



Chairman Jon Leibowitz  
Commissioner Julie Brill  
Commissioner Thomas Rosch  
Commissioner Edith Ramirez  
Commissioner Maureen Ohlhausen  
The Federal Trade Commission  
Washington, DC

Nov. 15, 2012

Dear Chairman Leibowitz and Commissioners Brill, Rosch, Ramirez and Ohlhausen,

I am writing on behalf of Consumer Watchdog to express our concern about the possibility that a negotiated consent agreement with Google to settle antitrust concerns about the Internet giant's business practices will be insufficient to remedy the harm that has been done to consumers and competition. We understand that the Commission's staff has recommended that a suit be filed against Google because of the way it uses its dominant position in search to unfairly and anti-competitively promote its own services. In addition we understand the Commission's staff has urged antitrust against Google for using its patents to thwart competition in the mobile space thereby harming consumers.

Consumer Watchdog believes the best course of action is to bring a suit and go to trial. The fully developed public record that would result from a trial would ensure that effective remedies could be put in place. A negotiated settlement will inevitably invite cynicism about the results, particularly if such an accord allowed Google to deny any wrongdoing.

However, should you opt to negotiate a settlement it must be strong enough to restrain Google's monopolistic behavior and redress the wrongs that have been committed.

Google's Android smartphone operating system dominates the mobile market with a 38 percent share and is growing. Apple's iPhone has 27 percent. Google controls 90 percent of the mobile search market. There is evidence it is pressuring handset manufacturers to favor Google applications when using the Android operating system. Google's earlier acquisition of AdMob gave the Internet Giant dominance in mobile ad sales.

Google's "Search, plus Your World" is but the latest example of how Google uses its dominance of the Internet in an anticompetitive way to promote its own services.

"Search, plus Your World" links Google+, Google's social network, to search and its favorable placement of the social network in results, particularly in the query box, gives Google an advantage over other social services like Facebook and Twitter.

As you know Google exerts monopoly power over Internet searches, controlling around 70 percent of the U.S. market and more than 90 percent of the market in some European

countries. For most people in the world, Google is the gateway to the Internet. Google's business practices to maximize its profits determine much of the Internet experience for most people by determining what they view.

We applaud the Commission's antitrust investigation and call upon you to take decisive action. In 2010 Consumer Watchdog's study, *Traffic Report: How Google is Squeezing out Competitors and Muscling Into New Markets* (<http://insidegoogle.com/2010/06/google-using-search-engine-to-muscle-into-internet-businesses-study-finds-2/>) demonstrated how with the launch of Universal Search Google favored its own properties and services in search results to the detriment of its competitors. One stark example was the dramatic drop-off in traffic that occurred on Mapquest's site after Google placed its Google Maps at the top of Universal Search.

Some observers had hoped that Google's arrogant anticompetitive behavior would change in the face of investigations by the FTC, several U.S. state attorneys general and the European Commission. It has not; the Internet giant will continue its monopolistic abuses unless regulators act strongly.

We urge you to file a formal antitrust complaint against Google as soon as possible.

### **Information Is Power**

Ultimately Google's monopoly power stems from its monopoly over personal information. Information is power and Google has amassed more data than anyone. How did Google gain this dominant position in consumer personal data? Very simply. The company tracked us all around the Internet and gave us no choice over whether our data was collected or not. Google tracks consumers around the Web, logs every search query and YouTube video watched and records the location of Android smartphone users.

Google's presence on the Internet is so pervasive that consumers cannot escape its reach even if they do not use its services. Google's ad network puts down tracking cookies and records consumers' activities as they surf the Internet. It is this immense database of consumer information, intentions and desires that gives the Internet giant its power.

Many people think of Google as a technology company. In actuality Google is an advertising business. Consumers make a Faustian bargain, often unknowingly, to provide personal information about their habits, desires and behaviors in return for Google's services. Google mines these massive digital dossiers and uses the information to sell ads, a lucrative business that accounts for 96 percent of its \$40 billion annual revenue.

Every platform the company buys expands its database of information on individuals. More consumer data means more information to target individuals in the ad server market. Every piece of information that is added to that database makes Google's ad targeting that much more sophisticated – in turn making it a must have for companies seeking to target advertising. The better Google's data, the more advertisers will have to go to Google to reach their audience, thus increasing its dominance of the market. If Google's unfettered absorption of companies, and the consumer information that comes with them, continues, and Google is not required to give

consumers the ability to opt out of this data collection, the ever-increasing consumer information database Google is compiling will only strengthen its dominance over the ad server market.

People who use Google aren't its customers. We are the Internet giant's product. The immense database about us, largely gathered without our informed consent, is used to target ads and bring Google billions in advertising profits.

## **Remedies**

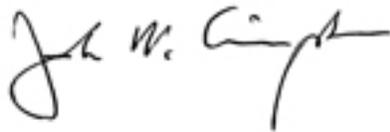
To counter the information monopoly we must be given effective control over our data – whether it's collected and how it's used. A meaningful Do Not Track standard is a way to return to consumers the control of their data. In addition, as a strong complement to data protection, strict antitrust regulation to prevent unfair practices with search and patents is necessary. Again, a public trial is the best course to follow, but if the Commission opts to negotiate, here are some specific recommendations that must be included if a settlement is to be meaningful:

- Google should be required to divest Motorola Mobility, whose standards essential patents it is using unfairly by not making them available for license on a fair basis.
- Google should be broken into different companies devoted to different lines of business so there is no incentive to unfairly use search to promote other services. Search could be separated from advertising. Gmail and the relatively new social networking service, Google +, could be spun off as a separate entity, as could YouTube, a Google acquisition that should have been denied at the time of merger. Enterprise applications could be another separate business.
- Google's search services should be separated from services where Google provides its own content.
- Google's search engine's importance as a gateway to Internet requires a maximum degree of openness and transparency. Google's monopoly position and importance to the Internet means that the company should be closely regulated like a public utility. Regulations should be designed to open up Google's ad platform to enable other competitors to compete. Rules should be crafted to create greater transparency in the operation of Google's ad platform to enable parties to negotiate more effectively. For example: Providing greater visibility into the maximum amount of the highest bid, how many search terms are shown per page, and how Google's "quality score" is derived and applied. Little, if any, of this information is currently public and openness would contribute to consumer choice and options as well as foster competition.
- Google should be forced to disgorge its monopolistic gains through the imposition of substantial financial penalties. Your change in policy regarding disgorgement over the summer was a welcome step and we urge you to apply it in this case. The payment would have to be significant enough to impact Google's future behavior.

Google hardly blinked when it paid half a billion dollars to the United States to settle an illegal drug sales case. The proposed \$22.5 million fine for violating the “Buzz” Consent Decree is but pocket change for the Internet giant. Perhaps the amount disgorged could be tied to paying back consumers for monetizing their private information and content without asking them permission or compensating them.

The Federal Trade Commission’s role in keeping Google’s abuses in check is essential. The Internet is too important to allow an unregulated monopolist to dominate it. We call on you to take the steps necessary to prevent it: File a formal antitrust complaint against Google and go to trial in Federal District Court in Washington, DC. If the Commission opts to settle the case the consent agreement must require Google to admit wrongdoing and be strong enough to change Google’s behavior and protect consumers from harm as outlined above in the proposed remedies. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Simpson". The signature is fluid and cursive, with a long horizontal stroke at the end.

John M. Simpson  
Privacy Project Director