



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Tony Romm
Politico
1100 Wilson Blvd., Suite 610
Arlington, VA 22209

JAN 31 2013

Re: FOIA-2013-00310
Google Investigation

Dear Mr. Romm:

This is in partial response to your request dated January 4, 2013, under the Freedom of Information Act seeking access to the staff recommendations sent to the Commission, as well as any correspondence between the Commissioners and the Commerce Department, White House, Congress, or Google, in the Google antitrust investigation. In accordance with the FOIA and agency policy, we have searched our records, as of January 7, 2013, the date we received your request in our FOIA office.

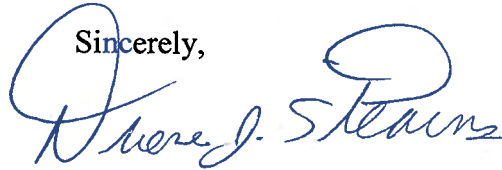
We have located 70 pages of responsive records thus far, and are continuing to search for responsive records. We hope to complete our search within the coming weeks, at which point we will send a further response. I am granting partial access to and am enclosing copies of, the accessible records. Portions of these pages fall within the exemptions to the FOIA's disclosure requirements, as explained below.

Some responsive records contain the personal identifying information of individual consumers. This information is exempt from release under FOIA Exemption 6, 5 U.S.C. § 552(b)(6), because individuals' right to privacy outweighs the general public's interest in seeing personal identifying information. See *The Lakin Law Firm v. FTC*, 352 F.3d 1122 (7th Cir. 2003).

If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington D.C. 20580, within 30 days of the date of this letter. Please enclose a copy of your original request and a copy of this response. If you believe that we should choose to disclose additional materials beyond what the FOIA requires, please explain why this would be in the public interest.

If you have any questions about the way we are handling your request or about the FOIA regulations or procedures, please contact Andrea Kelly at (202) 326-2836.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dione J. Stearns". The signature is fluid and cursive, with a large initial "D" and "S".

Dione J. Stearns
Assistant General Counsel



United States of America
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

MAR 26 2013

Tony Romm
Politico
1100 Wilson Blvd., Suite 610
Arlington, VA 22209

Re: FOIA-2013-00310
Google Investigation

Dear Mr. Romm:

This letter serves as our second and final response to your request dated January 4, 2013, under the Freedom of Information Act seeking access to the staff recommendations sent to the Commission, as well as any correspondence between the Commissioners and the Commerce Department, White House, Congress, or Google, in the Google antitrust investigation. In accordance with the FOIA and agency policy, we have searched our records as of January 7, 2013, the date we received your request in our FOIA office.

We have located an additional 2,678 pages of responsive records. I am granting partial access to the accessible records. Portions of these pages fall within the exemptions to the FOIA's disclosure requirements, as explained below.

Some responsive records are exempt from disclosure under FOIA Exemption 3, 5 U.S.C. § 552(b)(3), because they are exempt from disclosure by another statute. Specifically, Section 21(f) of the FTC Act provides that information obtained by the Commission in a law enforcement investigation, whether through compulsory process, or voluntarily in lieu of such process, is exempt from disclosure under the FOIA. 15 U.S.C. § 57b-2(f), *see Kathleen McDermott v. FTC*, 1981-1 Trade Cas. (CCH) ¶ 63964 (D.D.C. April 13, 1981).

In addition, some responsive records constitute confidential commercial or financial information, which is exempt from disclosure under FOIA Exemption 4, 5 U.S.C. § 552(b)(4). *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992). Moreover, because Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), prohibits public disclosure of this type of information, it is also exempt under FOIA Exemption 3, 5 U.S.C. § 552(b)(3), which, as noted above, exempts from disclosure any information that is protected from disclosure under another federal statute.

Some responsive records contain staff analyses, opinions, and recommendations. Those portions are deliberative and pre-decisional and are an integral part of the agency's decision-making process. They are exempt from the FOIA's disclosure requirements by FOIA Exemption 5.5 U.S.C. § 552(b)(5). *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975).

Some records are exempt from disclosure under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), because disclosure of that material could reasonably be expected to interfere

with the conduct of the Commission's law enforcement activities. *See Robbins Tire & Rubber Co. v. NLRB*, 437 U.S. 214 (1978).

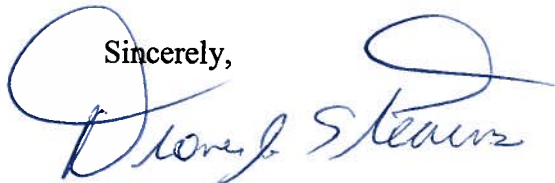
Some of the records contain personal identifying information compiled for law enforcement purposes. This information is exempt for release under FOIA Exemption 7(C), 5 U.S.C. § 552(b)(7)(C), because individuals' right to privacy outweighs the general public's interest in seeing personal identifying information.

Additionally, some pages contain the personal identifying information of individuals. This information is exempt from release under FOIA Exemption 6, 5 U.S.C. § 552(b)(6), because individuals' right to privacy outweighs the general public's interest in seeing such information. *See The Lakin Law Firm v. FTC*, 352 F.3d 1122 (7th Cir. 2003).

If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington D.C. 20580, within 30 days of the date of this letter. Please enclose a copy of your original request and a copy of this response. If you believe that we should choose to disclose additional materials beyond what the FOIA requires, please explain why this would be in the public interest.

If you have any questions about the way we handled your request or about the FOIA regulations or procedures, please contact Andrea Kelly at (202) 326-2836.

Sincerely,



Dione J. Stearns
Assistant General Counsel

Enclosed: 20 pages

Not Responsive

----- Original Message -----

From: JDL [<mailto:JDL@ftc.gov>]

Sent: Sunday, January 06, 2013 09:08 PM Eastern Standard Time

To: Cohen, Bruce (Judiciary-Dem)

Subject: Hi Bruce,

Hope you had a wonderful recess and new year's.

Congrats, as well, that Chairman Leahy is staying on Judiciary. (Good for our Democracy and good for our Bruce Cohen!)

Two quick items:

1) on Google, I saw that PJL had put out a balanced statement but one that expressed "disappointment" for not codifying certain problematic practices in an order. I agree you almost always want orders but there was a reason we couldn't get one here--staff is briefing Aaron but let me know if you want me to call you.

2) Can I come by for coffee at some point in the next couple of weeks?

Best to ML, etc.

Jon

Sent by Jon Leibowitz from his BlackBerry

Kelly, Andrea

From: David Drummond <ddrummond@google.com>
Sent: Friday, November 09, 2012 6:21 PM
To: JDL

Jon
Thanks for the time today. Am traveling back home, but had a quick question. . Do you have 5 min to chat over the weekend?
Best
David

Kelly, Andrea

From: JDL
Sent: Friday, December 07, 2012 10:59 AM
To: 'ddrummond@google.com'
Subject: Re: Coming in?

Not a problem
Sent by Jon Leibowitz from his BlackBerry

From: David Drummond [<mailto:ddrummond@google.com>]
Sent: Friday, December 07, 2012 10:53 AM
To: JDL
Subject: Re: Coming in?

Will do. May be a minute or two late.

On Dec 7, 2012 10:41 AM, "JDL" <JDL@ftc.gov> wrote:
Come over at 11:15. Thx.
Jon
Sent by Jon Leibowitz from his BlackBerry

From: David Drummond [<mailto:ddrummond@google.com>]
Sent: Friday, December 07, 2012 10:06 AM
To: JDL
Subject: Re: Coming in?

I'm free from 11:00 on.

On Dec 7, 2012 9:10 AM, "JDL" <JDL@ftc.gov> wrote:
I have a 2:00 Congressional that I can't reschedule and we would be better off for a variety of reasons to have this conversation sooner than 4:00. Do you have any availability mid to late morning? If so, I can move things around.
Best,
Jon
Sent by Jon Leibowitz from his BlackBerry

From: David Drummond [<mailto:ddrummond@google.com>]
Sent: Friday, December 07, 2012 08:55 AM
To: JDL
Subject: Re: Coming in?

Hi Jon

I heard 2:00, then heard it was moved to 4:00. Both work for me, though 2:00 works better. Thanks, David

On Dec 7, 2012 8:19 AM, "JDL" <JDL@ftc.gov> wrote:

Hi David,

Have we worked out a time for you to come in today? (Not on my schedule yet but might have been worked out, anyway.)

If not, I am happy to juggle meetings to accommodate you.

Best and hope you didn't have to come in on the redeye this time,

Jon

Sent by Jon Leibowitz from his BlackBerry

Kelly, Andrea

From: JDL
Sent: Tuesday, January 01, 2013 10:21 PM
To: 'ddrummond@google.com'
Subject: Re: Hi,

Got it.
Aloha.
Jon.

Sent by Jon Leibowitz from his BlackBerry

From: David Drummond [<mailto:ddrummond@google.com>]
Sent: Tuesday, January 01, 2013 10:14 PM
To: JDL
Subject: Re: Hi,

Hi Jon

Happy new year to you too. I'm 5 hours behind east coast but rise pretty early.

Best
David

(b)(7)(A)

From: JDL
Sent: Saturday, December 29, 2012 05:08 PM
To: 'ddrummond@google.com' <ddrummond@google.com>
Subject: Re: Call with Chairman Leibowitz

Just had exactly the same issue calling you. (You might be beyond coverage now just as I was before.)

In any event, I'm available for the next several hours so hopefully we'll be able to catch up.

Yours,

Jon

Sent by Jon Leibowitz from his BlackBerry

From: David Drummond [<mailto:ddrummond@google.com>]
Sent: Saturday, December 29, 2012 02:16 PM

To: JDL

Subject: Re: Call with Chairman Leibowitz

Tried you but wouldn't go through. Not sure if it's me or you. Will be out of coverage for a few hours but will try you then. Best, David

On Dec 29, 2012 5:13 AM, "JDL" <JDL@ftc.gov> wrote:

Hi David,

Have moved from tropical rainforests to snow covered mountains (Virginia), where cell service is much spottier. But my afternoon will be spent in a town at a bowling alley and a gym, so just call me when you get a chance. (If you get my vm, pls shoot me an email and I'll call you back.)

Best,

Jon

Sent by Jon Leibowitz from his BlackBerry.

From: David Drummond [mailto:ddrummond@google.com]

Sent: Friday, December 28, 2012 09:11 PM

To: JDL

Subject: Re: Call with Chairman Leibowitz

Jon

Sorry I missed you. Wanted to touch base on one item. Thanks. David

On Dec 28, 2012 11:37 AM, "JDL" <JDL@ftc.gov> wrote:

Mr. Drummond,

Chairman Leibowitz has tried to return your call but he is having trouble getting through (he wonders whether you are on the beach?). He is currently driving, and his cell phone (b)(6) should have reception for the next few hours.

If you are having trouble reaching the Chairman, please call the main office at (202) 326-3400.

Kelly, Andrea

From: JDL
Sent: Monday, December 24, 2012 9:57 AM
To: 'ddrummond@google.com'
Subject: Re: Next Steps

I'll wait until it's at least 9:00 AM on the Big Island (and various smaller ones).

Jon

Sent by Jon Leibowitz from his BlackBerry

From: David Drummond [<mailto:ddrummond@google.com>]
Sent: Sunday, December 23, 2012 10:26 PM
To: JDL
Subject: Re: Next Steps

Just tried you. Am in much more pedestrian Hawaii, so it sounds like we're in the same time zone. Am on my cell so any time works for me too.

Best

David

On Dec 23, 2012 4:52 PM, "JDL" <JDL@ftc.gov> wrote:

Hi,

Actually, I am in Costa Rica, which is only two hours behind CA time.

(b)(6)

(b)(6)

Cell phone service is generally good--feel free to call any time.

Best,

Jon

Sent by Jon Leibowitz from his BlackBerry

(b)(7)(A)

(b)(6),(b)(7)(A)

From: JDL
Sent: Tuesday, December 18, 2012 12:31 PM
To: 'David Drummond' <ddrummond@google.com>
Subject: RE: Re:

Just tried reaching you but, as you know, you are a hard person to track down! Call me when you get a chance.

Jon

From: David Drummond [<mailto:ddrummond@google.com>]
Sent: Monday, December 17, 2012 11:42 PM
To: JDL
Subject: RE: Re:

Hi Jon

Thanks for the note. I'll try you tomorrow. I can understand how frustrating the current environment must be. At your service to close this out.

Best
David

On Dec 17, 2012 6:05 PM, "JDL" <JDL@ftc.gov> wrote:

Hi David,

Thanks, just left you a vm in response to yours—and very much appreciate your note. Just give me a call when you get a chance: (b)(6) (c) tonight or (202) 326-2533 (o) tomorrow.

Best,

Jon

(b)(7)(C)

(b)(3):6(f),(b)(4),(b)(7)(A)

From: David Drummond [<mailto:ddrummond@google.com>]
Sent: Monday, December 17, 2012 2:35 PM
To: JDL
Subject:

Hi Jon-

Sounds like it might make sense to chat. Do you have a free moment today?

Thanks,

David



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 23, 2012

The Honorable Herb Kohl
Chairman
Subcommittee on Antitrust, Competition Policy
and Consumer Rights
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the December 19, 2011, letter from you and Senator Lee to the Federal Trade Commission concerning the Commission investigation of certain practices of Google, Inc. We appreciate receiving the information that you have provided, including the discussion of several concerns raised at the September 21, 2011 Antitrust Subcommittee hearing on Google's business practices. You have asked the Commission to carefully review all that information, and have urged us to conduct a thorough investigation to determine whether Google may have violated the federal antitrust laws.

Your correspondence has been forwarded to the Commissioners and to appropriate members of the Commission staff for review. Although a number of statutory prohibitions and the Rules of the Commission prevent me from disclosing the contours of any nonpublic investigation, I am able to confirm that the Commission is conducting an investigation of Google because Google has publicly disclosed that fact.¹ I can also assure you that the information and concerns which you have forwarded are receiving careful consideration, and that the Commission is committed to conducting a thorough investigation, and to considering all pertinent information and views gathered, as we do in all our investigations.

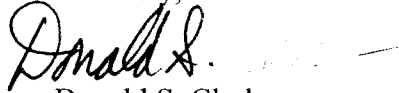
Thank you again for your interest in these important issues. Protecting consumers from anticompetitive acts and practices in the marketplace is vital to our nation's economic health, and your ongoing vigilance is greatly appreciated. Members of the Commission staff will promptly publicize any public action which the Commission or its staff may take with respect to the Commission investigation. If you or your staff have any questions or wish to provide

¹ See *Federal Trade Commission Policy Concerning Disclosures of Nonmerger Competition and Consumer Protection Investigations: Notice of Revised Policy*, 63 Fed. Reg. 63477 (Nov. 13, 1998); see also *Federal Trade Commission Notice of Policy of Disclosing Investigations of Announced Mergers: Notice of Revised Policy*, 62 Fed. Reg. 18630 (Apr. 16, 1997).

The Honorable Herb Kohl – Page 2

additional information or comments, please feel free to call or have your staff call Ms. Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195. More generally, please let us know whenever we may be of service with respect to any other matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donald S. Clark", followed by a horizontal line.

Donald S. Clark
Secretary of the Commission



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 23, 2012

The Honorable Mike Lee
Ranking Member
Subcommittee on Antitrust, Competition Policy
and Consumer Rights
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Lee:

Thank you for the December 19, 2011, letter from you and Chairman Kohl to the Federal Trade Commission concerning the Commission investigation of certain practices of Google, Inc. We appreciate receiving the information that you have provided, including the discussion of several concerns raised at the September 21, 2011 Antitrust Subcommittee hearing on Google's business practices. You have asked the Commission to carefully review all that information, and have urged us to conduct a thorough investigation to determine whether Google may have violated the federal antitrust laws.

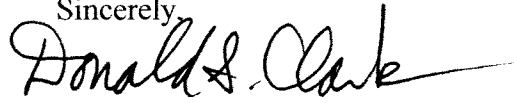
Your correspondence has been forwarded to the Commissioners and to appropriate members of the Commission staff for review. Although a number of statutory prohibitions and the Rules of the Commission prevent me from disclosing the contours of any nonpublic investigation, I am able to confirm that the Commission is conducting an investigation of Google because Google has publicly disclosed that fact.¹ I can also assure you that the information and concerns which you have forwarded are receiving careful consideration, and that the Commission is committed to conducting a thorough investigation, and to considering all pertinent information and views gathered, as we do in all our investigations.

Thank you again for your interest in these important issues. Protecting consumers from anticompetitive acts and practices in the marketplace is vital to our nation's economic health, and your ongoing vigilance is greatly appreciated. Members of the Commission staff will promptly publicize any public action which the Commission or its staff may take with respect to

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the Commission investigation. If you or your staff have any questions or wish to provide additional information or comments, please feel free to call or have your staff call Ms. Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195. More generally, please let us know whenever we may be of service with respect to any other matter.

Sincerely,

A handwritten signature in black ink that reads "Donald S. Clark". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Donald S. Clark
Secretary of the Commission

Office of the Secretary
Correspondence Referral

**Remember to Designate
FOIA Status**
Today's Date: 12/30/11

Reference Number: 14005402

Type of Response (or) Action:

Complaint

Date Forwarded:

12/30/11

Action: Secretary's Signature

Subject of Correspondence:

Google's search engine

Author:

Senator Herb Kohl

Senator Mike Lee

Representing:

Copies of Response To:

Office of Public Affairs (Press Office)

Office of the Executive Director

Office of the General Counsel

Office of the Secretary

Copies of Correspondence To:

Office of the Chairman

Office of Commissioner Kovacic

Office of Commissioner Rosch

Office of Commissioner Brill

Office of Commissioner Ramirez

Office of Congressional Relations - (0309)

Deadline:

01/13/12

Organization Assigned:

Policy and Coordination - BC

LOG

<u>Date Received</u>	<u>FTC Org Code</u>	<u>Assignment To:</u>	<u>Date Assigned</u>	<u>Action Required</u>
	1039	Alan J. Friedman		

EXPEDITE

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TOM COBURN, OKLAHOMA

United States Senate

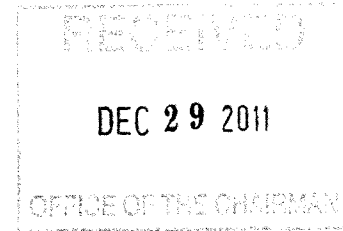
COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

December 19, 2011

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



Dear Chairman Leibowitz:

We are writing to you regarding our examination of competition concerns arising from the business practices of the world's leading Internet search engine, Google Inc. ("Google"). On September 21, 2011, we held an Antitrust Subcommittee hearing to examine allegations that Google's search engine is biased in favor of its own secondary products and services, undermining free and fair competition among e-commerce websites. While we take no position on the ultimate legality of Google's practices under the antitrust laws and the FTC Act, we believe these concerns warrant a thorough investigation by the FTC. We detail below a number of concerns raised at the hearing, in the course of our Subcommittee inquiry, and by a number of industry participants that we believe deserve careful review.

The Internet is a driving force of the American economy. Today, approximately 240 million people throughout the United States regularly use the Internet, and last year their activity generated nearly \$170 billion in commerce. Recent studies show that 92% of adults online use search engines to access information on over one trillion websites.¹ Experts estimate that the number of Internet websites will continue to grow, making the role of Internet search engines ever more important for those seeking information or engaging in commerce online. In July 2011 alone, there were 17.1 billion search queries in the United States, up 3 percent from the previous month. Google is dominant in general Internet searches, with a 65 to 70 percent market share in computer-based Internet search, and a market share of at least 95 percent for Internet searches done on mobile devices.² Indeed, in response to Senator Kohl's question at our Subcommittee hearing to Google's Executive Chairman Eric Schmidt as to whether Google is a monopolist in online search, he responded, "I would agree, Senator, that we're in that area."³

¹ Kristin Purcell, Pew Internet and American Life Project, Pew Research Center, *Search and Email Still Top the List of Most Popular Online Activities*, (2011), http://www.pewinternet.org/~media/Files/Reports/2011/PIA_Search_and_Email.pdf.

² StatCounter Global States, *Top Search Engines in the U.S. from Oct. 3 to Nov. 1, 2011*, http://gs.statcounter.com/#search_engine-US-daily-20111003-20111101 (last visited Nov. 2, 2011).

³ *The Power of Google: Serving Consumers or Threatening Competition? Before the Subcomm. on Antitrust, Competition Policy and Consumer Rights of S. Comm. on the Judiciary, 112th Cong., 1st Sess.* (September 21, 2011) (continued...)

FEDERAL TRADE COMMISSION
2011 DEC 30 AM 11:09
CONG. CORRESP. BRANCH

Google faces competition from only one general search engine, Bing, a partnership of Microsoft and Yahoo!, which is a distant second in market share and is losing an estimated \$2 billion annually.⁴ Given the scope of Google's market share in general Internet search, a key question is whether Google is using its market power to steer users to its own web products or secondary services and discriminating against other websites with which it competes.

Google began as a general Internet search engine, whose mission was simply to identify the web pages most relevant to user queries. Google's stated goal was to transfer users from its search results page to the websites listed on that page as soon as possible. As Google co-founder and current CEO Larry Page said at the time of its Initial Public Offering in 2004, "We want you to come to Google and quickly find what you want. Then we're happy to send you to the other sites. In fact, that's the point."⁵ At that time, Google had very little, if any, web content or products of its own.

Google's business model has changed dramatically in recent years. Google now seeks not only to link users to relevant websites, but also to answer user queries, provide a variety of related services, and direct customers to additional information on its own secondary web pages. To do so, Google has made numerous acquisitions in recent years, purchasing a large amount of web-based content and various e-commerce products and services,⁶ as well as developing such offerings on its own. Google now owns a large and growing array of search-dependent products and services (what are commonly known as "vertical search sites"), including Google Places/Local, Google Finance, Google News, YouTube, Google Maps, Google Travel, Google Flight Search, and Google Product Search. Google has been very successful in many of these areas, often replacing previous market leaders in short periods of time. Many question whether it is possible for Google to be both an unbiased general or "horizontal" search engine and at the same time own this array of secondary web-based services from which the company derives substantial advertising revenues.

Google's critics argue that given its acquisitions and development of these varied web products and services, Google has a strong incentive to bias its search results in favor of its own offerings. Rather than act as an honest broker of unbiased search results, Google's search results

(hereinafter "*September 2011 Senate Antitrust Subcommittee Google Hearing*") (testimony of Eric Schmidt, Executive Chairman, Google). The precise question Mr. Schmidt was asked was "do [you] recognize that . . . your market share constitutes monopoly . . . dominant firm, monopoly firm? Do you recognize you're in that area?" Schmidt replied that he "would agree." However, in response to written questions for the record following the hearing, Mr. Schmidt revised this answer, stating: "[i]nferring that Google is in any way 'dominant' in search would be incorrect." (*September 2011 Senate Antitrust Subcommittee Google Hearing*) (response to post hearing question for the record from Sen. Richard Blumenthal to Eric Schmidt, Executive Chairman, Google, p. 2).

⁴ David Goldman, *Microsoft's plan to stop Bing's \$1 billion bleeding*, CNNMoney, Sept. 20, 2011, http://money.cnn.com/2011/09/20/technology/microsoft_bing/index.htm.

⁵ Google Inc. Amendment 7 to SEC Form S-1, Appendix B, p. B-5, filed August 13, 2004. In the same document, Mr. Page re-emphasized this, contrasting his vision for Google at the time with the way web portals operated, stating "Most portals show their own content above other content elsewhere on the web. We feel that's a conflict of interest, analogous to taking money for search results. Their search engine doesn't necessarily provide the best results, it provides the portal's results. Google conscientiously tries to stay away from this. We want to get you out of Google and to the right place as fast as possible. It's a very different model." *Id.*, p. B-6.

⁶ Google has made over 100 acquisitions since 2001, including: Motorola Mobility (2011) (still under Justice Department review), Zagat's (2011), Like.com (2010), ITA Software (2010), AdMob (2009), DoubleClick (2007), YouTube (2006), and Android (2005).

appear to favor the company's own web products and services.⁷ Given Google's dominant market share in Internet search, any such bias or preferencing would raise serious questions as to whether Google is seeking to leverage its search dominance into adjacent markets, in a manner potentially contrary to antitrust law.

As discussed at our Subcommittee hearing, Marissa Mayer, Google's Vice President of Local, Maps, and Location Services, admitted in a 2007 speech that Google did in fact preference its own websites. She acknowledged that, in the past, Google ranked links "based on popularity . . . but when we roll[ed] out Google Finance, we did put the Google link first. It seems only fair, right? We do all the work for the search page and all these other things, so we do put it first. . . . That has actually been our policy, since then . . . So for Google Maps again, it's the first link, so on and so forth. And after that it's ranked usually by popularity."⁸ In response to written follow-up questions asking whether her statement was an accurate statement of Google policy, Eric Schmidt stated that "it is my understanding that she was referring to the placement of links within a onebox . . . and her description was accurate."⁹ While the basis for Mr. Schmidt's "understanding" is not clear, even if her statement was in fact limited to the "onebox" result, this is a clear admission of preferencing Google results. As consumer surveys show that 88 percent of consumers click on one of the first three links, these statements appear significant when analyzing Google's potentially anti-competitive practices.¹⁰

Also at our Subcommittee hearing, Yelp! CEO Jeremy Stoppelman and Nextag CEO Jeffrey Katz testified that Google's practice of favoring its own content harms them directly by depriving their sites of user traffic and advertising revenue. Mr. Stoppelman testified that 75 percent of Yelp!'s web traffic consists of consumers who find its website as a result of Google searches, and Mr. Katz testified that 65 percent of Nextag's traffic originates from Google searches.¹¹ They testified that losing this traffic would threaten the continued viability of their companies, which would have to spend much more on advertising to make up for lost traffic coming from Google queries. Indeed, both CEOs testified that they would not attempt to launch

⁷ Google critics also argue that the very layout of the Google search results first page is biased in favor of its own products and services. They point to the amount of the "real estate" in the search result page devoted to Google content, including paid advertising at the top and on the right of the page, and the Google "places" or "onebox" results, which are not designated as Google results separate from the algorithmic results. Consumers have no way of knowing that these one box results are not part of the algorithmic results. We believe, under the FTC's mandate to protect consumers from misleading and deceptive practices, the FTC should seriously consider requiring Google to label its "onebox" or "places" listing (or other similar listings), as Google products, just as it labels paid search results.

⁸ Marissa Mayer, Google VP of Local, Maps, and Location Services Address at the Google Seattle Conference on Scalability (June 23, 2007), <http://video.google.com/videoplay?docid=-6304964351441328559#docid=-7039469220993285507>.

⁹ *September 2011 Senate Antitrust Subcommittee Google Hearing* (response to post hearing question for the record from Sen. Herb Kohl to Eric Schmidt, Executive Chairman, Google, question 1(a), p. 2).

¹⁰ See SEO Scientist, *Google Ranking and CTR – How Clicks Distribute Over Different Rankings on Google* (July 12, 2009), <http://www.seo-scientist.com/google-ranking-ctr-click-distribution-over-serps.html>.

¹¹ *September 2011 Senate Antitrust Subcommittee Google Hearing* (testimony of Jeremy Stoppelman, CEO of Yelp!, and Jeremy Katz, CEO of Nextag).

their companies today given Google's current practices, raising serious concerns about the impact of these practices on innovation.¹²

Mr. Katz and others also allege that Google sometimes subjects websites to "search penalties" that drastically lower where links to these websites are found on Google searches. Although there are valid reasons for instituting such penalties—such as for websites that promote illegal activities, or for sites that are fraudulent or pornographic—observers suggest that some sites are penalized only because they compete with Google. According to Mr. Katz, Google informed him that Nextag's sites in Europe were penalized mainly because they offered links to other sites and search functionality. Of course, websites that link to other sites and allow users to perform searches have an almost identical function as the Google search engine. If these allegations are true, they raise serious questions as to whether Google is penalizing these competing websites simply in order to maintain its dominant market share in Internet search.

The importance of Google search result rankings for competing web-based products and services is underscored when one considers the market share of Google's search engine on mobile devices. Google has a 97 percent market share of Internet searches done on mobile devices (such as smart phones, tablet computers and the like).¹³ Given the exploding consumer demand for these devices, it is projected that over half of all Internet searches will be done on mobile devices by 2014.¹⁴ Additionally, Google owns the popular Android operating system for smart phones and in September 2011 announced its acquisition of Motorola Mobility, a leading mobile phone manufacturer. The Android operating system has grown rapidly in a few short years and is now installed in 43 percent of these smart phones, with expectations of further increases in market share in the near future.¹⁵ Industry observers have raised concerns that Google may, as a condition of access to the Android operating system, require phone manufacturers to install Google as the default search engine. In response to written questions after our hearing, Google denied that it presently makes this demand, suggesting that manufacturers are free to install any search engine they wish.¹⁶ Yet Google has been unwilling to provide any assurance that it will not adopt such a policy in the future. We urge that your investigation consider all avenues necessary to ensure robust competition in the mobile Internet search market.

In sum, it appears the issues raised at our Subcommittee hearing merit serious scrutiny by the FTC. It is important to note that the concerns expressed in this letter are not an effort to protect any specific competitor. Rather, our interest is to ensure robust competition in this vital market. We recognize that the Internet is fast evolving and subject to rapid technological change. We are motivated by a strong desire to protect the Internet's openness, competitiveness, and capacity for innovation. Critics contend that Google's efforts to favor its own secondary

¹² *Id.*

¹³ Greg Sterling, *Google Controls 97% of the Mobile Paid Search: Report*, Search Engine Land (Mar. 7, 2011).

¹⁴ Morgan Stanley, *The Mobile Internet Report*,

http://www.morganstanley.com/institutional/techresearch/mobile_internet_report122009.html.

¹⁵ Don Kellogg, *40 Percent of U.S. Mobile Users Own Smartphones; 40 Percent are Android*, NielsenWire (Sept. 1, 2011), http://blog.nielsen.com/nielsenwire/online_mobile/40-percent-of-u-s-mobile-users-own-smartphones-40-percent-are-android/.

¹⁶ *September 2011 Senate Antitrust Subcommittee Google Hearing* (response to post hearing question for the record from Sen. Herb Kohl to Eric Schmidt, Executive Chairman, Google, p. 10).

offerings threaten to retard the development of new innovative products and services on the Internet. They argue that if new web products and services are downgraded on Internet search listings, they will not receive the traffic or advertising revenues necessary to survive, and venture capitalists will not invest in developing innovative alternatives. According to Tom Barnett, the Assistant Attorney General for Antitrust in the administration of President George W. Bush, the ultimate result of Google's practices will be an Internet with fewer choices for consumers and businesses, higher prices, and less innovation.

Google strongly denies the arguments of its critics. Google claims it has done nothing to harm competition and that it merely seeks to serve consumers with the best Internet search results. Competition, it contends, is just "one click away," and Google does nothing to impede consumers' access to this competition.

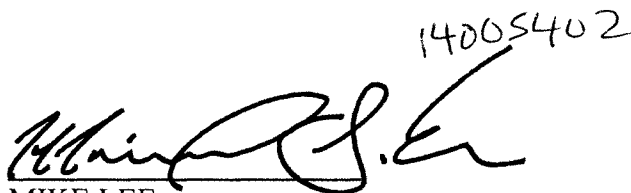
Nonetheless, for the reasons explained above and from the testimony at our Subcommittee hearing, we believe these allegations regarding Google's search engine practices raise important competition issues. We are committed to ensuring that consumers benefit from robust competition in online search and that the Internet remains the source of much free-market innovation. We therefore urge the FTC to investigate the issues raised at our Subcommittee hearing to determine whether Google's actions violate antitrust law or substantially harm consumers or competition in this vital industry.¹⁷

Thank you for your attention to this matter.

Sincerely,



HERB KOHL
Chairman, Subcommittee on
Antitrust, Competition Policy
and Consumer Rights



MIKE LEE
Ranking Member, Subcommittee on
Antitrust, Competition Policy
and Consumer Rights

¹⁷ In this regard, we note that several state antitrust regulators have begun investigating allegations that Google is engaged in anti-competitive practices. In the fall of 2010, Texas was the first state to formally begin an investigation; and more recently, attorneys general in New York, California, Ohio, Mississippi, and Oklahoma have opened full-scale investigations. Overseas, the European Commission is in its second year of its investigation, saying it is looking into whether Google might be giving its web services "preferential placement" in search results.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

October 22, 2012

The Honorable Jared Polis
United States House of Representatives
Washington, D.C. 20515

Re: FTC Reference No. 14007264

Dear Representative Polis:

Thank you for your October 9, 2012 letter to the Federal Trade Commission concerning the Commission investigation of certain practices of Google, Inc. We appreciate receiving the information and views that you have provided, and your correspondence has been forwarded to the Commissioners and to appropriate members of the Commission staff for review. Although a number of statutory prohibitions and the Rules of the Commission prevent me from disclosing the details of any nonpublic investigation, I am able to confirm that the Commission is conducting an investigation of Google because Google has publicly disclosed that fact.¹ I can also assure you that the information you have provided and the concerns you have expressed are receiving careful consideration. In addition, I can assure you that the Commission and the Commission staff thoroughly consider all relevant information in Commission investigations, and that the Commission takes law enforcement action only as appropriate to protect consumers and competition.

Thank you again for forwarding your views on this important subject. If you or your staff have any questions or wish to provide additional information or comments, please feel free to call or have your staff call Ms. Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195. More generally, please let us know whenever we may be of service with respect to any other matter.

Sincerely,

A handwritten signature in black ink that reads "Donald S. Clark". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Donald S. Clark
Secretary of the Commission

¹ See *Federal Trade Commission Policy Concerning Disclosures of Nonmerger Competition and Consumer Protection Investigations: Notice of Revised Policy*, 63 Fed. Reg. 63477 (Nov. 13, 1998); see also *Federal Trade Commission Notice of Policy of Disclosing Investigations of Announced Mergers: Notice of Revised Policy*, 62 Fed. Reg. 18630 (Apr. 16, 1997).

Office of the Secretary
Correspondence Referral

**Remember to Designate
FOIA Status**
Today's Date: 10/16/12

Reference Number: 14007264

Type of Response (or) Action:

Complaint

Date Forwarded:

10/16/12

Action: Secretary's Signature

Subject of Correspondence:

Google's Business Practices

Author:

Representative Jared Polis

Representing:

Copies of Response To:

Copies of Correspondence To:

Office of the Chairman

Office of Commissioner Ohlhausen

Office of Commissioner Rosch

Office of Commissioner Brill

Office of Commissioner Ramirez

Office of Public Affairs (Press Office)

Office of Congressional Relations - (0309)

Office of the Executive Director

Office of the General Counsel

Office of the Secretary

Deadline:

10/29/12

Organization Assigned:

Policy and Coordination - BC

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<u>Date Received</u>	<u>FTC Org Code</u>	<u>Assignment To:</u>	<u>Date Assigned</u>	<u>Action Required</u>
	1039	Alan J. Friedman		

EXPEDITE

JARED POLIS
2ND DISTRICT, COLORADO

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COMMITTEES:
COMMITTEE ON RULES
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Congress of the United States House of Representatives

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Youtube.com/user/JaredPolis31275

October 9, 2012

Jon Leibowitz
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Leibowitz:

I have read several recent press reports that the Federal Trade Commission is entering the final stages of its investigation of Google's business practices; by one account the Commission is considering bringing an antitrust complaint against Google. As a high-tech entrepreneur and someone who has actually used Google's advertising tools to grow my businesses, I encourage the Commission to tread carefully and not undertake action that would compromise the important service provided by Google, reduce Google's ability to rapidly innovate and improve its products, or make search engine results less useful for consumers or businesses.

Before coming to Congress, I founded several technology startups. After co-founding American Information Systems, an Internet Service Provider in 1994, I helped establish Bluemountain.com, an online greeting card site, and in the late 1990s I founded the online florist ProFlowers.com. When I started ProFlowers, the concept of selling flowers online instead of through local floral shops was a radical one, but thanks to the democratizing power of the Internet online florists have now become commonplace.

ProFlowers, like many small businesses, uses Google's advertising tools to help grow our business and reach new customers around the world, generating hundreds of new jobs. I've seen firsthand Google's economic impact on my state: in 2011, Google helped generate \$1.4 billion of economic activity for Colorado businesses, website publishers and nonprofits. We take it for granted now, but search engines have democratized access to information and made it possible for consumers to find information and services from the other side of the world. Search engines have also helped businesses tap new markets and new customers.

At a time when the national economy continues to stagnate, it's not clear to me why the FTC should be focusing on a product that consumers seem very happy with, search engines.

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970-568-3240

THORNTON OFFICE
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THORNTON, CO 80229
303 287-4159

While Google is surely a big company and an important service in people's lives, my constituents also use a variety of competing services, including Amazon.com for shopping, iTunes for music and movies, Facebook for social networking and recommendations, and mobile apps like Yelp for finding local businesses. Competition is only a click away and there are no barriers to competition; if I created a better search algorithm I could set up a server in my garage and compete globally with Google. To even discuss applying anti-trust in this kind of hyper-competitive environment defies all logic and the very underpinnings of anti-trust law itself.

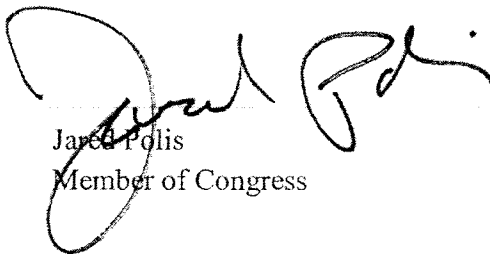
I have never heard one of my constituents say that they don't feel like they have enough choices online, or that they feel locked in to using any of these services. Competition among these services is leading to lots of great services for consumers -- and consumers aren't asking Congress or the FTC to protect them. Quite to the contrary consumers demand the rapid pace of progress and change that has become the norm on the internet.

Earlier this year, we saw during the PIPA/SOPA debate what happens when policymakers try to overregulate Internet content; consumers revolted and made their voices clearly. By the same token, the FTC should tread carefully when reviewing Google, Facebook, Twitter or any other tech company, given the dynamism of our tech industry and the potential for making things worse through regulation. Today's giant can be tomorrow's failure without any government intervention; market forces drive obsolescence at a break neck pace which should only further abrogate the need for government intervention. I believe that application of anti-trust against Google would be a woefully misguided step that would threaten the very integrity of our anti-trust system, and could ultimately lead to Congressional action resulting in a reduction in the ability of the FTC to enforce critical anti-trust protections in industries where markets are being distorted by monopolies or oligopolies.

Several years ago, we called firms like AOL, MySpace and Yahoo "dominant" -- but those firms have struggled to retain consumers online. Given how easily consumers can switch to a new service with just one click, regulators should be wary of intervening in the tremendous competition online.

Thank you for your attention to this matter as the FTC continues its review.

Yours truly,

A handwritten signature in black ink, appearing to read "Jared Polis". The signature is fluid and cursive, with a large initial "J" and "P".

Jared Polis
Member of Congress



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

November 20, 2012

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515-6216

Dear Chairman Smith:

Thank you for your letter dated November 16, 2012, requesting a confidential staff briefing on the agency's investigations into Google, Inc. The Commission is responding to your request as an official request of a Congressional Committee, *see* Commission Rule 4.11(b), 16 C.F.R. § 4.11(b), and has authorized its staff to provide the requested briefing.

Most of the information that the Commission attorneys will discuss during the briefing is nonpublic and statutorily protected from public disclosure by the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 41 *et seq.*, as well as exempt from mandatory disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. In particular, some of the information would be protected under Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), as confidential commercial or financial information. The Commission is prohibited from disclosing such information publicly, and it would be exempt from disclosure under FOIA Exemption 3, 5 U.S.C. § 552(b)(3). Because disclosure of this information is likely to result in substantial competitive harm to the submitters, or is clearly not of a kind that submitters would customarily make available to the public, it would be exempt from disclosure under FOIA Exemption 4, 5 U.S.C. § 552(b)(4). *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 877-80 (D.C. Cir. 1992) (*en banc*), *cert. denied*, 507 U.S. 984 (1993) (exempt status accorded to information submitted voluntarily); *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) (exempt status accorded to information submitted under compulsion).

Most of the information that the Commission attorneys will discuss was obtained by compulsory process or provided voluntarily in lieu thereof in a law enforcement investigation. Such information is protected from public disclosure under Section 21(f) of the FTC Act, 15 U.S.C. § 57b-2(f). By virtue of that section, such information is also exempt from public disclosure under FOIA Exemption 3(B), 5 U.S.C. § 552(b)(3)(B). *McDermott v. FTC*, 1981-1 Trade Cas. (CCH) ¶ 63,964 at 75,982-3 (D.D.C. April 13, 1981); *Dairymen, Inc. v. FTC*, 1980-2 Trade Cas. (CCH) ¶ 63,479 (D.D.C. July 9, 1980). Moreover, third party submitters provided their materials and information with a specific request for confidential treatment under Section 21(c) of the FTC Act, 15 U.S.C. § 57b-2(c). Under Commission Rule 4.10(d), 16 C.F.R. § 4.10(d), the Commission has waived its discretion to release to the public materials submitted

pursuant to compulsory process or materials submitted voluntarily in lieu of process that have been marked confidential by the submitting parties.¹

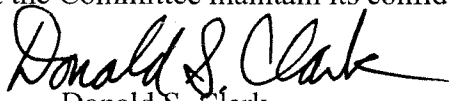
Additional information that may be discussed during the briefing was submitted in response to the Hart-Scott-Rodino premerger notification requirements of the Clayton Act, 15 U.S.C. § 18a. Section 7A(h) of the Act prohibits public disclosure of such documents or information. By virtue of this statutory prohibition, this information is also exempt from disclosure under Freedom of Information Act (FOIA) Exemption 3A, 5 U.S.C. § 552(b)(3)(A).²

Further, information discussed during the briefing would reveal the existence of, and information concerning, an ongoing, nonpublic law enforcement investigation. Disclosure of this information could reasonably be expected to interfere with law enforcement proceedings, and this information is therefore protected from mandatory public disclosure by FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 232 (1978); *Ehringhaus v. FTC*, 525 F. Supp. 21, 24 (D.D.C. 1980).

Finally, some of the information that will be discussed during the briefing will include internal staff analyses and recommendations, which are predecisional, deliberative materials exempt from mandatory public disclosure under FOIA Exemption 5, 5 U.S.C. § 552(b)(5). *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975); *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). Some of this information may also be protected from mandatory public disclosure under FOIA Exemption 5 as attorney work product prepared in anticipation of litigation. *FTC v. Grolier, Inc.*, 462 U.S. 19, 28 (1983); *Martin v. Office of Special Counsel, Merit Systems Protection Board*, 819 F.2d 1181, 1187 (D.C. Cir. 1987).

Notwithstanding the protected status of most of the responsive information, the FTC Act, 15 U.S.C. § 57b-2(d)(1)(A), the Clayton Act, 15 U.S.C. § 18a(h), and the FOIA, 5 U.S.C. § 552(d), provide no authority to withhold such information from this Congressional Committee, and the Commission has authorized staff to provide the requested briefing to Committee staff. Because the confidential information would not be available to the public under the FOIA or otherwise, the Commission requests that the Committee maintain its confidentiality.

By direction of the Commission.


Donald S. Clark
Secretary

¹ The Commission is required to notify persons who submitted information pursuant to compulsory process in a law enforcement investigation, or voluntarily in lieu thereof on a confidential basis, if the Commission receives a request from a Congressional Committee or Subcommittee for that information. See 15 U.S.C. §§ 57b-2(b)(3)(C), 57b-2(d)(1)(A); Commission Rule 4.11(b), 16 C.F.R. § 4.11(b). Staff is providing the requisite notice.

² The Commission has instructed its staff to provide reasonable notice, when possible, of the release to Congress of information submitted pursuant to HSR. See *Statement of Basis and Purpose of HSR Rules and Regulations*, 43 Fed. Reg. 33519 (July 31, 1978). Staff has provided notice to submitters pursuant to this policy.

Office of the Secretary
Correspondence Referral

Remember to Designate
FOIA Status
Today's Date: 11/16/12

Reference Number: 14007481

Type of Response (or) Action:

Complaint

Date Forwarded:

11/16/12

Action: Secretary's Signature

Subject of Correspondence:

Request for Nonpublic Briefing Re Google

Author:

Representative Lamar Smith

Representing:

Copies of Response To:

Office of Congressional Relations - (0309)

Office of the Executive Director

Office of the General Counsel

Office of the Secretary

Copies of Correspondence To:

Office of the Chairman

Office of Commissioner Ohlhausen

Office of Commissioner Rosch

Office of Commissioner Brill

Office of Commissioner Ramirez

Office of Public Affairs (Press Office)

Deadline:

11/19/12

Organization Assigned:

Policy and Coordination - BC

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<u>Date Received</u>	<u>FTC Org Code</u>	<u>Assignment To:</u>	<u>Date Assigned</u>	<u>Action Required</u>
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ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

November 16, 2012

The Honorable Jon Leibowitz
Chairman
Federal Trade Commission
600 Pennsylvania Ave NW
Washington, D.C. 20580

Dear Chairman Leibowitz,

I write to request a confidential staff briefing to provide an update on the Commission's activities related to Google Inc., including any investigations, projects, and reports. I hope to schedule such a briefing at your earliest possible convenience.

The Committee recognizes the sensitivity of discussing such matters, and the non-public character of the information that your staff will provide during the briefing. Non-public information will be afforded the highest level of protection and will not be discussed or used in any way that breaches the confidentiality of the Commission's work.

Thank you for your assistance in this matter.

Sincerely,

Lamar Smith 14007481

Lamar Smith
Chairman

Office of the Secretary
Correspondence Referral

Remember to Designate
FOIA Status
Today's Date: 12/12/12

Reference Number: 14007594

Type of Response (or) Action:

Complaint

Date Forwarded:

12/12/12

Action: Secretary's Signature

Subject of Correspondence:

Google

Author:

Representative Sheila Jackson Lee

Representing:

Copies of Response To:

Copies of Correspondence To:

Office of Commissioner Ohlhausen
Office of Commissioner Rosch
Office of Commissioner Brill
Office of Commissioner Ramirez
Office of Congressional Relations - (0309)
Office of the Secretary

Office of the Chairman
Office of Public Affairs (Press Office)
Office of the Executive Director
Office of the General Counsel

Deadline:

12/28/12

Organization Assigned:

Policy and Coordination - BC

ACTION LOG

<u>Date Received</u>	<u>FTC Org Code</u>	<u>Assignment To:</u>	<u>Date Assigned</u>	<u>Action Required</u>
	1039	Alan J. Friedman		
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SHEILA JACKSON LEE
18TH DISTRICT, TEXAS

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HOUSTON, TX 77020

Congress of the United States
House of Representatives
Washington, DC 20515

14007594

COMMITTEES:
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AFRICA AND GLOBAL HEALTH
MIDDLE EAST AND SOUTH ASIA
TERRORISM, NONPROLIFERATION, AND TRADE
SENIOR WRIP
DEMOCRATIC CAUCUS

December 12, 2012

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

Dear Chairman Leibowitz,

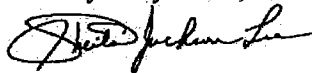
I have read with increasing concern recent reports of information leaks from those inside the Federal Trade Commission's (FTC) antitrust investigation of Google. These reports suggest that the Commission is preparing to use Section 5 of the FTC Act to avoid proving some of the elements of a claim required under Section 2 of the Act. It is my belief that such an expansive reading of FTC jurisdiction would be gratuitous, disruptive, and could have pernicious implications for our nation's economy.

The FTC has a duty and responsibility to remain fair, neutral, and impartial while protecting the confidentiality of internal discussions among the parties involved, in matters touching and concerning Google. If true, the release of sensitive details from an internal draft FTC staff report is irresponsible, reckless, and potentially compromises an investigation that has yet to be voted on by the full Commission.

There may be sound legal precedent and logic for the Commission to pursue matters under Section 5, though expanding the FTC's Section 5 powers to include antitrust matters could lead to overbroad authority that amplifies uncertainty and stifles growth. These effects may be most acutely felt among online services, a crucial engine of job creation, where technological advancement and small business innovation are dynamic. If the FTC indeed intends to litigate under this interpretation of Section 5, suitable guidance and precedent would be useful.

However the FTC concludes its investigation, I am hopeful that it will be done swiftly, fairly, and within the appropriate limits of the FTC's authority. Thank you for your attention to this important matter.

Very Truly Yours,



Sheila Jackson Lee
Subcommittee on Intellectual Property, Competition, and the Internet
Judiciary Committee

FEDERAL TRADE COMMISSION
2012 DEC 12 PM 4:10
CONG. CORRES. BRANCH

cc: The Honorable J. Thomas Rosch, Commissioner, Federal Trade Commission
The Honorable Edith Ramirez, Commissioner, Federal Trade Commission
The Honorable Julie Brill, Commissioner, Federal Trade Commission
The Honorable Maureen K. Ohlhausen, Commissioner, Federal Trade Commission

FEDERAL TRADE COMMISSION
2012 DEC 12 PM 4:10
CONG. CORRES. BRANCH



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

OCT 05 2011

The Honorable Spencer Bachus
U.S. House of Representatives
1900 International Park Drive, Suite 107
Birmingham, AL 35243
Attn: Cindy Pate

Re: FTC Ref. No. 14004878

Dear Representative Bachus:

Thank you for your letter on behalf of your constituent, Mrs. (b)(6) of Birmingham, regarding her concern over a derogatory internet entry regarding her firm on internet search engine, Google.

As you know, the Commission has been directed by Congress to act in the interest of all consumers to prevent deceptive or unfair acts or practices, pursuant to the Federal Trade Commission Act, 15 U.S.C. §§ 41-58, and complaints from consumers provide valuable information that is frequently used to develop or support Commission enforcement initiatives. Your constituents can file complaints by using our online complaint form on the Commission Website, or by contacting our Consumer Response Center at 877-FTC-HELP (877-382-4357). The Commission receives a very large number of complaints. While the agency is not able to intervene in individual disputes, our attorneys and investigators regularly review the complaint database to look for law enforcement targets, evaluate the need for consumer education, and make policy recommendations. We may also share information in the complaint database with law enforcement, regulatory, and other government agencies, to assist them in their investigations. I should also note that your constituents can find free educational materials on a variety of consumer topics, press releases, and other important information on the Commission Website at www.ftc.gov.

We appreciate receiving your correspondence and learning of your constituent's concerns. Under the Federal Trade Commission Act, an act or practice is *deceptive* if (1) it is likely to mislead consumers acting reasonably under the circumstances, and (2) it is material; that is, likely to affect a consumer's purchase decision.¹ An act or practice is *unfair* if it causes

¹ *Novartis Corp.*, 127 F.T.C. 580, 679 (1999), *aff'd and enforced*, 223 F.3d 783 (D.C. Cir. 2000); *Stouffer Foods Corp.*, 118 F.T.C. 746, 798 (1994); *Kraft, Inc.*, 114 F.T.C. 40, 120 (1991), *aff'd and enforced*, 970 F.2d 311 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 1254 (1993); *Removatron Intl Corp.*, 111 F.T.C. 206, 308-09 (1988), *citing, e.g., Southwest Sunsites, Inc. v. FTC*, 785 F.2d 1431, 1436 (9th Cir.), *cert. denied*, 107 S. Ct. 109 (1986); *International Harvester Co.*, 104 F.T.C. 949, 1056 (1984); *Cliffdale Assocs.*, 103 F.T.C. 110, 164-65 (1984); *see generally Federal Trade Commission Policy Statement on Deception, appended to Cliffdale*

or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and is not outweighed by countervailing benefits to consumers or to competition.² In determining whether a particular act or practice satisfies these standards and warrants enforcement or other action, the Commission may consider a number of factors -- including the type of violation alleged; the nature and amount of consumer injury at issue and the number of consumers affected; and the likelihood of preventing future unlawful conduct -- and correspondence from your constituents provide valuable information in making that determination.

The foregoing statutory provisions and law enforcement criteria provide a comprehensive framework for preventing the use of unfair or deceptive acts or practices, but the situation you have described does not appear to violate any specific law or regulation administered by the Federal Trade Commission. Furthermore, the Commission does not, as a matter of policy, intervene in individual legal disputes. Although I sympathize with your concerns, the FTC is unable to take any action at this time. (b)(6) may want to contact the Attorney General of Alabama to determine whether Alabama state law can provide her with any remedy.

We hope that the foregoing information is of assistance in addressing your constituent's concerns. Please let us know whenever we can be of service with respect to any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald S. Clark". The signature is written in a cursive style with a large, sweeping initial "D".

Donald S. Clark
Secretary of the Commission

Assocs., 103 F.T.C. at 174-83.

² Section 5(n) of the FTC Act, 15 U.S.C. § 45(n); see generally *Orkin Exterminating Company*, 108 F.T.C. 263, 362 (1986); *Federal Commission Policy Statement on Unfairness, appended to International Harvester*, 104 F.T.C. at 1070-76.

SPENCER BACHUS
6TH DISTRICT, ALABAMA

*Reekus & detrimental
google entry
4004878*

2246 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4921
1900 INTERNATIONAL PARK DRIVE
SUITE 107
BIRMINGHAM, AL 35243
(205) 969-2296
703 SECOND AVENUE NORTH
P.O. BOX 502
CLANTON, AL 35046
(205) 280-0704
<http://www.house.gov/bachus>

Congress of the United States
House of Representatives
Washington, DC

FACSIMILE COVER SHEET

TO: Ms. Jeanne Bumpus

FACSIMILE NUMBER: 202-326-3585

FROM: U.S. Congressman Spencer Bachus

DATE: Sept. 30, 2011

We are transmitting 5 pages including this cover sheet. If the transmission is incomplete, please call 205-969-2296 or fax 205-969-3958.

COMMENTS: _____

CONFIDENTIALITY STATEMENT

This communication may contain confidential information. The information here is intended for the use of the recipients named above. If you are not the intended recipient, you are hereby notified that disclosure, distribution, or copying of this information is strictly prohibited. If you have received this transmission in error, please call to arrange its return.

FEDERAL TRADE COMMISSION
2011 OCT -3 PM 3: 08
CONG. CORRES. BRANCH

SPENCER BACHUS
6TH DISTRICT, ALABAMA

COMMITTEE:
FINANCIAL SERVICES
CHAIRMAN

Congress of the United States
House of Representatives
Washington, DC

2246 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4921

1900 INTERNATIONAL PARK DRIVE
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BIRMINGHAM, AL 35243
(205) 969-2296

703 SECOND AVENUE NORTH
P.O. BOX 502
CLANTON, AL 35046
(205) 280-0704
<http://bachus.house.gov>

September 30, 2011

Ms. Jeanne Bumpus
Director Congressional Relations
Federal Trade Commission
Sixth Street and Pennsylvania Avenue NW
Room 404
Washington, DC 20580

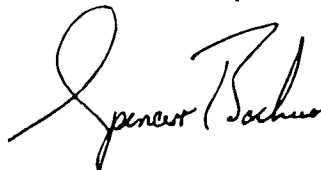
Dear Ms. Bumpus,

Mrs. (b)(6) is a constituent of mine in the Sixth Congressional District of Alabama.

Mrs. (b)(6) has contacted me about her concerns with Google. She states in her letter to me that their 32 year old CPA firm, (b)(6) have had a damaging entry on Google made about their firm and they have done everything possible to have the entry removed, but have not been successful. She further explains to me that they compete in the marketplace just like every other business and have lost potential lucrative clients due to this situation. Enclosed is a copy of (b)(6) letter to me explaining the problems they have experienced for your review.

Please look into this matter and give (b)(6) request and concerns every consideration. Send your response to Cindy Pate in my Birmingham office at 1900 International Park Drive, Suite 107, Birmingham, Alabama 35243 or by fax at (205) 969-3958. Thank you very much.

Sincerely,



Spencer Bachus
Member of Congress

STB/cp

(b)(6)

FTC

E-Mail Viewer

Message | Details | Attachments | Headers | Source

HTML

From: "Write your representative" <writerep@heoc-t2kwww1.house.gov>
Date: 9/21/2011 11:01:01 AM
To: "AL06IMA" <imaal06@mail.house.gov>
Cc:
Subject: WriteRep Responses

<WRP>
<DTTM>September 21, 2011 10:45 AM</DTTM>
<PREFIX>Mrs.</PREFIX>
<FIRST>(b)(6)</FIRST>
<LAST></LAST>
<ADDR1>(b)(6)</ADDR1>
<ADDR2>(b)(6)</ADDR2>
<ADDR3>(b)(6)</ADDR3>
<CITY>Birmingham, AL 35242</CITY>
<STATE>Alabama</STATE>
<ZIP>(b)(6)</ZIP>
<PHONE>(b)(6)</PHONE>
<EMAIL>(b)(6)</EMAIL>
<MSG>

Mr. Bachus - Please see the attached information regarding Google. Our 32 year old CPA firm, (b)(6) located (b)(6) in Birmingham has been the victim of Google. We have had a damaging entry on Google made about our firm and we have done everything possible to have the entry removed with no luck. We compete in the marketplace just like every other business and have lost potential lucrative clients do to the (b)(6) owned by (b)(6) of Dallas Texas. We have corrected any mistakes noted and have moved ahead with our best poicys and pracitces in place. To no availe, (b)(6) and Google who have been contacted by our representatives numerous times will not remove this damageing article on Google. If there is anything you could do to help us with this we would be most grateful. Please "google" (b)(6) and you will see Quass Enforcement Actions - this is over 5 years old!

Thank you for any assistance you can lend to us,

(b)(6)

Google Takes the Hot Seat in Washington By STEVE LOHR and CLAIRE CAIN MILLER
WASHINGTON — In Google's most public antitrust hearing to date, Eric E. Schmidt, the company's chairman, is expected to testify before a Senate panel Wednesday about how Google produces its search results, and whether it favors its own businesses, thwarts competition and hurts consumers.

The hearing, which begins at 2 p.m., is one of several ongoing inquiries into Google's behavior,

including a broad-reaching investigation by the Federal Trade Commission.

Antitrust scrutiny has intensified since Google has expanded into new businesses, like comparison shopping, local business reviews and travel search, where it competes with the same Web sites it indexes in its search engine.

After Mr. Schmidt testifies, three Google rivals will speak. They are Jeffrey G. Katz, chief executive of Nextag, a comparison shopping site; Jeremy Stoppelman, chief executive of Yelp, a site where users review local businesses; and Thomas O. Barnett, a lawyer for Expedia, the travel site. Susan A. Creighton, a lawyer representing Google, is also expected to testify.

Wednesday's hearing, held by the Judiciary subcommittee on antitrust, competition policy and consumer rights, was not intended as a step in building a case, but to raise policy questions and explore the arguments on both sides of the antitrust debate about Google, said Senator Herb Kohl, Democrat of Wisconsin and chairman of the panel.

"Google has enormous influence on consumers and businesses in America — how they find information on the Internet, what they see and the commercial choices they are presented," Mr. Kohl said in an interview before the hearing.

Google's dominance of search and search advertising is not an antitrust issue, he said, but there is cause for concern if Google is abusing its market power.

"Does it bias its search results in favor of its own business offerings and services?" he said. "That's the crux of what we're looking at."

In written testimony to the Senate panel, Mr. Schmidt described the search giant as a company facing fierce competition on many fronts and as a relentless innovator in a dynamic industry. He emphasized the open Internet, where consumers can easily switch to competing services.

Mr. Schmidt made the case that Google has been making for months as its business practices have come under increasing scrutiny from antitrust regulators in the United States, Europe and South Korea. But he presented the company's defense of its actions and motivations in a document that is pointed and succinct, yet comprehensive.

Google's success, Mr. Schmidt wrote, is a byproduct of its corporate ethos of putting consumer interests first.

"Keeping up requires constant investment and innovation," he wrote, "and if Google fails in this effort users can and will switch. The cost of going elsewhere is zero, and users can and do use other sources to find the information they want."

Google has generated \$64 billion in economic activity for small businesses, he wrote. Google has said that comes from enabling online sales for businesses, sharing ad revenue with Web site publishers and grants to nonprofits.

He said the F.T.C. investigation, with which Google is cooperating, is largely the result of complaints by disgruntled competitors.

In his oral testimony, which will likely differ somewhat from the written version, Mr. Schmidt was expected to talk about his personal history in Silicon Valley and how it has shaped his point of view

on these issues, and to emphasize the ways in which technology companies cooperate and compete at the same time.

Google's rivals are expected to make the case that it has abused its dominance in search.

"Unfortunately for consumers, there are strong indications that Google is, in fact, foreclosing competition rather than simply competing on the merits of its own products," Mr. Barnett, who is a former head of the Justice Department's antitrust division, wrote in his prepared testimony.

Google's products, like Google Maps, have often beaten out incumbents like Mapquest, he said, and Google has the incentive to steer Internet users to its own pages because it can then earn additional advertising revenue. While Google identifies ads, it does not identify links to its own products. Its practices are even more worrisome on mobile phones, Mr. Barnett said, where it almost completely dominates search.

Mr. Stoppelman has said that Google lists its own local review product, Google Places, above Yelp results, and until recently used Yelp's reviews in Places without its permission.

The Senate hearing will have no direct consequences for the investigations under way in the United States and Europe. But the testimony could influence policy makers and the public by articulating the potential threat to consumer welfare, competition and innovation if a corporate giant overreaches.

In 1998, for example, soon after Bill Gates of Microsoft was challenged by senators and competitors at hearing, the federal government and 20 states filed an antitrust suit against Microsoft.

As antitrust scrutiny has intensified, Google has ramped up its lobbying efforts in Washington and its communications campaigns nationwide. The company has shown television ads in some markets, including in Wisconsin, Mr. Kohl's home state, that trumpet Google's role in helping small businesses and creating jobs.

</MSG>

</WRP>

Close

LAMAR S. SMITH, Texas
CHAIRMAN

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ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

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

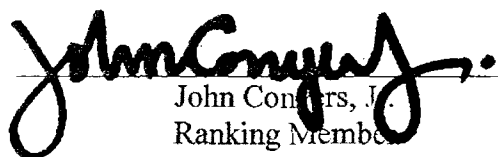
¹ See *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 304, 310 (1934) (The FTC is authorized to "consider[] public values beyond simply those enshrined in the letter or encompassed in the spirit of the antitrust laws."); *FTC v. Indiana Federation of Dentists*, 476 U.S. 447, 454 (1986) (The unfairness standard 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.").

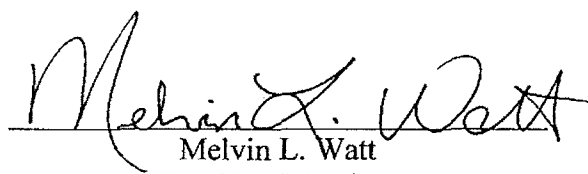
² See *Aspen Skiing v. Highlands*, 472 U.S. 585 (1985); *Otter Tail Power Co. v. U.S.*, 410 U.S. 366 (1973); *Lorain Journal Co. v. U.S.*, 342 U.S. 143 (1951).

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

Office of the Secretary
Correspondence Referral

Remember to Designate
FOIA Status

Today's Date: 11/19/12

Reference Number: 14007484

Type of Response (or) Action:

Complaint

Date Forwarded:

11/19/12

Action: Secretary's Signature

Subject of Correspondence:

Google investigation

Author:

Representative Anna Eshoo

Representative Zoe Lofgren

Representing:

Copies of Response To:

Office of the Chairman

Office of the Executive Director

Office of the General Counsel

Office of the Secretary

Copies of Correspondence To:

Office of Commissioner Ohlhausen

Office of Commissioner Rosch

Office of Commissioner Brill

Office of Commissioner Ramirez

Office of Public Affairs (Press Office)

Office of Congressional Relations - (0309)

Deadline:

12/04/12

Organization Assigned:

Policy and Coordination - BC

LOG

<u>Date Received</u>	<u>FTC Org Code</u>	<u>Assignment To:</u>	<u>Date Assigned</u>	<u>Action Required</u>
	1039	Alan J. Friedman		
.....				
.....				
.....				
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.....				
.....				
.....				

EXPEDITE

U. S. House of Representatives
Washington, D. C. 20515

November 19, 2012

14007484

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

FEDERAL TRADE COMMISSION
2012 NOV 19 PM 2:55
CONG. CORRES. BRANCH

Dear Chairman Leibowitz,

We have read with great concern recent reports of information leaks from those inside the Federal Trade Commission's (FTC) antitrust investigation of Google. These reports suggest that the FTC is preparing to use Section 5 of the FTC Act to avoid proving some of the elements of a claim required under Section 2 of the Act. Such a massive expansion of FTC jurisdiction would be unwarranted, unwise, and likely have negative implications for our nation's economy.

The FTC has a responsibility to remain fair and impartial while protecting the confidentiality of internal discussions among the parties involved. The release of sensitive details from an internal draft FTC staff report is irresponsible and potentially compromises an investigation that has yet to be voted on by the full Commission.

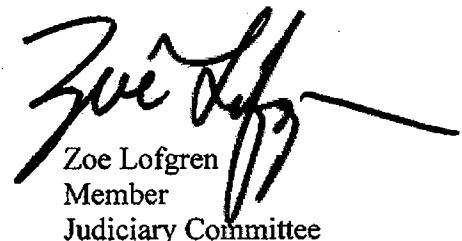
Expanding the FTC's Section 5 powers to include antitrust matters could lead to overbroad authority that amplifies uncertainty and stifles growth. These effects may be most acutely felt among online services, a crucial engine of job creation, where technological advancement and small business innovation are rapid. If the FTC indeed intends to litigate under this interpretation of Section 5, we strongly urge the FTC to reconsider.

However the FTC concludes its investigation, we are hopeful that it will be done swiftly, fairly, and within the appropriate limits of the FTC's authority. Thank you for your attention to this important matter.

Sincerely,



Anna G. Eshoo
Ranking Member
Communications and Technology Subcommittee
Energy and Commerce Committee



Zoe Lofgren
Member
Judiciary Committee

cc: The Honorable J. Thomas Rosch, Commissioner, Federal Trade Commission
The Honorable Edith Ramirez, Commissioner, Federal Trade Commission
The Honorable Julie Brill, Commissioner, Federal Trade Commission
The Honorable Maureen K. Ohlhausen, Commissioner, Federal Trade Commission

Office of the Secretary
Correspondence Referral

**Remember to Designate
FOIA Status**

Today's Date: 12/11/12

Reference Number: 14007580

Type of Response (or) Action:

Complaint

Date Forwarded:

12/11/12

Action: Chairman's Signature

Subject of Correspondence:

Google Investigations

Author:

Copies of Correspondence To:

Office of the Chairman
Office of Commissioner Ohlhausen
Office of Commissioner Rosch
Office of Commissioner Brill
Office of Commissioner Ramirez
Office of Public Affairs (Press Office)

Representing:

Copies of Response To:

Office of Congressional Relations - (0309)
Office of the Executive Director
Office of the General Counsel
Office of the Secretary

Deadline:

12/28/12

Organization Assigned:

ACTION LOG

<u>Date Received</u>	<u>FTC Org Code</u>	<u>Assignment To:</u>	<u>Date Assigned</u>	<u>Action Required</u>
		Rachel Miller Dawson		

EXPEDITE



United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

December 11, 2012

The Honorable Jon Leibowitz
Chairman, Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Leibowitz:

I write to express my deep concern that possible actions by Federal Trade Commission against Google, Inc. are consistently being leaked to the press. As I hope you know, the Commission's Operating manual provides in Chapter 3.1.2.3 that:

Unless otherwise directed by the Commission, all investigations are nonpublic. Accordingly, the existence of the investigation, the identity of the parties or practices under investigation, [and] the facts developed in the investigation . . . can be disclosed only in accordance with the Commission's directives and procedures for the disclosure of information . . .

However, notwithstanding this prohibition, there appears to have been a lengthy series of leaks coming from the Commission about what should be, according to the policy above, a nonpublic investigation of Google, including:

- A June 29, 2012 Bloomberg article that discusses a Commission probe of Google subsidiary Motorola Mobility's handling of "standard essential patents", including allocation of responsibility between the Justice Department and the FTC for handling investigations of Samsung Electronics and Google, respectively. The "person familiar with the matter" that was the source did not know the status of the Justice investigation, but did know the FTC's status.
- An August 30, 2012 Bloomberg article relied on "four people familiar with the matter" of an FTC antitrust investigation of Google, who discussed the

timing of a presentation by FTC staff to the commissioners, and the staff's probable recommendation. Three of these people also spoke of the FTC's awareness of Google's proposal to European Commission antitrust authorities.

- An October 1, 2012 Mlex article states that Commissioner Rosch and yourself are pushing for a conclusion of the investigation of Google. The article describes a staff briefing the commissioners received in mid-September, and the commissioners' directions back to the Bureau of Competition.
- An October 12, 2012 Reuters article reported that four of the five FTC commissioners support bringing an antitrust case against Google, and that the fifth is "skeptical"; the story cites "three people familiar with the matter."
- An October 13, 2012 Bloomberg article discusses "an internal draft memo that recommends suing Google Inc." regarding search-related issues that FTC investigators are circulating. It describes the length and content of this memo. It further relays that "A majority of commissioners, including FTC Chairman Jon Leibowitz, have expressed concerns internally about Google's practices, and are deciding how to proceed, two of the [unnamed] people said." The article also discusses various possible bases for action against Google that the commission is considering, civil investigative demands that were issued to Google, and the FTC's purpose in issuing these demands.
- On October 18, 2012, the New York Post reported about charges that the FTC soon will bring against Google, citing "a source close to the situation." The source discusses the direction of the investigation, the basis for the charges, and the likely FTC action.
- A November 2, 2012 Bloomberg article reported on FTC staff recommendations to the commissioners about the Motorola Mobility patent issues, and that "A majority of the agency's five commissioners are inclined to sue," citing "four people familiar with the matter."
- Finally, a November 14, 2012 article in the Policy and Regulatory Report/Financial Times explicitly cites "two FTC lawyers" among other sources in reporting on the FTC's strategy in the "Big Google" case. These

FTC lawyers are explicitly (although anonymously) cited in discussions of various strategies for and bases for a case against Google.

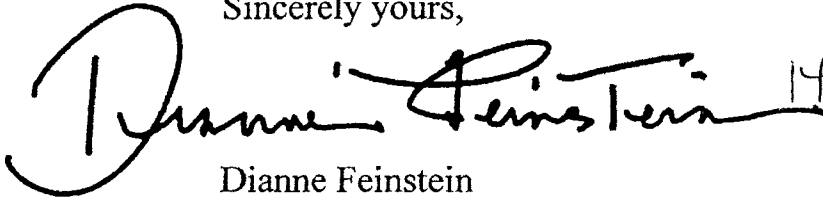
There is a belief that competitors of Google are in the process of manipulating legislative and regulatory actions against Google, to try to gain advantages against the company that they have been unable to obtain in the free marketplace. I have no way of knowing whether this is true or not, but it is a concern that I wanted to relay to you.

Google is a major California company, that employs thousands of Californians. They are subject to fierce competition in the marketplace, most or all of which is accessible with the click of a mouse. It is important that they be treated fairly in a government investigation, and not be subjected to a constant, one-sided assault of selective leaks to the press.

According to these media reports, this investigation has been going on for a year and a half. I hope that, out of fairness to the company, any investigation can be wrapped up and resolved one way or another in a reasonable time, and that the leaks will stop.

Thank you for your attention, and may I take this opportunity to wish you and your family a wonderful holiday season.

Sincerely yours,

A handwritten signature in black ink that reads "Dianne Feinstein". The signature is written in a cursive style with a large initial "D". To the right of the signature, the number "14007580" is handwritten in a similar ink.

Dianne Feinstein
United States Senator



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

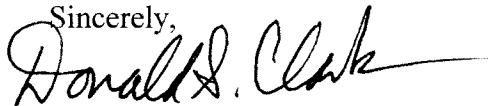
January 23, 2012

Mr. Lead Wey
220 East Flamingo Road, Unit 126
Las Vegas, Nevada 89169

Dear Mr. Wey:

Thank you for your letter to The Honorable Harry Reid – which has been forwarded to the Federal Trade Commission for response – concerning the Commission investigation of certain practices of Google, Inc.¹ Your correspondence has been forwarded to appropriate members of the Commission staff for review. Although a number of statutory prohibitions and the Rules of the Commission prevent me from disclosing the contours of any nonpublic investigation, I can assure you that the information you have provided and the concerns you have expressed are receiving careful consideration.

We appreciate your interest in this matter, and hope that the foregoing information is of assistance. Thank you again for your correspondence.

Sincerely,


Donald S. Clark
Secretary of the Commission

cc: The Honorable Harry Reid
United States Senate
Washington, D.C. 20510

¹ I am able to confirm publicly that the Commission is conducting an investigation of Google because Google “has publicly disclosed . . . that it is the subject” of a Commission investigation. See *Federal Trade Commission Policy Concerning Disclosures of Nonmerger Competition and Consumer Protection Investigations: Notice of Revised Policy*, 63 Fed. Reg. 63477 (Nov. 13, 1998); see also *Federal Trade Commission Notice of Policy of Disclosing Investigations of Announced Mergers: Notice of Revised Policy*, 62 Fed. Reg. 18630 (Apr. 16, 1997).

Laura DeMartino
14005332

United States Senate

WASHINGTON, DC 20510-7012

November 1, 2011

Ms. Jeanne Bumpus
Director, Office of Congressional Relations
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room 404
Washington, DC 20580

Dear Ms. Bumpus:

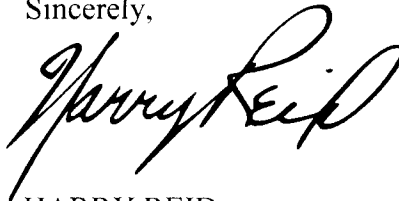
Enclosed is a letter I have received from

I would appreciate your reviewing this situation and providing answers to my constituent's concern. Please send your reply directly to and send a copy of your response to me.

Thank you for your cooperation and assistance.

My best wishes to you.

Sincerely,



HARRY REID
United States Senator
Nevada

HR:db

FEDERAL TRADE COMMISSION
2011 DEC 14 AM 11:12
CONG. CORRES. BRANCH

(b)(6)

CF_MAIL

(b)(6)

(b)(6)

</ADDRESS2>
<CITY>Las Vegas</CITY>
<STATE>NV</STATE>
<ZIP>(b)(6)/ZIP>

(b)(6)

<SUBJECT>BK</SUBJECT>
<MESSAGEBODY>In the past month, Google suddenly decided to suspend my ability to advertise on its Google Adwords platform without providing me any recourse. I have since been unable to reach anyone within Google with decision making authority to resolve my issues. Google is a monopoly and they hurt small businesses like me. As your constituent, I am writing to express my concern that Google is leveraging its enormous power in search and search advertising to maintain and extend its dominance at the expense of competition and consumers. Not only does Google's anti-competitive behavior threaten innovation and economic growth online, it also limits consumer choice and often leads to higher prices. Now, more than ever, I believe Google's business practices deserve close scrutiny. Consumers are depending on enforcers and policymakers like you to ensure that Google abides by existing antitrust laws. I urge you to act now to protect fair search so that competition and innovation can thrive.</MESSAGEBODY>
<AddressTo>General</AddressTo>



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 23, 2012

The Honorable Harry Reid
United States Senate
Washington, D.C. 20510-7012

Dear Senator Reid:

Thank you for your letter to the U.S. Department of Justice on behalf of your constituent, (b)(6) of Reno, Nevada -- which has been transferred to the Federal Trade Commission for response -- concerning the Commission investigation of certain practices of Google, Inc.¹ Your correspondence has been forwarded to appropriate members of the Commission staff for review. Although a number of statutory prohibitions and the Rules of the Commission prevent me from disclosing the contours of any nonpublic investigation, I can assure you that the information which (b)(6) has provided, and the concerns she has expressed, are receiving careful consideration.

We appreciate your interest in this matter, and hope that the foregoing information is of assistance. Thank you again for your correspondence.

Sincerely,

A handwritten signature in black ink that reads "Donald S. Clark".

Donald S. Clark
Secretary of the Commission

¹ I am able to confirm publicly that the Commission is conducting an investigation of Google because Google "has publicly disclosed . . . that it is the subject" of a Commission investigation. See *Federal Trade Commission Policy Concerning Disclosures of Nonmerger Competition and Consumer Protection Investigations: Notice of Revised Policy*, 63 Fed. Reg. 63477 (Nov. 13, 1998); see also *Federal Trade Commission Notice of Policy of Disclosing Investigations of Announced Mergers: Notice of Revised Policy*, 62 Fed. Reg. 18630 (Apr. 16, 1997).



Alan Friedman 14005164
U. S. DEPARTMENT OF JUSTICE
Antitrust Division

Office of the Assistant Attorney General

RFK Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
(202) 514-2401 / (202) 616-2645 (Fax)

OCT 31 2011

Mr. Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Secretary Clark:

Enclosed is a letter from a constituent of Senator Harry Reid regarding Google's potentially anticompetitive conduct in the search and search advertising markets. Since this matter has been cleared to the Federal Trade Commission, we are referring the letter to you for consideration.

Thank you for your cooperation.

Sincerely,

Jamillia P. Ferris
Deputy Chief of Staff
and Counsel

Enclosure

FEDERAL TRADE COMMISSION
2011 NOV 17 PM 1:07
CONG. CORRES. BRANCH

United States Senate

WASHINGTON, DC 20510-7012

October 11, 2011

Mr. Ronald H. Weich
Assistant Attorney General for Office of Legislative Affairs
Office of Legislative Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Room 1145
Washington, DC 20530

Dear Mr. Weich:

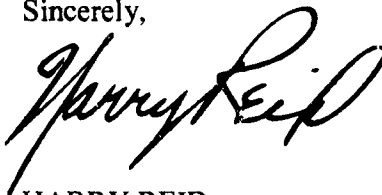
Enclosed is a letter I have received from (b)(6)

I would appreciate your reviewing this situation and providing answers to my constituent's concern. Please send your reply directly to (b)(6) and send a copy of your response to me.

Thank you for your cooperation and assistance.

My best wishes to you.

Sincerely,



HARRY REID
United States Senator
Nevada

HR:db

(b)(6)

CF MAIL

(b)(6)

</ADDRESS2>
<CITY>Reno</CITY>
<STATE>NV</STATE>
<ZIP>(b)(6)</ZIP>
<HOMEPHONE>(b)(6)</HOMEPHONE>
<WORKPHONE></WORKPHONE>
<EMAIL>(b)(6)@com</EMAIL>
<SUBJECT>BK</SUBJECT>
<MESSAGEBODY>As your constituent, I am writing to express my concern that Google is leveraging its enormous power in search and search advertising to maintain and extend its dominance at the expense of competition and consumers. Not only does Google's anti-competitive behavior threaten innovation and economic growth online, it also limits consumer choice and often leads to higher prices. Now, more than ever, I believe Google's business practices deserve close scrutiny. Consumers are depending on enforcers and policymakers like you to ensure that Google abides by existing antitrust laws. I urge you to act now to protect fair search so that competition and innovation can thrive.</MESSAGEBODY>
<AddressTo>General</AddressTo>



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

December 5, 2011

The Honorable Herb Kohl
Chairman
Subcommittee on Antitrust, Competition Policy and Consumer Rights
Committee on the Judiciary
United States Senate
Washington, DC 20510-6275

Dear Chairman Kohl:

Thank you for your letter dated November 18, 2011, requesting a confidential staff briefing on the agency's investigation into Google, Inc.'s search engine practices. The Commission is responding to your request as an official request of a Congressional Subcommittee, *see* Commission Rule 4.11(b), 16 C.F.R. § 4.11(b), and has authorized its staff to provide the requested briefing.

Most of the information that the Commission attorneys will discuss during the briefing is nonpublic and statutorily protected from public disclosure by the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 41 *et seq.*, as well as exempt from mandatory disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. In particular, some of the information would be protected under Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), as confidential commercial or financial information. The Commission is prohibited from disclosing such information publicly, and it would be exempt from disclosure under FOIA Exemption 3, 5 U.S.C. § 552(b)(3). Because disclosure of this information is likely to result in substantial competitive harm to the submitters, or is clearly not of a kind that submitters would customarily make available to the public, it would be exempt from disclosure under FOIA Exemption 4, 5 U.S.C. § 552(b)(4). *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 877-80 (D.C. Cir. 1992) (*en banc*), *cert. denied*, 507 U.S. 984 (1993) (exempt status accorded to information submitted voluntarily); *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) (exempt status accorded to information submitted under compulsion).

Most of the information that the Commission attorneys will discuss was obtained by compulsory process or provided voluntarily in lieu thereof in a law enforcement investigation. Such information is protected from public disclosure under Section 21(f) of the FTC Act, 15 U.S.C. § 57b-2(f). By virtue of that section, such information is also exempt from public disclosure under FOIA Exemption 3(B), 5 U.S.C. § 552(b)(3)(B). *McDermott v. FTC*, 1981-1 Trade Cas. (CCH) ¶ 63,964 at 75,982-3 (D.D.C. April 13, 1981); *Dairymen, Inc. v. FTC*, 1980-2

Trade Cas. (CCH) ¶ 63,479 (D.D.C. July 9, 1980). Moreover, third party submitters provided their materials and information with a specific request for confidential treatment under Section 21 (c) of the FTC Act, 15 U.S.C. § 57b-2(c)). Under Commission Rule 4.10(d), 16 C.F.R. § 4.10(d), the Commission has waived its discretion to release to the public materials submitted pursuant to compulsory process or materials submitted voluntarily in lieu of process that have been marked confidential by the submitting parties.¹

Additional information that may be discussed during the briefing was submitted in response to the Hart-Scott-Rodino premerger notification requirements of the Clayton Act, 15 U.S.C. § 18a. Section 7A(h) of the Act prohibits public disclosure of such documents or information. By virtue of this statutory prohibition, this information is also exempt from disclosure under Freedom of Information Act (FOIA) Exemption 3A, 5 U.S.C. § 552(b)(3)(A).²

Further, information discussed during the briefing would reveal the existence of, and information concerning, an ongoing, nonpublic law enforcement investigation. Disclosure of this information could reasonably be expected to interfere with law enforcement proceedings, and this information is therefore protected from mandatory public disclosure by FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 232 (1978); *Ehringhaus v. FTC*, 525 F. Supp. 21, 24 (D.D.C. 1980).

Finally, some of the information that will be discussed during the briefing will include internal staff analyses and recommendations, which are predecisional, deliberative materials exempt from mandatory public disclosure under FOIA Exemption 5, 5 U.S.C. § 552(b)(5). *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975); *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). Some of this information may also be protected from mandatory public disclosure under FOIA Exemption 5 as attorney work product prepared in anticipation of litigation. *FTC v. Grolier, Inc.*, 462 U.S. 19, 28 (1983); *Martin v. Office of Special Counsel, Merit Systems Protection Board*, 819 F.2d 1181, 1187 (D.C. Cir. 1987).

¹ The Commission is required to notify persons who submitted information pursuant to compulsory process in a law enforcement investigation, or voluntarily in lieu thereof on a confidential basis, if the Commission receives a request from a Congressional Committee or Subcommittee for that information. See 15 U.S.C. §§ 57b-2(b)(3)(C), 57b-2(d)(1)(A); Commission Rule 4.11(b), 16 C.F.R. § 4.11(b). Staff is providing the requisite notice.

² The Commission has instructed its staff to provide reasonable notice, when possible, of the release to Congress of information submitted pursuant to HSR. See *Statement of Basis and Purpose of HSR Rules and Regulations*, 43 Fed. Reg. 33519 (July 31, 1978). Staff has provided notice to submitters pursuant to this policy.

Notwithstanding the protected status of most of the responsive information, the FTC Act, 15 U.S.C. § 57b-2(d)(1)(A), the Clayton Act, 15 U.S.C. § 18a(h), and the FOIA, 5 U.S.C. § 552(d), provide no authority to withhold such information from this Congressional Subcommittee, and the Commission has authorized staff to provide the requested briefing to Subcommittee staff. Because the confidential information would not be available to the public under the FOIA or otherwise, the Commission requests that the Subcommittee maintain its confidentiality.

By direction of the Commission.

A handwritten signature in black ink that reads "Donald S. Clark". The signature is written in a cursive style with a long horizontal line extending to the right.

Donald S. Clark
Secretary

Office of the Secretary
Correspondence Referral

Remember to Designate
FOIA Status

Today's Date: 11/21/11

Reference Number: 14005166

Type of Response (or) Action:

Complaint

Date Forwarded:

11/21/11

Action: Secretary's Signature

Subject of Correspondence:

confidential briefing about FTC's antitrust investigation into Google's search engine practices

Author:

Senator Herb Kohl

Representing:

Copies of Response To:

Office of the Chairman

Office of the Executive Director

Office of the General Counsel

Office of the Secretary

Copies of Correspondence To:

Office of Commissioner Kovacic

Office of Commissioner Rosch

Office of Commissioner Brill

Office of Commissioner Ramirez

Office of Public Affairs (Press Office)

Office of Congressional Relations - (0309)

Deadline:

12/06/11

Organization Assigned:

Policy and Coordination - BC

ACTION LOG

<u>Date Received</u>	<u>FTC Org Code</u>	<u>Assignment To:</u>	<u>Date Assigned</u>	<u>Action Required</u>
	1039	Alan J. Friedman		
.....				
.....				
.....				
.....				
.....				
.....				

EXPEDITE

14005166

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN
DIANNE FEINSTEIN, CALIFORNIA
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT

CHARLES E. GRASSLEY, IOWA
ORRIN G. HATCH, UTAH
JON KYL, ARIZONA
JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TOM COBURN, OKLAHOMA

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

November 18, 2011

The Honorable Jon Leibowitz
Chairman, Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Suite 444
Washington, DC 20580

FEDERAL TRADE COMMISSION
2011 NOV 21 AM 9:58
CONG. CORRES. BRANCH

Dear Chairman Leibowitz:

I am writing to request that knowledgeable members of the FTC staff provide our Subcommittee staff with a confidential briefing about the FTC's antitrust investigation into Google's search engine practices.

I understand the sensitivity of discussing pending investigations. Therefore, my staff and I will ensure that any non-public information that your staff provides during the briefing will not be shared with anyone outside the Subcommittee. If you require further confidentiality assurances, we will do our best to accommodate you.

Thank you very much for your assistance in this matter.

Respectfully yours,



HERB KOHL

Chairman

Subcommittee on Antitrust, Competition Policy and
Consumer Rights



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

October 19, 2012

The Honorable Herb Kohl
Chairman
Subcommittee on Antitrust, Competition Policy
and Consumer Rights
Committee on the Judiciary
United States Senate
Washington, DC 20510-6275

Dear Chairman Kohl:

Thank you for your letter dated October 17, 2012, requesting a confidential staff briefing on the agency's investigations into allegations that Google, Inc. has been engaged in anticompetitive conduct. The Commission is responding to your request as an official request of a Congressional Subcommittee, *see* Commission Rule 4.11(b), 16 C.F.R. § 4.11(b), and has authorized its staff to provide the requested briefing.

Most of the information that the Commission attorneys will discuss during the briefing is nonpublic and statutorily protected from public disclosure by the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 41 *et seq.*, as well as exempt from mandatory disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. In particular, some of the information would be protected under Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), as confidential commercial or financial information. The Commission is prohibited from disclosing such information publicly, and it would be exempt from disclosure under FOIA Exemption 3, 5 U.S.C. § 552(b)(3). Because disclosure of this information is likely to result in substantial competitive harm to the submitters, or is clearly not of a kind that submitters would customarily make available to the public, it would be exempt from disclosure under FOIA Exemption 4, 5 U.S.C. § 552(b)(4). *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 877-80 (D.C. Cir. 1992) (*en banc*), *cert. denied*, 507 U.S. 984 (1993) (exempt status accorded to information submitted voluntarily); *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) (exempt status accorded to information submitted under compulsion).

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disclosure under FOIA Exemption 3(B), 5 U.S.C. § 552(b)(3)(B). *McDermott v. FTC*, 1981-1 Trade Cas. (CCH) ¶ 63,964 at 75,982-3 (D.D.C. April 13, 1981); *Dairymen, Inc. v. FTC*, 1980-2 Trade Cas. (CCH) ¶ 63,479 (D.D.C. July 9, 1980). Moreover, third party submitters provided their materials and information with a specific request for confidential treatment under Section 21 (c) of the FTC Act, 15 U.S.C. § 57b-2(c). Under Commission Rule 4.10(d), 16 C.F.R. § 4.10(d), the Commission has waived its discretion to release to the public materials submitted pursuant to compulsory process or materials submitted voluntarily in lieu of process that have been marked confidential by the submitting parties.¹

Additional information that may be discussed during the briefing was submitted in response to the Hart-Scott-Rodino premerger notification requirements of the Clayton Act, 15 U.S.C. § 18a. Section 7A(h) of the Act prohibits public disclosure of such documents or information. By virtue of this statutory prohibition, this information is also exempt from disclosure under Freedom of Information Act (FOIA) Exemption 3A, 5 U.S.C. § 552(b)(3)(A).²

Further, information discussed during the briefing would reveal the existence of, and information concerning, ongoing, nonpublic law enforcement investigations. Disclosure of this information could reasonably be expected to interfere with law enforcement proceedings, and this information is therefore protected from mandatory public disclosure by FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 232 (1978); *Ehringhaus v. FTC*, 525 F. Supp. 21, 24 (D.D.C. 1980).

Finally, some of the information that will be discussed during the briefing will include internal staff analyses and recommendations, which are predecisional, deliberative materials exempt from mandatory public disclosure under FOIA Exemption 5, 5 U.S.C. § 552(b)(5). *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975); *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). Some of this information may also be protected from mandatory public disclosure under FOIA Exemption 5 as attorney work product prepared in anticipation of litigation. *FTC v. Grolier, Inc.*, 462 U.S. 19, 28 (1983); *Martin v. Office of Special Counsel, Merit Systems Protection Board*, 819 F.2d 1181, 1187 (D.C. Cir. 1987).

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Notwithstanding the protected status of most of the responsive information, the FTC Act, 15 U.S.C. § 57b-2(d)(1)(A), the Clayton Act, 15 U.S.C. § 18a(h), and the FOIA, 5 U.S.C. § 552(d), provide no authority to withhold such information from this Congressional Subcommittee, and the Commission has authorized staff to provide the requested briefing to Subcommittee staff. Because the confidential information would not be available to the public under the FOIA or otherwise, the Commission requests that the Subcommittee maintain its confidentiality.

By direction of the Commission.

A handwritten signature in cursive script that reads "Donald S. Clark". The signature is written in black ink and is positioned above the printed name and title.

Donald S. Clark
Secretary

Office of the Secretary
Correspondence Referral

**Remember to Designate
FOIA Status**

Today's Date: 10/17/12

Reference Number: 14007131

Type of Response (or) Action:

Complaint

Date Forwarded:

09/21/12

Action: Secretary's Signature

Subject of Correspondence:

Request for Confidential Staff Briefing on Google's Anticompetitive Practices

Author:

Senator Herb Kohl

Representing:

Copies of Response To:

Office of Public Affairs (Press Office)

Office of Congressional Relations - (0309)

Office of the General Counsel

Office of the Secretary

Copies of Correspondence To:

Office of the Chairman

Office of Commissioner Ohlhausen

Office of Commissioner Rosch

Office of Commissioner Brill

Office of Commissioner Ramirez

Office of the Executive Director

Deadline:

10/05/12

Organization Assigned:

Policy and Coordination - BC

ACTION LOG

<u>Date Received</u>	<u>FTC Org Code</u>	<u>Assignment To:</u>	<u>Date Assigned</u>	<u>Action Required</u>
	1039	Alan J. Friedman		
.....				
.....				
.....				
.....				
.....				
.....				

EXPEDITE

7131

HERB KOHL
WISCONSIN

WASHINGTON OFFICE:
330 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5653
<http://kohl.senate.gov/>

United States Senate

WASHINGTON, DC 20510-4903

COMMITTEES:
APPROPRIATIONS
JUDICIARY
SPECIAL COMMITTEE
ON AGING

October 17, 2012

The Honorable Jon Leibowitz
Chairman, Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Suite 444
Washington, DC 20580

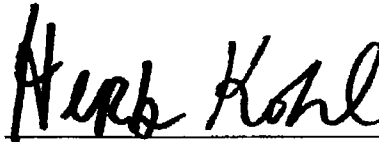
Dear Chairman Leibowitz:

I am writing to request that knowledgeable members of the FTC staff provide our Subcommittee staff with a confidential briefing about the FTC's antitrust investigations into allegations that Google has been engaged in anticompetitive conduct.

I understand the sensitivity of discussing pending investigations. Therefore, my staff and I will ensure that any non-public information that your staff provides during the briefing will not be shared with anyone outside the Subcommittee. If you require further confidentiality assurances, we will do our best to accommodate you.

Thank you very much for your assistance in this matter.

Respectfully yours,



HERB KOHL

Chairman

Subcommittee on Antitrust, Competition Policy and
Consumer Rights

MILWAUKEE OFFICE:
310 WEST WISCONSIN AVENUE
SUITE 950
MILWAUKEE, WI 53203
(414) 297-4461
T.T.Y. (414) 297-4485

MADISON OFFICE:
14 WEST MIFFLIN STREET
SUITE 207
MADISON, WI 53703
(608) 264-5338

EAU CLAIRE OFFICE:
402 GRAHAM AVENUE
SUITE 206
EAU CLAIRE, WI 54701
(715) 832-8424

APPLETON OFFICE:
4321 WEST COLLEGE AVENUE
SUITE 370
APPLETON, WI 54914
(920) 738-1640

LA CROSSE OFFICE:
205 5TH AVENUE SOUTH
SUITE 216
LA CROSSE, WI 54601
(608) 796-0045



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

September 13, 2011

The Honorable Herb Kohl
Chairman
Subcommittee on Antitrust, Competition Policy and Consumer Rights
Committee on the Judiciary
United States Senate
Washington, DC 20510-6275

Dear Chairman Kohl:

Thank you for your letter dated September 7, 2011, requesting a confidential staff briefing on the agency's investigation into Google, Inc.'s search engine practices. The Commission is responding to your request as an official request of a Congressional Subcommittee, *see* Commission Rule 4.11(b), 16 C.F.R. § 4.11(b), and has authorized its staff to provide the requested briefing.

Most of the information that the Commission attorneys will discuss during the briefing is nonpublic and statutorily protected from public disclosure by the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 41 *et seq.*, as well as exempt from mandatory disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. In particular, some of the information would be protected under Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), as confidential commercial or financial information. The Commission is prohibited from disclosing such information publicly, and it would be exempt from disclosure under FOIA Exemption 3, 5 U.S.C. § 552(b)(3). Because disclosure of this information is likely to result in substantial competitive harm to the submitters, or is clearly not of a kind that submitters would customarily make available to the public, it would be exempt from disclosure under FOIA Exemption 4, 5 U.S.C. § 552(b)(4). *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 877-80 (D.C. Cir. 1992) (*en banc*), *cert. denied*, 507 U.S. 984 (1993) (exempt status accorded to information submitted voluntarily); *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) (exempt status accorded to information submitted under compulsion).

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Trade Cas. (CCH) ¶ 63,479 (D.D.C. July 9, 1980). Moreover, third party submitters provided their materials and information with a specific request for confidential treatment under Section 21(c) of the FTC Act, 15 U.S.C. § 57b-2(c). Under Commission Rule 4.10(d), 16 C.F.R. § 4.10(d), the Commission has waived its discretion to release to the public materials submitted pursuant to compulsory process or materials submitted voluntarily in lieu of process that have been marked confidential by the submitting parties.¹

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Further, information discussed during the briefing would reveal the existence of, and information concerning, an ongoing, nonpublic law enforcement investigation. Disclosure of this information could reasonably be expected to interfere with law enforcement proceedings, and this information is therefore protected from mandatory public disclosure by FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 232 (1978); *Ehringhaus v. FTC*, 525 F. Supp. 21, 24 (D.D.C. 1980).

Finally, some of the information that will be discussed during the briefing will include internal staff analyses and recommendations, which are predecisional, deliberative materials exempt from mandatory public disclosure under FOIA Exemption 5, 5 U.S.C. § 552(b)(5). *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975); *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). Some of this information may also be protected from mandatory public disclosure under FOIA Exemption 5 as attorney work product prepared in anticipation of litigation. *FTC v. Grolier, Inc.*, 462 U.S. 19, 28 (1983); *Martin v. Office of Special Counsel, Merit Systems Protection Board*, 819 F.2d 1181, 1187 (D.C. Cir. 1987).

¹ The Commission is required to notify persons who submitted information pursuant to compulsory process in a law enforcement investigation, or voluntarily in lieu thereof on a confidential basis, if the Commission receives a request from a Congressional Committee or Subcommittee for that information. See 15 U.S.C. §§ 57b-2(b)(3)(C), 57b-2(d)(1)(A); Commission Rule 4.11(b), 16 C.F.R. § 4.11(b). Staff is providing the requisite notice.

² The Commission has instructed its staff to provide reasonable notice, when possible, of the release to Congress of information submitted pursuant to HSR. See *Statement of Basis and Purpose of HSR Rules and Regulations*, 43 Fed. Reg. 33519 (July 31, 1978). Staff has provided notice to submitters pursuant to this policy.

Notwithstanding the protected status of most of the responsive information, the FTC Act, 15 U.S.C. § 57b-2(d)(1)(A), the Clayton Act, 15 U.S.C. § 18a(h), and the FOIA, 5 U.S.C. § 552(d), provide no authority to withhold such information from this Congressional Subcommittee, and the Commission has authorized staff to provide the requested briefing to Subcommittee staff. Because the confidential information would not be available to the public under the FOIA or otherwise, the Commission requests that the Subcommittee maintain its confidentiality.

By direction of the Commission.

A handwritten signature in black ink that reads "Donald S. Clark". The signature is written in a cursive style with a long horizontal line extending to the right.

Donald S. Clark
Secretary

Office of the Secretary
Correspondence Referral

Remember to Designate
FOIA Status
Today's Date: 09/09/11

Reference Number: 14004739

Type of Response (or) Action:

Complaint

Date Forwarded:

09/09/11

Action: Chairman's Signature

Subject of Correspondence:

Nonpublic Briefing Request Re Google Investigation

Author:

Senator Herb Kohl

Representing:

Copies of Response To:

Office of the Chairman

Office of the Executive Director

Office of the General Counsel

Office of the Secretary

Copies of Correspondence To:

Office of Commissioner Kovacic

Office of Commissioner Rosch

Office of Commissioner Brill

Office of Commissioner Ramirez

Office of Public Affairs (Press Office)

Office of Congressional Relations - (0309)

Deadline:

09/15/11

Organization Assigned:

Policy and Coordination - BC

ACTION LOG

<u>Date Received</u>	<u>FTC Org Code</u>	<u>Assignment To:</u>	<u>Date Assigned</u>	<u>Action Required</u>
	1039	Alan J. Friedman		
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.....				
.....				
.....				
.....				
.....				

EXPEDITE

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN
DIANNE FEINSTEIN, CALIFORNIA
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
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CHRISTOPHER A. COONS, DELAWARE
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JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TOM COBURN, OKLAHOMA

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

September 7, 2011

The Honorable Jon Leibowitz
Chairman, Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Suite 444
Washington, DC 20580

Dear Chairman Leibowitz:

I am writing to request that knowledgeable members of the FTC staff provide our Subcommittee staff with a confidential briefing about the FTC's antitrust investigation into Google's search engine practices.

I understand the sensitivity of discussing pending investigations. Therefore, my staff and I will ensure that any non-public information that your staff provides during the briefing will not be shared with anyone outside the Subcommittee. If you require further confidentiality assurances, we will do our best to accommodate you.

Thank you very much for your assistance in this matter.

Respectfully yours,



HERB KOHL

Chairman

Subcommittee on Antitrust, Competition Policy and
Consumer Rights



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

November 8, 2012

The Honorable John D. Rockefeller IV
Chairman
Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510-6125

Dear Chairman Rockefeller:

Thank you for your letter dated November 6, 2012, requesting a confidential staff briefing on the agency's investigations into Google, Inc. The Commission is responding to your request as an official request of a Congressional Committee, *see* Commission Rule 4.11(b), 16 C.F.R. § 4.11(b), and has authorized its staff to provide the requested briefing.

Most of the information that the Commission attorneys will discuss during the briefing is nonpublic and statutorily protected from public disclosure by the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 41 *et seq.*, as well as exempt from mandatory disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. In particular, some of the information would be protected under Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), as confidential commercial or financial information. The Commission is prohibited from disclosing such information publicly, and it would be exempt from disclosure under FOIA Exemption 3, 5 U.S.C. § 552(b)(3). Because disclosure of this information is likely to result in substantial competitive harm to the submitters, or is clearly not of a kind that submitters would customarily make available to the public, it would be exempt from disclosure under FOIA Exemption 4, 5 U.S.C. § 552(b)(4). *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 877-80 (D.C. Cir. 1992) (*en banc*), *cert. denied*, 507 U.S. 984 (1993) (exempt status accorded to information submitted voluntarily); *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) (exempt status accorded to information submitted under compulsion).

Most of the information that the Commission attorneys will discuss was obtained by compulsory process or provided voluntarily in lieu thereof in a law enforcement investigation. Such information is protected from public disclosure under Section 21(f) of the FTC Act, 15 U.S.C. § 57b-2(f). By virtue of that section, such information is also exempt from public disclosure under FOIA Exemption 3(B), 5 U.S.C. § 552(b)(3)(B). *McDermott v. FTC*, 1981-1 Trade Cas. (CCH) ¶ 63,964 at 75,982-3 (D.D.C. April 13, 1981); *Dairymen, Inc. v. FTC*, 1980-2 Trade Cas. (CCH) ¶ 63,479 (D.D.C. July 9, 1980). Moreover, third party submitters provided

their materials and information with a specific request for confidential treatment under Section 21(c) of the FTC Act, 15 U.S.C. § 57b-2(c). Under Commission Rule 4.10(d), 16 C.F.R. § 4.10(d), the Commission has waived its discretion to release to the public materials submitted pursuant to compulsory process or materials submitted voluntarily in lieu of process that have been marked confidential by the submitting parties.¹

Additional information that may be discussed during the briefing was submitted in response to the Hart-Scott-Rodino premerger notification requirements of the Clayton Act, 15 U.S.C. § 18a. Section 7A(h) of the Act prohibits public disclosure of such documents or information. By virtue of this statutory prohibition, this information is also exempt from disclosure under Freedom of Information Act (FOIA) Exemption 3A, 5 U.S.C. § 552(b)(3)(A).²

Further, information discussed during the briefing would reveal the existence of, and information concerning, an ongoing, nonpublic law enforcement investigation. Disclosure of this information could reasonably be expected to interfere with law enforcement proceedings, and this information is therefore protected from mandatory public disclosure by FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 232 (1978); *Ehringhaus v. FTC*, 525 F. Supp. 21, 24 (D.D.C. 1980).

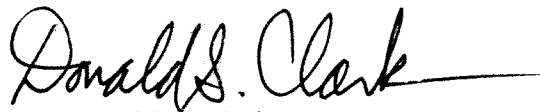
Finally, some of the information that will be discussed during the briefing will include internal staff analyses and recommendations, which are predecisional, deliberative materials exempt from mandatory public disclosure under FOIA Exemption 5, 5 U.S.C. § 552(b)(5). *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975); *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). Some of this information may also be protected from mandatory public disclosure under FOIA Exemption 5 as attorney work product prepared in anticipation of litigation. *FTC v. Grolier, Inc.*, 462 U.S. 19, 28 (1983); *Martin v. Office of Special Counsel, Merit Systems Protection Board*, 819 F.2d 1181, 1187 (D.C. Cir. 1987).

¹ The Commission is required to notify persons who submitted information pursuant to compulsory process in a law enforcement investigation, or voluntarily in lieu thereof on a confidential basis, if the Commission receives a request from a Congressional Committee or Subcommittee for that information. *See* 15 U.S.C. §§ 57b-2(b)(3)(C), 57b-2(d)(1)(A); Commission Rule 4.11(b), 16 C.F.R. § 4.11(b). Staff is providing the requisite notice.

² The Commission has instructed its staff to provide reasonable notice, when possible, of the release to Congress of information submitted pursuant to HSR. *See Statement of Basis and Purpose of HSR Rules and Regulations*, 43 Fed. Reg. 33519 (July 31, 1978). Staff has provided notice to submitters pursuant to this policy.

Notwithstanding the protected status of most of the responsive information, the FTC Act, 15 U.S.C. § 57b-2(d)(1)(A), the Clayton Act, 15 U.S.C. § 18a(h), and the FOIA, 5 U.S.C. § 552(d), provide no authority to withhold such information from this Congressional Committee, and the Commission has authorized staff to provide the requested briefing to Committee staff. Because the confidential information would not be available to the public under the FOIA or otherwise, the Commission requests that the Committee maintain its confidentiality.

By direction of the Commission.

A handwritten signature in black ink that reads "Donald S. Clark". The signature is written in a cursive style with a long horizontal line extending to the right.

Donald S. Clark
Secretary

Office of the Secretary
Correspondence Referral

**Remember to Designate
FOIA Status**
Today's Date: 11/06/12

Reference Number: 14007436

Type of Response (or) Action:

Complaint

Date Forwarded:

11/06/12

Action: Secretary's Signature

Subject of Correspondence:

Request for Confidential Staff Briefing Relating to Google

Author:

Senator John Rockefeller

Representing:

Copies of Response To:

Office of Congressional Relations - (0309)

Office of the Executive Director

Office of the General Counsel

Office of the Secretary

Copies of Correspondence To:

Office of the Chairman

Office of Commissioner Ohlhausen

Office of Commissioner Rosch

Office of Commissioner Brill

Office of Commissioner Ramirez

Office of Public Affairs (Press Office)

Deadline:

11/08/12

Organization Assigned:

Policy and Coordination - BC

ACTION LOG

<u>Date Received</u>	<u>FTC Org Code</u>	<u>Assignment To:</u>	<u>Date Assigned</u>	<u>Action Required</u>
	1039	Alan J. Friedman		

EXPEDITE

JOHN D. ROCKEFELLER IV CHAIRMAN

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PATRICK J. TOYNE, TEXAS
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KELLY AYOTTE, NEW HAMPSHIRE
DEAN HELEN, NEVADA

CELIA DONALD, STAFF DIRECTOR
CHRISTOPHER HENNING, HEAD OF STAFF BREVITY AND SENIOR COUNSEL

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

Web site: <http://commerce.senate.gov>

November 6, 2012

The Honorable Jon Leibowitz
Chairman
Federal Trade Commission
600 Pennsylvania Ave NW
Washington, D.C. 20580

Dear Chairman Leibowitz;

I write to request a confidential staff briefing to provide an update on the Commission's activities related to Google Inc., including any investigations, projects, and reports. I hope to schedule such a briefing at your earliest possible convenience.

The Committee understands the sensitivity of discussing such matters, and the non-public nature of the information that your staff provides during the briefing. Non-public information will be afforded the highest level of protection and will not be used for any purpose that breaches the confidentiality of the Commission's work.

Thank you for your assistance in this matter.

Sincerely,



14007436

John D. Rockefeller IV
Chairman
Senate Committee on Commerce, Science, and
Transportation

Office of the Secretary
Correspondence Referral

**Remember to Designate
FOIA Status**

Today's Date: 11/26/12

Reference Number: 14007506

Type of Response (or) Action:

Complaint

Date Forwarded:

11/26/12

Action: Secretary's Signature

Subject of Correspondence:

Google

Author:

Senator Ron Wyden

Representing:

Copies of Response To:

Copies of Correspondence To:

Office of Commissioner Ohlhausen

Office of Commissioner Rosch

Office of Commissioner Brill

Office of Commissioner Ramirez

Office of the General Counsel

Office of the Secretary

Office of the Chairman

Office of Public Affairs (Press Office)

Office of Congressional Relations - (0309)

Office of the Executive Director

Deadline:

12/10/12

Organization Assigned:

Policy and Coordination - BC

ACTION LOG

<u>Date Received</u>	<u>FTC Org Code</u>	<u>Assignment To:</u>	<u>Date Assigned</u>	<u>Action Required</u>
	1039	Alan J. Friedman		
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.....				

EXPEDITE

RON WYDEN
ORIGIN

224 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-1244
(202) 224-1260 (TDD)

United States Senate
WASHINGTON, DC 20510-3703

COMMITTEES:
COMMITTEE ON THE BUDGET
COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS
SPECIAL COMMITTEE ON AGING
SELECT COMMITTEE ON INTELLIGENCE
COMMITTEE ON FINANCE

November 26, 2012

14007506

The Honorable Jon Liebowitz
Chairman
Federal Trade Commission
600 Pennsylvania Ave NW 20580

FEDERAL TRADE COMMISSION
2012 NOV 26 PM 5:20
CONG. CORRES. BRANCH

Dear Chairman Liebowitz:

I am growing increasingly concerned by the way in which the Federal Trade Commission (FTC) is conducting itself with regards to questions about Google's commercial practices. The FTC is tasked by Congress to play a critical role in correcting market failures and ensuring that companies do not engage in monopolistic practices that stifle competition, innovation, and economic growth. For the FTC to effectively and credibly do this job, its actions must be viewed as fair and impartial. The FTC's credibility is eroded when confidential details of internal discussions are revealed to the media as has continually been the case in the investigation of Google.

It is also alarming that these leaks indicate that the FTC is focusing on allegations of monopoly in the online search industry. The Internet economy is the most highly competitive, innovative, and dynamic in this nation. A little more than a decade ago the most popular web search engine was Yahoo!, whose share of the market was over 46 percent, three times larger than its closest competitor, Excite. Unfortunately for consumers, all major search services offered paid results that obscured the value and popularity of the non-paying websites. When Google came on the scene it offered clean search results, clearly separating paid results, and actively combating gaming by sites that often sought attention for anti-consumer purposes. That over the course of the last several years Google has rapidly taken market share away from its competitors is not an indication that the search industry is uncompetitive, but evidence that Google is better meeting consumer preferences for a search engine.

Compared to almost any other market in the history of antitrust regulation, online search has effectively zero barriers to entry. In response to Google's use of obscured personal information to offer additional services, new search engines like DuckDuckGo have entered the market to offer fully untracked search services. There is no question that the market is continuing to ensure the full range of consumer choice without government intervention.

Lastly, according to the troubling press accounts that I described above, I understand that the FTC is considering using its Section 5 authority in ways it has not previously. It would be troubling if the FTC sought to expand the use of its authority to target a company for simply being popular rather than engaging in unfair or deceptive practices that harm consumers.

Sincerely,

Ron Wyden
United States Senator

911 NE 11TH AVENUE
SUITE 630
PORTLAND, OR 97232-4169
(503) 326-7525

405 EAST 8TH AVE
SUITE 2025
EUGENE, OR 97401
(541) 431-0229

SAC ANNEK BUILDING
105 FIR ST
SUITE 201
LA GRANDE, OR 97850
(541) 962-7691

U.S. COURTHOUSE
310 WEST 6TH ST
ROOM 118
MEDFORD, OR 97501
(541) 858-5122

THE JAMISON BUILDING
131 NW HAWTHORNE AVE
SUITE 107
BEND, OR 97701
(541) 330-9142

707 13TH ST SE
SUITE 285
SALM, OR 97301
(503) 589-4555

Office of the Secretary
Correspondence Referral

Remember to Designate
FOIA Status
Today's Date: 12/11/12

Reference Number: 14007573

Type of Response (or) Action:

Complaint

Date Forwarded:

12/11/12

Action: Secretary's Signature

Subject of Correspondence:

Section 5 of FTC Act

Author:

Representative Betty Mccollum

Representing:

Copies of Response To:

Office of Public Affairs (Press Office)

Office of Congressional Relations - (0309)

Office of the General Counsel

Office of the Secretary

Copies of Correspondence To:

Office of the Chairman

Office of Commissioner Ohlhausen

Office of Commissioner Rosch

Office of Commissioner Brill

Office of Commissioner Ramirez

Office of the Executive Director

Deadline:

12/28/12

Organization Assigned:

Policy and Coordination - BC

ACTION LOG

<u>Date Received</u>	<u>FTC Org Code</u>	<u>Assignment To:</u>	<u>Date Assigned</u>	<u>Action Required</u>
	1039	Alan J. Friedman		

EXPEDITE

BETTY McCOLLUM
4TH DISTRICT, MINNESOTA

1714 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-6631
FAX: (202) 225-1968

165 WESTERN AVENUE NORTH
SUITE 17
ST. PAUL, MN 55102
(651) 224-9191
FAX: (651) 224-3056

www.house.gov/mccollum



UNITED STATES
HOUSE OF REPRESENTATIVES

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON INTERIOR,
ENVIRONMENT, AND RELATED AGENCIES
SUBCOMMITTEE ON MILITARY CONSTRUCTION,
VETERANS AFFAIRS, AND RELATED AGENCIES

COMMITTEE ON THE BUDGET

SENIOR DEMOCRATIC WHIP

CONGRESSIONAL GLOBAL
HEALTH CAUCUS, CO-FOUNDER

December 3, 2012

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

Dear Chairman Leibowitz:


I am writing about my concern regarding recent reports indicating that the Federal Trade Commission (FTC) is preparing to use Section 5 of the FTC Act to avoid proving some elements of a claim required under Section 2 of the Act. In my view, this would be an unwarranted expansion of FTC jurisdiction that could have negative implications on the broader economy.

More specifically, expanding FTC's Section 5 powers to include antitrust matters could have the most detrimental effect on online services, which is a core driver of innovation and small business job growth. If reports that the FTC intends to litigate under this interpretation of Section 5 are true, I hope the FTC reconsiders. Antitrust law is designed to protect consumers, not competitors and Google's primary objective is to give consumers information quickly, not to deliver traffic to websites.

I respectfully urge the FTC to conduct their investigation in a fair manner and within the appropriate limit of the FTC's authority.

Thank you for your attention to this important matter.

Sincerely,


Betty McCollum
Member of Congress

14007573



December 27, 2012

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

Re: Google Inc., File No. 111-0163

Dear Chairman Leibowitz:

We understand that the Federal Trade Commission (“FTC” or the “Commission”) has decided to close the above-captioned investigation of the business practices of Google Inc. (“Google”). Google is confident that our practices are entirely consistent with all applicable laws and regulations. However, in connection with the closing of the FTC’s investigation, Google is making the commitments described below with respect to its display of content from third-party websites and with respect to its AdWords API Terms and Conditions. Google will honor these commitments for a period of five years from the date of this letter.

Google will publish the commitments on our website in a location easily accessible to the relevant audiences. Google understands that these commitments are important; and Google agrees that a material violation of these commitments would be actionable by the FTC under Section 5 of the FTC Act, 15 U.S.C. §45, and that the jurisdictional elements of such an action by the Commission would be satisfied. As more fully described below, Google will cooperate with the FTC to ensure that Google is complying with its commitments under this letter.

I. GOOGLE’S DISPLAY OF THIRD-PARTY CONTENT

Within 90 days, Google will make available a web-based notice form that provides website owners with the option to opt out from display on Google’s Covered Webpages¹ of content from their website that has been crawled by

¹ “Covered Webpages” means only Google’s (i) current Shopping, G+ Local, Flights, Hotels, and Advisor webpages, and any successors unless such successors do not have the primary purpose of connecting users with merchants in a manner substantially similar to Google’s current Shopping, G+ Local, Flights, Hotels, and Advisor webpages; and (ii) future or modified non-experimental specialized webpages launched within three years of the date of this letter that are linked to from the google.com search results page and that have the primary purpose of connecting users with merchants in a manner substantially similar to Google’s current Shopping, G+ Local, Flights, Hotels, and Advisor webpages. All other Google

Google.² When a website owner exercises this option, Google will cease displaying crawled content from the domain name designated by the website owner on Covered Webpages on the google.com domain in the United States.

Website owners will be able to exercise the opt-out described above by completing a web-based notice form. Google will implement the opt-out within 30 business days of receiving a properly completed notice form.

Exercise of this option will not (1) prevent content from the website from appearing in conventional search results on the google.com search results page, or (2) be used as a signal in determining conventional search results on the google.com search results page.

Beyond these specific commitments, nothing described above will impact Google's ability to (i) display content that it has sourced or derived independently even if it is the same as or overlaps with content from the opting-out web site, or (ii) otherwise crawl, organize, index and display information from the Internet or innovate in search.

II. ADWORDS API TERMS AND CONDITIONS

Within 60 days, Google will remove from its AdWords API Terms and Conditions the AdWords API Input and Copying Restrictions currently contained within Section III(2)(c)(i-ii) of the AdWords API Terms and Conditions for all AdWords API licensees with a primary billing address in the United States.³ In addition, Google will not add any new provisions to its AdWords API Terms and Conditions, or adopt new technical requirements in connection with use of the AdWords API, that prevent an AdWords API client from (a) showing input fields for the collection or transmission of AdWords API campaign management data in the same tab or screen with (i) the content of third party ad networks or (ii) input fields for the collection or transmission of campaign management data to third party ad

webpages (including but not limited to Google's current News, Image Search, Video Search, Maps, Book Search, Finance, and future or modified Google webpages falling outside of the parameters in (ii) above) are not Covered Webpages.

² Website owners will be permitted to exercise the opt-out on a domain name basis. For instance, a website owner may designate [www.example.com] to subject all content on that domain name to the opt-out. A website owner may not designate only individual sub-domains (such as [sub.example.com]) or individual directories within a domain (such as [www.example.com/sub]) for the opt-out. Google may use reasonable authentication measures to ensure that website owners selecting the opt-out are the legitimate owners of the website that is the subject of the web form notice.

³ The current version of the AdWords API Terms and Conditions is located at <https://developers.google.com/adwords/api/docs/terms>.

networks; or (b) offering functionality that copies campaign management data between AdWords and a third party ad network. Google will not treat AdWords API licensees differently from similarly situated licensees with respect to the provision or administration of the AdWords API as a result of their development or distribution of AdWords API clients that implement the functionality currently prohibited by Section III(2)(c)(i-ii) of the AdWords API Terms and Conditions.

Nothing in the foregoing will prevent or otherwise restrict Google from maintaining minimum functionality requirements as they currently exist or as they may be modified in the future as part of Google's AdWords API Terms and Conditions or in any other provisions governing the use of the AdWords API, so long as such modifications do not have the effect of reinstating the restrictions described above.

* * *

Within 60 days, Google will file with the Secretary of the FTC, with a copy to the Bureau of Competition's Compliance Division, a report describing in reasonable detail how Google has complied with its commitments, and Google will file an update to this report annually during the duration of its commitments.

If Google receives written notice from the Commission that the Commission believes Google has acted contrary to its commitments on the display of third-party content or the AdWords API Terms and Conditions, Google will, within 60 days, address the Commission's concerns or explain to the Commission why it believes that it has acted in a manner consistent with its commitments.

In addition, if the FTC has reason to suspect that Google has violated its commitments and with reasonable prior written notice from FTC staff, subject to claims of any legally recognized privilege, Google will (1) make available electronic and paper documents related to compliance with the above commitments, and (2) in the presence of Google's legal counsel, Google will permit FTC staff to interview its officers, directors, employees and agents on subjects related to Google's compliance with these commitments.

Sincerely,



David Drummond
Google Inc.
Senior Vice President of Corporate Development
and Chief Legal Officer

Not Responsive

From: Matthew Bye [mailto:matthewbye@google.com]

Sent: Wednesday, October 31, 2012 04:41 PM

To: (b)(7)(C)

Subject: Re: Possible meeting

(b)(7)(C) Kent Walker, Stewart Jefferies, John Harkrider and I will be joining from Google tomorrow.

Cheers,
Matthew

On Wed, Oct 31, 2012 at 6:43 AM, (b)(7)(C)@ftc.gov wrote:

Matthew – Good morning. Do you happen to know which Google representatives will be attending tomorrow morning's meeting with Commissioner Ohlhausen?

Thanks,

(b)(7)(C)

(b)(7)(C)

Attorney Advisor

Office of Commissioner Maureen K. Ohlhausen

Federal Trade Commission

600 Pennsylvania Avenue, NW

(b)(7)(C)

Washington, DC 20580

(b)(7)(C)

From: Matthew Bye [mailto:matthewbye@google.com]

Sent: Monday, October 22, 2012 6:46 PM

To: (b)(7)(C)

Subject: Re: Possible meeting

(b)(7)(C) - yes, that would be perfect. Thank you!

On Mon, Oct 22, 2012 at 2:46 PM, (b)(7)(C) <[@ftc.gov](mailto:(b)(7)(C)@ftc.gov)> wrote:

Matthew – Can we schedule the meeting for 9:00 am on Thursday, November 1?

Thanks,

(b)(7)(C)

(b)(7)(C)

Attorney Advisor

Office of Commissioner Maureen K. Ohlhausen

Federal Trade Commission

600 Pennsylvania Avenue, NW

(b)(7)(C)

Washington, DC 20580

(b)(7)(C)

From: Matthew Bye [mailto:matthewbye@google.com]

Sent: Friday, October 19, 2012 6:16 PM

To: (b)(7)(C)

Subject: Re: Possible meeting

(b)(7)(C) - yes, I'm on

(b)(6)

Cheers,

Matthew

On Fri, Oct 19, 2012 at 2:22 PM, (b)(7)(C) @ftc.gov> wrote:

Matthew – Do you have a number I can reach you at? It might be easier to schedule this over the phone.

Thanks,

(b)(7)(C)

(b)(7)(C)

Attorney Advisor

Office of Commissioner Maureen K. Ohlhausen

Federal Trade Commission

600 Pennsylvania Avenue, NW

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Washington, DC 20580

(b)(7)(C)

From: Matthew Bye [mailto:matthewbye@google.com]

Sent: Friday, October 19, 2012 1:14 PM

To: (b)(7)(C)

Subject: Possible meeting

Hi (b)(7)(C) - the best day for us to meet would be Monday 10/29 (anytime except 4pm, which is when we're meeting with Commissioner Ramirez). Tuesday 10/30 could also work -- with a preference for the morning, if possible.

Cheers,

Matthew

Not Responsive

-----Original Message-----

From: Creighton, Susan [mailto:screighton@wsgr.com]

Sent: Tuesday, December 18, 2012 10:32 PM

To: Ohlhausen, Maureen

Subject: RE: Free to talk tomorrow?

perfect. what # should I call?

From: Ohlhausen, Maureen [mailto:mohlhausen@ftc.gov]

Sent: Tuesday, December 18, 2012 10:30 PM

To: Creighton, Susan

Subject: Re: Free to talk tomorrow?

Yes. Is 9:30 good for you?

Maureen

From: Creighton, Susan [mailto:screighton@wsgr.com]

Sent: Tuesday, December 18, 2012 08:25 PM

To: Ohlhausen, Maureen

Subject: Free to talk tomorrow?

Sent with Good (www.good.com)

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Not Responsive

From: Creighton, Susan [<mailto:screighton@wsgr.com>]
Sent: Wednesday, November 14, 2012 1:04 PM
To: Ohlhausen, Maureen
Subject: RE: Google update

202-973-8855.

From: Ohlhausen, Maureen [<mailto:mohlhausen@ftc.gov>]
Sent: Wednesday, November 14, 2012 12:40 PM
To: Creighton, Susan
Subject: Re: Google update

Susan: I can call you after 1 today. What number is best?

Maureen

From: Creighton, Susan [<mailto:screighton@wsgr.com>]
Sent: Wednesday, November 14, 2012 12:24 PM
To: Ohlhausen, Maureen
Subject: Google update

Commissioner: I was hoping I might have a chance to update you on things going on in this matter. I am out of pocket until about 1, but after that I'm free any time that is convenient for you for the rest of the day. Many thanks, and with best regards, Susan

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Not Responsive

-----Original Message-----

From: Creighton, Susan [mailto:screighton@wsgr.com]
Sent: Thursday, November 15, 2012 12:42 PM
To: Ohlhausen, Maureen
Subject: RE: Google conduct matter

that would be great. my number is (b)(6)

From: Ohlhausen, Maureen [mohlhausen@ftc.gov]
Sent: Thursday, November 15, 2012 12:33 PM
To: Creighton, Susan
Subject: RE: Google conduct matter

I can call you at around 5:00.

Maureen

-----Original Message-----

From: Creighton, Susan [mailto:screighton@wsgr.com]
Sent: Thursday, November 15, 2012 11:07 AM
To: Ohlhausen, Maureen
Subject: Google conduct matter

Commissioner: Might you have a block of 20 minutes or so some time late this afternoon or tomorrow? I'm free pretty much any time after 4:30 today, or any time tomorrow. With best regards, Susan Creighton

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