

Google Press Conference
Opening Remarks of Federal Trade Commission Chairman Jon Leibowitz
As Prepared for Delivery
January 3, 2013

Good morning, and thank you all for coming. I am pleased to be joined by Rich Feinstein, Director of the FTC's Bureau of Competition, his Deputy Pete Levitas, and by Howard Shelanski, Director of the FTC's Bureau of Economics. Beth Wilkinson, our terrific special counsel to the FTC in our competition investigations of Google, is on a long-scheduled family vacation and couldn't be with us today.

This morning, by two bipartisan votes of 4-1 and 5-0, the Federal Trade Commission announces a comprehensive settlement of all of its competition-related investigations of Google. Today's action delivers more relief for American consumers faster than any other option available to the Commission, and protects competition and consumers in a number of crucial markets central to the daily lives of hundreds of millions of American consumers and businesses. It ensures Americans continued access to smart phones, tablet computers, and computer gaming systems as well as continued competition in internet search and search advertising.

Today's Commission action follows an exhaustive investigation into Google's business practices. Commission staff received over nine million pages of documents from Google and other parties, interviewed numerous industry participants, and took sworn testimony of key Google executives. Many of the Commission staff that have worked tirelessly on this matter have joined us as well, and we thank them for all their hard work.

There are two aspects to the settlement we announce today. The first involves Google's misuse of patent protection to prevent competition. We stop that abuse. The second concerns allegations that Google unfairly biases its search results to harm competition. We close that investigation, finding that the evidence does not support a claim that Google's prominent display of its own content on its general search page was undertaken without legitimate justification. But we do accept Google's binding

commitment to stop the most problematic business practices relating to its search and search advertising business.

On the patent issue, by a 4-1 vote, a bipartisan majority of the Commission orders Google to stop seeking to exclude competitors using essential patents that Motorola, which Google later purchased, had first promised, but then refused, to license on fair and reasonable terms. These essential patents and others like them are the cornerstone of the system of interoperability standards that ensure that wireless internet devices and mobile phones can talk to one another. Over half of American consumers own and use one of these devices – including iPhones, Android phones, and Xboxes. Today’s action by the Commission ensures that competition continues to work for the benefit of American consumers in these important markets.

Years ago, Motorola promised to license its patents essential to these interoperability standards – called “Standard-Essential Patents” – on fair and reasonable terms – called “FRAND” – to any interested manufacturer. Other companies took Motorola at its word. Over many years, relying on this promise, they invested billions of dollars in developing and bringing products using these patents to consumers. Rather than offering the license it had promised, Motorola then changed the rules of the game. The company sought injunctions and exclusion orders against products using its standard-essential patents. After Google purchased Motorola, it continued these same abusive practices.

Google’s unfair conduct threatened to block consumers access to critical electronic devices – including laptop and tablet computers, smartphones, and gaming systems –or to increase the cost of these products by requiring manufacturers to pay higher licensing fees which then would have been passed on to consumers. Here is an example of a product at issue in this case. On the table next to me you can see a variety of other devices that were also under threat if this practice had been allowed to continue.

Google’s settlement with the Commission requires Google to abandon its claims for injunctive relief on any of its standard essential patents with a FRAND commitment, and to offer a license on FRAND terms to any company that wants to license these

patents in the future. Today's landmark enforcement action will set a template for resolution of SEP licensing disputes across many industries, and builds on more than 15 years of work at the FTC – from patent reports to workshops to enforcement actions like this one – aimed at protecting the integrity of the patent system.

Today's action makes clear that commitments to make patents available on reasonable terms matter, and that companies cannot make those commitments when it suits them – that is, to have their patents included in a standard and then behave opportunistically later, once the standard is in place and those relying on it are vulnerable to extortion. Today's Commission action will also relieve companies of some of the costly and inefficient burden of hoarding patents for purely defensive purposes, savings that we hope can be invested in job-creating research and development.

Before we turn to the Commission's investigation of Google's search and search advertising practices, let me say a few words about the Commission's Section 5 authority, which was the statutory basis for our challenge to Google's unfair conduct related to standard-essential patents. When Congress created this agency in 1914, it endowed the Commission with a unique combination of broad jurisdiction and limited remedies. Our Section 5 authority reaches beyond the antitrust laws to prohibit "unfair methods of competition," but as a counter-balance, Congress also restricted the remedies the Commission could seek. We can't impose fines and we don't put malefactors in jail.

Just as important, in cases like this one, Section 5 violations that are not also violations of the antitrust laws are not a basis for subsequent follow-on private lawsuits for treble damages in federal court. In a society that some of us believe is overly litigious, the judicious use of Section 5 represents a sensible and practical way for the Commission to bring problematic conduct to a halt.

In the second part of today's action, Google has also committed to stop the most troubling of its business practices related to internet search and search advertising. Google will stop misappropriating – or "scraping" – the content of its rivals for use in its own specialized search results. Google will also drop contractual restrictions that impaired the ability of small businesses to advertise on competing search advertising

platforms. Google has made enforceable commitments to resolve the Commission's concerns, and these commitments have reporting requirements that will allow the Commission to vigorously monitor and enforce Google's compliance. Let me talk in a little bit more detail about some of this conduct. The Commission investigated troubling allegations that Google misappropriated, without consent or compensation, the content of its rivals' websites to improve its own products, and then passed this content off to consumers as its own.

For example, Google allegedly "scraped" the user generated reviews of local restaurants displayed on Yelp, and led consumers to believe that these reviews were its own. When some of these websites complained to Google about this practice, Google allegedly threatened to remove them entirely from Google's search results.

Congress created our Commission almost 100 years ago to stop unfair business practices. I won't seek to characterize Google's behavior here except to say that the allegations describe conduct that is clearly problematic and potentially harmful to competition because it might harm incentives to innovate. Going forward, Google will allow websites the ability to opt out of appearing in its vertical properties like Google Local or Product Shopping, without being penalized or demoted in its general search results on Google.com. This arrangement should ensure that the Internet remains vibrant and competitive.

The Commission also investigated whether Google unfairly restricted the ability of small businesses to use tools provided by third parties to manage advertising campaigns simultaneously on Google and other competing advertising platforms, a practice known as "multi-homing." Our investigation suggested that while most large advertisers, who were not affected by Google's contractual restrictions, preferred to multi-home, multi-homing by small advertisers affected by Google's restrictions was much less common. Some Commissioners were concerned by the tendency of Google's restrictions to raise the costs of small businesses to use the power of internet search advertising to grow their businesses. Google has committed to simply drop the restrictions on multi-homing.

Many of Google’s critics – including many of its competitors – wanted the Commission to go further in this investigation and regulate the intricacies of Google’s search engine algorithm. The Commission exhaustively investigated allegations that Google unfairly manipulated its search engine results to harm its competitors, a practice known as “search bias.” Today the Commission has closed this investigation by a 5-0 vote.

Although some evidence suggested that Google was trying to eliminate competition, Google’s primary reason for changing the look and feel of its search results to highlight its own products was to improve the user experience. Similarly, changes to Google’s algorithm that had the effect of demoting certain competing websites had some plausible connection with improving Google’s search results, especially when competitors often tried to game Google’s algorithm in ways that benefitted those firms, but not consumers looking for the best search results. Tellingly, Google’s search engine rivals engaged in many of the same product design choices that Google did, suggesting that this practice benefits consumers.

While not everything Google did was beneficial, on balance we did not believe that the evidence supported a FTC challenge to this aspect of Google’s business under American law. As Chief Justice Earl Warren wrote more fifty years ago, and as the federal courts have consistently ruled since, the focus of our law is on protecting “competition, not competitors.”

Google is unquestionably one of America’s great companies, innovative in fields from its core search engine to such varied ventures as driverless cars and augmented reality eyewear. With today’s action by the FTC, Google can refocus on its business and its products, but with a clearer understanding that it, too, must do so while competing fairly.

Some may believe the Commission should have done more in this case, because they are locked in hand-to-hand combat with Google around the world and have the mistaken belief that criticizing us will influence the outcome in other jurisdictions. Some may believe we should have done less. For our part, we follow the facts where they lead,

applying our statute faithfully to the unique circumstances of each case, with appropriate vigor and with appropriate restraint. Today's bipartisan Commission action brings to an end the Commission's investigations of Google in a fashion calculated to bring the maximum relief to American consumers in a timely way. It is good for consumers, it is good for competition, it is good for innovation, and it is the right thing to do. With that, Rich, Pete, Howard and I will be happy to take any questions you may have.

Thank you.