

# The Judgment in *Streetmap.EU Limited v Google Inc.*

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\* Ropes & Gray is from time to time instructed by Google on antitrust matters, but is not retained in any capacity in this case. The views expressed in this presentation are entirely my own.



# Outline

- The Parties
- The Allegation
- The Legal Standard
- Analysis
- Conclusions

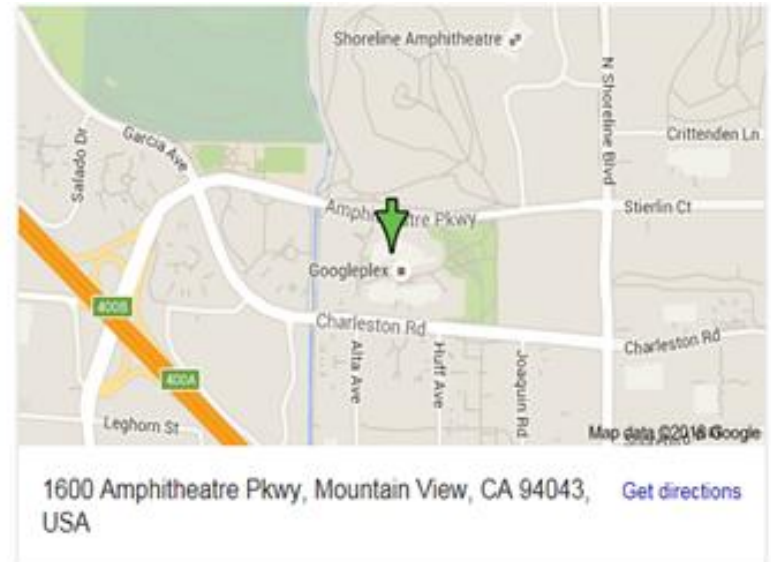
# The Parties



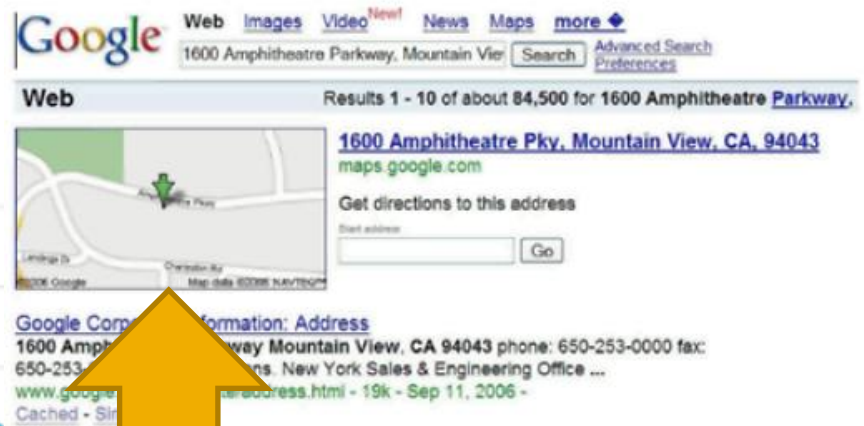
- Provider of online maps since 1997
- Since 2000, Streetmap has licensed Ordnance Survey's mapping data
- Streetmap went into voluntary liquidation in May 2009



- Launched Google Maps in the UK in April 2005 (using satellite and aerial imagery)
- Has experimented and innovated with how it shows maps



# The Allegation



Key allegation: the addition of the thumbnail map linking *only* to Google Maps foreclosed Streetmap

Search interest in Streetmap (2004 – 2011)

# The Legal Standard

- Confirmation that the mere possibility of foreclosure is not sufficient
- Impugned conduct must be reasonably likely to harm the competitive structure of the market (*Microsoft*). In this case, could look at actual effects (not always possible for a competition authority)
- The effect must be appreciable:
  - *Post Danmark and Hoffmann La Roche* differentiated on the basis that they concerned rebate schemes on a market where competition was already weakened
  - In related market cases, conduct is abusive only where it gives rise to an effect on the “leveraged” market (in this case in the UK online mapping market)
- This must be right. Otherwise almost any entry by a DomCo into a related market would be abusive. Would be a bad outcome if entry were to be prohibited.
- See also *Microsoft Tying* Judgment of the General Court (¶ 1034 and 1060).

Takeaway: Confirms that *per se* infringements of Article 102 are rare

# Analysis:

## The Intent behind new OneBoxes

- Intent can be a relevant consideration in abuse cases (*Tomra*)
- Google's intent was to improve its search engine
- OneBox thought the new OneBox might have led to more traffic to Google Maps but that was a likely consequence not the objective

Takeaway: The intent behind the innovation was pro-competitive

### **OneBox Product Plan:**

#### *“Background*

*The current incarnation of the maps onebox suffers from a number of issues:*

- 1. It provides a link to a map, instead of rendering a map in the onebox.*
- 2. Its triggering heuristics are in need of dramatic improvement. The most mortifying example of this phenomenon is that the query “2 dead guys in LA” triggers the maps onebox for Los Angeles, CA.*
- 3. We are not yet able to geo-code addresses internationally.*

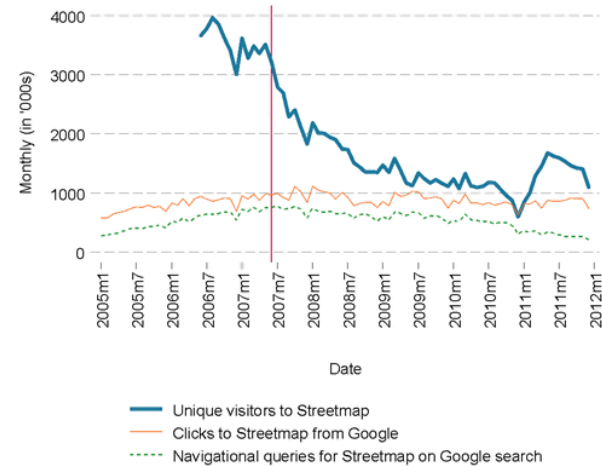
*The maps onebox project intends to remedy the above situation by accomplishing the following goals...an improved maps onebox is expected to drive more traffic to the Google Maps property.”*

# Analysis: The Data

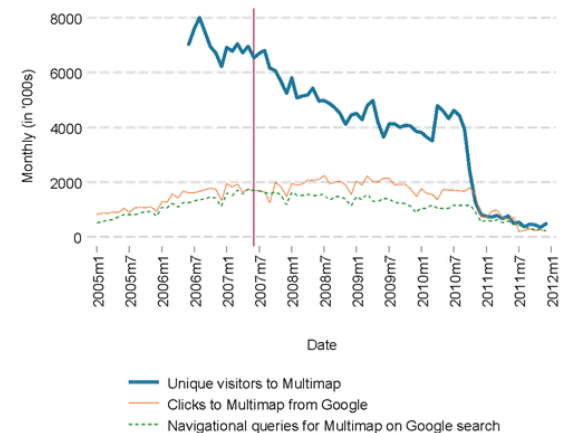
- **No increase in traffic to Google Maps.** Overall number of visitors to Google Maps likely *decreased* after initiation of the new OneBox.
- **No less traffic to blue links.** Eval Report for new style OneBox showed no material change in CTR to blue links – 29.7% for new OneBox vs. 29.3% for old style.
- **A very significant proportion of Streetmap's traffic came from sources other than Google.** Direct entry into URLs and from advertising on other sites.

Takeaway: No evidence that the new OneBox had an adverse impact on Streetmap

Traffic to Streetmap (2005-2011)



Traffic to MultiMap (2005-2011)



# Analysis: Competition on the Merits

Innovation	Google	Streetmap
Slippy maps	Introduced in April 2005	Introduced in December 2008 (+3 years later)
Hybrid mode	✓	✗
Vector data presentation	✓	✗
Natural language searching	✓ (from July 2006)	✗
Geo-targeted ads	✓	✗

Takeaway: The fact that Google Maps gained share compared to Streetmap does not indicate that the new style OneBox was the cause of Streetmap's decline. Users are able to discern quality.

# Analysis: Objective Justification

- Accepted that the thumbnail was an improvement
- Court considered whether there was a less distortive alternative that could have been adopted?
- Several options considered:
  - Showing a thumbnail map from Google Maps but with links to competitors (like old style OneBox)
  - Links from a variety of map providers that lead to a thumbnail map
  - User selection of preferred provider of map
  - Showing multiple thumbnail maps
- These options were rejected *inter alia* because they would give rise to:
  - Technical and practical difficulties (e.g., linking to static maps)
  - Latency/delay in search results
  - Worse search results

Takeaway: no obligation on Google to institute alternative methods that are impractical or overly burdensome

# Conclusions

- *Per se* breaches of Article 102 and Chapter 2 are rare
- Competitive harm in related market cases needs to be appreciable
- Presumptions about user behaviour are sometimes unsafe
- Competition on the merits should be enabled