



WHAT EXPERTS ARE SAYING ABOUT THE U.S. FEDERAL TRADE COMMISSION'S INVESTIGATION INTO GOOGLE

ACADEMICS, LEGAL EXPERTS & THINK TANKS

- Ben Edelman, Assistant Professor, Harvard Business School [\[link\]](#)
- Bob Lande, Director, American Antitrust Institute [\[link\]](#)
- Gary Reback, Of Counsel, Carr & Ferrell LLP [\[link\]](#) [\[link\]](#) [\[link\]](#) [\[link\]](#)
- David Wood, Counsel, ICOMP (Initiative for a Competitive Online Marketplace) [\[link\]](#) [\[link\]](#)
- Jonathan Grossman, Lawyer, Cozen O'Connor [\[link\]](#)
- Melissa Maxman, Lawyer, Cozen O'Connor [\[link\]](#)
- Ted Henneberry, Partner, Antitrust & Competition, Orrick, Herrington & Sutcliffe LLP [\[link\]](#) [\[link\]](#)

INDUSTRY

- Robert Birge, Chief Marketing Officer, Kayak [\[link\]](#)
- Adam Raff, Co-Founder, Foundem [\[link\]](#)
- Jay Herratti, Chief Executive, CityGrid Media [\[link\]](#)

CONSUMER ORGANIZATIONS

- John Simpson, Advocate and Jaime Court, President, Consumer Watchdog [\[link\]](#)
- John Simpson, Advocate, Consumer Watchdog [\[link\]](#) [\[link\]](#)
- Tech-Progress.org [\[link\]](#)
- Steve Pociask, President, American Consumer Institute [\[link\]](#)

GOVERNMENT AND LEGISLATORS

- Congressman John Barrow (D-GA-12) [\[link\]](#)
- Congressman Frank Pallone, Jr. (D-NJ-6) [\[link\]](#)
- Congressman Albio Sires (D-NJ-13) [\[link\]](#)

ANALYSTS

- Rob Enderle, President and Principal Analyst, The Enderle Group [\[link\]](#)
- Dan Olds, Analyst, The Gabriel Consulting Group [\[link\]](#)
- Scott Cleland, President, Precursor LLC [\[link\]](#)

MEDIA & BLOGGERS

- Jim Edwards, Blogger, BNET [\[link\]](#)
- Chris Castle, Blogger, MUSIC • TECHNOLOGY • POLICY [\[link\]](#)

ACADEMICS, LEGAL EXPERTS & THINK TANKS

In today's Q & A, Benjamin Edelman, an assistant professor at Harvard Business School, weighs in on the antitrust troubles that Google is facing, and he compares the search giant's issues with those Microsoft faced a decade ago.

"What Google is doing now touches much more of the economy. The bad acts I believe are worse. You look at the worst thing Microsoft ever did, they gave guys Internet Explorer, they told Dell they had to buy a copy of Windows for every computer," said Edelman, who is a paid consultant for MSFT. **"You look at the worst thing Google ever did, that calls for much more than a sentence."**

--Ben Edelman, Assistant Professor, Harvard Business School

Politico Morning Tech Blog; Facebook beefs up on privacy - Prospects bright for patent reform - Key SCOTUS decisions likely to come this week - What's next in Google-SJC showdown? - Nortel patent war begins; By Tony Romm; June 27, 2011

"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."**

-- Bob Lande, Director, American Antitrust Institute

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.

-- Gary Reback, Of Counsel, Carr & Ferrell LLP

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

Following widespread press coverage last week, Google confirmed on Friday that it is subject to an antitrust investigation by the US Federal Trade Commission (FTC), a significant uptick in the level of antitrust scrutiny that Google now faces around the world...

So how does Google respond to this central issue? Nothing. Not a word. Google merely states that it is "unclear exactly what the FTC's concerns are" and repeats increasingly tired mantras about "putting the user first" and "competition is only one click away".

It is extraordinary that Google claims not to understand the antitrust concerns that have been leveled against it. It has been engaged in fighting a rearguard action against various Government antitrust investigations for years. It is not credible for it to claim that it does not understand why people are concerned about the manipulation of search results and why using the gateway to the Internet to favour its own products and stifle competition is anti-competitive. It provides no answer to these concerns. Silence speaks volumes.

-- David Wood, Legal Counsel, ICOMP

ICOMP Voices; Antitrust Investigations: Google's response;

By David Wood; June 27, 2011

"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.

-- Jonathan Grossman, Lawyer, Cozen O'Connor

Wall Street Journal; [Feds to Launch Probe of Google](#);
By Thomas Catan and Amir Efrati; June 24, 2011

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.

-- Melissa Maxman, Lawyer, Cozen O'Connor

Associated Press; [FTC's Antitrust Inquiry Turns up Heat on Google](#);
By Joelle Tessler and Michael Liedtke; June 24, 2011

... Google is overwhelmingly dominant in delivering search results. In many European countries, over 90% of searches are conducted on Google. This gives Google massive power over what consumers get to see and which businesses win or lose in the online world. Given the economies of scale that lie behind search and the massive dominance of Google in search advertising, it is practically impossible to compete with Google in search, **leaving Google as the sole gateway to the Internet...**

Competition investigations are typically slow and cumbersome. It is right that serious issues need to be seriously investigated and the actions of the European Commission and the Federal Trade Commission are to be applauded and encouraged. However, investigations are not an object in themselves. **Firm action is needed urgently to ensure that an end is put to Google's dominant position and that online consumers and online businesses are given fair and transparent access to each other.**

--David Wood, Legal Counsel, ICOMP

ICOMP Voices; [US Competition Authorities Weigh in on Search Manipulation](#);
By David Wood; June 24, 2011

Gary Reback, a Silicon Valley lawyer who represents companies competing with Google in other online markets, stressed that any antitrust probe **needs take a broad look not only at Google's so-called "organic" search results — which are ranked based on relevance — but also at the so-called "sponsored" results that advertisers pay for.** He noted that these, too, tend to place Google's own services on the top.

In addition, because Google powers search functionality on many other Web sites, antitrust officials need to look at organic and sponsored search results on those sites as well, Reback said.

-- Gary Reback, Of Counsel, Carr & Ferrell LLP

Associated Press; [FTC to Issue Subpoenas in Google Antitrust Probe](#);
By Joelle Tessler; June 24, 2011

"It is Microsoft redux," said Gary Reback, a Silicon Valley antitrust lawyer who attacked Microsoft before and has pushed for action against Google. **"It is almost exactly the same case...."**

Google, like Microsoft did, denies such actions and says it focuses on helping consumers. Mr. Reback nevertheless argues that there is a case to be made that Google violated Section 2 of the Sherman Antitrust Act, which prohibits actions to maintain a monopoly...

-- Gary Reback, Of Counsel, Carr & Ferrell LLP

Wall Street Journal; [Google Probe Stirs Echoes of Microsoft Antitrust Case](#);
By Don Clark and Ashby Jones; June 24, 2011

Henneberry said he expects Google will have to make some changes in the way it does business. "I would handicap it this way," he said. **"There are a lot of complainants out there. When the agencies undertake an investigation like this, it means there are some serious issues that they have. I would say look at the ITA merger deal and the remedies [the DOJ] imposed there. They set up a mechanism for other companies to complain about search bias. That's obviously a core issue for them."**

-- Ted Henneberry, Partner, Antitrust and Competition Group, Orrick, Herrington, and Sutcliffe LLP

InformationWeek; [Google Confirms FTC Antitrust Investigation](#);
By Thomas Claburn; June 24, 2011

An FTC investigation would be "serious. This is not an everyday thing," said Ted Henneberry, a Washington, D.C., antitrust lawyer who has served as an adviser to both the Justice Department and the FTC. **"From my viewpoint, if I put all this stuff together, I would be hard pressed to say they are going to get out of this altogether,"** said Henneberry, referring to Google's multiple antitrust and privacy problems in the U.S. and Europe.

-- Ted Henneberry, Partner, Antitrust and Competition Group, Orrick, Herrington, and Sutcliffe LLP

San Jose Mercury News; [FTC may launch antitrust probe of Google](#); June 24, 2011

INDUSTRY

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.

-- Robert Birge, Chief Marketing Officer, Kayak

NPR – All Things Considered; [Is Google Playing Fair With Its Search Results?](#);
By Nina Gregory; June 27, 2011

Q [James Temple]: What do you make of the news that the FTC is subpoenaing Google as part of an antitrust probe?

Adam [Raff]: **We would certainly welcome that. We've always said that the issues we're raising are not in any way limited to us or to Europe. They're global issues, so it would be unnatural if (the FTC) were not to take a look.**

--Adam Raff, Co-Founder, Foundem

San Francisco Chronicle; [Foundem takes on Google's search methods](#);
By James Temple; June 26, 2011

"[Google] 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."

-- Jay Herratti, Chief Executive, CityGrid Media

Wall Street Journal; [Feds to Launch Probe of Google](#);
By Thomas Catan and Amir Efrati; June 24, 2011

CONSUMER ORGANIZATIONS

“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.”

-- John M. Simpson, Advocate and Jaime Court, President, Consumer Watchdog

Politico Pro; [White House warned to get distance from Google](#); By Kim Hart; June 24, 2011

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.”

-- John Simpson, Advocate, Consumer Watchdog

Washington Post; [Google’s dominance draws new scrutiny from regulators](#); By Jia Lynn Yang; June 24, 2011

“And it’s about time. No, actually, it’s past time for an investigation. Consumer Watchdog has been raising antitrust concerns about Google since 2009...”

“Google would have us believe that ‘competition is one click away.’ But Google has emerged as the dominant search engine with 70 percent of the market in the United States. In some countries Google’s share tops 90 percent. Such monopoly power may be a natural result of ‘network effects.’ That is people discover a good search engine and so more people use it. As more people use it, the search it offers gets better drawing in even more people. Soon it has monopoly power.

Simply being a monopoly is not illegal. **What is illegal is using the monopoly power to win an unfair competitive advantage in the marketplace. I’m confident the FTC will find that is exactly what Google has been doing and will seek the necessary remedies to ensure competition and protect consumers. On the table as possible solutions – as I said a year ago – should be everything from breaking the company up to regulating it like a public utility.”**

-- John Simpson, Advocate, Consumer Watchdog

Consumer Watchdog; [FTC Targets Google for Antitrust Investigation](#); By John Simpson; June 23, 2011

“News reports that the FTC plans to conduct a probe of Google’s antitrust practices is welcome news to consumers. Google’s potential market power and apparent disregard for privacy poses a real risk to consumers and small businesses given the company’s dominance of the online search and advertising markets. The company’s growing dominance and pattern of behavior has raised significant concern among members of Congress on both sides of the aisle, as well as state attorneys general. A few months ago, a Federal Judge rejected the Google Book settlement, raising antitrust, privacy and copyright

issues. The FTC also announced remedies with Google for its ‘deceptive privacy practices,’ and numerous law enforcement agencies have targeted the company over its Spy-Fi practices. In light of this disturbing track record, a wide ranging investigation by the FTC is more than justified in order to determine whether Google is violating existing laws.

“A healthy and competitive Internet is vital to our nation’s economy, investment, job creation and to the free flow of information. As the dominant provider of search and search advertising, Google functions as a key Internet gatekeeper for information. This means that members of Congress, the FTC and other agencies deserve answers about their commitment to competition, privacy and transparency.”

--Steve Pociask, President, American Consumer Institute

American Consumer Institute; [ACI Applauds FTC Investigation into Google Practices](#);
By Steve Pociask; June 23, 2011

It’s about time that the federal government stopped just quietly interviewing Google officials and actually started demanding information that the company might not be voluntarily sending over to regulators.

With Google increasing its attempts to profit from control of e-commerce searching, there are a lot of areas for the FTC to look into. And the recent emails coming out of the Skyhook litigation shows Google using control of its Android licensing to reinforce its power over geolocation services, a classic “tying” antitrust violation worth exploring.

And you have the deeper issue of how Google controlling so much private information reinforces its search and advertising dominance. It would be nice if the FTC would revisit its pass on serious investigation of the Wi-Spy scandal, especially in light of the Skyhook emails, and find out what was the real motivation for eavesdropping on those millions of private communications via wi-fi sniffing on the Street View cars. – Tech-Progress.org Blog Posting

Tech Progress; [Google Antitrust Probe Revs Up: FTC to Serve Subpoenas](#); June 23, 2011

GOVERNMENT AND LEGISLATORS

“While anti-competitive practices stifle the business world from doing what they do best, the folks that suffer the most are consumers, who miss out on new and innovative products that will only come about from healthy competition in the marketplace. I applaud the FTC for working to bring these issues to light and am hopeful these hearings will reveal the full extent of Google’s violations. At the same time, I will continue working to see that Google is also held accountable for their repeated breaches of consumer trust.”

-- Congressman John Barrow (GA-12) [[link](#)]

Office of Rep. Barrow; [Barrow Statement on the Federal Trade Commission’s Antitrust Investigation into Google](#); June 24, 2011

“The fact that there is enough cause for an investigation by the FTC is by itself reason for serious concern. The Internet and the businesses of new technology that are such a big part of electronic communication still have to follow the rules of fair trade. Fair competition is not only a good business principle; it also fuels new discoveries and better service for consumers.

“This isn’t just a battle among companies or between Google and regulators, it is an important matter of what is in the best long-term interests of consumers who increasingly rely on Internet services in their day-to-day lives. Everyone benefits from fair competition.

“I urge Google to fully cooperate with the investigators and I urge the FTC to conduct a thorough investigation. That is the best way to send a clear message to everyone in the industry that fair competition will be fully enforced.”

-- Congressman Frank Pallone, Jr. (D-NJ)

Office of Congressman Frank Pallone, Jr.;
[Pallone Reacts to Investigation of Google](#); June 24, 2011

“I am encouraged by recent reports that the FTC is poised to launch an antitrust investigation into Google’s business practices. Over time, complaints have increased regarding Google’s anti-competitive behavior, in particular the use of its market power in search to push consumers to its own services. The time has come to seriously look into this issue. 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. Furthermore, anti-competitive practices deter investment and innovation by smaller companies. 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.”

-- Congressman Albio Sires (D-NJ)

Office of Congressman Albio Sires;
[Sires Lauds Reports of FTC Antitrust Investigation of Google](#); June 23, 2011

ANALYSTS

"This is just the beginning. You've got the EU investigating Google, you've got the Feds investigating Google. The state AGs have Google in the crosshairs. It's not a great position to be in," said Colin Gillis, technology analyst at BGC Partners. "You start having regulators tamper with your core business, that's something to be concerned about."

-- Colin Gillis, Analyst, BGC Partners

Reuters; [Google investors fear long battle against feds](#);
By Diane Bartz and Alexei Oreskovic; June 24, 2011

"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 or six years. This will hurt their image even more."**

-- Rob Enderle, President and Principal Analyst, The Enderle Group

Economic Times; [FTC Approaches Google With Antitrust Hammer Swinging](#);
By Rob Spiegel; June 24, 2011

"I think that this has been coming for a long time and it had to eventually happen," said Dan Olds, an analyst with The Gabriel Consulting Group. "Once Europe started their investigation, it was just a matter of time before the FTC did the same." And both Olds and Rob Enderle, an analyst with the Enderle Group, noted that Google can't take the FTC investigation lightly.

"A full FTC investigation along these lines can take more than a decade from start to finish -- like with IBM back in the day," said Olds. "It's going to be a long and very expensive process for all concerned. With the level of electronic records we have today, **just the discovery process is going to be massive, with investigators having the ability to make Google give up emails, meeting notes, and other records stretching back years.**"

... Olds added that the FTC's initial probe into Google could make for some interesting shifts in the search market down the road. **"I think that this might tamp down Google's aggressiveness a bit, but we'll have to wait to see for sure,"** said Olds.

"The thing to keep in mind is that it isn't illegal to have a monopoly. It's illegal to abuse monopoly power," he said. "This preliminary phase is just the FTC deciding if there is enough evidence of anti-competitive abuse to justify opening up a formal investigation, [which] could take a year or longer to decide." -- Dan Olds, Analyst, The Gabriel Consulting Group

*ComputerWorld; [FTC probe could be hard, costly battle for Google](#);
By Sharon Gaudin; June 24, 2011*

"What the FTC is looking into is; have they unfairly leveraged that monopoly to punish potential competitors, putting their products and their services number one in the ranking. And why that's significant is 34 percent of people click on the top result. So concretely, a website like Yelp that's designed to search for restaurants may come up below a restaurant search result from Google Places. Same for YouTube, which Google owns, if I want to find a video."
-- Scott Cleland, President, Precursor

*MarketPlace; [The FTC launches anti-trust probe over Google ads](#);
By Mitchell Hartman; June 23, 2011*

MEDIA & BLOGGERS

“The FTC and Congress’s simultaneous investigations of Google 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 more of a political issue than a legal one. It also explains why Google CEO Larry Page and Chairman Eric Schmidt are refusing to testify to Congress.”

“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. 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.’”

“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.” --Jim Edwards, Blogger, BNET

BNET; [Google Is a Monopoly-That’s Why Its CEO Dares Not Testify to Congress](#);
By Jim Edwards; June 23, 2011

“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... 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... I don’t know what Google’s problem is with sending Schmidt or Page. They can always take the 5th. Just ask Frank Costello. 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?”--Chris Castle, Blogger, MUSIC • TECHNOLOGY • POLICY

MUSIC • TECHNOLOGY • 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