



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

Jan. 8, 2013

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

I am writing on behalf of Consumer Watchdog to ask that you release to the public the Federal Trade Commission staff report about the FTC antitrust investigation into Google's business practices.

One of the key problems with the Commission's action announced last week is a lack of context for the decision. Media reports suggest that the Commission's tap on the Internet giant's wrist was the result of a "calculated and expensive charm offensive." As *Politico* put it, "Google spent about \$25 million in lobbying, made an effort to cozy up to the Obama administration and hired influential Republicans and former regulators." (<http://www.politico.com/story/2013/01/how-google-beat-the-feds-85743.html#ixzz2HKoYY2sO>)

"It was a multiyear campaign focused on this very moment, knowing as the company grew these issues were going to come up," Alan Davidson, Google's former top lobbyist, told *Politico*. Or as the New York Times reported, "Working relentlessly behind the scenes, executives made frequent flights to Washington, laying out their legal arguments and shrewdly applying lessons learned from Microsoft's bruising antitrust battle in the 1990s." (http://www.nytimes.com/2013/01/04/technology/googles-lawyers-work-behind-the-scenes-to-carry-the-day.html?hp&_r=0)

Put another way, by all appearances, the Internet giant played an insiders' game and bought its way out of trouble. Perhaps, the Commission managed to ignore the charm offensive and decide the case on the merits. Sadly, we cannot know the true situation because we don't have the details of the 19-month staff investigation. The best course of action would have been to file an antitrust suit and bring the case to trial. All the evidence would have been part of the public record. As I wrote in a letter to you last November, "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."

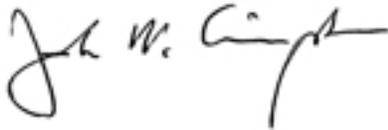
Opting to avoid a trial and filing a formal consent agreement would at least have required a complaint, spelling out the violation. Instead you have settled for promises from a company that has a demonstrated record of repeatedly breaking its word. And it's not even clear what they did wrong.

Your only chance of re-establishing the FTC's credibility on its handling of the Google investigation is to release the 100-page staff report about the inquiry. Releasing the report would put the Commission's decision in context.

Moreover, the public has the right to know what the staff recommended and to understand the reasoning of the professionals who conducted the lengthy investigation and the quality of their work. It could be possible that the staff botched the investigation and you were left with no other choice. If the report contains Google trade secrets, they could be redacted.

I call on you to release the FTC staff report to help make clear what was behind the Commission's otherwise unfathomable action. It is the only way that you can restore a modicum of public trust in the Commission's ability to serve as an effective antitrust enforcer. Thank you for your consideration; we look forward to receiving a copy of the report at your earliest convenience.

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