

STATEMENT OF THE COMMISSION

United States of America v. Google Inc.
(United States District Court for the Northern District of California)
In the Matter of Google Inc., FTC Docket No. C-4336

August 9, 2012

The Federal Trade Commission has approved a proposed federal court consent order imposing a \$22.5 million civil penalty on Google Inc., the highest fine ever levied for violation of a Commission consent order.¹ That the violations alleged in the Commission's federal court complaint have warranted so significant a penalty signals to Google and other companies that the Commission will vigorously enforce its orders.

We write to respond to our colleague, Commissioner Rosch, who opposes approval of the settlement with Google because it includes a denial of the substantive allegations in the Commission's civil penalty complaint.² While Commissioner Rosch agrees that the Commission has the requisite "reason to believe" that Google violated the underlying FTC consent order, he does not believe that the settlement is in the public interest because Google denies the FTC's allegations.³ Commissioner Rosch takes issue with the Commission permitting Google to deny liability in the consent order while at the same time approving a civil penalty of \$22.5 million against the company.

We strongly disagree with Commissioner Rosch's view that if the Commission allows a defendant to deny the complaint's substantive allegations, the settlement is not in the public interest. Here, as in all cases, a defendant's denial of liability in a settlement agreement has no bearing on the Commission's determination as to whether it has reason to believe the defendant has violated the law or that a proposed settlement will afford appropriate relief for the Commission's charges. To the contrary, the Commission acts based on its consideration of the staff's investigative work, and in this instance we have strong reason to believe that Google violated its order. The FTC staff's careful investigation in this case clearly demonstrated that the historic \$22.5 million fine is an appropriate remedy for our charge that Google violated a Commission order by misrepresenting to Safari browser users how to avoid targeted advertising by Google.

Nor is a denial of liability inconsistent with the imposition of a civil penalty.⁴ This is a settlement, and, in our view, the most important question is whether Google will abide by the

¹ The Commission consent order against Google became effective on October 28, 2011.

² The order states that Google "denies any violation of the FTC Order, any and all liability for the claims set forth in the Complaint, and all material allegations of the Complaint save for those regarding jurisdiction and venue." Order, Stipulated Fact 2.

³ Dissenting Statement of Commissioner Rosch at 1.

⁴ See, e.g., *United States v. ChoicePoint, Inc.*, No. 1:06-cv-0198 (N.D. Ga. Feb. 15, 2006) (Stipulated Final Judgment and Order) (defendant expressly denied liability in consent order imposing then-largest FTC civil penalty); see also *United States v. ChoicePoint, Inc.*, No. 1:06-cv-0198 (N.D. Ga. Oct. 14, 2009) (Supplemental

underlying FTC consent order going forward.⁵ We firmly believe that the Commission’s swift imposition of a \$22.5 million fine helps to promote such future compliance. With a company of Google’s size, almost any penalty can be dismissed as insufficient.⁶ But it is hardly inconsequential to impose a \$22.5 million civil penalty when the accompanying complaint does not allege that the conduct at issue yielded significant revenue or endured for a significant period of time. This settlement is intended to provide a strong message to Google and other companies under order that their actions will be under close scrutiny and that the Commission will respond to violations quickly and vigorously.

Stipulated Judgment and Order) (contempt settlement in which defendant expressly denied liability for FTC order violations).

⁵ *Cf. United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995) (“The important question is whether Microsoft will abide by the terms of the consent decree regardless of whether it is willing to admit wrongdoing.”).

⁶ *See* Dissenting Statement of Commissioner Rosch at 2.