U.S. Senate Committee on the Judiciary, Subcommittee on Antitrust, Competition Policy and Consumer Rights

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

Responses of Jeremy Stoppelman, Cofounder and CEO, Yelp! Inc.

Senator Kohl

1. Do you depend on links from Google's search engine for a substantial portion of your business?

Yes, like many other websites, we draw a sizable portion of our traffic from Google.

How much?

Approximately 75% of Yelp traffic comes from Google in one form or another.

And what would happen to your business in the United States if you no longer appeared near the top of Google search results?

I would like to think that Yelp features some of the most relevant information when it comes to local businesses, but I can only assume that Yelp would be negatively affected if Google prevented links to the Yelp site from appearing near the top of Google search results.

2. Do you believe the experience of Yelp and similar companies could deter new, innovative web companies from entering the market and competing with Google?

Yes.

3. The Federal Trade Commission and several state attorneys general are currently pursuing an antitrust investigation against Google. Should they conclude the law has been violated, are there any specific remedies you believe they should pursue?

Google has demonstrated it cannot be trusted to police itself. It is my hope that regulators will ensure that Google competes on a level playing field. For example, Google should not be permitted to preference its own products ahead of its competitors in search results. In addition, Google should not be permitted to incorporate third party content from its web search index into its other products without permission. Similarly, competitors should not be forced to contribute their content to Google under the threat of removal from any portion of Google's web search results.

<u>Senator Grassley</u>

1. Would you create Yelp today knowing what you know about Google's business practices?

It is my belief that markets work best when the competitive landscape allows innovators to challenge the entrenched interests (regardless of whether the innovators ultimately succeed). It is extraordinarily difficult to innovate, however, if a single company abuses its dominant position in the market.

Yelp has worked hard to build a fantastic product and credible brand. It is difficult for me to imagine if we would have been able to accomplish what we have accomplished had Google engaged in anticompetitive practices in the early going. Were I to tackle a new industry tomorrow, I would undoubtedly look to a market that is less prone to the manipulative influences of a dominant market power.

Do you think this is a good environment for innovation?

I see wonderful innovations in areas which -- at least today -- are not threatened by Google's anticompetitive practices. At the same time, it is hard to ignore the sentiment I hear from entrepreneurial veterans every day: it is no longer enough to focus on your own business – you also need to spend substantial time and energy worrying about the 800-lb Google gorilla in the room.

2. What trends are you seeing in the industry that suggest content companies are under threat from anti-competitive behavior?

Google's conduct may ultimately spell trouble for a number of content verticals, such as news and travel, as long as the conduct goes unchecked. We may see less original content, and as a result, less choice for consumers in those verticals.

What can we do about them?

Congress can shine a light on anticompetitive practices, encourage voluntary compliance, and provide guidance for regulatory authorities to enforce laws that are already on the books. More simply, it is my hope and expectation that Google will learn to compete on a level playing field -- that it will agree not to take content from third parties without permission for the benefit of its own competing products, and that it will treat its own competing products consistent with the manner in which it treats its competitors.

3. Do you have any concerns with Google's search algorithm? Do you believe that Google manipulates search placement at the expense of competition?

Google's tactics have less to do with its search algorithm than its design decisions. These design decisions effectively push objectively ranked search results off the screen, and give Google's own products more prominent placement, larger fonts, and eye-catching graphics.

For example, while Google's own finance product may not always have the best or most relevant information about a particular stock, its link always appears first. Similarly, Google gives Google Places special treatment when users search for information about local businesses, even if other sites rank higher in relevance.

Indeed, the much-discussed and little-understood algorithm has proven an effective red herring in the debate, allowing Google to insist that the algorithm uses objective criteria to rank websites while ignoring difficult questions about results that have nothing to do with the algorithm.

4. 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?

I share your constituents' concerns about "new rules and regulations." That said, I believe that we should enforce rules and regulations that are already on the books for very good reasons. Antitrust enforcement exists precisely to protect the free market.

5. One of my constituents indicated that Google's search engine is "highly satisfactory" for his use and if he "wanted something different, it is readily available on the internet." He says that "with unemployment at an all time high and the country being spent into bankruptcy, [he hopes that Congress] will not waste more time on these hearings and vote to keep out further government intrusion into how the internet is used by private citizens and private businesses." What do you think?

Are you concerned that government intervention will impact innovation?

Google has a great product, but it also uses its dominant position in the market to limit access to the competition. Antitrust laws serve an extraordinarily important purpose, and their enforcement provides a rare opportunity for the government to positively impact job growth, innovation, and the broader free market.

6. 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?

Google goes to great lengths to reduce choice in the marketplace, preferencing its own products ahead of competitors and investing heavily to be the world's default web browser, search provider, mobile platform, and content publisher, among other functions. Google appears entirely unwilling to allow consumers to make their own choices.

<u>Senator Lee</u>

1. Until very recently, Google Places featured significant portions of Yelp reviews, without your permission.

a. How did Google's use of Yelp reviews on its Places pages differ from traditional use of content displayed in search results?

Google's use of Yelp reviews on its Places pages differed significantly from the way Google uses content from Yelp in Google web search results.

First, although most web services otherwise prohibit third parties from scraping or indexing content from their websites, they usually allow and enable search engines like Google to index the content on their websites for search purposes only. This is typically accomplished by technical means through the "Robots Exclusion Standard." When Google uses third party content for other purposes -- specifically, to construct a competing service -- it exceeds the authority that the third parties grant it in the first place.

In Yelp's case, Google had previously acknowledged in 2005 that it required a license in order to use Yelp's content in its competing Google Places product. When Yelp later balked because of the growing competitive threat from Google, the executives responsible for Google Places simply took Yelp's content over Yelp's express objection. As a threshold matter, then, Google's use of Yelp's content in Google Places differs from its use of Yelp's content in web search results because Google simply does not have permission to use Yelp's content in Google's competitive products.

Second, Google's use of Yelp content in its own local products is different in the sense that it is intended to direct users to Google's own products rather than the information that users seek. For example, Google boasted that Google Places featured more than one thousand reviews of a well-known steakhouse in Washington D.C., but in reality, it only featured a handful of reviews – the rest were taken from Yelp. As a result, users were lured into Google Places, but could not find the information they were looking for.

Third, Google uses content from its competitors to power search results *within* its own local products, even when its own local products do not have the information that its users seek. For example, Google has very little of its own information about pizzerias in San Francisco, but it relies on information from Yelp to drive users to its own Place pages. Indeed, the most prominent links in Google Maps search results appear at first glance to link to local businesses, but they really link to Google Place pages.

Put differently, Google's use of Yelp's content in web search results is intended to be mutually beneficial: it allows Google to direct its users to the information they seek, and it allows Yelp to be discovered by those same users. In contrast, Google's use of Yelp's content in its own competing product is only intended to benefit Google since it creates an interstitial page (monetized by Google) between users and the information they seek.

b. What went into developing Yelp's collection of reviews?

Yelp has focused obsessively on consumers, fostering relationships both online and offline between and among our community of users. The community is diverse, but the one commonality is that its members love to share local information. Yelp's users have contributed more than 21 million reviews to the site since we started in 2004.

c. What role does scale – the number of reviews available – play in the amount of traffic to a user-review site like Yelp?

Scale matters to the extent that it drives trust and branding, which in turn should drive traffic and new contributors. For example, Craigslist is one of the most recognized classified listing brands because of the sheer volume and breadth of its classified listing database. As a result, Craigslist would likely have an exponential (and not just a proportional) advantage over a comparable new classifieds service with only a few listings in its database.

In addition, scale may matter for the purposes of "page rank" in Google's organic search results. Using the same Craigslist example above, Craigslist likely features more prominently in organic search results as compared to an upstart because of its massive classified listing database -- even when the upstart has more relevant information in response to a particular search query.

d. How did Google use Yelp's reviews to grow scale for its Places pages?

Google used Yelp reviews to avoid the long, arduous, and expensive task of building its own compendium of reviews from scratch. In effect, Google used Yelp's content as a "honeypot" to attract new users and content contributors in order to achieve scale more quickly and cheaply than it otherwise could without Yelp's content. Indeed, Google publicly touted the growth of review content and mobile traffic during the period when it misappropriated Yelp's content.

e. Were the Google Places pages beneficial in directing more attention and traffic to your reviews?

No. Less than one half of one percent of the traffic that Yelp received from Google came from Google Places.

f. What was Google's reaction when Yelp requested that Google stop using its review content on Google Places?

Google explained that the only circumstance under which Google would stop using Yelp's content was if Yelp removed itself entirely from Google's web search index. Even now, Google still insists that it must remove links to Yelp in portions of its web search results in order to comply with Yelp's demand that Google cease using Yelp's content in Google Maps.

2. In response to your company's complaints, Google removed the links to Yelp on Google Places, although links to reviews by Urban Spoon, Metro Mix, and local newspapers and magazines remain. How has this affected Yelp's traffic?

While it is difficult to measure the impact in isolation, once Google removed Yelp's content from Google Places, Yelp's traffic increased significantly across several metrics.

3. The prominence and size of Google Places listings often push competing sites to a significantly lower position on the page. How have the search rank and placement of Google Places affected traffic to Yelp?

It is difficult to measure the impact in isolation, particularly because Google's practices apparently differ from month to month, market to market, and search to search. We do know that studies routinely indicate that prominence and placement matter, and Eric Schmidt underscored this point in his testimony to the Subcommittee.

4. Google recently acquired Zagat, a review-based site similar in many ways to Yelp. In your view, how might Google's acquisition of Zagat affect Yelp's traffic?

Google's acquisition of Zagat is presumably designed to bolster Google's review content, and strengthen its local product offering. It is unclear at this point how the acquisition will affect Yelp's traffic.

5. What corrective action could Google take to ameliorate the current situation?

Google has demonstrated it cannot be trusted to police itself. It is my hope that regulators will ensure that Google competes on a level playing field. For example, Google should not be permitted to preference its own products ahead of its competitors in search results. In addition, Google should not be permitted to incorporate third party content from its web search index into its other products without permission. Similarly, competitors should not be forced to contribute their content to Google under the threat of removal from any portion of Google's web search results.