Senate Judiciary Subcommittee on
Antitrust, Competition Policy and Consumer Rights

Hearing on "The Power of Google: Serving Consumers or Threatening Competition?"

Responses of Thomas O. Barnett (Covington & Burling LLP)
to Follow-Up Questions for the Record Received from Senator Grassley

Question 1: You've testified about allegations of improper and illegal behavior on the part of Google. What do you think federal regulators should do? What about Congress? Are you not concerned about overregulation of the internet and the possibility that government involvement will stifle innovation?

Answer 1: Federal antitrust enforcers should conduct a thorough investigation of Google's conduct. If they determine that Google has harmed competition in violation of the antitrust laws, they should take appropriate action to remedy that harm. Congress should continue to exercise its important oversight role and to encourage the agencies to enforce the antitrust laws effectively. Those laws protect the competitive process, which provides companies with the opportunity and the incentive to innovate and compete on the merits. If Americans are to benefit from the full potential that the Internet offers, Congress and federal and state antitrust enforcers must ensure that Google obeys those laws.

If Google is instead permitted to use its dominance in search and search advertising to stifle competition, then innovation, and consumers, will suffer. This is not just a theoretical concern. Jeffrey Katz and Jeremy Stoppleman -- respectively, the CEOs of Nextag and Yelp -- both testified at the Subcommittee hearing that they would not attempt to launch their companies in today's market given Google's use of its dominance in search and search advertising to exclude competition.

More generally, if Google is permitted to continue to expand and reinforce its dominance across broader and broader swaths of the Internet, there will be increasing pressure for some form of government intervention. Antitrust enforcement has the benefit of protecting free market competition. Direct government regulation -- such as through the creation of an Internet oversight agency -- could well impose more rigid and burdensome obligations that could pose an even more serious threat to innovation on the Internet.

Question 2: One of my constituents is concerned that the goal of FTC's investigation into Google's business practices "is to . . . place new rules and regulations on [a] very successful internet technology company" and that the investigation is "counterproductive, totally unwarranted, and goes against all the principles that truly make a capitalist free market economy work for the betterment of all." Do you agree with these concerns? Why or why not?

Answer 2: No, I do not agree. For the reasons set forth in the answer to the prior question and in my written testimony, antitrust enforcement is consistent with market competition and can help avoid the need for more burdensome, less efficient government regulation. The best response to Google's dominance and exclusionary conduct, I believe, is effective enforcement of our nation's existing antitrust laws, which will ensure that all participants in the market, including Google, are able to innovate and compete on the merits.

Question 3: The online search market is a dynamic, constantly evolving market. Do you believe that search is an essential facility that should be regulated? Are you concerned with what would happen to innovation in search if the government were to regulate it?

Answer 3: Effective antitrust enforcement is essential in order to ensure that dominant companies like Google operate within the boundaries of the law and that consumers are able to benefit from the competitive process that those laws safeguard. At the same time, more direct government regulation presents significant challenges and risks. Accordingly, the best response to Google's dominance and exclusionary conduct, I believe, is effective enforcement of our nation's existing antitrust laws.

Question 4: Google often responds to its critics by saying that "Competition is just one click away." Do you agree with that statement? Why or why not?

Answer 4: The fallacy in this slogan frequently invoked by Google is that the opportunity to click to another site does not help the user if there is no other site providing a comparable service. Because of the network effects that benefit Google from its massive scale, other general search engines simply cannot provide the same level of search service. Search engines "learn by doing." As more users enter more queries into the search engine, it gains access to more data, and it is better able to develop and improve its algorithms. Over time, this makes it more likely that the search engine will be able to return results that users find relevant, which in turn leads to even more users entering more search queries, and so on. Without sufficient scale, a search engine is less able to improve and innovate, less able to attract users, and therefore less able to compete. The self-reinforcing loop of scale also enables a dominant search provider like Google to maintain and even expand its dominance over time. Even Mr. Schmidt has acknowledged that "[m]anaging search at our scale is a very serious barrier to entry."[1]

Because of those hurdles, Google is unlikely to face significant competition in search for the foreseeable future. As a result, the ability of users to click to other sites does not impose significant competitive constraints on Google.

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[1] John Markoff and G. Pascal Zachary, *In Searching the Web, Google Finds Riches* (April 13, 2003), http://www.nytimes.com/2003/04/13/business/in-searching-the-web-google-finds-riches.html?src=pm.