



FEDERAL TRADE COMMISSION

PROTECTING AMERICA'S CONSUMERS

Google Agrees to Change Its Business Practices to Resolve FTC Competition Concerns In the Markets for Devices Like Smart Phones, Games and Tablets, and in Online Search

Landmark Agreements Will Give Competitors Access to Standard-Essential Patents; Advertisers Will Get More Flexibility to Use Rival Search Engines

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FOR RELEASE

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Google Inc. has agreed to change some of its business practices to resolve Federal Trade Commission concerns that those practices could stifle competition in the markets for popular devices such as smart phones, tablets and gaming consoles, as well as the market for online search advertising.

Under a settlement reached with the FTC, Google will meet its prior commitments to allow competitors access – on fair, reasonable, and non-discriminatory terms – to patents on critical standardized technologies needed to make popular devices such as smart phones, laptop and tablet computers, and gaming consoles. In a separate letter of commitment to the Commission, Google has agreed to give online advertisers more flexibility to simultaneously manage ad campaigns on Google's AdWords platform and on rival ad platforms; and to refrain from misappropriating online content from so-called "vertical" websites that focus on specific categories such as shopping or travel for use in its own vertical offerings.

"The changes Google has agreed to make will ensure that consumers continue to reap the benefits of competition in the online marketplace and in the market for innovative wireless devices they enjoy," said FTC Chairman Jon Leibowitz. "This was an incredibly thorough and careful investigation by the Commission, and the outcome is a strong and enforceable set of agreements."

"We are especially glad to see that Google will live up to its commitments to license its standard-essential patents, which will ensure that companies willing to license these patents can compete in the market for wireless devices," Leibowitz added. "This decision strengthens the standard-setting process that is at the heart of innovation in today's technology markets."

Google is a global technology company with more than 32,000 employees and annual revenues of nearly \$38 billion. The FTC also conducted an extensive investigation into allegations that Google biased its search results to disadvantage certain vertical websites; and that Google entered into anticompetitive exclusive agreements for the distribution of Google Search on both desktop and in the mobile arena. The agency decided not to take action in connection with these allegations.

"The evidence the FTC uncovered through this intensive investigation prompted us to require significant changes in Google's business practices. However, regarding the specific allegations that the company biased its search results to hurt competition, the evidence collected to date did not justify legal action by the Commission," said Beth Wilkinson, outside counsel to the Commission. "Undoubtedly, Google took aggressive actions to gain advantage over rival search providers. However, the FTC's mission is to protect competition, and not individual competitors. The evidence did not demonstrate that Google's actions in this area stifled competition in violation of U.S. law."

In response to the agency's concerns about several of its business practices, Google has agreed to take the following steps:

Google will not seek injunctions to block rivals from using patents essential to key technologies

In 2012, Google paid about \$12.5 billion to acquire Motorola Mobility (MMI), including MMI's patent portfolio of over 24,000 patents and patent applications. These patents have been a significant source of revenue for at least a decade, and hundreds of MMI's patents are essential to industry standards used to provide wireless connectivity and for internet-related technologies. These standards are essential for smartphones, tablets, gaming systems, operating systems, and the increasing number of devices offering wireless connectivity or high definition video.

Development and use of these types of standards is a cornerstone for many high-tech markets, and encourages innovation and investment in high-tech products, according to the FTC's complaint. By agreeing to standards, companies can ensure that the numerous components of a device or a technology network can work together seamlessly, often called "interoperability."

Setting a standard, however, can have the effect of giving market power to the owner of a patent that is deemed essential to the standard, according to the agency. That patent – even if it is only on a small component of a much larger and more complex device – can be used to "hold up" a licensee for an excessive royalty. To avoid this problem, technology companies involved in setting a standard commit to license standard-essential patents on "fair, reasonable and non-discriminatory" terms – known as FRAND terms.

The Commission's complaint alleges that Google reneged on its FRAND commitments and pursued – or threatened to pursue – injunctions against companies that need to use MMI's standard-essential patents in their devices and were willing to license them on FRAND terms. Specifically the company pursued injunctions in federal district court and at the United States International Trade Commission ("ITC") to block competing technology companies from using MMI standard-essential patents.

The FTC alleged that this type of patent hold-up is what the standard setting organizations sought to prevent by instituting FRAND licensing requirements. According to the FTC, if left unchecked, this type of patent hold-up can lead to higher prices, as companies may pay higher royalties for the use of Google's patents because of the threat of an injunction, and then pass those higher prices on to consumers. This may cause companies in technology industries to abandon the standard-setting process and limit or forgo investment in new technologies, according to the agency.

To remedy this concern, Google has agreed to a Consent Order that prohibits it from seeking injunctions against a willing licensee, either in federal court or at the ITC, to block the use of any standard-essential patents that the company has previously committed to license on FRAND terms.

Google will remove restrictions hampering advertisers' management of their ad campaigns across competing ad platforms

Under a separate commitment, Google has agreed to remove restrictions on the use of its online search advertising platform, AdWords, that may make it more difficult for advertisers to coordinate online advertising campaigns across multiple platforms.

Advertisers who wish to use a search advertising platform spend considerable time, effort, and resources preparing extensive bids, including keywords, price information, and targeting information. Once an advertiser has entered the information necessary to create a search advertising campaign, the advertising platform sends critical data back to the advertisers that they need to evaluate the effectiveness of, and to further manage, their campaign. Advertising platforms use application programming interfaces, known as APIs, to give advertisers direct access to these advertising platforms so they can develop their own software programs to automatically manage and optimize their advertising campaigns.

Some FTC Commissioners were concerned that Google's contractual conditions governing the use of its API made it more difficult for an advertiser to simultaneously manage a campaign on AdWords and on competing ad platforms, and that these restrictions might impair competition in search advertising.

Google will give websites the ability to "opt out" of display on Google vertical properties

Under the same commitment, Google also has promised to provide all websites the option to keep their content out of Google's vertical search offerings, while still having them appear in Google's general, or "organic," web search results. The FTC investigated allegations that Google misappropriated content, such as user reviews and star ratings, from competing websites in order to improve its own vertical offerings, such as Google Local and Google Shopping. Some FTC Commissioners were concerned that this conduct might chill firms' incentives to innovate on the Internet.

FTC's investigation into allegations of search bias

The FTC conducted an extensive investigation into allegations that Google had manipulated its search algorithms to harm vertical websites and unfairly promote its own competing vertical properties, a practice commonly known as "search bias." In particular, the FTC evaluated Google's introduction of "Universal Search" – a product that prominently displays targeted Google properties in response to specific categories of searches, such as shopping and local – to determine whether Google used that product to reduce or eliminate a nascent competitive threat. Similarly, the investigation focused on the allegation that Google altered its search algorithms to demote certain vertical websites in an effort to reduce or eliminate a nascent competitive threat. According to the Commission statement, however, the FTC concluded that the introduction of Universal Search, as well as additional changes made to Google's search algorithms – even those that may have had the effect of harming individual competitors – could be plausibly justified as innovations that improved Google's product and the experience of its users. It therefore has chosen to close the investigation.

The Commission would like to acknowledge the close cooperation in this matter with the European Commission's Directorate-General for Competition, and with the state Attorneys General of Texas, New York, Ohio, California, and Oklahoma.

The Commission vote to accept the consent agreement package containing the proposed consent order relating to standard-essential patents (SEPs) for public comment was 4-1, with Commissioner Maureen Ohlhausen voting no. The vote to issue the Commission statement in the SEP matter was 3-0-2, with Commissioners Rosch and Ohlhausen abstaining. Commissioner J. Thomas Rosch issued a separate statement regarding the SEP matter; Commissioner Ohlhausen issued a dissenting statement regarding the SEP matter. The Commission vote to close the investigation related to Google's search-related practices was 5-0. The vote to issue the Commission statement relating to the search investigation was 4-0-1, with Commissioner Rosch

abstaining. [Commissioner Rosch issued a statement](#) concurring and dissenting with regard to the search investigation; and [Commissioner Ohlhausen issued a concurring statement regarding the search investigation](#).

The FTC will publish a description of the consent agreement package in the Federal Register shortly. The agreement will be subject to public comment for 30 days, beginning today and continuing through February 4, 2013, after which the Commission will decide whether to make the proposed consent order final. Interested parties can submit written comments electronically or in paper form by following the instructions in the "Invitation To Comment" part of the "Supplementary Information" section. Comments in electronic form should be submitted using the following Web link:

<https://ftcpublic.commentworks.com/ftc/motorolagooglesconsent> and following the instructions on the web-based form. Comments in paper form should be mailed or delivered to: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The FTC is requesting that any comment filed in paper form near the end of the public comment period be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

NOTE: The Commission issues an administrative complaint when it has "reason to believe" that the law has been or is being violated, and it appears to the Commission that a proceeding is in the public interest. The complaint is not a finding or ruling that the respondent has actually violated the law. A consent order is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of up to \$16,000.

The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to antitrust@ftc.gov, or write to the Office of Policy and Coordination, Bureau of Competition, Federal Trade Commission, 601 New Jersey Ave., Room 7117, Washington, DC 20001. To learn more about the Bureau of Competition, read [Competition Counts](#). Like the FTC on [Facebook](#), follow us on [Twitter](#), and [subscribe to press releases](#) for the latest FTC news and resources.

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