ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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December 17, 2012

The Honorable Jon Leibowitz, Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Chairman Leibowitz:

As the Ranking Members of the Committee and Subcommittee with jurisdiction over antitrust policy, we have read with great interest reports suggesting that the Federal Trade Commission (FTC) will soon conclude its investigation into Google's business practices. The outcome of this investigation undoubtedly will have important implications for Google and its competitors and for consumers.

Recently, some have expressed concern that the FTC may exceed its authority in applying a Section 5 "standalone" theory to the issues raised in the Google investigation. While we do not take a position on the merits of the claims alleged against Google, we do believe that concerns about the use of Section 5 are unfounded.[1] Well established legal principles set forth by the Supreme Court provide ample authority for the FTC to address potential competitive concerns in the relevant market, including search.[2]

We believe that competition in the key markets that allow consumers to navigate the Internet promotes consumer welfare by facilitating the free flow of information, directing consumers to accurate information, and enhancing consumer choice. Evaluating whether the conduct being examined by the FTC harms the competitive process, is squarely within the authority and responsibility of the FTC.[3]

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[1] See FTC v. Sperry & Hutchinson Co., 405 U.S. 304, 310 (1934) (The FTC is authorized to "consider[ ] public values beyond simply those enshrined in the letter or encompassed in the spirit of the antitrust laws."); FTC v. Indiana Federation of Dentists, 476 U.S. 447, 454 (1986) (The unfairness standard under Section 5 "encompass[es] not only practices that violate the Sherman Act and other antitrust laws, but also practices that the Commission determines are against public policy for other reasons.").

[2] See Aspen Skiing v. Highlands, 472 U.S. 585 (1985); Otter Tail Power Co. v. U.S., 410 U.S. 366 (1973); Lorain Journal Co. v. U.S., 342 U.S. 143 (1951).

[3] U.S. v. Microsoft, 253 F.3d 34, 79 (D.C. Cir. 2001) ("[I]t would be inimical to the purpose of the Sherman Act to allow monopolists free reign to squash nascent, albeit unproven, competitors at will – particularly in industries marked by rapid technological advance and frequent paradigm shifts").

We urge you and your fellow Commissioners to follow the facts and law in this regard as you deem fit without regard to outside influence or pressure. We further urge the Commission, regardless of the outcome of the current investigation, to continue to monitor the existing and emerging markets within the Internet ecosystem to ensure robust competition and protection for consumers.

Sincerely,

John Conyers, Jr.
Ranking Member

Melvin L. Watt
Ranking Member
Subcommittee on Intellectual Property,
Competition, and the Internet

cc: The Honorable Lamar Smith, Chairman, House Committee on the Judiciary
The Honorable Bob Goodlatte, Chairman, Subcommittee on Intellectual Property, Competition, and the Internet