



# The Internet Explorer tying case

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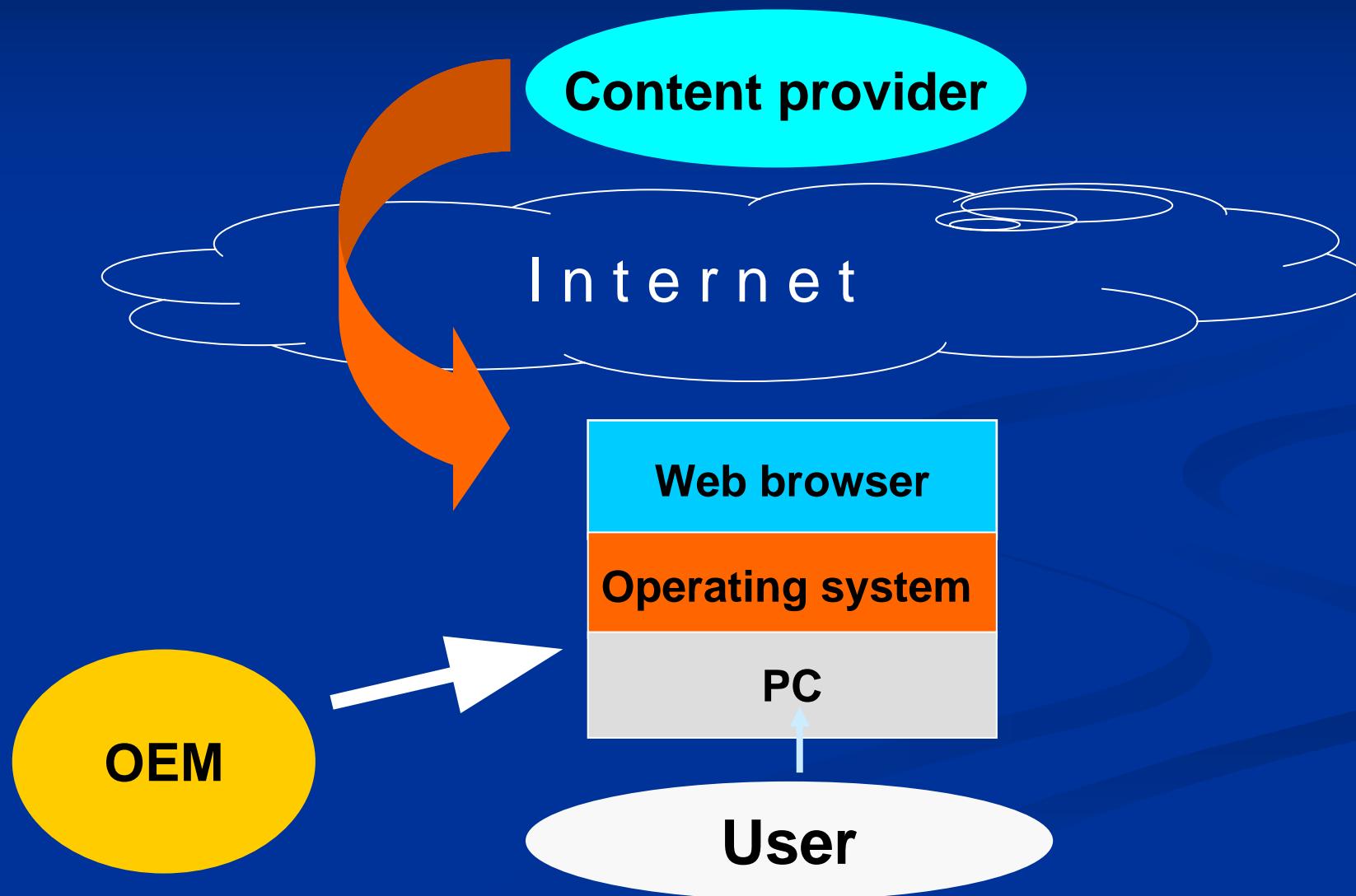
DG Competition, European Commission

(speaking in a personal capacity - the views expressed are not necessarily those of the European Commission)

# Microsoft

- Microsoft holds a dominant position on the PC OS market ( $> 90\%$  market share)
- Barriers to entry are high:
  - Sunk cost (cost of developing OS)
  - Applications barriers to entry (indirect network effect)
- Microsoft tied its web browser Internet Explorer to the Windows PC OS

# Strategic importance of web browsers



# Strategic importance of web browsers

- Web browsers are a gateway to web based applications
- Web based applications could lower applications barrier to entry
- Web browsers are entry points for internet search

# Assessment of tying under Art 102 TFEU

Case law, e.g. Hilti, Tetra Pak II, Microsoft I:

- Dominance in tying product (PC OS)
- Two separate products
- No choice for customers
- Liable to foreclose competition
- No objective justification

# Assessment of tying under Art 102 TFEU

## Guidance Paper:

### ■ Distinct Products

- « A substantial number of customers would purchase the tying product without also buying the tied product from the same supplier » (para 51)

- Shoes and laces

### ■ Anticompetitive Foreclosure

# Potential Foreclosure of Competition

- Tying gives Internet Explorer unparalleled distribution advantage
  - This creates disincentives for OEMs and consumers
  - Competition on the merits prevented (Microsoft's competitors are a priori at a disadvantage even if their products are inherently better)

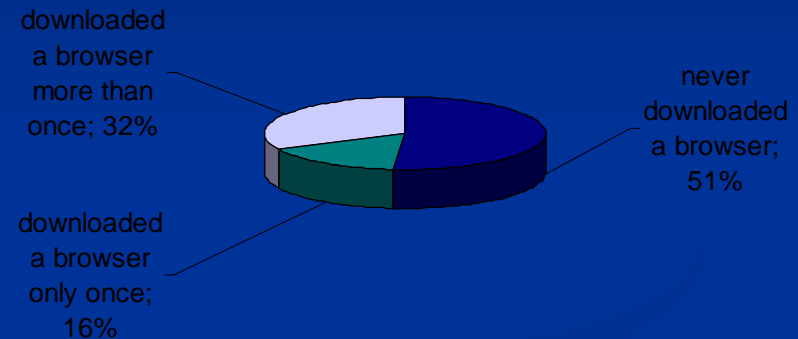
# Potential Foreclosure of Competition

- Downloading cannot offset the effect of tying
- Consumer and enterprise surveys
  - 8 Member States (Germany, France, the United Kingdom, Italy, Spain, Poland, Romania and Sweden)
  - Sample size 1000 per Member State for consumers and 500 per Member State for enterprises
- Information deficit and status quo bias
  - Behavioural economics support these findings

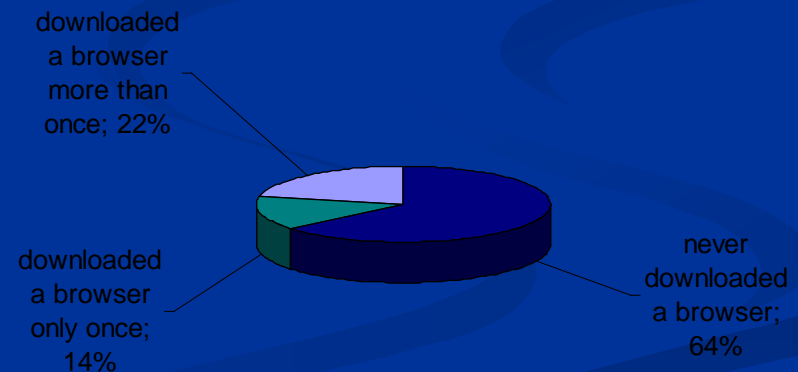


# Downloading

- Many Windows users do not download browsers

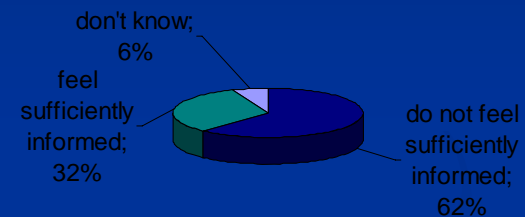


- Windows users are less likely to download if they use IE as their primary web browser

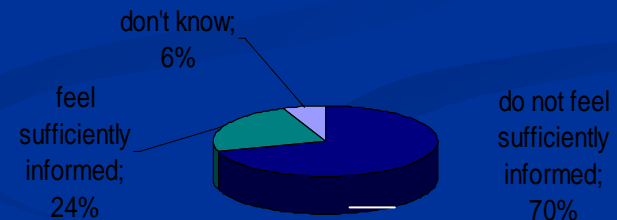


# Information deficit...

- Windows users do not feel sufficiently informed to compare the web browsers...



- Especially if they use IE as their primary web browser



84% of Windows users with IE as their primary web browser never use another one

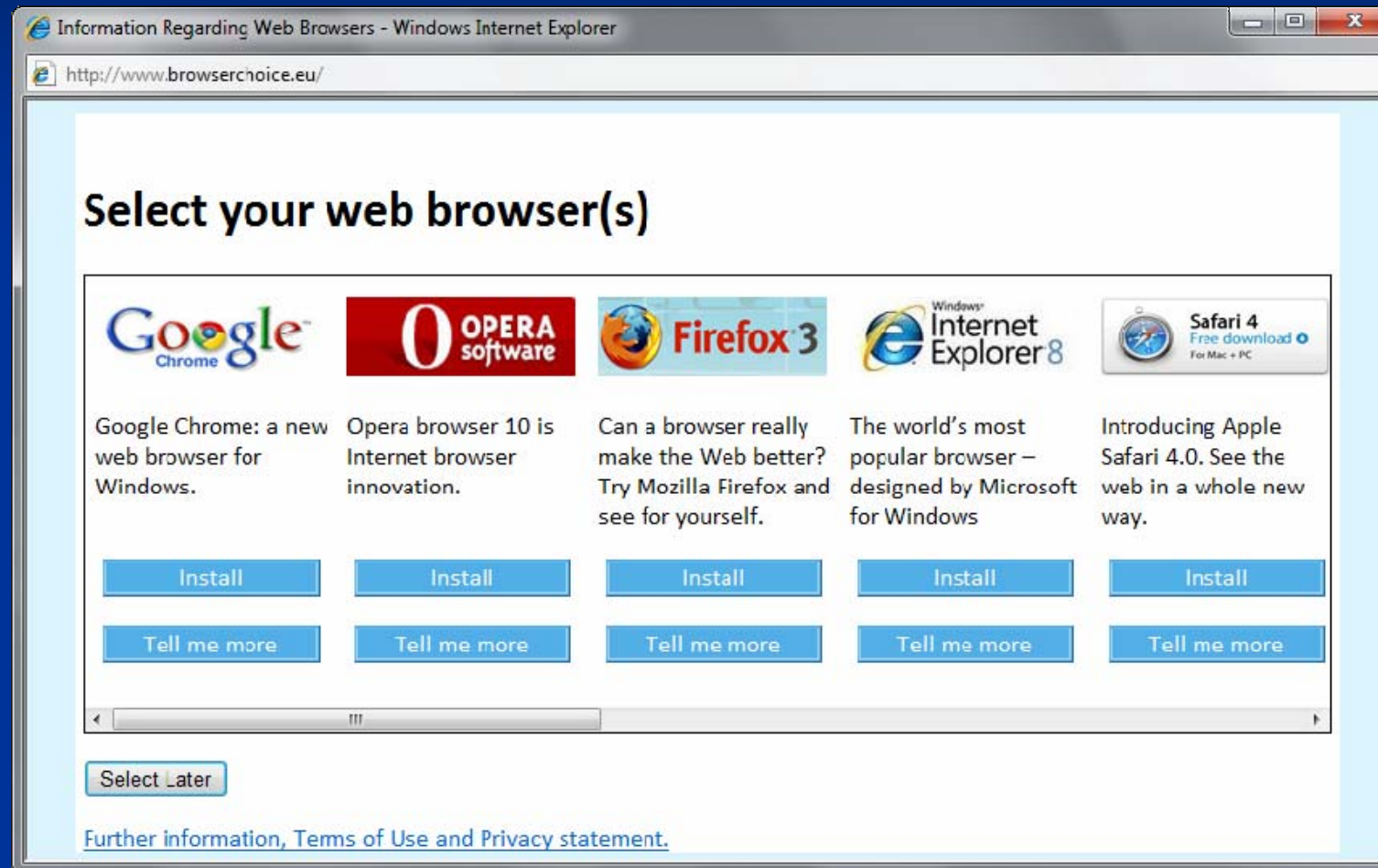
# Potential Foreclosure of Competition

- Indirect network effects
  - Artificially induces content providers and software developers to code for Internet Explorer
- Tying has a detrimental impact on innovation
  - Internet Explorer smallest common denominator as regards web content (HTML 5)
- Tying protects Windows as Internet Explorer is not cross platform

# Commitments

- OEMs
  - OEMs will be free to pre-install any web browser(s) of their choice
  - Turn off Internet Explorer
  - No retaliation from Microsoft
- Must inform remedy for users
  - Choice Screen
  - Distributed via Windows Update also to installed base (Windows XP, Vista and 7)

# Choice Screen



Browser  
order  
presented  
randomly

# Conclusion

- Key technology market
- Swift resolution
- Potential immediate impact on competition
- More consumer choice and innovation