

Tying or a New Business Model? Google's MADA Controversy

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Introduction

- ▶ Tying claims abound against Google's Android mobile licensing, while mixed decisions are made.
 - ▶ FTC(2010~2013): rejected the claim on tying
 - ▶ KFTC (2011~2013): dropped
 - ▶ Feitelson v. Google(2014): class-action dismissed
 - ▶ Canada Competition Bureau (2013~2016): dropped
 - ▶ Russia FAS (2014~2015): ruled against and fined (settled 2017)
 - ▶ EC investigations(2013~): Statement of Objection issued on April 20, 2016

- ▶ What makes the judgement difficult? Is Google evil after all, or is this all just a misunderstanding?
 - ▶ Studying of the issue might shed light on platform business model and antitrust
 - ▶ I will focus on EC claims (although details are not released)

EC Claim of Antitrust Violations

1. Requiring to pre-install Google Search and Chrome and make Search as default.
2. Preventing manufacturers from selling “Android-forks”
3. Giving financial incentives to manufacturers and mobile network operators to set Google Search as ‘exclusive’ default engine.



Background Facts

- ▶ MADA(Mobile Application Distribution Agreement)
 - ▶ Google-HTC contract 2010 (provided by Ben Edelman)
 - ▶ "Devices may only be distributed if all Google Applications [listed elsewhere in the agreement] ... are pre-installed on the Device." See [MADA section 2.1.](#)
 - ▶ The phone manufacturer must “preload all Google Applications approved in the applicable Territory ... on each device.” See [MADA section 3.4\(1\).](#)
 - ▶ The phone manufacturer must place “Google's Search and the Android Market Client icon [Google Play] ... at least on the panel immediately adjacent to the Default Home Screen,” with "all other Google Applications ... no more than one level below the Phone Top." See [MADA Section 3.4\(2\)-\(3\).](#)
 - ▶ The phone manufacturer must set “Google Search ... as the default search provider for all Web search access points.” See [MADA Section 3.4\(4\).](#)
 - ▶ Google's Network Location Provider service must be preloaded and the default. See [MADA Section 3.8\(c\).](#)

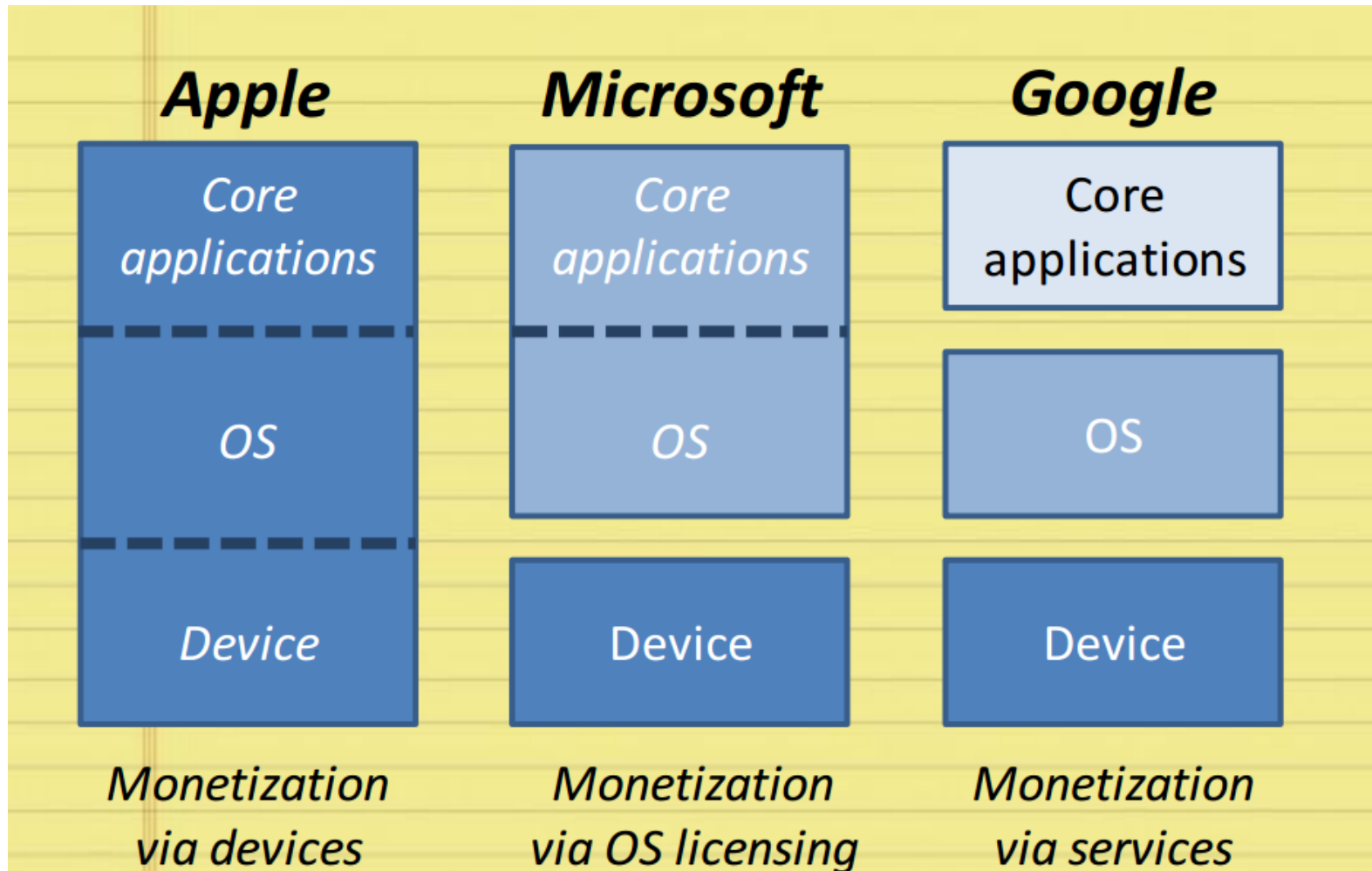
Background Facts

- ▶ Understanding of Android varieties
 - ▶ **AOSP**: truly open source (true Android forks)
 - ▶ Amazon(Kindle Fire), Barnes & Nobles(nook), Nokia X
 - ▶ **OHA**(open handset alliances): Google endorses the compatibility (CTS; compatibility test suites)
 - ▶ Should follow Anti Fragmentation Agreement(AFA) that prohibits making devices with an incompatible version of Android
 - ▶ Compatible forks are possible (Xiaomi, Gionee, etc.)
 - ▶ **GMS**(Google Mobile Services) through MADA
 - ▶ Free pre-loading for manufacturers, but not “open”
 - ▶ Should follow certain pre-loading rules (previous slide)
- ▶ How about Apple OS and its pre-installed apps?
 - ▶ Vertically integrated to the device (no freedom)

Google's Business Model

- ▶ Google is basically an online advertising company
 - ▶ more than 90% of revenue comes from advertising
- ▶ To attract eyeballs, Google wants to distribute GMS as much as possible
 - ▶ GMS apps are 3-side products linking OEMs, app developers/advertisers, and consumers
 - ▶ Effectively negative pricing for OEMS ('loosely' bundled with Android OS and its support)
 - ▶ Ad revenues (Search, YouTube), Revenue sharing(Google Play)
 - ▶ No charge for consumers
- ▶ Pre-installation clauses of MADA might be considered as the implicit price for Android OS
 - ▶ Google could have chosen to pay for pre-installation, while separately charging for the Android OS (no difference for OEMs)
 - ▶ Note: Apple receives \$3 billion to make Google Search default, and it is reported that Samsung is about to get paid similar amount.

Google's Business Model



Checking the Claims

▶ Claim I: Tying

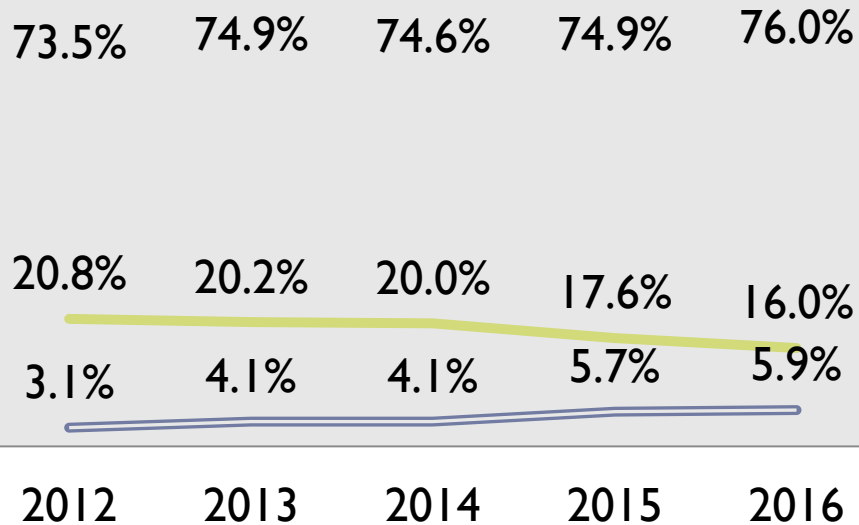
- ▶ EC seems to claim that Google Play is the tying product, and Search/Chrome are tied products
- ▶ Why Play?
 - ▶ Essential for installing Android OS
 - Doesn't this mean that Android is the real tying product? But Android is open and free
 - You may condemn that Android is not so free after all, but tying?
 - ▶ Most dominant (compared to Search, Chrome, Maps, etc.)
 - Play was never licensed alone (separate product?)
 - Search could have been the reason for licensing GMS (at least for early Android devices)
- ▶ Equally efficient competitors being foreclosed?
 - ▶ Naver search never lost the dominance in Korea despite all those Google pre-installs
- ▶ If this is tying, what is the remedy?
 - ▶ Separate licensing of GMS products probably, but would that make real difference if Google offers bundling discount instead?

Checking the Claims

- ▶ Korea is a counter-example for MADA's exclusionary power

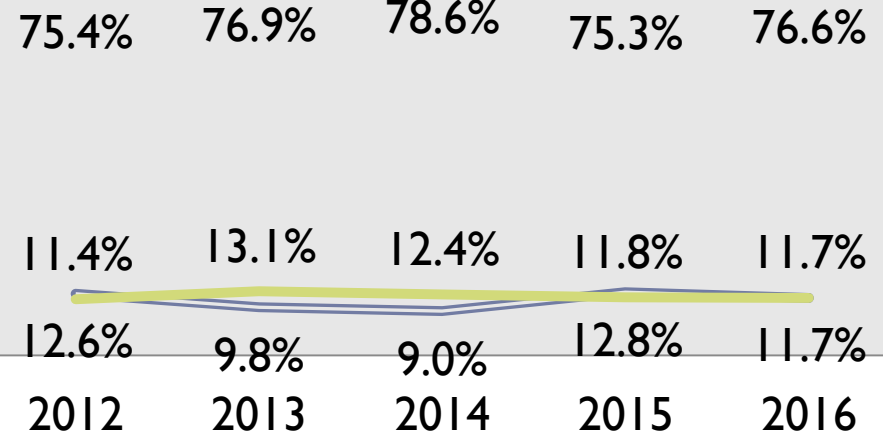
Search Query Share (PC)

— Google — Naver — Daum



Search Query Share (Mobile)

— Google — Naver — Daum



Source: Korean Click

Note: yearly average of monthly shares except for 2012(3~12), 2016(1~3)

Checking the Claims

- ▶ **Claim 2: Preventing from selling Android forks**
 - ▶ Two separate issues are involved
 - 1) Android OEMs cannot sell incompatible Android products
 - 2) Google is not licensing GMS for incompatible Android products
 - ▶ Justification of 1) depends upon the seriousness of fragmentation
 - ▶ But OEMs can sell non-Android devices (e.g. Samsung Bada/Tizen) and compatible Android forks (Xiaomi MIUI)
 - ▶ 2) is basically an essential facility issue
 - ▶ Difficult to prove, and was there any dealing attempt?

Checking the Claims

- ▶ **Claim 3: Financial rewards to pre-install Google Search exclusively**
 - ▶ Seems to claim exclusive dealing (otherwise, it's just paying of the price)
 - ▶ If true, however, doesn't this support that MADA requirements are not quite exclusionary?
 - ▶ Showing that rival apps can be also pre-installed and be competitive without exclusive dealing
 - ▶ Pre-installation competition is good, but 'exclusive' pre-installation competition is bad?
 - ▶ EC is worrying that MADA reduces competition for good spaces for pre-installation (So preferential treatment itself is OK)
 - ▶ Consumers seem to hate too much pre-installation because they can easily download apps they want

Concluding Remark

- ▶ No new antitrust principles are needed for platform economy, but we should improve our understanding of new business models
 - ▶ How to treat ‘free’ products and increased bundling practices are two important challenges
 - ▶ But we should always bear in mind Coase’s(1972) remark “if an economist finds something—a business practice of one sort or other—that he does not understand, he looks for a monopoly explanation. And as in this field we are very ignorant, the number of ununderstandable practices tends to be rather large, and the reliance on a monopoly explanation, frequent.”