



Dec. 18, 2012

The Hon. Eric Holder
Attorney General
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC
20530

Dear Attorney General Holder:

We are writing to urge that the Department of Justice re-open its antitrust investigation of Google. If widespread press reports are accurate, the Federal Trade Commission is about to conclude its 20-month antitrust probe of the Internet giant's business activities with no more than a scolding. This is baffling in light of recent comments by Google Executive Chairman Eric Schmidt comparing his company to Microsoft in the 1990s, when the Department of Justice prosecuted the software company for abusing its monopoly of desktop computers.

Press reports suggest that the FTC will close its probe of Google's anti-competitive practices by accepting a letter that promises the company will play nice with others. Such a "pledge" is meaningless for a company with Google's track record of lying to regulators and the public about its business activities and violating consent agreements. Consumers need the Justice Department to step in and fill the vacuum that will be left if the FTC abdicates its responsibility to protect consumers from Google's abuse of its monopoly to manipulate consumers in the online and mobile worlds.

The public would have been better off if the Justice Department had taken charge of the investigation from the start. The only meaningful checks on Google's wrongdoing have come from the Department, when it negotiated a settlement that fined Google \$500 million for illegally advertising drugs. The Department also took the lead in opposing the anticompetitive Google Books settlement.

The FTC's apparent decision to end its investigation with but the lightest tap on the wrist is inexplicable when, as noted above, Google's chairman equates Google with software giant Microsoft in the 1990s at the pinnacle of the company's unfair abuse of its monopolistic dominance of desktop computers. In the third quarter, Google's Android operating system got 72 percent of the smartphone market compared to Apple's 14 percent, according to Gartner Inc. "This is a huge platform change; this is of the scale of 20 years ago -- Microsoft versus Apple," Schmidt told Bloomberg News Service. "We're winning that war pretty clearly now." In other words, the FTC is settling for rubbish just as the new computer monopolist equates its own power and dominance with the last poster child for government antitrust action. The public deserves to know how even Google's executives see the company's dominance of mobile and online markets.

Google has also won every encounter it has had with the Federal Trade Commission. The Commission approved its acquisition of DoubleClick and approved the acquisition of AdMob against the recommendation of FTC staff. Google wriggled out of the FTC's investigation of the Wi-Spy scandal only to have the FCC fine the company for willfully obstructing the FCC investigation of the incident. The Commission obtained a consent agreement as a result of Google's wrongfully violating users' privacy when it launched its "Buzz" social network. Google responded by violating the "Buzz" consent agreement when it hacked around privacy settings on the Safari browser, used on iPhones, iPads and other Apple devices. For that violation Google was allowed to pay a mere \$22.5 million penalty and explicitly deny any wrongdoing. Google was allowed to keep the wrongfully gather data.

Given the FTC's track record with Google we were not optimistic when the Justice Department deferred to the Commission's antitrust investigation. And, if press reports are correct, that pessimism is justified. The Department of Justice has fared far better in its dealings with the Internet giant, which is why we call upon you to reopen the Department's investigation.

Consumer Watchdog believes the best course of action is for the Department of Justice ultimately to bring an antitrust 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, and keep any documents obtained in the course of the investigation out of the public eye.

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. There is evidence that Google abuses Standards Essential Patents to maintain dominance in the mobile market.

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.

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. Consumer Watchdog urges you to file a formal antitrust complaint against Google as soon as possible.

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 wielding monopolistic power in ways that harm consumers. 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 monopolistic 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.

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 anti-competitive practices is necessary. Here are some possible remedies that the Department of Justice should seek:

- 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.
- 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.
- Google should be forced to disgorge its monopolistic gains through the imposition of substantial financial penalties. The amount disgorged could be tied to paying back consumers for monetizing their private information and content without asking them permission or compensating them.

It is now clear that the Federal Trade Commission is unable to thwart Google's abuses. The Internet is too important to allow an unregulated monopolist to dominate it. We call on you to take the steps necessary to protect consumers: The Justice Department must re-open its investigation of Google and file a formal antitrust complaint. Thank you for your consideration.

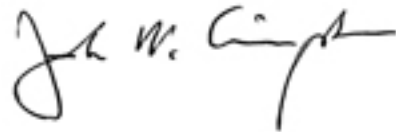
Sincerely,



Jamie Court
President



Carmen Balber
Washington Director



John M. Simpson
Privacy Project Director

CC: Renata Hesse, Acting Assistant Attorney General, Antitrust Division