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NPR: All Things Considered
Is Google Playing Fair With Its Search Results?
By Nina Gregory
June 27, 2011

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Virginia Mayo/AP

Federal regulators are investigating Google to see whether the company has broken antitrust laws. Those watching the investigation say the company's power gives it an incentive to unfairly exclude competitors. But Google says it doesn't tip the scales in its favor when it comes to search results.

Google draws over 1 billion visits to its websites each month, making it the world's largest Web property. But what it might do with that market share has helped Google become federal regulators' target in a massive antitrust investigation.

It is not illegal for a company to have a monopoly — what experts say is illegal is how a company uses its monopoly.

"Have they unfairly excluded competitors in a way that will hurt consumers?" asks Bob Lande, a director at the American Antitrust Institute, a nonprofit research group. He's watching the Federal Trade Commission's investigation of Google closely.

"Google has this enormous power, and they have the incentive to unfairly exclude competitors in a way that could harm consumers," he says. "And the FTC wants to see whether this has happened."

It will be a difficult case to make: Google says the site is free to users, and if you don't like its results, you can go elsewhere for information.

And despite its dominant market share, Google argues it doesn't have a monopoly, pointing out there are other search engines like Bing. But more important, it says the FTC's notion of search is antiquated.

Matt Cutts, a software engineer at Google, explains that search is no longer relegated to just search engines.

Google has this enormous power, and they have the incentive to unfairly exclude competitors in a way that could harm consumers. And the FTC wants to see whether this has happened.

- Bob Lande, director of the American Antitrust Institute

"You can go online and ask your friends — whether on Twitter or Facebook — y'know, 'Hey, I need a recommendation for a good bicycle' or something like that," he says. "It's not probably always going to be about the Web. It might be bringing in things like social [networks]. It might be bringing in trusted experts."

Stifling Competition?

Gary Reback, an antitrust attorney in the Silicon Valley, is credited with spearheading the government's massive antitrust case against Microsoft in the 1990s.

He says in the case of Google, the government is also investigating whether the search engine unfairly puts its own results at the top. For example, if a user Googled "map of Pasadena," a Google map might come up above MapQuest.

"The allegation is that Google brings its own results up to the top of the search results, making them more visible and more valuable than competitors who actually would score higher on the normal relevance tests Google uses to rank search results," Reback says.

Google denies that it tips the scales in favor of itself. One of the many companies that disagree is the online travel company Kayak.com.

"We believe there's a very compelling case that Google is abusing its dominant position in search to stifle competition and to extend its control over how information and commerce flows over the Internet," says Robert Birge, Kayak's chief marketing officer.

Birge offers an example. Say you want to go to Tahiti. "I think what would happen if you search for hotels from Tahiti, you're going to see a number of search results that appear to be unbiased search results from the Google search engine, when in fact they're a part of a new product that Google has launched last year — that's their own product — and is based on what advertisers are paying them," he says.

Google admits companies are sometimes unhappy with where they turn up in a search result, but not everyone can be first.

There are myriad accusations being made against Google, and given the scope, the FTC probe is ongoing. Similar cases have taken years to sort out.

But in this Google investigation, the FTC certainly has plenty of data it has to search through.

POLITICO

Google's refusal puts Kohl on spot

By Mike Zapler

June 26, 2011



Kohl's choice now is to subpoena the tech icon or risk the panel's authority. | Westcott/POLITICO

Read more: <http://www.politico.com/news/stories/0611/57811.html#ixzzIQb2DYlue>

Google's refusal last week to let Chief Executive Officer Larry Page or Executive Chairman Eric Schmidt testify at a Senate antitrust hearing on the tech giant's alleged bad acts put the screws to subcommittee chairman Herb Kohl.

Kohl now has a dilemma: Subpoena a tech icon or back down and potentially undermine the panel's authority to compel top corporate execs to appear.

It's no easy call. Congressional subpoenas typically are reserved for extraordinary situations — a banking meltdown or a colossal oil spill. Kohl, a Wisconsin Democrat, and Mike Lee of Utah, ranking member on the Senate Judiciary's antitrust subcommittee, must decide whether Google's behavior in Internet search warrants going to the mat.

"That seems to be a bit over the top," said Norman Ornstein, a congressional scholar with the American Enterprise Institute. "You bring in financial executives after the collapse, or tobacco executives. This could be seen as an exercise in slamming Google."

At the same time, Ornstein and others said Google's refusal to play ball with a congressional committee appears unwise — even naive.

"The purpose of a highly paid CEO or top official is to be the spokesperson for the company," said Herbert Hovenkamp, an antitrust professor at the University of Iowa College of Law. "Not going makes it look like they have something to hide."

Long before the Federal Trade Commission issued a subpoena last week officially notifying Google that it was the target of an antitrust case, Kohl planned to hold a hearing to explore whether Google is leveraging its dominance in Web search to expand into new markets and elbow out competitors.

Smaller Web startups as well as tech titans such as Microsoft have pressed regulators in recent months to scrutinize what they see as Google's anticompetitive acts. Several have brought their concerns to the FTC and the Justice Department, in addition to European regulators.

But when Kohl's staff earlier this month asked one of Google's head honchos to testify, the tech giant responded that it would send a lower-ranking executive instead.

"We're in talks with the subcommittee, and we'll send them the executive who can best answer their questions," Google spokeswoman Mistique Cano told POLITICO.

That was not the answer Kohl and Lee wanted. In a June 10 letter to Page and Schmidt, the lawmakers made clear they wished one of them to testify under oath at a hearing that's expected to take place before the August congressional recess.

"We strongly prefer to have one of you as the witness representing Google at the hearing," Kohl and Lee wrote. "We would much prefer to work this out by agreement rather than needing to resort to more formal procedures."

Translation: Don't make us issue a subpoena.

One congressional source familiar with the matter framed the lawmakers' dilemma this way: On the one hand, Kohl and Lee will want to avoid looking like they're staging a publicity stunt.

In that vein, the source said, it's critical that the senators make a compelling case why Schmidt or Page — rather than a less senior executive — appear before the subcommittee.

At the same time, presumably, Kohl and Lee knew what they were doing when they put their veiled threat to issue a subpoena in writing. Not following through could send a signal to other companies that it's okay to stiff-arm the antitrust panel.

"He's a boss who's very well aware of his actions and thinks things through very carefully," said Jeff Miller, a subcommittee staffer under Kohl for eight years until 2008.

"I'm sure there's a reason he's asking for the people he's asking for," added Miller, who said he has not discussed the matter with Kohl.

In their letter to Google, Kohl and Lee wrote that they want one of the top executives at the hearing because "fundamental questions of business operations rather than merely legal issues" are involved.

A majority vote of the full Senate Judiciary Committee would be needed to issue a subpoena to the Google executives. In what would almost certainly become a media spectacle, the committee would debate and vote on the issue in a public hearing.

Kohl, who recently announced he won't seek reelection next year, and ranking member Lee appear to be acting in tandem.

“I’m very disappointed in Google’s response to the request to have Larry Page or Eric Schmidt testify,” Lee said in a statement. “I’m committed to work with Sen. Kohl and others on the committee to ensure we have the opportunity to investigate these issues thoroughly and receive adequate responses from Google.”

The executive Google offered instead, David Drummond, is no middle manager.

As senior vice president of corporate development and chief legal officer, Drummond oversees a broad portfolio that includes government relations, corporate development and new business development. He helped Google incorporate in 1998 when he was a lawyer at prestigious Silicon Valley law firm Wilson Sonsini, before joining the company in 2002.

But neither is he Schmidt or Page.

There is precedent for major corporate executives testifying before the antitrust committee. Just last month, AT&T CEO Randall Stephenson did so on the AT&T/T-Mobile deal. Top oil executives testified in 2006.

In 1998, Microsoft Chairman Bill Gates testified before the full Judiciary Committee and defended the company against the same types of charges of allegedly anticompetitive behavior that Google now faces.

The comparisons of Google’s current antitrust woes with Microsoft’s longrunning case — which finally concluded in May — have run rampant in the past few days.

News last week that the FTC issued a subpoena and civil investigative demand to Google — officially launching a probe — sparked speculation about potential damage to the search company’s business and image, possible trial and calls for the White House to distance itself from the company.

Earlier this month, Schmidt and another Google official, Marissa Mayer, were guests at President Barack Obama’s state dinner for German Chancellor Angela Merkel.

There are noteworthy political ties on both sides in the case of Sen. Kohl and the Google snub. FTC Chairman Jon Leibowitz served as Kohl’s chief counsel from 1989 to 2000.

Miller, the former antitrust committee aide, who is now a lobbyist for the NFL, could not recall another time that the subcommittee resorted to a subpoena to get a business executive to appear. He worked for Kohl from 2000 to 2008.

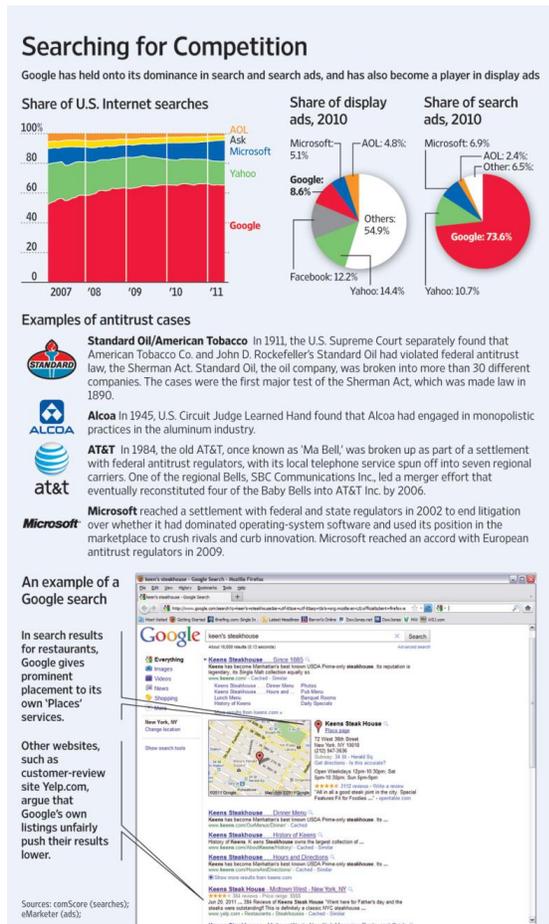
“I would say it’s highly unusual for a company to take this tack,” he said. “I don’t know Google’s reasons, but this approach, it seems, is not going to win them any friends in Congress.”

Wall Street Journal
Feds to Launch Probe of Google
 By Thomas Catan and Amir Efrati
 June 24, 2011

Federal regulators are poised to hit Google Inc. with subpoenas, launching a broad, formal investigation into whether the Internet giant has abused its dominance in Web-search advertising, people familiar with the matter said.

The civil probe, which has the potential to reshape how companies compete on the Internet, is the most serious legal threat yet to the 12-year-old company, though it wouldn't necessarily lead to any federal allegations of wrongdoing against Google.

While Google has faced several antitrust probes in recent years, the U.S. has limited its investigations largely to reviews of the company's mergers and acquisitions. The new inquiry, by contrast, will examine fundamental issues relating to Google's core search-advertising business, its biggest money maker, said the people familiar with the matter.



[View Interactive](#)

Many policy watchers think the Google probe ultimately could be as much of a watershed event for antitrust policy as the Justice Department's landmark lawsuit against Microsoft Corp. in the 1990s.

Microsoft avoided being broken up, but industry and antitrust experts say the legal assault on the company—and its aftermath—helped check Microsoft's ability to exploit its dominance in personal-computer operating systems to control other technology sectors. The long-running case also distracted the company from its operations and tarnished its public images—risks that might also face Google.

Google wouldn't be an easy target for prosecution, antitrust lawyers say. Under U.S. antitrust law, it isn't illegal to have a monopoly—only to acquire one unlawfully or abuse it. And courts have significantly narrowed the scope of antitrust law in recent years, further raising the bar for the Federal Trade Commission, which is handling the probe, to bring a successful case.

The people familiar with the matter said issues in the FTC probe are expected to include whether Google searches unfairly steer users to the company's own growing network of services at the expense of rival providers. Some companies complain about the way that Google ranks its own services in its "natural" search results, or the amount it charges them for placing ads, claiming its market power gives it the ability to determine whether businesses succeed or fail.



D9 Conference

Google's Chairman is concerned about facial recognition software – so much so that the company built a product but never launched it. In the kickoff session for the D9 conference, Schmidt's conversation with Walt Mossberg and Kara Swisher ranged from privacy to Android to turning over the CEO spot to Larry Page.

"Google engages in anticompetitive behavior...that harms consumers by restricting the ability of other companies to compete to put the best products and services in front of Internet users, who should be allowed to pick winners and losers online, not Google," said Fairsearch.org, a group representing several Google critics, including Microsoft and travel services [Expedia Inc.](#), [Kayak.com](#), and Sabre Holdings.

Those companies said that Google's anticompetitive practices include using other companies' content without their permission, deceptive display of search results, manipulation of search results to favor Google's products, and buying up competitive threats to its dominance.

Google—which handles about two-thirds of all U.S. Web searches, according to comScore Inc., and more than 80% in many parts of Europe—has denied doing any of these things. It argues that users can easily navigate to other choices on the Web. In statements, the company has said it "built Google for users, not websites, and our goal is to give users answers."

In November, the European Commission, the European Union's executive arm, opened its own formal investigation into allegations by several companies that Google had violated European competition laws. The Texas attorney general has also opened a probe.

The FTC's five-member panel of commissioners is preparing to serve Google with civil subpoenas within days, the people familiar with the matter said. They said other companies are likely to receive official requests for information about their dealings with Google at a later stage.

Google has drawn public complaints from travel sites like Expedia and TripAdvisor, health site WebMD.com and local-business reviews sites Yelp.com and Citysearch.com, among others. They claim Google promotes links to its own services—such as local-business information pages—depriving their sites of potential traffic.

Google is quickly expanding its array of services that seek to directly answer users' queries, departing from its original strategy of sending them quickly to the most relevant site. Since 2009, for example, Google has directed people who search for mortgages or credit cards to its own marketplace for such offers.

Independent websites have complained publicly that Google doesn't subject its specialized sites, such as Google Places, the company's local-business information pages, to the same rules that cover their sites, and so Google's own sites often show up atop its search results, regardless of their quality. Google has used Google Places as a launching pad to sell ads to local businesses who want to promote offers to Google Web-search users.

"They should compete on fair terms, but they're not subjecting their own content to the same standards by which they judge ours," said Jay Herratti, chief executive of CityGrid Media, a unit of [IAC](#) that operates Citysearch.com, Urbanspoon.com and InsiderPages.com. "They always guarantee themselves the top position with products that are largely built on other publishers' content," he said.

He said earlier this year he had discussions with Google but they have become "tone-deaf to publisher concerns and are proceeding with their own agenda."

Another example is the "comparison ads" that Google introduced in 2009, in which users can enter information to judge advertisers' products against each other. Google then charges a fee for a detailed business referral to, say, a mortgage lender or an airline.

Google has insisted that it is merely providing a service to users, who want answers rather than just links to other services. But that format isn't open to services such as LendingTree or Kayak, which already provide referrals.

"I think there's an excellent argument to be made that, given Google's large market share, the antitrust laws require it to treat its own content on an equal basis with the content of its direct competitors," said Jonathan Grossman, an antitrust lawyer at Cozen O'Connor in Washington, who isn't involved in the dispute.

Other companies contend Google is abusing its dominance in search ads to extend its control to other markets, from mobile phones to online television, publishing and airline travel.

Many of the antitrust inquiries, Google has said, are sparked by companies that fear their business models will be upended by its entry into their market.

"Given our success and the disruptive nature of our business, it's entirely understandable that we've caused unease among other companies and caught the attention of regulators," wrote two Google executives in a company blog post after the official European probe was launched in November.

Google has also suggested that many of the complaints about its behavior have been orchestrated by Microsoft, which in April filed its own antitrust complaint against Google with European authorities. Microsoft has said it isn't behind others companies' actions, but merely helps direct them to the proper authorities.

The FTC's preparations to subpoena Google are the first concrete signal that the agency's commissioners have decided there is enough evidence to move forward with a formal investigation. The probe is expected to take a year or more to unfold, and it won't necessarily lead to any charges.

But the FTC fought hard with the Justice Department to take the case, the people familiar with the matter said, and so is unlikely to walk away without taking any action. The FTC and Justice Department share responsibility for enforcing federal antitrust laws.

The FTC has been making informal inquiries about Google's business practices for several months, these people said.

They said Google lawyers have met with FTC officials several times to explain various aspects of the company's business. Some technology companies said privately that they have been contacted by the FTC in recent months, as it decided whether to open an investigation,

In addition to Texas, where a state investigation of Google was disclosed last year, the attorneys general of New York, California and Ohio have started preliminary probes of the company, people familiar with the matter said. Representatives of the New York and California officials declined comment; those in Ohio couldn't be reached. The Financial Times reported the additional state investigations Thursday.

Google also has faced pressure on privacy matters. In April, Google agreed to submit to independent privacy audits for the next 20 years as part of a legal settlement with the FTC of claims it violated users' privacy at its social network Buzz.

The same month, Google agreed to allow the Justice Department to oversee a slice of its operations in exchange for approval of its \$700 million purchase of travel-software provider ITA Software.

In 2008, the Justice Department blocked a Google advertising agreement with [Yahoo Inc.](#), saying it would have controlled more than 90% of the relevant market.

Write to Thomas Catan at thomas.catan@wsj.com

Financial Times

Google under US antitrust pressure

By Richard Waters in San Francisco and Kara Scannell in New York

June 24, 2011



A handful of the biggest US states has started antitrust investigations into Google, adding to the mounting regulatory pressure on the search company as federal authorities move closer to a full-blown inquiry of their own.

Attorneys-general in California, New York and Ohio have all recently begun reviews of the potential threat to online competition from Google's search dominance, according to people familiar with the investigations. The moves come in the wake of an investigation launched last year by the Texas attorney-general's office, which became the first regulator in the US to weigh in.

The gathering regulatory clouds around Google in the US echo the mounting inquiries against Microsoft that began more than a decade ago. The first investigation into the software company was also launched by Texas, before a group of other states and the Department of Justice became involved.

Microsoft eventually reached a settlement with the administration of George W. Bush and a group of states after a judge had ordered that the company be broken up.

The widening number of jurisdictions where Google is facing competition probes threatens to stretch its resources and distract its senior management in similar ways to Microsoft, one person familiar with the inquiries said. The European Commission launched its own in-depth review last year.

The states that have recently joined the inquiries into Google are still at an early stage in their deliberations, according to three people familiar with their thinking. State antitrust laws differ from federal statutes, and each other, adding to the potential legal complexity.

The European case was triggered by complaints that Google had unfairly penalised some websites by pushing them down the rankings in search results, and abused its dominance of search advertising.

The complaints spread to the US last year when some companies complained that a move into the travel search business with the acquisition of ITA Software would give Google an unfair advantage over other travel information services on the internet.

While the Department of Justice approved the ITA deal this year, the Federal Trade Commission almost immediately began a preliminary, broad-ranging investigation into Google's power.

People who have talked to the FTC have anticipated for weeks that the agency would soon begin issuing information requests, known as civil investigative demands. Such a move would signal that its inquiries had entered a new, formal phase.

Adding to the pressure on Google in Washington, the leading Republican and Democratic figures on the Senate antitrust subcommittee have called for the company to send Larry Page, chief executive, or Eric Schmidt, chairman, to testify in a hearing about the company. Google is negotiating with the committee over sending David Drummond, its top lawyer, instead, according to a person close to the discussions.

Google refused to comment on the widening investigations, as did the FTC and the attorneys-general of New York, California, Ohio and Texas.

Washington Post
Google's dominance draws new scrutiny from regulators
By Jia Lynn Yang
June 24, 2011



KIMIHIRO HOSHINO/AFP/GETTY IMAGES - (FILES) This April 7, 2011 file photo shows the Google logo at the Google headquarters in Mountain View, California.

Tech titan Google has built its runaway success on a promise to consumers that the firm's almighty search engine can take the untamed jungle of sites and information on the Web and spit out exactly what people are looking for, whether it's the cheapest shoes or the best home mortgage rates.

Now government regulators around the world are wondering whether Google is still giving consumers the best results or whether the giant, as it expands, is more interested in using its search formula to promote its products and block out competitors.

Google said Friday that it had received a subpoena this week from the Federal Trade Commission as part of a government investigation into the company's business practices. This marks the first time the U.S. government will take a broad look at whether one of the country's most powerful companies is harming consumers or stamping out competition, joining inquiries in progress in other countries.

The company with the motto "Don't be evil" said it wasn't sure what the FTC will investigate but vowed to cooperate, maintaining that it always focuses on what's best for users.

"We respect the FTC's process and will be working with them (as we have with other agencies) over the coming months to answer questions about Google," wrote Amit Singhal, a Google fellow, in a company blog post. "Since the beginning, we have been guided by the idea that, if we focus on the user, all else will follow."

The FTC is in the early stages of learning more about the company, according to people close to the investigation. The agency might conclude that the company has done nothing wrong, or it could impose sharp restrictions on Google's behavior.

There are hints of what's troubling the government — with parallels to the landmark case built by the Justice Department against Microsoft in the 1990s.

Being big is not itself against the law. Yet as with Microsoft and its Windows operating system, critics allege that Google is illegally leveraging a popular product, its search engine, to unfairly knock out competitors.

The company's position as the Internet's most popular search engine has given it immense power over the fortunes of a huge array of companies and industries, from retailers to news sites. But critics worry that with Google acting as the de facto gatekeeper for the Internet, users don't always know what they're missing when they hit "search."

The business of search is multilayered. There are the broad players such as Google, Bing and Yahoo that consumers use as entry points to the Web. But there are also a plethora of specialized search sites, such as Orbitz for travel and Yelp for restaurants, that depend on Google for much of their traffic.

There is intense competition to appear high up on Google's first page of results. For many businesses, millions of dollars of revenue can hang in the balance depending on the outcome of Google's algorithms.

As Google has launched its specialized services, some critics have worried that Google has been putting its products higher in its results. They point to Google's tendency to show its Google Maps product in a large box above other results, making it tougher for competing services, such as MapQuest, to win users.

"They're somewhat disingenuous when they say we're trying to provide a neutral search and all we care about is our users," said John Simpson at Consumer Watchdog. "What they really care about is selling their users to advertisers. That's how they make their money."

Another example cited by competitors is the firm's product Google Places, which lists local search results for hotels, restaurants and other locations. The travel site TripAdvisor.com has complained that when users search for hotels, Google puts results from Google Places above other results, meaning that fewer rival sites with their own hotel or restaurant listings appear on the first page of searches. TripAdvisor.com has also alleged that Google is using star ratings from TripAdvisor.com's users in its results, effectively using another company's unique content while profiting from ads sold against it.

Sites that specialize in shopping searches have made similar allegations against Google, saying the company tends to favor the results of its price comparison service above others.

In defense, Google says it is adding these features to give consumers a better product. Also, the tech company says users are free to switch to other sites.

"Using Google is a choice — and there are lots of other choices available to you for getting information: other general-interest search engines, specialized search engines, direct navigation to Web sites, mobile applications, social networks, and more," Singhal wrote.

In the past few years, antitrust enforcers at the FTC, the [Justice Department](#) and the European Union have been trying to learn more about the workings of the company as they have reviewed mergers and fielded complaints from competitors.

Until now, however, U.S. government officials have mostly limited their inquiries to narrow questions over whether to approve certain acquisitions. The FTC's move this week marks the first time the U.S. government is stepping back to address bigger issues about Google's impact on consumers and competition. The EU has launched its own broad investigation.

Scrutiny is also rising on Capitol Hill, where the Senate's antitrust subcommittee has asked Google chief executive Larry Page and the company's former head, Eric Schmidt, to testify at a hearing on the

company's practices. Google has been reluctant to send those executives, prompting the committee to send a letter this month threatening to subpoena them.

Reuters

Google at the center of antitrust probes: source

By Abhishek Takle, Bill Rigby and Diane Bartz

June 24, 2011



(Reuters) - Google Inc found itself at the center of multiple government investigations on Thursday into whether it is using its dominance in search advertising to scotch competition.

At least three state attorneys general have started antitrust investigations into Google, a source familiar with the matter said.

The source declined to elaborate on the details of the investigations by the attorneys general of California, Ohio and New York as they were still in the early stages.

The attorneys general investigation into Google was first reported by the Financial Times, citing people familiar with the investigations.

The news of the attorneys general investigation emerged on the same day the Wall Street Journal reported that the internet search giant is about to receive the civil equivalent of a subpoena from the U.S. Federal Trade Commission as part of a probe into the company's Internet search business.

The company, which dominates U.S. and global markets for search advertising, has been accused by competitors of favoring its own services over rivals in its search results.

Google, the world's No. 1 search engine, and the FTC declined to comment on the Journal report.

Google was not immediately available to comment on the attorneys general investigation. The attorneys general of California and New York declined comment while the attorney general of Ohio was not immediately available for comment.

The FTC plans to send the civil investigative demand with a request for more information, the civil equivalent of a subpoena, within five days, according to the Journal report.

U.S. antitrust regulators have been concerned about Google's dominance of the Web search industry, and it has been under investigation by the European Commission since last November.

Complaints has been filed with regulators on both sides of the Atlantic, many from Google rivals who specialize in vertical searches like price comparison websites, which are widely seen as a threat to Google's position as a key gateway to online information.

"The distraction that comes from a federal investigation should not be underestimated," Colin Gillis of BGC Partners said, noting that one of Google's best options to grow -- by moving into adjacent markets -- was being hampered by antitrust probes.

Gillis noted that the real cost of the FTC investigation was not financial. "The issue comes down to management distraction, that's a real cost," he said.

Google has been in a stock slump. The company's shares began the year a touch above \$600, but are now below \$500. Google shares closed at \$480.2 on Thursday on the Nasdaq.

Google has weathered other antitrust setbacks. The company walked away from a search deal with Yahoo! Inc in 2008 when the Justice Department signaled it was prepared to challenge it.

A New York judge has said that a deal Google had made with publishers and authors to create a massive digital library was illegal, partially because it effectively gave Google the rights to books that are in copyright but whose authors cannot be found.

(Reporting by Abhishek Takle, [Bill Rigby](#) and [Diane Bartz](#); Editing by John Wallace, Maureen Bavdek and [Bernard Orr](#))

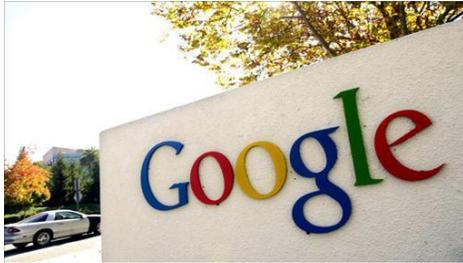
MarketWatch

Google confirms probe into business practices

By Dan Gallagher and John Letzing

June 24, 2011

SAN FRANCISCO (MarketWatch) — Google Inc. acknowledged Friday that it has received notice from the Federal Trade Commission that the antitrust regulator has begun an investigation of the firm's Internet search and advertising businesses.



Google under federal scope

Regulators to serve Google with civil subpoenas, signaling start of a probe into whether the firm abuses its dominance on the Web.

However, Google GOOG +0.10% said in a posting on a company website that, “It’s still unclear exactly what the FTC’s concerns are.”

Google also made a filing with the U.S. Securities and Exchange Commission, disclosing that it has received a subpoena and notice of civil investigative demand from the FTC, related to the company’s “business practices, including search and advertising.”

An FTC spokesman declined to comment. [See post on The Tell about the FTC probe of Google.](#)

A broad investigation of Google’s market power and competitive practices — one that extends beyond scrutiny of a particular acquisition, for example — had long been anticipated. A similar probe of Google has been underway in Europe since last year. In addition to the U.S., Google holds a commanding lead in many overseas online search markets.

According to data from eMarketer, Google will account for nearly 76% of all U.S. search-advertising revenue this year, compared with a combined 16% for Microsoft Corp. MSFT -0.04% and Yahoo Inc. YHOO -1.29%

Microsoft has actively supported the antitrust review of Google being undertaken by the European Commission. That probe relates to questions about whether or not Google presents search results in such a way as to protect its own economic interests.

On Friday, Google said it is cooperating with the FTC’s investigation. The company said in its blog posting that “we respect the FTC’s process and will be working with them” to answer questions about its business.

“Using Google is a choice — and there are lots of other choices available to you for getting information,” the company said. “Still, we recognize that our success has led to greater scrutiny.”

Lawmakers are also pressing the company’s top executives directly.

In a letter sent earlier this month, Sens. Michael Lee, (R., Utah) and Herb Kohl (D., Wis.) requested that Google Chief Executive Larry Page or Executive Chairman Eric Schmidt testify at a hearing on competition in the search market. [Read full story on Google execs being asked to testify.](#)

The senators suggested that if one of the top executives does not appear to testify, rather than Google’s top legal officer, subpoenas may be issued to compel them to show up.

The recent scrutiny of Google draws some similarities to the antitrust difficulties encountered by Microsoft in the 1990s.

Microsoft, which finds itself currently struggling to match Google in the online search market, only recently was freed from close oversight of its business practices resulting from an antitrust settlement with the U.S. Justice Department, related to Microsoft’s considerable market power thanks to its Windows operating systems.

The FTC and the Justice Department effectively share purview of competition issues in the technology industry.

Last year, the FTC settled charges of anti-competitive conduct against Intel Corp. [INTC -0.33%](#), resolving the regulator’s allegations that the company “stifled competition in the market for computer chips.” The FTC had sued Intel in 2009.

The Computer & Communications Industry Association, a organization originally formed decades ago to help draw antitrust scrutiny to International Business Machines Corp. [IBM -0.05%](#), said Friday that it supports the FTC probe of Google, which it counts as a member.

The CCIA has also been involved in antitrust cases against Microsoft and Intel.

“There have been a number of complaints by interested competitors of Google, and since fair government scrutiny is necessary for good competition policy we support an FTC investigation,” CCIA Chief Executive Ed Black said in a statement.

However, Black added: “We have not yet seen the type of credible evidence that would support a charge of [Google’s] abuse of market power, so the investigation should be helpful in identifying actual abuse or, as Google claims, in dispelling accusations designed to harass or distract the company as it competes.”

On a day of broad losses for technology stocks, shares of Google were down more than 1% to \$474.81.

Associated Press

FTC's antitrust inquiry turns up heat on Google

By Michael Liedtke and Joelle Tessler

June 24, 2011

SAN FRANCISCO—Google may be entering a make-or-break phase in its colorful history now that U.S. regulators have opened an investigation into whether the company has been abusing its dominance of Internet search and advertising to stifle competition.

The probe by the Federal Trade Commission, confirmed by the company Friday, will require Google to convince regulators that its closely guarded recipe for search results is designed to give people the best recommendations, not bury links to its rivals.

If you search for a local business, for example, Google might highlight its own listing, from a service called Google Places, instead of one on Yelp, a popular review site and Google competitor.

Requests for directions may turn up Google Maps, and queries for a video might point to the company's own site, YouTube. Or if you type "mortgage" in Google's main search box, the top ad might be for Google Advisor, which lists the lowest interest rates.

The inquiry also is expected to peer into Google's financial engine: the advertising links tied to the subject of each search request. Some of these commercial messages appear, shaded in color, at the top of the results page, while others are stacked in the right-hand column.

Even as Google has expanded into video, mobile phones and television, the text advertising that pops up alongside search results and other Web content generates most of Google's revenue—an amount expected to exceed \$35 billion this year.

Some websites contend Google has rigged its system in a way that drives up the ad prices, even though Google says the rate is determined by bids submitted in an auction. Others say Google purposely blocks their ads from appearing because the company views them as competitive threats. A coalition of Internet travel companies, including Expedia, Hotwire and Kayak, have welcomed the investigation.

The FTC is following the lead of European regulators who launched a similar investigation last November. The Texas attorney general has been looking into Google's business practices, too.

The search engines for Microsoft and Yahoo also sometimes feature their own services in search results. The big difference: Google processes about two-thirds of all search requests in the U.S. and handles an even larger volume of advertising. Microsoft's Bing and Yahoo combined have less than 30 percent of the market.

Danny Sullivan, who follows the industry closely as editor-in-chief of the trade journal Search Engine Land, said what Google is doing is not unlike a newspaper running an ad to promote one of its products.

"From what I have seen so far," he says, "Google doesn't seem to be doing anything wrong."

Melissa Maxman, an antitrust attorney in Washington, said the FTC wouldn't have opened its inquiry unless it thought the complaints were credible.

"There is smoke if not fire," she said.

The FTC's investigation threatens to put Google on the same course as nemesis Microsoft, which was the target of a Justice Department lawsuit that began in the 1990s and dragged into the next decade. That case alleged that Microsoft used its dominant Windows operating system to kill competing software makers.

"It's right out of the same playbook," Maxman said of the FTC's probe into Google.

Although Microsoft thwarted an attempt to break up the company, it was distracted for years, and the company has never been quite the same. The investigation may have made Microsoft more vulnerable to companies such as Google during the late 1990s as the Internet emerged as an important new platform on computers.

Now, Google faces some of the same threats as it tries to figure out how to counter the rising popularity of services such as Facebook.

In an extreme scenario, the FTC's inquiry could be the first step in a long process that ends with Google having to spin off YouTube and some of the other pieces of the empire it has built for 13 years. Although it doesn't have to, the FTC could hand its case off to the Justice Department, as it did in the Microsoft inquiry.

"Inevitably, if we get to the point where Google is found to have abused its power, we are going to be talking about divestiture because divestitures are always a better way to go than trying to regulate something like this," said Gary Reback, an antitrust lawyer in Silicon Valley who is representing some of the companies complaining about Google's practices.

Other antitrust attorneys think the investigation could result in less radical solutions, such as prohibiting Google from featuring its own services at the top of its search results. Google could also agree to periodic audits of how it programs its search engine, much as did earlier this year in a settlement of an FTC investigation into its privacy practices.

Google is expected to put up a fierce fight. The investigation is aimed at the heart of its business, its formula for ranking the quality of websites and ads, which has evolved since Google co-founders Larry Page and Sergey Brin began working on it at Stanford University. The company views the recommendations that it produces as a matter of opinion protected by the First Amendment.

"It's still unclear exactly what the FTC's concerns are, but we're clear about where we stand," one of Google's top search engineers, Amit Singhal, wrote Friday on the company's blog. "Since the beginning, we have been guided by the idea that, if we focus on the user, all else will follow."

Google has been under increasing government scrutiny since then. It has prevailed in the key confrontations and won regulatory approval for several key acquisitions, including its \$3.2 billion purchase of online ad service DoubleClick in 2008, last year's \$681 million purchase of mobile ad service AdMob and a \$700 million purchase of airline fare tracker ITA Software in April.

To prove Google abused its dominance, regulators will have to get it to turn over sensitive documents that it has resisted sharing in the past. And Google probably won't be shy about fighting for the right to adjust its search formula to deliver more useful results to its audience.

The company says it needs to fine-tune search results to weed out the sites that try to game its system and win a high ranking even though they have little to do with whatever a person was searching for.

POLITICO

White House warned to get distance from Google

By Kim Hart

June 24, 2011



Google is reportedly the subject of an antitrust investigation by the FTC. | AP Photo Close

Consumer Watchdog is telling the White House that its cozy relationship with Google is inappropriate, given ongoing reviews by both the FTC and the Department of Justice.

The group, a vocal critic of Google, is asking White House Counsel Kathryn Ruemmler, who is responsible for overseeing ethics policy, “to rule that the president and other members of the administration must distance themselves from Google until the investigations are concluded,” according to [a letter](#) delivered to the White House on Friday.

Google is reportedly the subject of an antitrust investigation by the FTC, and Justice is reviewing its \$400 million purchase of online advertising firm Admeld. In addition, Justice, the FDA and the Rhode Island U.S. attorney are reportedly looking into allegations that Google profited from selling online ads to illegal online pharmacies.

Despite those ongoing reviews, Google’s Executive Chairman Eric Schmidt and Vice President Marissa Mayer were guests at last month’s State Dinner to honor German Chancellor Angela Merkel.

“Allowing such executives to hobnob at a gala White House event inevitably sends a message that the administration supports them and undercuts the ability of federal investigators to proceed with their case in a fair and unbiased way,” reads the letter, signed by Consumer Watchdog President Jamie Court and Privacy Project Director John Simpson.

Schmidt has been friendly with President Barack Obama for several years, having advised his presidential campaign and transition team and now serving on the President’s Council of Advisors on Science and Technology. The warm relationship between Schmidt and Obama has been called into question before by Google critics who worried the search giant was getting special treatment in certain areas, such as broadband policy.

“Nonetheless, given the current circumstances, the president and top administration officials must distance themselves from Google until the serious allegations against the company are resolved,” the letter said.

Complicating the situation is Google’s refusal to send Schmidt or CEO Larry Page to testify at an upcoming hearing on competition. Sens. Herb Kohl (D-Wis.) and Mike Lee (R-Utah), chairman and

ranking member of the Senate Judiciary antitrust subcommittee, said they may pursue a subpoena to force one of the Google executives to appear.

Google is in touch with the subcommittee and will “send them the executive who can best answer their questions,” spokeswoman Mistique Cano said Thursday.

Google did not respond to a request for comment on the Consumer Watchdog letter.

This article first appeared on [POLITICO Pro](#) at 5:38 a.m. on June 24, 2011.

San Francisco Chronicle
Google likely to face antitrust subpoenas from FTC
By James Temple and Casey Newton
June 24, 2011



Liz Hafalia / The Chronicle
Attorney Gary Reback talks about the antitrust issues surrounding Google in Menlo Park, Calif., on Friday, January 21, 2011.

Online search giant Google confirmed today that federal regulators have begun a formal antitrust review of its business practices.

In a blog post, Google said it received notification from the Federal Trade Commission of the review on Thursday.

The Mountain View company said in the post "it's still unclear exactly what the FTC's concerns are."

It's the most serious antitrust test yet for Google in the United States, but only the latest in a series of similar challenges. The European Commission and the Texas attorney general's office have initiated antitrust investigations of their own, and several U.S. senators have called for public hearings on the company's business practices. Most of Google's recent major acquisitions have drawn regulatory scrutiny for their potential impact on the competitive landscape.

At issue is whether or not Google is abusing its dominance in the online search market in ways that give it unfair advantages in adjacent fields like online comparison shopping, local business reviews, maps and video.

Some rivals claim the company arranges search results for its own products on its pages in ways that drive traffic toward services like Google Maps, Google Places and YouTube - and away from competitive offerings such as MapQuest, Yelp and MetaCafe.

The FTC declined to comment on the Journal report.

Even at its earliest stages, the FTC inquiry is drawing parallels to the landmark Microsoft antitrust case in the late 1990s, which turned on similar allegations and opened up competition in the technology

industry. But the actual similarities will depend on the outcome, which could take years and may still come to nothing.

Building a successful antitrust case against Google would require proving both that the company is a monopoly and that it has abused its position to undermine competitors and harm customers, said Aaron Edlin, a professor of economics and law at UC Berkeley's Boalt Hall School of Law.

Both are high bars, antitrust lawyers said.

A rule of thumb for monopoly status under antitrust law is control of 70 percent of the relevant market, Edlin said. Google owns about 65.5 percent of the U.S. search market, according to comScore Inc. But it is expected to control 75.9 percent of U.S. search advertising revenue this year, according to research firm eMarketer.

The thornier question is whether Google has worked to subvert competitors by manipulating its algorithms. Google maintains that it has changed its products and search algorithms only to provide better results for consumers.

Gary Reback, who represents several undisclosed clients that have raised concerns about Google's business practices, said news that the FTC plans to issue subpoenas signals that the case is building momentum.

Reback, an attorney with the Carr & Ferrell law firm, said he has been in touch with unspecified regulatory bodies about Google. His clients reportedly include Foundem, the British shopping comparison site that helped push forward the European Commission's antitrust probe into Google.

Reback was also instrumental in initiating the landmark antitrust case against Microsoft in the late 1990s.

"It's the same case, it's Microsoft redux," he said. "Everything we worried about Microsoft being able to do, Google is now doing. Exerting control over access to the Web, control over how people use the Web and the ability to take a cut off online transactions. That's the power that Google has amassed."

Danny Sullivan, a close observer of Google and the editor of online publication Search Engine Land, said it remains unclear how the government might try to remedy any unfairness it finds within the company's business practices. One option might be to force Google to play down its own products in search results, which Sullivan said would not benefit users.

"There'll be a fundamental unfairness if other search providers are allowed to favor themselves, but only Google is held to a higher standard," he said. "People have chosen that they want to search with Google. To suggest that therefore Google has to be punished for it is odd."

The Associated Press contributed to this report.

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This article appeared on page A - I of the San Francisco Chronicle

E-Commerce Times
FTC Approaches Google With Antitrust Hammer Swinging
By Rob Spiegel
June 24, 2011

If Google appears nonplussed by the FTC's attention, it doesn't have much company. Comparisons to Microsoft's long and painful antitrust saga abound. "Google seems to be making the same mistakes Microsoft made, only they're making those mistakes faster and worse," said tech analyst Rob Enderle. "Snubbing Congress was insane."

Google (Nasdaq: GOOG) was notified by the Federal Trade Commission on Thursday that a broad formal investigation will be launched. Google respects the FTC's process, it said in a blog post, and will be working with the agency over the coming months.

The FTC's Bureau of Competition will issue subpoenas to Google within the next few days, *The Wall Street Journal* reported on Thursday. Its investigation will focus on Google's dominance in search advertising, and determine whether it manipulates search results to direct users to its own sites and services.

Attorneys-general in California, New York and Ohio have also launched antitrust investigations against Google, *The Financial Times* has reported.

While the FTC probe appears to be the most intense investigation into Google to date, the company has been over antitrust issues.

Google could be at the center of a chapter of history repeating itself. Its present position is reminiscent of Microsoft's (Nasdaq: MSFT) in the mid-90s, which led to its prolonged battle with U.S. and European regulators. One question is whether Google's long dominance of search advertising has led company officials to have a sense of entitlement, creating a climate in which they've been routinely using search as a competitive weapon.

"The FTC called up Google and said, 'You've been naughty boys,'" Rob Enderle, principal analyst at the Enderle Group, told the E-Commerce Times. "Now Google is going down the same path Microsoft went down. Congress wanted to look at them as well, and they thumbed their nose at Congress. They said, 'No, we're not coming.' Instead, they sent their chief counsel. You don't snub Congress. As rich as they are, they're not a government yet."

Right now, Google's control of the Web is formidable.

"They control the page rankings," said Enderle. "They have the power to make and break companies on the Web, and many of those companies are Google competitors. That's an enormous amount of control, and the FTC sees that as restraint of trade."

The lessons of the past don't seem to have made a sufficient impression on Google, in Enderle's view.

"Google seems to be making the same mistakes Microsoft made, only they're making those mistakes faster and worse," he said. "Snubbing Congress was insane. Microsoft blazed this trail in the United States and Europe, so I think we're going to see this happen more quickly with Google."

If Google seems cavalier about the way it wields its power, the same could be said about its concern over its public image.

"It's almost like they've decided their image doesn't matter," said Enderle. "Their image has taken a beating over the past five of six years. This will hurt their image even more."

Cracking Open Google Search

Ultimately, the FTC inquiry may have a bearing on how online searches are conducted. Will Google continue to determine how to produce the best search results, or will its competitors get a chance to weigh in?

"Google's algorithms today currently select one set; Google's competitors would like to have a different set. At issue is how gets to decide what 'best' means," Carl Howe, director of anywhere consumer research at the [Yankee Group](#), told the E-Commerce Times.

"If the subpoenas get issued, I think this could result in litigation that goes on nearly as long as the Microsoft antitrust trial," he said -- "not because the merits of the case warrant it, but because Google's competitors have everything to gain from it going forward."

The Hill
House Dem praises report of Google antitrust probe
By Gautham Nagesh
June 23, 2011

Rep. Albio Sires (D-N.J.) praised reports on Thursday that the Federal Trade Commission is preparing a broad antitrust probe of Google's search practices.

Citing increased complaints about the search giant's anticompetitive practices, Sires said the time has come for the government to seriously scrutinize the firm's conduct. Web firms have complained in recent years that Google uses its search results to drive traffic to its own products and services.

"At the end of the day, the real victim of anti-competitive behavior is the consumers who are restricted of the ability to choose which services they wish to use," Sires said.

Sires also cited a pending antitrust investigation against Google in Europe, arguing that allowing monopolists to abuse their position would stifle innovation from smaller firms. An antitrust lawsuit against Microsoft in the 90s is credited for preventing the software giant from dominating the post-PC platforms.

"Anti-competitive practices deter investment and innovation by smaller companies," Sires said.

"As Google's business practices are already under review in Europe, I believe it would be wise for the FTC to pursue a similar antitrust investigation to ensure that consumers and small businesses are not taking a back seat to an industry giant."

The Wall Street Journal first reported that the FTC was preparing to issue subpoenas to Google as part of the investigation. Google declined to comment, while the FTC did not immediately respond to a request for comment.

BLOGS

New York Times – Bits **Google Confirms F.T.C. Antitrust Inquiry** **By Miguel Helft** **June 24, 2011**

Google confirmed Friday that the Federal Trade Commission [has opened an antitrust investigation](#) into its core search and advertising business. The inquiry has the potential to turn into the biggest showdown between the United States government and a major technology company since the Microsoft antitrust trial that began in the late 1990s.

In a [regulatory filing](#), Google said that a day earlier it had “received a subpoena and a notice of civil investigative demand” from the commission. Google said that the agency’s investigation concerned its “business practices, including search and advertising.” In the brief filing, the company added: “Google is cooperating with the F.T.C. on this investigation.”

The investigation will not necessarily lead to accusations of misconduct against the company. If it does, it could become the most serious antitrust challenge for Google to date.

In a [blog post](#), Google said it was unsure about the precise focus of the commission’s concerns. But it began outlining its defense against accusations, made by some of its rivals, that it has manipulated its search results to favor its own services at the expense of others.

“At Google, we’ve always focused on putting the user first,” wrote Amit Singhal, a Google fellow. “No matter what you’re looking for — buying a movie ticket, finding the best burger nearby, or watching a royal wedding — we want to get you the information you want as quickly as possible. Sometimes the best result is a link to another Web site. Other times it’s a news article, sports score, stock quote, a video or a map.”

Mr. Singhal also sought to play down the dominant role that Google has in determining where users go on the Internet. “Search helps you go anywhere and discover anything, on an open Internet,” he wrote. “Using Google is a choice — and there are lots of other choices available to you for getting information: other general-interest search engines, specialized search engines, direct navigation to Web sites, mobile applications, social networks, and more.”

Google’s business practices and its dominance over the Internet have come under scrutiny from the Justice Department and the Federal Trade Commission a number of times in recent years. But the prior cases focused either on acquisitions or on portions of Google’s business that were not critical to its survival, like its plan to create a giant digital library.

The current investigation focuses on the heart of Google’s business, the search and advertising systems that account for nearly all of the company’s \$29 billion in annual revenue.

“This is major league,” said Ten Henneberry, former trial lawyer at the Justice Department and a partner at Orrick Herrington & Sutcliffe. Google is facing a similar challenge in Europe, where the European Commission opened an investigation into Google’s business late last year. “Given what’s happened in Europe, they must have known this was inevitable,” Mr. Henneberry said.

In a statement, FairSearch.org, an organization that represents several of Google's critics, including Microsoft and the Web sites Expedia, Travelocity and Kayak, said that Google's "anti-competitive practices include scraping and using other companies' content without their permission, deceptive display of search results, manipulation of search results to favor Google's products, and the acquisition of competitive threats to Google's dominance. Google's practices are deserving of full-scale investigations by U.S. antitrust authorities."

Music Tech Policy

Setting Man free from men: Google [finally] to be served with subpoenas by US Senate and Federal Trade Commission, but should Marissa Mayer be testifying?

By Chris Castle

June 23, 2011

“Civilization is the progress toward a society of privacy. The savage’s whole existence is public, ruled by the laws of his tribe. civilization is the process of setting man free from men.” Ayn Rand, *The Fountainhead*

According to numerous news outlets and apologists, Google is about to be served (one hesitates to say “hit”) with subpoenas by the Federal Trade Commission and the U.S. Senate. One of Google’s principal apologists devotes some ink to comparing Microsoft’s experiences with the Senate to Google, which “by contrast, has shown more of a willingness to compromise”. Really. Was that “willingness to compromise” particularly present a few weeks ago when Google refused to show up to a Senate hearing on how it supports sites that steal music and movies?

In today’s apologia, we are told that the U.S. Senate is grandstanding in their interest in getting Eric Schmidt or Larry Page to testify—why? Because when the Senate had an interest in a particular functionality in Apple’s gear, Apple sent a divisional VP and not Steve Jobs. This argument from a Google-connected-journalist is echoed in, of all places, Marketwatch in the breathless paen entitled “Google Subpoena: An Attack on Capitalism” complete with truly odd references to Ayn Rand probably designed to raise the blood of Lessig’s fans among libertarians.

This is sort of the equivalent of saying you must be a believer in the Reagan philosophy because you, too, eat jelly beans, or that you believe in the Clinton principles because you, too, have given money to charity. No less because the writer seems to completely ignore the personal responsibility trope that is at the heart of Rand’s philosophy in her rush to bash the Congress and promote Google’s position.

The reason that CEOs should show up and take responsibility for those over whom they are responsible is because they are responsible. This is particularly true in the case of Google. Because “Money is only a tool. It will take you wherever you wish, but it will not replace you as the driver.” Ayn Rand said that, too.

Both these pieces struggle from shoehorning in their talking points because they want you to focus on the clash of personalities between elected officials and unelected corporate titans. While it may be true that the individuals involved both think themselves superior to the other for whatever reasons, what is also true is that elected officials serve at the pleasure of their constituents, and the Google currency that makes it rich is its stock—sold in the public markets at the pleasure of those same constituents. If Google wants all the benefits of being able to raise money in the public equity and debt markets to fund, among other things, its litigation against creators who cannot do the same, then Google can bear the burdens as well as enjoying the benefits and show up when the people ask them to. These writers fail to address these points and for that reason I find their writing fallacious.

Setting that flaw aside, of course these two hearings chosen for comparison, the Apple hearing that was and future Google hearings, have little or no relation to each other in substance or gravity. The ultimate result of Apple’s testimony was probably going to be legislation dealing with user privacy. The ultimate result of Google’s testimony might be breaking up the company and possibly someone doing time. So it’s at all not grandstanding for the Senate to request that the top executives show up and take responsibility.

They'll show up eventually. Why waste time?

I don't know what Google's problem is with sending Schmidt or Page. They can always take the 5th. Just ask Frank Costello.

It may actually be a better idea to hear testimony from Marissa Mayer, Vice President of Geographic and Local Services, Google, Inc. who said: “[**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**, because of Finance. So for Google Maps again, it's the first link.” (at 45:10)

If it's a first hand knowledge of how Google rigs search that you want, then someone may ask Mayer to explain under oath exactly what she meant in this statement on video. A YouTube video, of course. Is there another kind? (And if not, why not?)

I think that it's kind of ironic that this story is breaking the same day as the FBI capture of the criminal Whitey Bulger. The wheels of justice turn slowly, but they do turn. And Bulger reportedly said of the charges against him, “I know [the charges] pretty well.” Who could ask less of Google?

BNET

Google Is a Monopoly — That’s Why Its CEO Dares Not Testify to Congress

By Jim Edwards

June 23, 2011



The FTC and Congress’s simultaneous investigations of Google (GOOG) raise one of the more fascinating questions of the digital age for corporate strategy buffs: Is Google an illegal monopoly? The answer is complicated and nuanced — which is what makes it so fascinating — and reveals that whether Google survives the FTC probe intact is both a political issue and a legal one. It also explains why Google CEO Larry Page and chairman Eric Schmidt are refusing to testify to Congress.

Microsoft (MSFT) faced a similar investigation in the 1990s, which most observers regard as the point at which the company entered a decline. Google doesn’t want to repeat that history — this isn’t just about management’s selective deafness, as BNET’s Erik Sherman points out.

More specifically, the FTC subpoenas, as reported by the WSJ, are focused on whether Google has abused its dominance in search advertising to direct users toward its own properties and advertisers, such as Google Places. Expedia, TripAdvisor, Microsoft and Yelp have publicly accused the company of discriminating against their sites in search results that trigger ad dollars for Google.

The European Commission began its own investigation in 2010 after two companies, price-comparison site Foundem and legal search engine ejustice, accused Google of artificially holding down their search rankings.



Google has market dominance, duh

The general principles behind monopoly and antitrust law are easy to understand but complex to apply. Basically, companies cannot create monopolies through unfair means, for instance by colluding to

undermine or restrict competitors from entering a market, or by using their dominance in a way that hurts customers. Companies can, however, maintain monopoly status if they gained it through their own superior competitiveness and not by unfair means.

Google, clearly, has market dominance in search advertising. It takes more than three of every four search dollars spent in the U.S. It gets 1 billion unique visitors per month.

Google does not *per se* restrict other companies from competing against it, however. If you want to build your own ad-funded search engine, there is nothing stopping you. Facebook has done just that. If Google CEO Page and chairman Schmidt are ever compelled to testify before the Senate antitrust subcommittee, they are likely to point out that Facebook is proving to be a strong competitor. Facebook serves more banner ads than Google, and has stabilized Bing's share of the search market. And Google is not dominant in some countries like Russia, where it struggles against Yandex.

Then there are the reasons why Google might be regarded as an illegal monopoly, which I outlined as a worst-case scenario in February.

Google discriminates against some companies

Google is discriminating between companies based on its own internal logic, and not the neutral logic of its search engine's algorithms. AshleyMadison.com cannot advertise on certain Google properties, but Match.com can. Google has biased its results against JCPenney, BMW and DecorMyEyes, all of whom used "black hat" links to goose their rankings.

And through its recent "Panda Farmer" algorithm update, Google made an editorial decision that what it calls "spam" web sites are to receive less search traffic than the ones it deems "quality" sites. The head of Google's web spam team, Matt Cutts, actually keeps a "whitelist" of companies he deems to be of high enough quality that search results for their material will ride above those he deems low quality. The adjustment hurt some of the companies it was expected to help* and helped some that it should have hurt.

Obviously, Cutts isn't deliberately hurting and helping companies based on his own malicious temper. Search results have to come in *some* order; not everyone can be top. I'm sure he's not playing favorites — he just wants Google to return the best results possible. It's just that Google gets to define "best."



That's why Page and Schmidt cannot testify

The mere fact that Google employs an executive whose job it is to discriminate against some companies and maintain most-favored-nation status for others appears to be the kind of *de facto* proof that Google is using its dominance in search to affect supply and demand in the market for web content or news stories (or glasses or cars or clothing or dating web sites).

This is why Schmidt and Page are resisting testifying under oath before Congress. As soon as they admit in public that Google has the power to permit or deny potential customers to other businesses, and that executives make company-by-company decisions on that, then the monopoly case is 90 percent made.

**Disclosure: Some editors at BNET believe the site was likely hurt by the Panda Farmer adjustment even though, based on the way Google explained it, it should have improved our traffic.*