



Jose Manuel Barroso
President
European Commission
B-1049
Brussels

Feb. 6, 2014

Via email

Re: European Commission antitrust investigation into Google Inc.

Dear President Barroso:

I am writing on behalf of Consumer Watchdog, a U.S. public interest group, to express our deepest concerns about the announcement made on Wednesday by Vice President Almunia that he has reached an agreement to settle the antitrust investigation of Google and will not “market test” the proposal nor make Google’s newest Commitments public. In addition to our deep concerns about the procedure that is being followed in apparent contradiction to Commission policy, we have strong objections to this third proposal from the Internet giant on its merits in so far as we have been able to determine the details of what Google is offering. At a minimum any remedy must insist that Google use an objective, nondiscriminatory mechanism to rank and display all search results – including links to Google products.

Consumer welfare is the ultimate test of any antitrust settlement. Consumer groups on both side of the Atlantic – BEUC and Consumer Watchdog – have objected to Google’s latest proposal as it has been described. Labeling does nothing but obscure the results of Google’s anticompetitive abuses. Charging rivals to appear in a favored position as an alternative does not resolve the fundamental issue of search manipulation. It creates a new revenue stream for Google and allows it to exercise even greater power over competitors.

As you may know, Consumer Watchdog participated in the market tests of both of Google’s earlier proposals and found them to be fundamentally flawed. We were gratified when, based on comments received from stakeholders and competitors, both proposals were rejected. We cannot understand how the stakeholders will not be allowed to review this new deal.

While DG Comp’s procedure manual provides that no market test is required for “smaller (‘technical’) changes to the commitment text” it would be necessary if “the revision of the commitments is substantial.” The manual adds, “A change is only substantial if the very nature or scope of the commitments changes.”

Frankly, given the results of the two earlier market tests, we cannot understand how the third proposal could be deemed anything other than a substantial change from the earlier woefully insufficient remedies proffered by Google if it is acceptable. In other words for the third proposal to be remotely viable, it must be a substantial change from the earlier iterations. If it is such a significant change, then – by your own procedures – you must market test it.

The heart of the problem is simple. Google has developed a substantial conflict of interest. It no longer has an incentive to steer users to other sites, but rather primarily to its own services. It is becoming even more effective at this and has a greater incentive to engage in manipulation now that it is merging data collected across all its services. The only way to deal with this conflict is to remove it. Ideally, there needs to be a separation of Google's different services and assets. At a minimum any remedy must insist that Google use an objective, nondiscriminatory mechanism to rank and display all search results – including links to Google products.

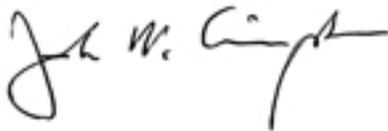
There is one additional point that we would like to make. Our nonprofit nonpartisan public interest group receives no funding from Microsoft or any of Google's competitors. Our interest in this case is only motivated by our concern for the welfare of consumers.

We had been impressed with the strong position the Commission had taken in your investigation, unlike regulatory authorities in the United States. We cannot understand what prompted this recent change in attitude.

While Vice President Almunia has the competition portfolio, Consumer Watchdog believes this investigation is a matter for the whole Commission and that all members of the College are fully entitled to demand satisfactory remedies to Google's ongoing abuse of its market dominance. If Google does not provide a commitment to end search manipulation and to practice search neutrality, then the Commission must file a Statement of Objections and commence antitrust proceedings.

Thank you for your time and 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 extending to the right.

John M. Simpson
Privacy Project Director