



Jose Manuel Barroso
President
European Commission
B-1049
Brussels

March 26, 2014

Via email

Re: Commission antitrust investigation into Google Inc., Case Comp/-3/39.740

Dear President Barroso:

I am writing on behalf of Consumer Watchdog, a U.S. public interest group, to express further concerns about the proposed third Commitments from Google Inc. to settle the Commission's antitrust investigation of the Internet giant. First, however, I wish to thank you for the March 6 letter you asked Director General Alexander Italianer to send on your behalf. One of Consumer Watchdog's original issues with the proposed settlement was the failure by the Commission to make the third proposed Commitments public. However, as Mr. Italianer pointed out to me in the letter, "More generally, Google has made its revised commitments public. Therefore, complainants, third parties and members of the public can provide input on them as appropriate."

I take that as an invitation on behalf of you and the Commission to interested third parties such as Consumer Watchdog to voice our continuing concerns now that we have studied the document. We have read the third Commitments closely and are surprised and dismayed by the provisions governing Google's responsibilities to the Monitoring Trustee. Much has been made of the idea that Google will be under the supervision of the monitor for five years to ensure the company fulfills the Commitments.

However, to our amazement the Commitments do not actually obligate Google to do anything in response to a request from the Monitoring Trustee. Shockingly, the Commitments leave the decision about whether to comply entirely up to Google. I quote:

"VI.5 Duties and Obligations of Google

67. Google may comply with any specific request made by the Monitoring Trustee in its sole discretion. The Commission reserves the right to exercise its powers of investigation set out in Section V of Council Regulation (EC) No 1/2003 should Google decline any request made by the Monitoring Trustee." – Commitments in Case Comp/-3/39.740, Jan. 31, 2014, Page 19.

In other words Google may choose to ignore any request and the Commission may launch an investigation. But, that is exactly what the Commission has been doing for the past three years – investigating Google. This provision hardly seems a likely means to settle the antitrust case; rather it portends further stalling and foot-dragging on the part of the Internet giant.

Paragraph 67 of the Commitments is not the only place where Google gets a free pass to ignore the Monitoring Trustee. Google's obligations are further spelled out on Page 2 of Annex 4:

"Section B: Duties and Obligations of Google

I. GENERAL DUTIES AND OBLIGATIONS

“7. Google shall provide the Monitoring Trustee with

a) all such cooperation, assistance and information as the Monitoring Trustee may reasonably require for the performance of its duties and obligations specified in Section VI.3 of the Commitments and in this Annex; and

b) full complete and prompt access, after reasonable notice, to any of its books, records, documents, management or other personnel, facilities, sites and technical information, to the extent necessary for the Monitoring Trustee to fulfill its duties and obligations specified in Section VI.3 of the Commitments and in this Annex, and upon request with copies of any document.

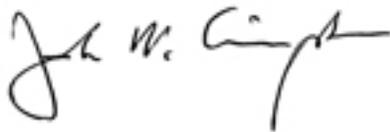
“8. Google shall be available for meetings to provide the Monitoring Trustee with all information that is reasonably necessary for the performance of the Monitoring Trustee’s duties and obligations specified in Section VI.3 of the Commitments and in this Annex.” – Annex 4, Page 2.

At first blush paragraphs 7 and 8 appear to be a straightforward requirement that Google give the Monitoring Trustee the information and cooperation necessary to do his job of ensuring that the Commitments are kept. But all is not as it first seems. Paragraph 9 eviscerates any apparent constraint or obligation on Google by referring to the earlier paragraph 67 of the Commitments, which allows Google – and Google alone – to decide what requests from the Monitoring Trustee need be honored.

“9. Google’s duties and obligations pursuant to paragraphs 7 and 8 above are without prejudice to Google’s discretion to comply with any specific request made by the Monitoring Trustee in accordance with paragraph 67 of the Commitments.” – Annex 4, Page 2.

These latest Commitments from Google purport to ensure that Google’s promises will be closely monitored for the next five years. In fact they do nothing of the sort. A close reading reveals that they explicitly allow Google to decide how, when and, indeed, whether the Internet giant will cooperate with the Commission’s duly appointed Monitoring Trustee. This is simply unacceptable. It in effect allows Google to act as its own Monitoring Trustee. Consumer Watchdog calls on the Commission to modify this deeply flawed proposed settlement.

Sincerely,



John M. Simpson
Privacy Project Director

Cc: Vice President Joaquin Almunia; Director General Alexander Italianer