entry? We have seen a number of these companies are quite new. So, looking at it from a competitive angle, you could say: well, it is open to almost anybody who has technological experience to then say, well I am going to start a search engine or a networking space that has increased privacy aspects. How would you view it, in that sense?

A – Sophie in 't Veld:

Well, first of all, to start with the last issue, the previous aspects. It is true that privacy is not formally a part of the checklist of a merger review. At the same time, existing privacy legislation is, of course, is horizontal, in a way, and it should apply to whatever the Commission does. And that includes merger reviews, of course. You cannot take any decision if that would violate European data protection laws.

Secondly, again, I am not involved in the merger review. Nor should I be. But, yes, I think that you are right in what you are saying. And I imagine and I hope very much that the Commission will take that into account. I mean, in my view, that is something that, you know... if they are the custodian of the competition policies in the internal market, then that should be a prime concern.

A – Wayne Arnold:

It is a good point that you raise. And I think that there are two things, especially information held. Google are very smart. I am as big a fan of them as I am a critic of them. And I very much believe in self-control, as the Internet is growing so big, so quickly. The interesting thing about the mergers is two things: One, Google, if something came along better than Google, right, we would move. Now, that is what we did with Alta Vista. So, as long as Google stays the best product, people would move, because that is what happened before. Okay? You may say that it may move slightly more slowly because we have kind of gotten more used to it now, and it is more people. But, fundamentally, people will move. I firmly believe that.

The interesting thing about the DoubleClick thing is slightly different, because DoubleClick is actually a B2B player. Its strength is not in, actually – yes, its technology is good, yes, but there is other technology out there that is as good, even better, in some cases. What are interesting about DoubleClick are all the contracts that they have with all the key publishers, and basically, the people that are viewing the content. So, by buying or merging with DoubleClick, suddenly they have access to basically the biggest network of people displaying ads. And those contracts are tied in for one, two, three years. So, that is the slight difference of the barrier to entry.

Google, I believe there, someone could come along and do a better job. And that probably will happen, at some point. It is almost even evolution. It is going to happen, at some point. If it happens tomorrow, in five years, ten years, twenty years' time, we do not know. On the DoubleClick one it is far higher, because it is tied into contracts. So, for another player to come in... and there have been people like Atlas, for example, people like Falk, who have all, actually been bought by basically DoubleClick, over a period of time. Basically, to literally be able to cookie, and do the best behavioural targeting, like we were talking about earlier, is so much higher. Basically, I believe it will take someone three to five years to get there, at which point, there is such a major advantage to the data they are using, that they will have the far superior product.

A – Stephen Pollard:

We have to finish in a few minutes. Yes, at the back. If we could maybe take two or three questions at a time, so that we get them all in.

Q - Margaret Boribon, Copiepresse:

I am Secretary General of Copiepresse, which is a licensing company, managing rights of the Belgian newspaper publishers. And we are more or less well known to have won a court case against Google for infringement of copyright.

I am here today because we were questioned by the competition authority regarding this merger. And I think that this was a good trend because this means that this authority has understood that the problem is not only to look at what Microsoft or Yahoo, or any other major player thinks about this merger, but also to have a look at the impact, and make a kind of impact assessment of this merger on other sectors, and mainly on content providers, content producers, because we firmly believe that the Internet is interesting and is important because of the content which is provided, and which is available. And search engines are interesting to search about this content, but if there is no content, there is no interest to the Internet.

So, we were facing Google, in terms of copyright infringement. And we tried to convince the Commission to really confirm the importance of content producers, creative content producers and providers on the Internet to make the richness, and you talked about cultural diversity, but this also has to do with the same issue. And we answer the Commission that the merger of these two companies would have a very negative impact on, at least, publishers, newspaper publishers on the Internet, because the monopoly already exists in

the advertising market. And if we want to keep and remain with a free press, and a diverse press, and a trustworthy press, on the Internet, as it is on paper, we really need to have competitors to Google and to DoubleClick and not have to face a monopoly, and an abuse of monopoly, which could be really harmful for the content providers and content producers. That is one point.

Second point: Everybody raised the idea of having the consumer be more aware of the danger, and of the way to use the Internet, in the right way. And I think that there is a project at the Commission, which is called Media Literacy. And I think that this project is really linked to that, how to give to the consumer, to the citizen, to the European citizen, all the means and all the information, to help them use the Internet, in the right way. That is the second point that I wanted to highlight.

A – Stephen Pollard:

Thank you. One last question. Right here at the back.

Q - Anne Du Chatelet:

Thanks. Anne I was just reading in the *Monde Diplomatique* that with the take over of Yahoo by Microsoft, Microsoft and Yahoo would represent together five hundred million of the webmail market for legalities, fifty million of the webmail. So, it means that Microsoft will get ninety percent of the webmail. And my question is: do the panellists think that with this takeover there could be a big problem with consumer rights, and a big issue with competition, as well?

A – Stephen Pollard:

Thank you. Let us go from Marco.

A – Marco Pierani:

It is a consumer issue, from my point of view. We are facing these mergers and acquisitions in this market. As a matter of fact, it is not yet clear who is going to acquire Yahoo. And if somebody is going to acquire Yahoo, and as a matter of fact, I remind you that Google represented itself, some weeks ago, as a white knight. So, as a matter of fact, I think that we can enjoy this thing for another month. For sure, I think that we are risking having another Internet in the future, and that we are going to do whatever is possible to not let it go.

A – Sophie in 't Veld:

Yes. Thank you. Well, to start with the last question and one that was also implied in the second one... Again, I do not think that I am well placed to make any specific comments on specific mergers. I cannot judge the Google DoubleClick merger. I cannot judge Microsoft taking over Yahoo. However, the fact that we have concerns over these mergers is obvious. It is the very reason that we are trying to put it on the agenda. And it is the reason that we

had the meeting in January. That is clear. I cannot say anything about the specifics of the mergers.

Then, I am very pleased to hear that, indeed, the Commission is consulting, is listening to stakeholders and experts. Incidentally, I think it was a gentleman in the back who was making the remark that, the Internet, sort of – if you block one road, you will find another one. If we are talking about content and copyright, then we have plenty more to discuss, if we are looking at developments in the twenty first century.

And then, finally, your remark on the media literacy, the project of – yes, that is a good project. I think that we all need to take responsibility there, and behave as responsible citizens, and educate our children.

A – Wayne Arnold:

Yes. I think, personally, it is positive that we are having this debate, because with Microsoft-Yahoo, we could have another two-hour session about the pros and cons of each.

What is interesting is the two, three things: the advertising world – what that looks like, the data privacy – what we do with that data, but really the future of it, as that kind of starts with the control of information, and the control of the way we work. That is really what is at the heart of this, because these companies control it. What I do know, that basically, you know Google and DoubleClick, maybe we should call it “GoogleClick”, now – and maybe it is “MicroHoo”, with the new names they come up with, it will not be the last. They will be – probably in the next twelve months, we could have debates every week about something that is coming along. But I think at the heart of it, really, are control of the way we work, the way we live, and the way that we access information, which is quite big.

A – Stephen Pollard:

Thank you. Thanks to the wonders of modern technology, you will be able to relive every moment of this seminar in a matter of hours, online. A recording of it will be available on the Centre for the New Europe website: cne.org. Unfortunately, however, transcription involves human beings, so it will take a few days for that to appear online. But, there will also be a transcript of the seminar, also available at the Centre for the New Europe website: cne.org.

I would like to thank all of you very much for coming. I have certainly learned masses from this seminar. And I hope that you found it useful, too.

I, most of all, would like to thank our three speakers for giving us such a penetrating analysis of the issue. And this is something that, obviously, the particulars of the Google DoubleClick merger will be something in the past soon, but the issues that have been raised here are issues that are current and growing, in fact. So, thank you all for coming. And as I have said, thank you once again for all of our speakers for coming, too. Thank you.

– end –

