



Mr. Joaquin Almunia  
Vice President of the European Commission  
and Commissioner for Competition  
DG Competition  
rue Joseph II / Jozef II straat 70  
1000 Bruxelles/Brussel  
BELGIQUE/BELGIË

Jan. 29, 2014

**Re: Cases COMP/AT.39740 – Google- Google’s 3rd proposal**

Dear Vice President Almunia:

I am writing on behalf of Consumer Watchdog, a U.S. public interest group, to express our deepest concerns about reports that Google’s third proposal to settle the Commission’s three-year antitrust investigation will not be market tested. As you will recall Consumer Watchdog participated in the market tests of both earlier proposals and found them to be fundamentally flawed. 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.

An unnamed Commission official was quoted by the media on Wednesday as describing Google’s third settlement proposal as “much better.” If that is true, then the proposal must involve substantial changes from the second offer made in October, which received strong objections in the market test and was rejected by you as insufficient. 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 anything other than a substantial change from the earlier woefully insufficient remedies proffered by Google if it is to be accepted by you. In other words for the third proposal to be remotely viable, it must be a substantial change. If it is such a significant change, then – by your own procedures – you must market test it.

Consumer welfare is the ultimate test of any antitrust settlement. As you know, consumer groups on both side of the Atlantic – BEUC and Consumer Watchdog – have objected to Google’s earlier proposals. Both times the proffered Commitments failed to meet the standard of consumer welfare. If the third proposal merely offers “technical” changes from the earlier proposals, the new Commitments would essentially legitimize Google’s anticompetitive practices and give the company more tools to strengthen its dominance. Labeling does nothing but obscure the results of Google’s anticompetitive abuses. It does not resolve the fundamental issue of search manipulation.

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.

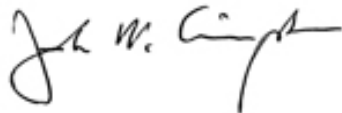
There is one additional point that we would like to make. Our nonprofit nonpartisan public interest group receives no funding from Microsoft or any of Google's competitors. Our interest in this case is only motivated by our concern for the welfare of consumers.

We have been impressed with the strong position the Commission has taken so far in this investigation, unlike regulatory authorities in the United States. While we understand your desire to conclude the case before you leave office, you must not let that wish induce you to accept an insufficient remedy to Google's unfair market dominance and behavior.

Perhaps this latest proposal is adequate. We cannot know or comment, because we have not seen it yet. We call upon you to release this third proposal and market test it. And, if this third settlement proposal with 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 your for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Simpson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John M. Simpson  
Privacy Project Director