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1 THE CHAIRMAN: Good afternoon. Today
2 the Subcommittee meets to consider an issue that
3 affects everyone who searches or does business over
4 the Internet; in other words, almost everybody.
5 We'll examine how the world's dominant Internet
6 search engine, namely Google, presents its search
7 results to consumers and treats the businesses it
8 competes with. Our inquiry centers on whether
9 Google -- which best serves its consumers as it
10 claims. At the outset, I wish to stress that I come
11 to this hearing with an entirely open mind without
12 any prejudice of these issues. My goal is to
13 provide both Google and its critics with a forum to
14 air their views. In examining these issues, we
15 recognize the incredible technological achievements
16 of Google and the need to avoid stifling its
17 creative energy. At the same time, we need to be
18 mindful of hundreds of thousands of businesses that
19 depend on Google to grow and prosper. We also need

20 to recognize that as the dominant Internet search,
21 Google has special obligations under antitrust law
22 not to deploy its power to squelch competition.
23 There can be no questions of the astounding
24 achievements of Google search engine. Through the
25 magic of its search technology, Google started at a

1 garage by two Stanford students less than 15 years
2 ago, has done nothing less than organize all the
3 billions of Internet web pages into an easily
4 accessible listening to the computer screen. 65 to
5 70 percent of all U.S. Internet searches and 95
6 percent on mobile devices are done on Google's search
7 engine. Millions of people every day run Google
8 searches to find out the question to nearly every
9 question imaginable, including for the best and
10 cheapest products and services from electronics to
11 clothing to hotels restaurants, to give just a few
12 examples. And business is equally rely on Google to
13 find customers. The search premise of Google in its
14 finding is that it would build an unbiased search
15 engine, that consumers would see the most relevant
16 search result first and that the search results would
17 not be influenced by the web pages commercial
18 relationship with Google. Its goal was to get the
19 user off Google's web page and onto the web sites it

20 lists as quickly as possible. As current CEO Larry

21 Page in 2004 and I quote, we want you to come to

22 Google and quickly find what you want, then we're

23 happy to send you to the other sites. In fact,

24 that's the point.

25 However, as Internet searches become a

1 major channel of e-commerce, Google has grown ever
2 more dominant and powerful and it appears its mission
3 may have changed as in the last five years or so,
4 Google has been on an acquisition Bing acquiring
5 dozens of businesses culminating most recently with
6 its proposed acquisitions of Motorola mobility and
7 Zagat CK SPELL and now Internet businesses including
8 health, finance, travel and product comparison. This
9 has transformed Google from a mere search engine to a
10 major Internet conglomerate and these acquisitions
11 raise a very fundamental question; is it possible for
12 Google to be both an unbiased search engine, and at
13 the same time, own a vast portfolio of web based
14 products and services. Does Google maintain an
15 inherent conflict of interest which threatens to
16 stifle competition. In the last few years,
17 businesses that compete have complained that Google
18 is now behaving in a way contrary to free and fair
19 competition. They allege that Google is trying to

20 allege its dominance in Internet search into key
21 areas of Internet commerce where it stands to capture
22 from its competitors billions of dollars in
23 advertising revenue, rather than fairly presenting
24 search results, these critics claim that Google has
25 become suddenly biased in search results in favor of

1 its own services. This conduct has the potential to
2 substantially harm competition for commerce on the
3 Internet and retard innovation by companies that fear
4 the market power of Google. Antitrust means not
5 about picking winners and losers but about fostering
6 a fully competitive environment so consumers can pick
7 winners and losers. As more and more commerce moves
8 to the Internet, it should be highest that the
9 Internet remain a bastion of open and free
10 competition as it has since its founding. We need to
11 protect the next Google to emerge, the next great web
12 site being developed in a garage in Silicon Valley or
13 in Madison, Wisconsin. Senator Lee, we would like
14 to hear what you have to say

15 MR. LEE: Thank you, Mr. Chairman.

16 Internet search is critical to economic growth in the
17 United States and Google has long been a dominant
18 force in this arena. Indeed, Americans Google so
19 frequently and ubiquitously that the company's name

20 has become a generic verb that means search the
21 Internet. Google controls between 65 and 70 percent
22 of the Internet search arena and more than 75 percent
23 of page search advertising and 95 percent of global
24 search. Given its dominant position, most Internet
25 based businesses rely on Google for a substantial

1 share of their traffic and revenues. As a result,
2 last year, Google generated nearly \$30 billion in
3 search advertising revenues. Studies show what most
4 of us know from experience; that the first few Google
5 search results attract nearly 90 percent of all user
6 collision. Google's search ranking therefore has
7 enormous power over the information users find, which
8 web sites receive traffic and the amount businesses
9 must pay to be found on the Internet.

10 A former regular and administration
11 antitrust chief recently suggested this market power
12 has essentially made Google a monopoly gatekeeper to
13 the Internet. Whether or not Google formally
14 qualifies as a monopoly under our antitrust laws, one
15 thing is clear, given ability to steer E commerce and
16 the flow of on line information, Google is in a
17 position to help determine who will succeed and who
18 will fail on the Internet. In the words of the head
19 of Google's search ranking team, Google is the

20 biggest kink maker on earth. Google used its

21 revenues to branch out into a multitude of secondary

22 Internet business. Largely by acquiring more than

23 100 different companies, Google offers YouTube video,

24 Chrome Internet, the Android mobile operating system

25 and a host of services including Google Maps, news,

1 books, shopping, places and flight search. And with
2 its recent purchase of Motorola mobility, Google is
3 poised to get into the business of mobile hand set
4 manufacturing. With Google in many areas,
5 advertisers and consumer groups raised concerns about
6 Google's activities suggesting they may be acting in
7 anticompetitive ways. Google is under -- this
8 Subcommittee has enforcement of oversight of
9 anticompetition policy and I appreciate the Chairman
10 calling the hearing. From its inception, Google's
11 stated goal was to have users leave its web site as
12 quickly as possible. But over time the company
13 appears to have changed its approach, to steer users
14 not to other businesses and sources of information
15 but to its own complement of services. Google worked
16 hard to -- there is growing concern that Google
17 employs different search ranking algorithms to
18 advantage its own secondary, and to other
19 disadvantaged businesses. There's also evidence that

20 Google has taken information and reviews from
21 competing specialized search sites like Yelp! and
22 trip advisor, used that data as part of its own
23 services and in the process demoted the search result
24 rankings of the sites from which Google acquired that
25 information. In addition, some reports suggest that

1 Google has taken steps to impede competing search
2 engines from crawling indexing and returning such
3 results to its YouTube content and book scans.
4 Access to these popular stores of content is crucial
5 and critical to enabling other search engines to
6 compete. There are also allegations that Google has
7 achieved and sought to maintain its dominance in
8 search by imposing exclusivity restrictions in
9 dealings with advertising partners perhaps in an
10 effort to block competing search tools. This
11 includes a broad array of and a broad network of
12 exclusive search syndication deals with web sites
13 like AOL and eBay, exclusive arrangements for
14 Google's search box to appear in Mozilla and Firefox
15 Firefox's search bar and Google be the default search
16 provider on the Android and many models. Impose
17 limits on the advertisers ability to transfer data
18 associated with Google's advertising platform to any
19 other platform to the form using third-party tools that

20 would make the process simple but automatic. Studies

21 said the net effect is to reinforce the tendency of

22 small to medium advertisers to use only Google add

23 words to the exclusion of competing platforms. Many

24 observers, and customers who wish to use the Android

25 platform from using competitors services; for

1 example, by tying Android to Google's location
2 program in order to exclude competing geo location
3 services. In assessing each of these concerns, the
4 primary focus of our antitrust analysis should be
5 consumer welfare. Growing complaints that Google is
6 using its search dominance to favor its own offerings
7 at the expense of competition deserves serious
8 attention especially if users are misled by
9 self-rankings, such bias would deny user traffic and
10 revenue to competing sites depriving those sites of
11 research needed to offer better services to
12 customers. When competing web sites loose traffic
13 they are forced to, ultimately leading to increased
14 prices for consumers. As a conservative Republican
15 who favors free markets, I believe that insuring
16 robust competition in this critical area of our
17 nation's economy will benefit consumers, spur
18 innovation and lead to job creation. In this
19 instance, I believe that preserving competitive

20 markets through antitrust principles can forestall

21 the imposition of burdensome government regulation.

22 Thank you

23 THE CHAIRMAN: First witness who will

24 be Mr. Eric Schmidt. He has served as chairman of

25 Google since April of this year and from 2001 to 2011

1 was the Chief Executive Officer of the company. We
2 will introduce our second panel before they testify,
3 but I would now turn to Senator Finestein CK SPL who
4 would like to make remarks in order to enter did you
5 see witnesses from California. Fine fine thank you
6 very much and I appreciate this special privilege.
7 The three gentlemen you're going to hear from today
8 come right from the heart of the San Francisco bay
9 area. I have known the chairman of Google for many
10 years. I have always known him as a forthright and
11 man filled with integrity. He has a long history in
12 Silicon Valley and at the helm of a number of
13 America's most innovative companies. He has been
14 with Google since 2001. He has helped Google grow
15 from less than a thousand employees to 28,000, 13,000
16 of whom are in California. It's a 45 percent growth
17 in employment, even in the most difficult times of
18 the past two years with 5,000 new-hires in California
19 in about that same time. Under his leadership,

20 Google has been helping businesses throughout the
21 golden state last year alone providing \$15 billion in
22 economic activity to nearly 300,000 small businesses,
23 publishers and nonprofits. Mr. Jeff Katz, the CEO of
24 Nextag, is from San Francisco. This is a price
25 comparison web site company in San Mateo that allows

1 people to search for products and see lists of
2 available on-line prices for those products.
3 Mr. Katz has extensive experience in the Internet and
4 travel industries, having held a variety of positions
5 at American Airlines serving as president and CEO
6 of Swiss Air, being the chairman and founding CEO of
7 the well-known travel web site Orbitz, and serving as
8 president and CEO of leap frog enterprises, that's a
9 maker of technology based learning products among
10 other endeavors. He holds a Master's Degree of
11 science -- master of science degree from my all
12 memoranda mater Stanford along with other degrees.
13 Finally, Jerry Stoppelman, chairman and Chief
14 Executive Officer of Yelp!. Joining him will be
15 Jeremy Stoppelman, Co-Founder, CEO of a small,
16 innovative company from San Francisco, whose web site
17 allows people to search for local businesses or types
18 of businesses and find profiles of the businesses in
19 its results, including customer reviews and rankings,

20 photographs and other similar businesses. He worked
21 as the vice president of engineering at PayPal before
22 dropping out of Harvard business school to co-found
23 Yelp! with Russell Simmons. As you can see,
24 Mr. Chairman, you have three very well-qualified bay
25 area citizens. I hope they tank go rather than

1 tangle. Thank you very much for this

2 THE CHAIRMAN: Thank you very much,

3 Senator Fineststein CK SPL. We again thank all

4 witnesses who are appearing here today and I would

5 like you all now to rise and step forward and raise

6 your right hand and take the oath as I administer it

7 (Witnesses sworn)

8 THE CHAIRMAN: Thank you all.

9 Mr. Schmidt, we would love to hear what you have to

10 say

11 MR. SCHMIDT: Good afternoon, chairman

12 Lee and members of the Subcommittee. I thank you for

13 inviting me here today. I want to start first by

14 taking a step back. 20 years ago a large technology

15 firm was setting the world on fire. It's software

16 was on nearly every computer and it's name was

17 synonymous with innovation. But that company lost

18 site of what mattered and Washington stepped in. I

19 was an executive at sun and later Novell at the time,

20 and in the years since, many of us have absorbed the
21 lessons of that era so I'm here today carrying a long
22 history, thank you Senator, and a message from our
23 company, we get it. By that, I mean, we get the
24 lessons of our corporate predecessors. We also get
25 it's natural for you to have questions about our

1 business and that's certainly fine.

2 What we ask is that you help us to
3 insure that the Federal Trade Commission's inquiry
4 means a fair and focused process, which I'm sure
5 you'll do. So before I talk about our perspective on
6 the state of technology in general, I would like to
7 start by explaining how we think of our own business
8 and a few of the principles that guide the decisions,
9 which I'm sure you'll want to talk about. First,
10 always put consumers first.

11 Last year alone, we made more than 500
12 changes to improve service. It's not an easy task.
13 Our challenge is a return, the most relevant answers
14 first. This means that not every web site can come
15 on top. It's a ranking problem and there are
16 definitely complaints from businesses who want to be
17 first in rankings even when they are not the best
18 match as best we can tell from a user search.
19 Second, focus on loyalty, not lock-in. We don't trap

20 our users. If you don't like the answer the Google
21 search provides, you can search to another engine
22 with literally one click and we have lots of evidence
23 people do this. If you want to leave other Google
24 services, we make it easy for you to do so. You can
25 even take your data with you without any hassle. We

1 want consumers to stay with us because we're I know
2 novating and making our products better not because
3 they are locked in. Third, be open, not closed.
4 Open means open source meaning we release and code
5 that, and open standards, we work to create the
6 standards that can improve the entire Internet.
7 Fourth, be transparent. We share more information
8 about how our search engine and other products work
9 than any of our competitors and we give advertisers
10 detailed information about performance and return on
11 investment. Finally, the only constant is change.
12 Ten years ago, no one would have guessed, certainly I
13 and I don't think anybody else, that the vocabulary
14 in economics would look like it does today and no one
15 knows what it will look like in one year or five
16 years. Despite what others say about the American
17 Academy, I think our future in America is bright.
18 There's no doubt we're facing difficult times. It's
19 an exciting time to be part of the business as you

20 will see from others this afternoon. While others
21 have given up on the American Academy, Google is
22 doubling down. We're investing in people, we have
23 more than 24,000, we're hiring, we announced 2011
24 would be our biggest year yet and we're on target to
25 meet or beat that. We're investing in mobile as was

1 suggested. Look at our plans to acquire Motorola
2 mobility. We believe our proposed acquisition like
3 many previous moves we made his good for innovation
4 and the American Academy. It's a big bet with you
5 we're confident this will lead to growth and
6 innovation in mobile technology which is what we care
7 about. We're also investing in local. 97 percent of
8 the people look on line for local business services,
9 but only 63 percent -- 63 percent of small businesses
10 do not have a web site at all. This is a missed
11 opportunity in my view, so we started an initiative
12 to help small businesses get on line, we partnered
13 with I know two it and others to assist small
14 businesses. Last year Google alone provided 64
15 billion in economic activity to other companies,
16 publishers and nonprofits in the United States and
17 we're very, very proud of this and this year will be
18 even greater. So without exaggeration, high-tech is
19 the most dynamic part of the American Academy.

20 Advertising alone is 3.1 million jobs and according
21 to McKenzie, the Internet was responsible for 15
22 percent of the Internet's GP growth. The Internet is
23 home for successful companies, Amazon, apple,
24 Facebook and Google. We compete hard against each
25 other and we welcome that competition. It makes us

1 better and our competitors, too. But most
2 importantly, better products for your users. Today
3 it's Google's turn in the spotlight and we respect
4 the role you have in this process. I ask you to
5 remember that not all companies are cut from the same
6 clotting and that one company's past not be another's
7 future. We live in a different world today and the
8 open Internet is the ultimate level playing field.
9 So if you keep that in mind, and we believe the
10 Federal Trade Commission's inquiry will reveal an
11 enthusiastic company filled with people who believe
12 we have only scratched the surface of what's
13 possible. That passion to do better will not only
14 serve our users well best of your recollection it
15 will serve our nation well, and by helping create new
16 jobs and economic growth that our wonderful country
17 needs. So thank you very much for your time and this
18 hearing

19 THE CHAIRMAN: Thank you. Mr. Schmidt,

20 we appreciate what you just had to say and now we'll

21 begin our inquiries of you individually and Google

22 has questions for a maximum of seven minutes.

23 Mr. Schmidt, many industry experts believe the

24 mission of Google has fundamentally changed since its

25 founding, according to Larry Page in 2004 was to get

1 consumers off Google's page and quote send you to
2 other sites. Since that time Google has acquired or
3 expanded into Internet businesses in many diverse
4 areas including travel shopping, you want to provide
5 consumers the answers to questions not merely links
6 to web sites that provide those answers. What do you
7 say to those who argue there's a fundamental conflict
8 of interest between only providing unbiased web links
9 and now providing answers when you own many of the
10 services providing the answers. As a rationale
11 business trying to make the most profit, wouldn't we
12 expect Google to favor its products and services in
13 providing these answers?

14 A I'm not sure Google is a rational business
15 trying to maximize its own profits, Senator. As we
16 addressing in the IPO, founder's letter, Google is
17 run under a set of principles quite profound within
18 the company and one of the most important principles
19 is solve the problem the consumer has. So 10 years

20 ago the best answer may have been the 10 links that
21 we saw, but the best answer today may be that we
22 can go rhythmically compute an answer and do it
23 quicker. Think of it as, if you want the answer, you
24 want the answer quicker and speed matters especially
25 at the scale we're at. If we can calculate an answer

1 more quickly, that's an improvement for the end-user.

2 Q I appreciate your response but in a large

3 measure, it's another way of saying, trust us that we

4 are going to do and we do do and we will do, quote,

5 the right thing.

6 It's merely trusting Google to do the right

7 thing sufficient given your clear business incentives

8 to maximize the value of your company? Shouldn't we

9 be guided by the words of a great president, Ronald

10 ray began, who said trust, yes, but verify?

11 A Well, in fact, I completely agree with trust

12 but verify and I hope this is in the process we're

13 going through right now.

14 The ultimate correction against any mistakes

15 that Google make is how consumers behave and we live

16 in a great fear every day that consumers will switch

17 extraordinary quickly to other services. One of the

18 consequences of the open Internet is that people have

19 choices they did not have in previous generations.

20 In every case, the site that is now lower ranked is

21 still available if you type their name into your

22 Browser and off you go.

23 In all cases, what we're trying to do is

24 we're saying, our customers want quick and accurate

25 answers and if you will, the guide or the way we

1 correct ourselves is if they witch.

2 We know that people like what we do because

3 we have an extraordinary extensive testing regime.

4 It may be worth describing, we have thousands of

5 engineers that work on search and we're proud of them

6 and they mathematically compute with more than 200

7 signals, a whole bunch of incites how to rang things.

8 It's the hardest thing in science because of the

9 scale of the Internet. Because we do it well we

10 think we've earned that position you're describing.

11 Nevertheless, what happens is when we do that, we get

12 down to do 1 percent testing. We actually know, do

13 side-by-side testings to know we're producing what

14 customers want.

15 Q During a conference in 2007, Marissa Meyer

16 CK SPL, one of Google's top executives, discussed how

17 Google placed its own products and services on its

18 search results page. Speaking of the Google finance

19 service, we said in the past, Google ranked links,

20 quote, based on popularity. But when we rolled out

21 Google finance, we did put the Google link first,

22 seems only fair; isn't that right, we do all the work

23 for the research page and all these other things so

24 we do it, put it first. That is actually been our

25 policy since then. This is your employee.

1 So for Google Maps again, it's the first
2 link so on and so forth, and after that, it's ranked
3 usually by popularity, unquote.

4 So when she made that comment back in 2007,
5 she was speaking in her mind accurately. How do you
6 measure what she said then and what you're telling us
7 now?

8 A Well, again, I wasn't there, so maybe I
9 should use my own voice on this question.

10 There's a category of queries which are not
11 well served by the 10 links answer. You mentioned in
12 Marissa's quote maps. When people want a map, they
13 actually want a map right then and there, so over a
14 six or seven-year period, we not only acquired a set
15 of companies, but also invested hundreds after
16 millions of dollars producing what we think
17 technologically and experience are the best mapping
18 products around and we service those because our
19 testing and own tuition is that when somebody types

20 in an address, they actually want to have a map and

21 we show it to them very quickly. It would be quick

22 to do that with the 10-links model. If we were

23 forced to stay within the 10-links model, we would

24 not be able to do that kind of innovation.

25 Furthermore, all our competitors have

1 similar approaches and products to the placement of
2 the maps, products and other things.

3 Q Let me say one again, she said, when we
4 rolled out Google finance, we did put the Google link
5 first. It seems only fair. We do all the work for
6 the search page and all the other things so we do put
7 it first.

8 Now, you recognize, of course, if that's
9 company policy, that's very in the contrary to what
10 you're telling us here today?

11 A Well, I can speak for the policy of the
12 company during my tenure and I represent I
13 implemented and understood it and in our case, we
14 implemented the way I described it. I'll let Marissa
15 speak for herself on her quote.

16 If you look at Google finance, we started
17 off presenting Google links as you described and then
18 we decided it would be better to have a simple,
19 quick, stock quote if you will, a tool, and we

20 licensed that technology from the NASDAQ and NYC and

21 others and that's the source of her answer.

22 So again, we moved from the standard

23 10-links answer to this what we call a simple answer,

24 and then what happened after that of course is right

25 below it, you see all of the top engines. And if you

1 do that inquiry today, not only will you see we show
2 all the other competitors and ideas and great sources
3 of information, but we also have hot links as they
4 are called right below our answers including, for
5 example, Yahoo finance, which is probably the most
6 popular of them.

7 Q To be listed first is an advantage, isn't
8 it?

9 A In this particular case, we don't list
10 anybody first, we have an insertion which summarizes
11 the answer and typically the Yahoo answer comes right
12 after our -- it's easier if I describe it, if you
13 want a stock quote, we'll give you the stock quote
14 and right after that we'll show you links to Yahoo
15 finance and the others right there, so I disagree
16 with the characterization that somehow we were
17 discriminating against the others.

18 THE CHAIRMAN: Thank you very much.

19 Mr. Lee.

20 BY MR. LEE:

21 Q Let me get right to the point of one of my

22 concerns. Our Google products and services offered

23 by Google are subject to the same search ranking

24 algorithmic process as all other organic search

25 results?

1 A They are -- they are when they are actually
2 in ranking -- in the answers that you're describing,
3 but I think the core question that both of you
4 addressed in your opening statements was this
5 question of where we synthesize or come up with an
6 answer to a question, so again, I want to just
7 repeat, if we know the answer, it is better for the
8 consumer for us to answer that question so they don't
9 have to click anywhere and in that sense we tend to
10 use data sources that are our own because we can't
11 engineer it any other way.

12 Q Okay. I'm not asking whether you're giving
13 the right information, whether you're giving
14 information that's, you know, you regard as most
15 helpful to the customer, I'm asking whether your own
16 secondary services that Google itself offers, are
17 they subject to the same test, the same standard as
18 all the other results of an organicalgorithmic
19 search?

20 A I believe so. As I understand your
21 question, I believe the answer is question. I'm not
22 aware of any unnecessary or strange boosts or biases.
23 You'll see everything is mixed in a way and often
24 competitor's links are in, for example, like YouTube.

25 Q I would like to show a visual aid. Let's

1 bring up the first slide if we can, Mike. This is a
2 chart that reflects the results of a study comparing
3 the search rankings of three popular price comparison
4 sites and those of Google Shopping. Now, the three
5 popular price comparison sites results are depicted
6 in various shades of green and the Google results are
7 depicted in red. These particular data points were
8 gathered in April of this year and they represent the
9 ranking results from 650 shopping-related key word
10 searches. While next tab, price graber and shopper
11 all show significant variation, ranking first for
12 some and near 50th for others, Google has a very
13 consistent rate of success. Google Shopping ranked
14 third in virtually every single instance.

15 So to be clear, your testimony a moment ago
16 that these Google Shopping rankings almost
17 exclusively in the third spot are, in fact, the
18 result of the same algorithm as the rankings for the
19 other comparison sites --

20 A There's a con affiliation of two different
21 things going on in this study that I haven't seen so
22 I shouldn't comment beyond that.

23 There's a difference between sites that do
24 product comparisons and sites that offer products
25 themselves.

1 Google product search is about getting you
2 to a product. And so we tend to look for the
3 product, as opposed to the product comparison in this
4 particular case, which is why the product is more
5 highly ranked than the results of a product
6 comparison site.

7 If you did the same study with all of the
8 other product sites, you would find a very different
9 result.

10 Q Okay. So if we call this a product search,
11 if we call the result a Google product result, that
12 is not subject to the same algorithmic search input
13 that brings about the other organic algorithmic search
14 result?

15 A Again, I'm sorry, I may have confused you
16 and I apologize. We do product search ranking,
17 things like the companies that are mentioned there
18 are price comparison shopping. They are different
19 animals, if you will. They do different -- they are

20 important. They do different things.

21 Google product search is about searching for

22 specific products. In that sense, product search

23 does something similar to what price grabber, Nextag

24 and shopper does which is why the confusion exists.

25 It's an apples to oranges comparison.

1 Q Why is it always third? It seems to me this
2 is an uncanny statistical coincidence, if we can call
3 it that, third every single time. There are a few
4 outliers where you're first or third or fourth,
5 you're also interestingly never 12th. Every one of
6 those others will find themselves every where along
7 the spectrum. You're always third almost every time.
8 How do you explain that?

9 A Again, I would have to look at the specific
10 results.

11 Q We've got the results right here.

12 A I would actually need to see the technical
13 details to give you a direct answer.

14 But in general, what's happening here is
15 you're having product comparison sites and their
16 results are being compared against Google answers,
17 which are products, and the two cannot be properly
18 compared and that's why I think you're seeing such a
19 strange result.

20 Q Okay. Okay. It seems to me for whatever
21 it's worth, when I see this, when I say you magically
22 coming up third every time, that seems to me, I don't
23 know whether you call this a separate algorithm or
24 reversed engineered, but either way you cooked it so
25 you're always third?

1 A Senator, may I assure you, we have not
2 cooked anything.

3 Q Well, okay. You you have an uncanny ability
4 and unnatural attraction to the number three in that
5 instance.

6 Let's look at this search result. This one
7 is the product of a search query. Here, it's a
8 search query for a particular camera model and we
9 bring up a Google product listing. Now, it's near
10 the middle of the search screen result. You note
11 from your research that the middle of the first
12 screen is the area where users are most likely to
13 focus. That's the prime real estate on-line;
14 correct?

15 A Well, actually, collision go from the top to
16 the bottom.

17 Q Okay. So you want to be at or near the top
18 of the list?

19 A In general, you want to be on the first page

20 and then among the first entries; that's correct.

21 Q Okay. Now, among the natural search results,

22 the Google listing, the Google products listing is

23 the only result that includes the photo. We've

24 highlighted it here in blue just to demonstrate here

25 it's different, but there's nothing on-line that

1 differentiates it as a Google listing. There's
2 nothing that indicates this is an advertisement, that
3 it's even Google and it's prominent given its
4 placement?

5 A Again, that's not an ad, that is an organic
6 search result which is triggered by a product search
7 database which we have gathered by searching and
8 ranking offerings from many different vendors. If
9 you click within that, you go to the vendor that will
10 sell you the product.

11 Q I see my time has expired?

12 THE CHAIRMAN: Thank you, Senator Lee.

13 Thank.

14 BY MR. SCHUMER:

15 Q I want to thank Mr. Schmidt and the other
16 witnesses being here to testify. I
17 share -- especially in the high-tech sector. Google
18 and its competitors are building the infrastructure
19 of the economy and it's critical that technological

20 growth not be unfairly constrained. That's how all
21 markets work, but particularly in this area where
22 innovation really matters and things change quickly,
23 so I think the FTC investigation will get to the
24 facts behind the allegations we're hearing today and
25 that's a good thing. We have to examine -- I have

1 been particularly passionate about the growth of the
2 high-tech sector because it has been and will be
3 critical to the future growth of New York.

4 I realize that when most people hear about
5 high-tech sectors in the United States, they don't
6 necessarily think of New York, yet by many measures,
7 New York is number one or two when it comes to
8 employment or investment in the entire sector. We're
9 now the second largest recipient of high-tech venture
10 capital in the country. We passed Boston this year
11 and only trail Silicon Valley in the amount of
12 venture capital invested and this is the state of
13 Connecticut most amazing to me, by some measures, the
14 New York metropolitan has more -- over 300,000 men
15 and women, 22,000 firms classified as high-tech
16 companies, that's right, we have more than Silicon
17 Valley, more than Boston, more than Washington. It's
18 sort of hidden by some of the other industries. J.P.
19 Morgan, I have been told, has more computer

20 programmers than companies like Google or Microsoft.

21 So it's very important to New York.

22 Google, frankly, has been a very important

23 part of that equation in New York. Last year, Google

24 bought the largest office building in Manhattan.

25 Google employs around 3,000 people in New York.

1 That's double its employment rate from 2010, and in
2 2010, it provided \$8.5 billion of economic activity
3 and I would like to ask unanimous consent, a number
4 of letters I received from members of the New York
5 literature, New York businesses describing the
6 significant role Google place in New York's economic
7 development. Obviously with that great power Google
8 has, Google has as my colleagues mentioned great
9 responsibility. I want to get a fix on this, and
10 frankly, the future of New York's high-tech is lots
11 of little companies. There are hundreds of them that
12 are burgeoning, one or two of whom might grow into a
13 Google or Facebook or one of the others. So if
14 Google were being what patient us and shutting down
15 the ability of these small companies to function, it
16 would hurt New York and every six months or so I meet
17 with the CEOs of the high-tech companies in New York,
18 the growing, the little ones, and we talk about
19 problems they face. We don't have a good -- we don't

20 have enough engineers in New York. We're trying to
21 build an engineering school. Immigration is a huge
22 problem to them. We need reform of H1B visas which
23 we're working on, but without even prompting them,
24 and this is important for my colleagues to hear, each
25 of whom had a hundred, 200, 300 employees and most of

1 whom hadn't existed a couple of years ago and I asked
2 them, what do you think of Google. This is off the
3 record. Is Google rapacious CK SPL? Are they
4 competing with you trying to steal what you do? I
5 have been through this before where one of New York's
6 companies Kodak was being unfairly taken care of by
7 another large high-tech company or are they
8 generally, do they have a more positive attitude of
9 being open and encouraging, et cetera. Frankly, I
10 expected them to attack Google. That would be the
11 natural thing you think. But they didn't.

12 Four-fifths of them said Google is a
13 positive force, much more positive than most of the
14 other companies they deal with. They said it helps
15 us more than hurts us. Their words were Google is
16 pretty good, we don't see them as rapacious CK SPL.
17 It surprised me and influenced me so I think my
18 colleagues ought to hear that, that while it's
19 important, of course, that we pay attention to

20 competition in the high sector, I agree with you

21 Senator Lee, that that's the best way to get growth,

22 it's also important we focus on growth and investment

23 and jobs, and so I thought I would just share that

24 with my colleagues because I think it's important to

25 hear and it was not -- you know, they had no idea I

1 was going to ask about Google. It was off the
2 record. They are very frank with me about a lot of
3 things including people's politics and things like
4 that.

5 Now, I have a question for you that is
6 specific for New York and then a couple of general
7 questions -- well, I don't have too much time
8 remaining.

9 Last year, Google selected Kansas City as a
10 site for your new ultra high-speed internet service.
11 That really helped Kansas City. Hudson Valley is
12 very eager to be another test place for your network.
13 We have IBM there, we have a lot of high-tech
14 industry, it's growing, but it's being hindered by a
15 lack of Internet capacity.

16 Would you agree to consider the Hudson
17 Valley as a future test site for your broad-band
18 project?

19 A I think the answer is absolutely, I have

20 been there and it's both a great technology place and

21 also a wonderful natural resource.

22 What we're doing in Kansas City is we're

23 actually experimenting for a new model for broadband,

24 different pricing and different speed, and so forth,

25 and if it works, it has the ability to change the

1 discussion of broadband. We want it to succeed in
2 Kansas City first, absolutely.

3 Q One last question. We've heard your answer,
4 you have to think about this, what do you think
5 Google could be doing better to foster competition
6 that you're not doing now that you could do to help
7 all those little companies grow into big successful
8 companies?

9 A I'm always interested in creating greater
10 platforms for innovation. If you take a look at
11 Android today, 550,000 phones, the platform for new
12 companies to build mobile apps in Android is
13 exciting, we could invest a lot more money for the
14 industry that will be built around the platforms
15 Google is building. I have always felt that's
16 something we could invest more in.

17 Q My time is up.

18 THE CHAIRMAN: Thank you. Mr. Cornyn.

19 BY MR. CORNYN:

20 Q I'm a frequent user of your product and
21 learned a lot when I visited your facilities in
22 California, and it is a marvel of modern technology.
23 I have to confess when I read the nonprosecution
24 agreement between Google and the U.S. Justice
25 Department, it gave me some concerns and I just want

1 to give you an opportunity to comment on that,
2 because since the chairman talked about trust and
3 Ronald Reagan talked about trust and verify, I want
4 to know how you put this into the context of what I
5 would regard generally as a very positive
6 contribution to productivity and technology.

7 But the nonprosecution agreement between
8 Google and the Department of Justice dated August the
9 19th basically Google admits to helping on-line
10 pharmacies illegally sell hundreds of millions of
11 dollars of potentially counterfeit and tainted
12 prescription drugs to U.S. consumers. As a result,
13 you know Google paid what is reported to be one of
14 the largest criminal penalties levied in U.S.
15 history, \$500 million.

16 And just quoting, as early as 2003, Google
17 was on notice that on-line Canadian pharmacies were
18 advertising prescription drugs to Google users in the
19 United States through Google's ad words advertising

20 program. Although Google took steps to block
21 pharmacies and countries other than Canada from
22 advertising in the United States through ad words,
23 Google continued to allow Canadian pharmacy
24 advertisers to geo target the United States in their
25 ad words advertising campaigns. Google knew that

1 U.S. consumers were making on-line purchases of
2 prescription drugs from these Canadian on-line
3 pharmacies. In this document, Google admitted to
4 knowing at the time that many of these Canadian
5 on-line advertising included controlled substances
6 based on an on-line consultation rather than a valid
7 prescription from a treating medical practitioner.

8 And it was not until 2009 when Google became
9 aware of the DOJ's investigation of its advertising
10 practices in the on-line pharmacy area that Google
11 took a number of significant steps to prevent the
12 unlawful sale of prescription drugs by on-line
13 pharmacies to U.S. consumers.

14 So I want to give you the opportunity,
15 Mr. Schmidt, to put that in context so we can get a
16 complete and accurate picture of Google as a
17 corporate citizen and I think it also speaks directly
18 to the issue of trust?

19 A Well, Senator, thank you, and again, all of

20 that is generally quite correct. We regret what
21 happened, and we entered into the agreement that you
22 named and cited from.

23 Unfortunately, as part of that agreement,
24 and I have been advised very clearly by our lawyers,
25 that we have an agreement with the Department of

1 Justice that we are not to speak about any of the
2 details of it, so I would have to ask you to speak to
3 the Department of Justice for more of that.

4 Q Is that in the 15-page agreement?

5 A It's in there somewhere, yes, sir. So, in
6 any case, the important thing for me to say is that
7 the conduct that was covered is not -- has nothing to
8 do with any of our current advertising practices or
9 policies. In other words, it was an historical
10 event.

11 Q Was it -- was it the results of oversight or
12 inadvertence or were there some employees in the
13 company that were doing this without your knowledge
14 or --

15 A Certainly not without my knowledge. Again,
16 I have been advised. Unfortunately, I'm not allowed
17 to go into any of the details and I apologize,
18 Senator, except to say that we're very regret full
19 and it was clearly a mistake.

20 Q My counsel I advises me that under the
21 agreement, you're not allowed to contradict the
22 agreement, although you can comment on it. Is your
23 understanding different?

24 A Let me ask my counsel.

25 (Pause.)

1 Again, I'm not allowed to go into the
2 details or characterize it beyond the -- beyond what
3 has been stated in the agreement.

4 We absolutely regret what happened. It was
5 a mistake and we certainly apologize.

6 Q Well, do you -- do you disagree with the
7 characterization that I gave it or the word --

8 A I agree with you, Senator.

9 Q And you've taken the steps to make sure that
10 that sort of thing never happens again?

11 A Absolutely. And again, I say that with
12 great regret.

13 Q Mr. Schmidt, the -- of course, this is the
14 antitrust Subcommittee. Would you agree it becomes
15 illegal under the antitrust laws to insist that
16 customers of one product buy another separate
17 product, generally called tying?

18 A Yes, I'm not an attorney, but my general
19 understanding is that that's correct.

20 Q Do you believe that your mobile Android

21 operating system -- your mobile operating system

22 Android has reached that point? It's about 40

23 percent of the market and growing fast; correct?

24 A As a bit of background, as I mentioned

25 earlier, Android is on its way to becoming the most

1 successful mobile platform. We're proud of this. We
2 have 550,000 activations and the Android is first and
3 foremost freely licensed, that is, there's no fee or
4 whatever to use it.

5 Speculating on the basis of your question,
6 it turns out that it's possible to use Google search
7 along with Android, but it's expressly also possible
8 to not use Google search, so the answer is, that's
9 not an example of a case you were describing.

10 Q Can -- can Google design Android so that
11 other applications cannot work as well as Google
12 applications; for example, the G mail application
13 will always be faster than the Yahoo mail
14 application; is that possible?

15 A I'm sure that's not true in general because
16 under the rules of open source, it's possible for
17 anyone to take open source and modify it in any way
18 possible.

19 So anything that we did, which we wouldn't

20 do, that would advantage our own apps would be
21 reversible by somebody because we give them the
22 source code.

23 In other words, historically, the problem in
24 this case is that there was a hidden feature a
25 previous company would do that wasn't visible.

1 Because Android is made available to everyone, we

2 couldn't choose that if we wanted to.

3 Q Thank you. My time is up?

4 THE CHAIRMAN: Thank you very much,

5 Senator Cornyn. Senator Comprehensive general

6 liability.

7 BY SPEAKER:

8 Q Thank you very much, Mr. Chairman, and thank

9 you for holding this important hearing. As we know,

10 Google is a big component of the Internet 6789 I was

11 doing my own research comparing Googling my name

12 which I'm sure no one on this panel has ever Googled

13 their own named, but I Googled my name on Google and

14 used Bing, as well, and I will note Google 4th entry

15 beating out my own Facebook page, in which he says

16 the laws of chance are basically silent on the odds

17 of another football team matching the mind-bending

18 performance of the Minnesota vie Kings on Sunday.

19 So Bing luckily does not feature that

20 article at all about the vie Kings. But it was
21 making me think about how you do these rankings, and
22 according to some remarks attributed to Google in a
23 recent article, Google uses 200 factors to determine
24 rankings and I know Senator Lee went through some of
25 this with you and Google changed its ranking formula

1 according to this article about 500 times in 2010.
2 Obviously, these changes have a big impact. For
3 example, the difference between being ranked first
4 and being ranked second is that the first rang result
5 gets about 35 percent of the collision, the second
6 result gets only about 11 percent and when Google
7 changes its formulas, companies that were once first
8 might be second page or even further down the line
9 and businesses are telling me how they want certainty
10 and I know at the same time, Google is I know
11 novating and changing its algorithm to improve its
12 product. Do you think the company has a right to
13 expect more certainty in how they are being ranked?

14 A In the situation you're describing, I have a
15 lot .

16 (Technical Interruption.)

17 xxx (Resuming with Senator Grassley)

18 BY SENATOR GRASSLEY:

19 Q Google uses its power to manipulate

20 consumers and drive traffic to itself and away from
21 potential competitors for traffic and ad revenue, end
22 of quote. So kind of how do you respond to that?
23 And the additional quote is, are you concerned that
24 your company has been, quote, exerting enormous power
25 to direct Internet traffic in ways that hurt many

1 small, rural businesses, end of quote.

2 A Sir, I would like to return to the

3 philosophy that we have had for some years, which is

4 to focus on getting to the right answer.

5 And we have a lot of systems inside the

6 company, internal testing, external testing, 1

7 percent tests as they are called, to really make sure

8 that we're producing the best results, and that is

9 the guide that we use. It's really about consumers.

10 As we discussed earlier, it's perfectly

11 possible that in the course of that, extremely good

12 and well-meaning small businesses move up and down in

13 the rankings, but we are in the rankings business, so

14 for every loser, there's a winner, and so forth. I

15 am satisfied that the vast majority of small business

16 are extremely well-served by our approach. As I said

17 earlier to Senator Klobuchar, I do believe our system

18 promotes and enhances the small businesses over large

19 businesses and it gives them a role they would not

20 otherwise have because of the nature of the way the

21 algorithms work.

22 Q Here is a quote from somebody who supports

23 Google. How would you respond to the eye would he

24 and that wrote, further restrictions on successful

25 businesses like Google are the surest way to impede

1 innovation, entrepreneur ship, ultimately sustain any
2 sustainable economic recovery?

3 A Again, we would like to be judged and we're
4 happy to be judged and reviewed by you all and on the
5 principles we set out, consumer and consumer choices.
6 We're always concerned about consumers moving from
7 ourselves which is the larger being and the many new
8 competitors. We argue we're in a highly competitive
9 market. We welcome the oversight but we would ask
10 the way you're making the decision based on the
11 principles.

12 Q You may want to say how you help small
13 businesses beyond what we talked about here, these
14 one shops that you have, but in addition to anything
15 you want to aalong that line, how can small
16 businesses web sites compete with large retailers and
17 big-box tools on Google?

18 A It's interesting that Google was first and
19 foremost a success in small businesses because small

20 businesses were more anymore bell than the big
21 businesses when it came to the Internet. We have a
22 history of promoting small businesses and we love
23 this. Small businesses succeed precisely where the
24 big ones don't, specially occasion. What we try to
25 do when we get companies on-line, we try to get them

1 to articulate the unique way they are different. In
2 your constituent, there's something uniquely
3 different about the view and culture of your state.
4 They are on the margin going to rang higher and
5 appeal to a broader audience. What's great about it,
6 we can have local flavor with global impact in terms
7 of the market that you're serving.

8 Q A question that would come from somebody who
9 is not an admirer, complaints along the line that
10 Google is directing Internet users to Google operated
11 web sites regardless of whether the organic results
12 of the search would direct users to competing sites;
13 specifically, some of my constituents are concerned
14 that small local Iowa businesses are not treated in a
15 fair and competitive manner and that the top search
16 results to a query are often given to large national
17 companies, even when a search designates a specific
18 Iowa location in the query.

19 So obviously feel small businesses are being

20 cheated and consumers being misled. Your response?

21 A It's perfectly possible that you're

22 describing failures of our algorithm. A large

23 company can masquerade as a small business in Iowa

24 and it's hard for us to detect it. We're constantly

25 making changes in testing to improve it. In the case

1 you're describing, part of the answer we would give,
2 hopefully you'll have a mixture of larger companies
3 and smaller businesses that reflect the best of Iowa
4 in that particular scenario. But this precise
5 ranking algorithm is difficult to characterize. Why
6 am I first? There are different signals and it's
7 applied so broadly it's hard to reason from a
8 specific case out to the general case.

9 Q Thank you, Mr. Chairman.

10 THE ARBITRATOR: Thank you, Senator
11 Grassley. Senator Franken

12 MR. FRANKEN: .

13 Q Thank you, Mr. Chairman for the extremely
14 important hearing. First of all, I want to start out
15 by saying I love Google and I said that the last time
16 Google was here in front of my Subcommittee, but I
17 think it bears repeating. Google has transformed the
18 way we use information and Google will be among those
19 setting the standard for innovation in this country

20 for decades to come.

21 But in many ways, Google's unprecedented

22 growth and success is also one of the reasons we need

23 to pay attention to what you're doing. And as you

24 get bigger and bigger and bigger, I worry about what

25 that means for the next Larry Page or Sergey Brin who

1 are struggling to build the next innovative product

2 in the garage.

3 I am admittedly skeptical of big companies

4 that simultaneously control both information and the

5 distribution channels to that information, and for

6 me, that is at the heart of the problem here.

7 When you completely accommodate how people

8 search for that -- for information and you own

9 separate products and services that you want to

10 succeed, you're incentives shift. Your fiduciary

11 duties to your shareholders shift and people have

12 reason to worry that you aren't going to play fair.

13 And there's been a lot of talk about

14 where -- where your placement on a search, companies,

15 and I was a little taken aback by an answer you gave

16 when the Chairman brought up managers a marry quote

17 when we rolled out Google finance, we did put the

18 Google link first, right, we do all the work for the

19 search page and all these other things so we do put

20 it first.

21 And you anxious had that by saying that,

22 well, you put a map out there when someone wants a

23 map to someplace, you just put a map out there and

24 that's what they want.

25 And sort of understand that -- or a

1 financial answer of stock price.

2 But then the ranking member asked you, well,
3 when that's not the case, when you're not putting out
4 the answer that people want, when you're not doing
5 that, do all your rankings reflect an unbiased
6 algorithm, and you said after a little hesitation, "I
7 believe so."

8 That seemed like a pretty fuzzy answer
9 to me coming from the Chairman.

10 If you don't know, who does? ?

11 I really -- that really bothers me, because
12 that's the crux of this, isn't it? And you don't
13 know so we're trying to have a hearing here about
14 whether you favor your own stuff and you're asked
15 that question and you admittedly don't know the
16 answer.

17 I want to talk about Yelp! a little bit. I
18 read through the testimony of Mr. Stoppelman, the
19 Co-Founder and CEO of Yelp! last night and I found

20 his story to be quite compelling.

21 It sounds to me that like Google, Google

22 first tried to license Yelp!'s content -- content and

23 did, and then when Yelp! terminated that contract,

24 Google tried to buy Yelp!, and when Yelp! refused,

25 Google started taking Yelp!'s reviews and showed them

1 on Google's page, and we're going to hear from
2 Mr. Stoppelman soon, but I want to give you a chance
3 to respond to some of the points in his testimony.

4 Did you get a chance to read it and did you
5 get a chance to look at the exhibits?

6 A In general terms, yes, not in specific, but
7 I'm generally familiar with Yelp!, so --

8 Q Okay. First of all, Yelp! contends that
9 even now consumers cannot find links to Yelp! in
10 Google emerged results, and Mr. Stoppelman goes on to
11 say that, goat, it is impossible for any of Google's
12 competitors to be displayed as prominently as Google
13 itself even if Google's own algorithm rates them
14 higher.

15 Do you think that's a fair characterization?

16 A I generally disagree with.

17 Q Generally?

18 A Again, with Mr. Stoppelman's comments and he
19 will have an opportunity to say what he would like in

20 a minute.

21 The background on Yelp! is that they have
22 been a partner and an important site on the web for
23 many years and they have been always relatively
24 highly ranked and our search results, we have always
25 had them part of our index.

1 Some years ago, we decided to start working
2 on a project about the around location and the idea
3 was to create, if you will, a hub around an
4 information, a place, so that would be a map,
5 information about things at that map -- a restaurant,
6 a store, what have you.

7 So given we searched this information, we
8 took snippets from the information from Yelp! Along
9 with many others and put those in, those became known
10 as place pages today. Our competitors also have a
11 similar offering and if it's -- if there's confusion
12 as to why we need the place page, think about a
13 mobile device. If you have phones, if you have a
14 phone here, it's going to be very difficult for you
15 to go through the 10 links, whereas if you have a map
16 and can thumb around and move around, that all makes
17 sense.

18 So in the particular case of Yelp!, I felt
19 Yelp! would be very happy with us pointing to their

20 site and then using a little bit of their reviews

21 because we've got even those in the index and then

22 sending traffic to them.

23 They were not happy with that. They sent us

24 a letter to that affect and we took them out of the

25 place pages.

1 So if you look today, you'll see that they
2 are not in there. You have the Google reviews and a
3 bunch of other stuff like that and ultimately, we
4 bought a company called satisfy got to do something
5 similar.

6 So this is not a case of generic ranking and
7 so forth, it's about us trying to create these place
8 pages and getting information to solve a different
9 problem.

10 Q I'm out of time. I would like to ask one
11 short question and hopefully go to a second round if
12 we can. Is Google still using Yelp!'s content to
13 drive business to Google's place?

14 A As far as I know, not.

15 Q As far as you know?

16 A Again, I'll have to look but I'm not aware
17 of any.

18 Q Maybe Mr. Stoppelman will help us on that.

19 Thank you?

20 THE CHAIRMAN: Thank you very much.

21 Senator Blumenthal

22 MR. BLUMENTHAL: .

23 Q Thank you for having this hearing, which I

24 think is very important. Thank you for being here,

25 Mr. Schmidt. We welcome you here and I want to join

1 my colleagues who have remarked on what a tremendous
2 success story Google is, a great American success
3 story, a great consumer success story.

4 And I certainly have formed no conclusions
5 whatsoever as to any of the questions you have been
6 asked or others that may relate to the concerns that
7 have been expressed, those concerns focusing on the
8 size and market power of Google and whether it is of
9 a scope and scale that it invokes certain
10 responsibilities under our law and whether or not
11 Google has complied with those responsibilities.

12 But there's no question about the fact that
13 Google is really the bee me moth in the search market
14 these days, and that it far out sizes its nearest
15 competitor, which has less than 30 percent of the
16 market as compared to Google's 65 or 70 percent more
17 in searches and an even higher share in advertising
18 revenue and that the trend will be toward perhaps
19 even more sizeable share on the part of Google in the

20 search market, and the reason I say it is is that

21 your nearest competitor is losing \$2 billion a year

22 and Google made \$29 billion in 2010.

23 And I think that the dynamic here is best

24 summarized by Jonathan Rosenberg, who is your own

25 vice president of product management who said, and

1 I'm quoting -- he said it in 2008, it's not your
2 voice, but I think it does speak to the dynamic in
3 the market, "So more users, more information, more
4 information, more users, more advertisers, more
5 users. It's a beautiful thing, lather, rinse,
6 repeat. That's what I do for the living. So that's
7 the engine that can't be stopped."

8 The hearing and the testimony here and a lot
9 of what's been written and said has many allegations.
10 They are only allegations. They haven't been proven
11 about scraping content, co-opting that content. My
12 colleague, Senator Franken, just raised Yelp!'s
13 allegations, the other kinds of claims about
14 anticompetitive conduct so my question to you is:
15 Drawing on the lessons that presumably you have
16 learned as you very forthrightly acknowledged, can
17 Google suggest measures to be taken voluntarily at
18 this point to promote competition, to dispell those
19 allegations and perhaps dissipate some of the

20 momentum towards government intervention?

21 And I ask this question in the spirit of

22 trying to avoid government regulation and

23 intervention. In my view, some of the companies who

24 have occupied your chair before you have been their

25 own worst even me in that regard and your very frank

1 acknowledgment about Google's responsibilities and
2 its approach, I think, speaks an approach to, in
3 effect, try to do voluntarily what's in consumers'
4 best interests because competition is in consumers'
5 best interest before there is intervention either by
6 a government agency or by a court?

7 A My general answer would be that making the
8 Internet win guarantees very strong competition for
9 all of us.

10 I understand you were asking a more narrow
11 question, but the fact of the matter is, there are
12 many, many new start-ups that are potential future
13 competitors of Google and others.

14 For example, there are sites now seeing more
15 than half of their traffic coming from Facebook and
16 Google is a very small component of the traffic that
17 they get.

18 So there's every reason to believe that a
19 broad strategy to promote competition and investment

20 in companies, the IP markets were the hottest markets

21 ever done, so I would argue that the levers are

22 necessary -- that are necessary to guarantee the

23 outcome you're looking for are largely already in

24 place.

25 Q Let me be more narrow in my question. Right

1 now as I understand it, certain Google properties;

2 maps, for example, are at the top of the search

3 results?

4 A Sure.

5 Q Regardless of the algorithm or the formula

6 or the methodology, they are at the top.

7 Would, for example, eliminating that

8 preference be a step in the right direction?

9 A Well, I would disagree for two reasons;

10 first, that it would be bad for consumers because

11 consumers wanted a map, and now you're by virtue of

12 such a rule, you're forcing people to do two steps.

13 The second, of course, is that it would

14 allow the competitors offer that but without

15 competitors being able to do it because the

16 competitors have that, as well. What I'm worried

17 about, such a restriction would prevent us from

18 meeting our primary mission.

19 Q Are there other specific steps that you

20 would suggest; I mean, if we were a court and

21 liability were found and the question were remedies,

22 what would you suggest?

23 A Well, again.

24 Q And I don't mean to put you in an unfair

25 position. It's a very, very hypothetical question?

1 A I have actually spent a lot of time thinking
2 about this. We had a long conversation some years
3 ago about how Google would behave to avoid being evil
4 when we were big.

5 We actually believe we have made those
6 changes, steps and so forth. For example, we created
7 the Data Liberation Front so we cannot capture or
8 hold your data. If you wish to flee Google, we make
9 it easy for you to do that with your personal data as
10 well as your advertising data, so we think we've done
11 the things to make sure we stay within an appropriate
12 competitive box. We're open to suggestions on
13 competitive steps.

14 With the extraordinary expansion of choices
15 on the Internet, ultimately, the global playing field
16 that is the Internet is the real protection, the
17 combination of one click away and the huge amounts of
18 many going into those spaces.

19 Q My time expired and thank you for your

20 responses. I hope there will be a second round but

21 that's up to the Chairman?

22 BY THE CHAIRMAN (KOHL):

23 Q Second round, three minutes and we'll see if

24 a third round. Mr. Schmidt, industries and statutes

25 show Google has -- done on computers said 95 percent

1 on mobile devices and as over 70 percent of all
2 search revenue, under common antitrust standards,
3 this kind of a market share is considered to
4 constitute monopoly power. Does Google recognize
5 that as a monopolize or dominant power, special rules
6 apply that there is conduct that must be taken and
7 conduct that must be refrained from?

8 A We certainly understand the rule that we
9 play in information and we also understand the proper
10 role of government and your role and so forth to
11 expect what we're doing.

12 We're satisfied the things we're doing are
13 in the legal and philosophical balance of what we're
14 trying to do. We answer the question in competitive
15 market, we're focused on the consumers. We
16 understand the role we have to play and we're kept
17 honest all the time and not just by your good graces,
18 but also that of the press and the many other people
19 who look at what we do.

20 Q But you do recognize that in the words that

21 are used and antitrust kind of oversight, your market

22 share constitutes monopoly, dominant -- special power

23 dominant for a monopoly firm. You recognize you're

24 in that area?

25 A I would agree, Senator, that we're in that

1 area. Again, with apologies because I'm not a
2 lawyer, my understanding of monopoly findings is,
3 this is a judicial process so I have to let the
4 junction do such a finding. From, we have a special
5 ability to debate all the issues that you're
6 describing to us. We do understand it.

7 Q Thank you. Our hearing is focused on
8 commerce and business decisions but perhaps the
9 potential information on news and influence the
10 American people receive. This points out we need to
11 preserve competition. In the Internet search market,
12 Google is the primary way Americans search for news
13 and information on the Internet. If your only search
14 engine competitor which is Bing would go away, Google
15 would be the only search engine consumers could use.
16 Given, to influence information and news coverage
17 citizens find on the Internet; for example, those
18 searching the Internet for information on today's
19 hearing could get links to my Opening Statement, your

20 testimony, the testimony of your critics on the next

21 panel as the first search result.

22 Or people searching for information on

23 President Obama could get links to the official White

24 House web site or a critical column on the president

25 or in the weekly standard.

1 You would argue, I suppose, that Google
2 simply returns the most relevant results first for
3 any news or information query, free of any political
4 bias but is this really possible. There must be some
5 decision as to whether my Opening Statement or your
6 testimony at this hearing is at the top of the
7 information results. Is it really possible to have a
8 truly unbiased research results for news and
9 information queries. Should we be queried by any one
10 company however well-intended as yours having huge,
11 huge information over news and information citizens
12 find on the Internet, and doesn't this demonstrate
13 the absolute need for competition and real
14 competition in this area?

15 A Well, as I said earlier, we're very strongly
16 in favor of competition. There's a lot of evidence
17 that much of the on-line news is being consumed and
18 generated within the social networks so we would want
19 to add that into the framework Senator that you

20 propose. With respect to the question of ranking
21 algorithms and bias, it's ultimately a judgment what
22 comes first or second and in our case, because we
23 have so many things to rank, it would not be possible
24 for me to explain to my satisfaction or your own why
25 one link to my testimony or your testimony was one

1 higher or lower. It's a complex influence involving
2 who points to whom and the way it's expressed using
3 an algorithm we've developed that Google is proud of.
4 It's the best we can do and I want to say up front
5 that we do occasionally make mistakes.

6 Q All right. Now we turn to Senator Lee.

7 MR. LEE: .

8 Q Mr. Schmidt, I just want to make clear and
9 get a statement on the record under oath, does Google
10 give any preference to its own listings; places or
11 shopping results, et cetera, in its own natural
12 search ranking results?

13 A Again, the reason I was a little confused by
14 your earlier question is by the word preference. We
15 have a product called universal search and universal
16 search chooses how to organize the page, and so that
17 decision includes many -- many components in the
18 natural search.

19 It will, for example, when we think you're

- 20 looking for a product, we will pop out this product
- 21 search essentially insert that you showed earlier,
- 22 and if you go through that product -- that product
- 23 search thing that we put out, it actually as I
- 24 pointed out takes you to other sites that want to
- 25 sell products. So the answer is, we give preference,

1 but we give preference in the context of our best
2 judgment of the sum of what the person wants to do.
3 Did I answer your question? I apologize for not
4 answering earlier.

5 Q That helps answer the question. It gives
6 preference to those, perhaps in the case of the
7 camera, not to your only camera sales port, but maybe
8 to another page where you're not selling cameras,
9 you're selling advertisements?

10 A In that case, I don't think there's an
11 advertising component to that decision, but I take
12 your point.

13 Q Okay. In preparing for this hearing, I was
14 uncertain as to what might be the full extent of my
15 concerns regarding Google's current practices. But
16 some of my fears, I have to say, have been confirmed
17 as a result of our conversation. I would just like
18 to summarize, Mr. Schmidt, what some of those
19 concerns are.

20 I am troubled by some of Google's practices.

21 Its practice of inserting its own offerings in the

22 midst of natural algorithm search results, usually in

23 the most prominent position of the page and with the

24 most eye-catching display, and my concerns related to

25 this are really three-fold; first, this practice

1 seems to me to leverage Google's primary search
2 dominance to give its own secondary services and
3 listing and unnatural and extraordinary advantage.
4 No other specialized business or search site can hope
5 to compete on figure close to a level playing field
6 when Google uses its significant market power to
7 disadvantage on-line competitors.

8 Second, this same practice that I described
9 presents a clear and inherent conflict of interest,
10 rather than acting as an honest broker of
11 information.

12 Google now has a strong financial incentive
13 to channel users to its own listings, regardless of
14 their quality. As Google vice president Marissa
15 mayor noted, to the degree that we, meaning Google,
16 host content, we ultimately have a monetary incentive
17 to dry people to those pages, if those pages have ads
18 on them.

19 Finally, I worry that this practice harms

20 consumers. Manipulating algorithm search results
21 violates consumers' legitimate expectations and by
22 unfairly disadvantageing competing services, it may
23 stifle consumer choice and innovation. I'm troubled
24 by what we learned today about Google's practices and
25 I hope that you will take swift action necessary to

1 resolve these concerns.

2 Thank you very much. Thank you,

3 Mr. Chairman. Mr. Franken.

4 MR. FRANKEN: .

5 Q Thank you. I think I'm the Chairman now for

6 a while and then the Chairman will be back.

7 Mr. Schmidt, let's gift to talk about mobile search

8 because clearly direction of search -- of the

9 Internet is going to mobile and searches will be

10 going to mobile.

11 I understand you control about 97 percent of

12 mobile search. You are the default search engine on

13 all apple phones; is that true?

14 A That is correct.

15 Q Okay. And you also own Android, which is

16 the largest mobile operating system.

17 And this type of dominance ultimately means

18 that you control what consumers use when they

19 purchase an Android phone. Kneels even released a

20 state last week that stated that five of the six
21 dominant apps on the Android device are owned by
22 Google. Only Facebook made it into the top six. I
23 have no doubt that part of the reason for that is
24 that Google often creates superior products.
25 But that isn't the only reason. What comes

1 preloaded on a phone impacts what apps, which ones

2 win or lose, do all Android devices come preloaded

3 for apps for Google Maps, Google Places, G mail and

4 now Google plus?

5 A They do not.

6 Q They do not. Do many of them; do a

7 large -- large number of them?

8 A My not too precise estimate is that a slight

9 majority come with it, I would estimate on the order

10 of two-thirds of it come preloaded.

11 Q So if an equipment manufacturer that makes

12 Android phones for you doesn't want to preload Google

13 apps on its devices, can they do that?

14 A Absolutely.

15 Q Okay. If I am a customer and want to use

16 Yelp! instead of Google Places, is it easy for me to

17 delete Google Places on my phone and up load Yelp!?

18 A Well, Google places is essentially a result

19 for most search results, so if you simply used -- if

20 you didn't use Google search, you wouldn't have

21 Google places at all and Yelp! is available through

22 all the browsers available on Android, so Yelp! is

23 always available independent of that.

24 Q I'm talking about as an app?

25 A It's not an app. Google operations is not

1 an application on Android. It's a result from
2 search.

3 Q Okay. So what apps -- what Google apps are
4 there?

5 A G mail, chat applications, those sorts of
6 things.

7 Q Okay.

8 A And again, to help, I think what you're
9 -- if I may, I think what you're getting at is -- I
10 think what you're getting at is --

11 Q Tell me what I'm thinking.

12 A No, just trying to be helpful.

13 Q Yes, I know.

14 A Many Android partners combines Google
15 search, G mail, chat and a few other apps into a
16 package, and I believe what you're referring to is
17 the fact that in that case, we do a revenue share
18 with them on the Google search.

19 Q Thank you. My time is up. Senator

20 Blumenthal.

21 MR. BLUMENTHAL: Thank you

22 MR. BLUMENTHAL: .

23 Q Again, I want to emphasize to you, I have

24 reached no conclusions and I will be submitting other

25 questions in writing because we may not have time for

1 a third round and I'm sure that you will be happy to
2 be relieved of that spot.

3 But, you know, I have been trying to think
4 of the analogy here to what the ordinary consumer can
5 understand as to what Google does, and as I sat here,
6 the race track analogy, you run the race track, you
7 own the race track. For a long time, you had no
8 horses. Now you have horses and you have control
9 over where those horses are placed and your horses
10 seem to be winning. And, you know, I think what a
11 lot of these questions raise is the potential
12 conflict of interest to use a sort of pejorative, but
13 not necessarily to be critical, because you may have
14 great products and you put them first and you may
15 regard that placement as a service to consumers, but
16 inevitably, that will stimulate the kind of criticism
17 that has brought you here today.

18 A So it won't surprise you Senator to say I
19 disagree with your analogy completely, so I prefer to

20 think of the Internet as the platform and you can

21 think of Google as the GPS.

22 One of the most important things to say

23 here, and again, with respect to all the complaints

24 and comments and so forth, Google does nothing to

25 block access to any of the competitors and other

1 sources of information. We earn courage it and
2 indeed in all the cases that have been used where we
3 come to an answer, we also show all the other
4 possible answers. We try to be as inclusive as
5 possible. So from my perspective, when I netted out,
6 we need to be able to be free to get to what we think
7 algorithmically is the best answer to the query, if
8 we can do that with no collision, zero click and we
9 can compete it algorithmically, that's better for the
10 consumer. I believe that.

11 Q But to return to my analogy, there's no
12 allegation that you necessarily exclude those other
13 horses, to use your analogy, there's no allegation
14 that you would necessarily misguide a consumer to go
15 in the wrong direction on the Internet, but there is
16 something different when you own a place and the
17 directions happen to put the consumer at the place
18 you own, as opposed to some other place that in
19 appearance objectively might result in that consumer

20 going to another place and, you know, I realize that

21 we're over-simplifying a very difficult and complex

22 area, but again, I invite your comments and

23 disagreement.

24 A Again, I think that the most important thing

25 for us to do is to come up with the quickest answer

1 the best and this is the best we know how to do and
2 we do, in fact, have the concerns you're describing
3 in our mind as we make decisions, but we are, and we
4 have said this for years, we really, really do test
5 this stuff and we believe this is the best choice for
6 the consumers and we run for the benefit of the
7 consumers, not the other web sites.

8 Q My time has expired. I thank the acting
9 Chairman?

10 MR. FRANKEN: Thank you. I think to
11 carry your analogy one step further, your met for,
12 that you might have been saying that you think Google
13 might be doping the horses?

14 A I didn't say that.

15 MR. FRANKEN: I guess I misunderstood.
16 Senator Comprehensive general liability. Klobuchar
17 Klobuchar.

18 Q Thank you. A lot of the questions have been
19 focused on how the searches work and how you end up

20 on one suddenly on one day. Have you thought about

21 more transparency and if there's other things you

22 could do to explain to people why this is happening

23 and when there's going to be a change?

24 A I think there's again an excellent point.

25 We do a lot of tools for web sites so they can

1 understand how they are ranked and the changes they
2 have made. We don't in my view do enough so I agree
3 with your question there.

4 There's a limit to how much transparency we
5 can provide for two reasons. One is that our actual
6 ranking algorithm are viewed as quite proprietary by
7 our great scientists at Google and if we're
8 transparent how the algorithms work, they would be
9 heavy gamed by sites that spam us. We have had
10 experiences where people latch on to some behavior
11 and manipulate the index to produce a really false
12 answer which is often the butt of jokes, so on.

13 There's a limit to how transparent we wish to be with
14 respect to our actual ranking algorithm. I do agree
15 we can do a better job of describing the change and
16 so forth. I think that's exactly right.

17 Q Just one last question here. You know,
18 on-line users are in many ways your customers but
19 also the businesses that advertise are your

20 customers. Does Google need to be careful that the
21 privacy and protection of the web users doesn't come
22 into conflict with the business interests of those
23 that are advertising on the web and how do you
24 resolve that conflict?

25 A We debate this quite a bit. We have a very

1 detailed privacy policy about how we behave with
2 users data and there have been a number of businesses
3 suggested to us over the years that would use -- that
4 would in your view misuse people's private data,
5 search histories and so forth and we have said no to
6 those.

7 It's very, very important that the history
8 of people's searches, where they are, what they do is
9 not used without their permission in these
10 advertising products, and I think you'll find that
11 Google westbound one of the exemplars of that
12 principle, and as this becomes a bigger thing for
13 many, many companies, a lot of people will face this
14 question.

15 MS. KLOBUCHAR: Thank you very much

16 MR. FRANKEN: We are now going to
17 transition to the second panel and we thank you,
18 Mr. Schmidt, for being here and for your testimony
19 and I'm glad that my colleague from Minnesota brought

20 up privacy. I am the Chairman of the Subcommittee on
21 privacy technology and the law, and I would probably
22 like to -- we'll be keeping the record open for 10
23 days -- 20 days -- oh, one day -- one week. Okay,
24 it's either 10 days, one week or 20 days. I'm the
25 Chairman right now and I think we'll do one week,

1 which I think is actually the proper answer.

2 Chairman Kohl apologize for not being

3 here for the conclusion of your testimony but was

4 needed for votes in the appropriations committee, so

5 we thank you, and since we're open for, I think, a

6 week, I also plan to submit a few questions on

7 privacy and other -- and then I know electric

8 eventual theft, so -- but I really thank you and I

9 would like to call the second panel.

10 THE WITNESS: Thank you for giving me

11 the opportunity to appear before your panel here. We

12 will be happy to answer any other questions and

13 clarify any questions that require further

14 clarification. So thank you very much

15 MR. FRANKEN: Thank you very much.

16 The record will be open for a week. We now call the

17 second panel.

18 We're going to take a brief recess so

19 if you want to sit there, get used to that place and

20 you can do that or if you want to just mil around and

21 chat idly, you can do that, as well. We're going to

22 take a brief recess, and I believe the Chairman, the

23 real Chairman will be back any moment. So recess.

24 (Whereupon, a recess was held from 3:41

25 p.m. to 3:45 p.m.)

1 THE CHAIRMAN: The hearing is resumed.
2 We'll be moving to our second panel. The first on
3 the panel will be Mr. Barnett. Mr. Barnett is a
4 partner at Covington & Burling and co-chair of the
5 consumer law and practice group. Mr. Barnett served
6 as Assistant Attorney General for and trustee in
7 the U.S. Justice Department from 2005 to 2008 and
8 represents Expedia, a member of the fair search
9 coalition.

10 Next we'll be hearing from Jeff Katzenberg, CEO of
11 Nextag; after serving as president and CEO of Leap
12 Frog and was the Chairman and founding CEO of Orbitz
13 from 2000 to 2004. Next we'll be hearing from Jeremy
14 Stoppelman, Co-Founder and CEO of Yelp!, a position
15 he has held since 2004, finally hearing from Susan
16 Creighton, partner at Wilson Sonsini Goodrich &
17 Rosati where she serves as co-chair of the firm's
18 antitrust practice. She served as director of the
19 FTC Bureau of Competition from 2003 to 2005 and

20 represents Google on antitrust matters. We're happy

21 to have you all here today and Mr. Barnett, we'll

22 start with you for five minutes bar bar thank you,

23 Chairman coal and thank you senators for holding this

24 important hearing. I would like to start with a

25 general observation. I was heart end initially by

1 the statement from Chairman Smith that Google gets
2 it, but to be frank with you, based on my experience
3 both in the private sector and government, Google
4 doesn't get it. Companies that get it will step up
5 to the plate, admit to reality and focus on what are
6 the real issues.

7 Google won't even admit to reality. Let me
8 tell you what I'll talking about.

9 The first element of the section to
10 monopolization claim is is Google a dominant company.

11 I think this committee recollection undoubtedly

12 Google has monopoly power in paid and search

13 advertising. You don't have to take my word for it.

14 You heard it. Both the Department of Justice and

15 Federal Trade Commission has conducted extensive

16 investigations and both of them, the expert agencies

17 reached factual determinations that show that Google

18 has monopoly power. There's a federal judge who

19 believes that they are dominant, but don't take my

20 word for it or their word for it, take the word of

21 Chairman Smith. If Kelly could put up the first

22 chart, in 2003 in a moment of candor, Chairman

23 Schmidt acknowledged that managing search at our

24 scale is a very serious barrier to entry. If you

25 have a 80 percent share of the market with barriers

1 to entry, you have monopoly power. Those don't come
2 from clicking or switching to another site, the
3 barriers come from building an effective search
4 engine. You need the scale and volume of traffic
5 Google has to tune the engine, and it's an ongoing
6 process. Nobody else is going to catch Google even
7 if you had access to their algorithm today. They
8 have market power.

9 Second, is that market power expanding?

10 Absolutely, their dominance is expanding and the maps
11 and video and finance and product, mobile is an
12 important area where they are expanding. I think
13 Senator Franken pointed out 97 percent of searches on
14 a mobile device, 98 percent of paid search
15 advertising served to a mobile device is from Google.

16 More over, their Android operating system
17 which is on more than 50 percent of every smartphone
18 shift in the United States today is rapidly becoming
19 the dominant mobile operating system.

20 So from a Sherman act monopolization,
21 monopoly maintenance perspective, is there a problem?
22 Yes, if Google is engaging in any improper conduct to
23 maintain or expand its dominance. And the question
24 is not does Google do anything that is good. Google
25 does lots of things that are good and they want to

1 point you to that.

2 But what they don't do is step up to the
3 plate and acknowledge there's some things that are
4 highly problematic. If Kelly could put up the second
5 chart and similar to the screen shot that Senator Lee
6 put up there, Ms. Mayor in her quote acknowledged
7 that Google operations links above the natural search
8 results. The oh, the orange are the paid search ads
9 that are labeled as ads because they have an economic
10 interest in that.

11 What's in the middle? What's in the middle
12 is not algorithmic. Does Google tell the user it's
13 not algorithmic; absolutely not. There are multiple
14 links on this page that when clicked on will take you
15 to a Google place page. On that page Google will
16 advertise and they will earn money. Google has a
17 direct financial interest in placing that link above
18 the natural search results and by failing to disclose
19 what they are doing to users, they can mislead them

20 into going to a site, what's at the top of the page,
21 the algorithm has told us is the most relevant to our
22 queries. It's not an algorithm result and they
23 haven't disclosed that fact.

24 In the own Droid operating system, there's
25 already indication they are using compatibility as a

1 club to force handset manufacturers to do things to
2 help Google and harm competitors.
3 You will hear further with respect from
4 Yelp! and from Nextag some of the other conduct
5 Google is engaged in I would suggest to you is
6 improper and to the extent it has advanced Google's
7 position in the marketplace, a problem. Antitrust
8 enforcement can and should play a role. It is, in
9 fact, I agree with Senator Lee, very important it
10 play a role, because if Google continues to expands
11 and control more and more of the Internet, there will
12 be increasing pressure for more direct government
13 regulations that may be more burdensome, more
14 difficult, the right answer is appropriate antitrust
15 enforcement. Thank you.

16 THE CHAIRMAN: Thank you, Mr. Barnett.

17 Mr. Cats.

18 MR. KATZ: Thank you for the opportunity

19 to be here today to discuss what I think are

20 important issues to our E commerce industry. Nextag
21 is an Internet comparison shopping company. Tens of
22 thousands of merchants list their products on our
23 site and our visitors use your content and features
24 to compare prices and services for many merchants.
25 About 70 percent of our partners are small merchants

1 who you have never heard of like Crafty Corner in
2 Oshkosh, CK SPL Wisconsin. About 30 million shoppers
3 a month use our site and we send over 1 billion in
4 sales over to our merchant partners every year.
5 Google has been a principal partner and outstanding
6 partner for many years but I am here to say what must
7 be said about the Google of today. To insure that E
8 commerce remains competitive and vibrant.

9 It was 10 years or so ago when I first
10 worked with a small company no one had heard of from
11 the world of mathematics, Google. At that time, they
12 were the only company who would let me as a founding
13 CEO of another founding company called Orbitz
14 advertise. Google approach through a bidding access
15 to let all get access to ads and a ranking that let
16 all sites be visible was brilliant and it was O. it
17 created massive growth in our digital economy for
18 all.

19 Back in 2002, this openness and competitive

20 aspect of the Internet was also available to the
21 founders of my company Nextag. They began to invest
22 around Google's ideas and technology and words. They
23 believed that when Google said it would treat others
24 fairly, the natural results would be unbiased and
25 that advertisers could not get locked out of top

1 advertising spots.

2 These approaches let Google stand out from
3 other search engines back when search was actually
4 competitive and Nextag and others built around those
5 ideas. They believed that Google would live up to
6 its end of the bargain.

7 But Google abandoned those core principles
8 when they started interfering with profit growth.

9 Today, Google doesn't play fair. Google rigs its
10 results, biasing in favor of Google Shopping and
11 against competitors like us.

12 Google says that competition is just one
13 click away, but that's not even the question. The
14 question is, should Google be able to use its market
15 power to make it difficult for users to find us?

16 We believe them when they said they treat
17 all sites fairly and we built our business around
18 that, but that is not what they do.

19 Our technology means we can help little

20 companies who cannot possibly invest in the tools or
21 the head-numbing statistical methodologies required
22 to be profitably successful with Google to sell their
23 products from cameras to apparel to home and garden
24 goods to jewelry, try it out sometime, Nextag will
25 surprise you with what a good site it is. Consider,

1 for example, a merchant in haste is, Minnesota, store
2 dot.com for about 50 cents, this customer gets a
3 customer from Nextag directly to their store's web
4 site that is highly likely to buy the trailer jack
5 that customer was looking for. For that same price,
6 there is virtually no way for that merchant to put an
7 ad in a local newspaper nor to get that customer or
8 to get that same customer from Google on their own.
9 It's a good deal for the merchant.

10 We are pleased to have helped Google grow
11 their business and appreciate appreciative they
12 helped us grow ours. They are not I know novating.
13 They helped grow our business but they are copying
14 after we invested hundreds of millions to perfect it
15 and they are politely Defendantly and assuredly
16 moving us aside. Today when you search for products
17 like running shoes or washing machines, Google is not
18 a search engine anymore. A search engine organizes
19 and presents information that is hard to find in an

20 unbiased way. The Google of today doesn't present
21 the information that users want, it presents the
22 information that Google's wants you to see based on
23 its commercial interest.

24 The company that dominates the information
25 highway controls all of the digital billboards and

1 off-ramps doesn't even tell the consumer this search
2 prefers Google advertisers or vendors and some such
3 results may be obscured. A company that dominates
4 the marketplace has the responsibility to provide
5 fair access.

6 I hope this committee and Google itself will
7 act to balance the forces that enable competition to
8 persist.

9 This is a very big deal. We should get it
10 right and we should make it right.

11 Mr. Chairman, members of the committee,
12 thank you very much for your time and attention.

13 THE CHAIRMAN: Thank you, Mr. Katz.

14 Now hear from Mr. Stoppelman.

15 MR. STOPPELMAN: Thank you, Mr. Chairman
16 and distinguished members of the committee. I
17 appreciate your interest and invitation to appear
18 today. I'm Jeremy Stoppelman, chairman and CEO of
19 Yelp!, a company I founded with my co-Chairman,

20 Russell Simmons. Our initial is to connect people
21 with great local businesses. The site allows people
22 throughout the country to share detailed and
23 passionate reviews about businesses in their
24 neighborhood. In turn, businesses that provide great
25 value and good service are able to establish and

1 promote themselves on-line. Today, Yelp! employs
2 more than 800 people throughout the country, more
3 than 60 million consumers use Yelp! every month to
4 decide how and where to spend their hard-earned
5 money, and on the flip side, job growth in this
6 country relies on small but fast-growing and
7 successful businesses.

8 Yelp! helps them reach new customers by
9 amplifying their positive word of mouth on-line.

10 This hearing is important because it
11 examines issues that go to the heart of innovation,
12 whether new individuals can compete fairly against
13 expanding monopolies. In our case, I wonder if we
14 would have been able to start Yelp! today given
15 Google's recent action. Let's be clear, Google is no
16 longer in the business of sending people to the best
17 sources of information on the web. It now hopes to
18 be a destination site itself for one vertical market
19 after another including news, shopping, travel and

20 now local business reviews.

21 It would be one thing if these efforts

22 were conducted on a level playing field, but the

23 reality is, they are not.

24 The experience in my industry is telling.

25 Google forces review web sites to provide their

1 content for free to, Google then gives its own
2 product preferential treatment in Google's search
3 results. Google first began taking our content
4 without permission a year ago, despite public and
5 private protests, Google gave the ultimatum that
6 only a monopolize can give; in order to appear in web
7 search, you must allow us to use your content to
8 compete against you.

9 As everyone in this room knows, not
10 being in Google is equivalent to not existing on the
11 Internet. We had no choice.

12 Recently, Google has inexplicably
13 softened its assistance. What changed? Well, the
14 FTC announced an antitrust investigation, the
15 Attorney General took notice and this hearing, was
16 this an admission of anticompetitive conduct?
17 Perhaps. But practices remain, web sites in Google
18 search results now take a back seat to Google's own
19 competing products. This is typically accomplished

20 by calling special attention to Google and properties
21 through larger text, great graphics, isolated
22 placement and pushing objectively ranked web sites
23 down the page. What we're most concerned about is
24 that Google is no longer satisfied with pointing
25 users to content on the web that can be find, instead

1 send users to the most profitable content on the web
2 which is naturally their own. Is it consumer or
3 small business for that matter well-served when
4 Google promotes its own properties regardless of
5 merit. It has everything to do with generating more
6 revenue.

7 So where is the harm? I live and work in
8 San Francisco, which sits on the border of Silicon
9 Valley, a place that has participated in the
10 development of some of the most amazing products and
11 services in the last few decades, including Google.

12 Today represents a rare opportunity for the
13 government to protect innovation. Allowing a search
14 engine with monopoly share to it exploit, insuring
15 open and equal competition will sustain job growth,
16 it will assure the price of Internet pricing paid by
17 small businesses will be set by the market and not
18 solely by a monopolize. When one control controls
19 the market, it ultimately controls consumer choice.

20 If competition were a click away as Google
21 suggestions, why have they invested so heavily to be
22 the smart choice in web browsers and phones. They
23 are not taking chances. I thank the committee for
24 time and interest and assist in any way I can.

25 THE CHAIRMAN: Thank you,

1 Mr. Stoppelman. Ms. Creighton.

2 MS. CEIGHTON: Mr. Schmidt asked me to
3 clarify that both places, Google Places and Yelp! are
4 mobile apps

5 UNIDENTIFIED SPEAKER: Thank you

6 MS. CEIGHTON: From 2001 to 2005, I had
7 the privilege of serving as the Deputy Director and
8 then director of the Bureau of Competition at the
9 Federal Trade Commission, serving as the chief
10 antitrust enforcer at the FTC. We brought more
11 monopolization cases than during any comparable
12 period of the FTC going back to the late 1970s. As
13 this strong enforcement record lacks foundation, I
14 firmly believe there is an important role for
15 government in enforcing our antitrust laws. The same
16 experience, however, underscored for me the need for
17 the government to exercise extreme caution before
18 acting against a company for its day-to-day business
19 decisions. These unilateral business decisions are

- 20 the heart of the competition and innovation
- 21 underlying our free market system.
- 22 Because of the very real risk of detouring
- 23 innovation and other beneficial activities,
- 24 extraordinary care must be taken to assure that
- 25 government intervention in the market is truly

1 essential. Otherwise, such action is much more
2 likely to harm consumers than to help them.

3 As an attorney based in Silicon Valley who
4 has worked with high-tech companies for more than 20
5 years, I believe that the danger of harmful
6 intervention is especially acute in the high-tech
7 sector. Silicon Valley, disrupted innovations are
8 the rule and not the exception and companies can
9 watch their market positions disappear overnight.
10 For example, just four years ago, my spaced a 70
11 percent share in social networking. Today it is a
12 fraction of 1 percent. We all know what happened.

13 In the same length of time, Facebook grew to
14 become the most popular destination on the Internet
15 with 750 million registered users.

16 In this sector, the only constant has been
17 change. The pangs of technological innovation has
18 been extraordinary, competition is robust and the
19 competitive landscape is constantly evolving.

20 And we have seen the incredible benefit to
21 consumers this vibrant competition has delivered,
22 developments unimaginable when I started 20 years ago
23 in silicon. Google's founders changed the nature of
24 search when they invented the PageRank system.
25 Rather than count how many times a key word appears

1 on a page, PageRank is based on the idea that the
2 basic way to rank information is based on consumer's
3 assessment of its relevance. So really the core of
4 Google's success has been that the best search
5 results are the ones that give consumers what they
6 want.

7 Today Google continues to I know no nature
8 to satisfy the same users competing against
9 ever-growing competition, not just from other general
10 search engines, but also from social networks like
11 Facebook, specialized search engines like Amazon,
12 Expedia and Yelp!, mobile apps for smart phones and
13 tablets and a host of others.

14 Because it is free and easy to try different
15 alternatives, users are quick to switch to the
16 sources of information on the Internet that they find
17 most accurate, the easiest to use and the most
18 responsive.

19 Importantly, there is no single right answer

20 to what information is most responsive to the
21 consumer's question. Indeed, the essence of the
22 competition among search services also to make
23 adjustments about how best to answer the billions of
24 queries that they receive every day.

25 For the government to dictate how Google

1 should make those judgments, whether to rank the New
2 York post above the Washington Times or the
3 Washington Post would be to turn Google's search
4 service into a regulated utility. This would
5 make Google less responsive to its users and put the
6 company at a disadvantage as it competes every day to
7 provide the best, fastest and most responsive answers
8 to users' requests for information. It has often
9 been the case in the high-tech industry that
10 competitors have sought to invoke antitrust laws to
11 freeze technology in place that they been to be
12 unfair competition. In the late 1970s, several
13 different disk drive manufacturers brought antitrust
14 suits against IBM, a major innovation would cut into
15 their sales of disk drives. Courts recognized that
16 even if IBM's I know no occasions seemed hard on
17 competitors, it was good for consumers and in fact
18 this paved the way for lower-costs, better products
19 for consumers and ultimately the IBM PC.

20 The core premise of our antitrust laws for
21 more than 100 years has been that whereas here there
22 are no artificial restraints that prevent consumers
23 from being able to make choices in the marketplace,
24 the best way to benefit and protect consumers is to
25 allow competition to flourish, if -- actually has the

1 effect of short-circuiting competition and innovation
2 and harming the individuals the law was designed to
3 protect. As the courts have repeatedly emphasized,
4 the antitrust laws are meant to protect the antitrust
5 process not the competitors. We would be wise to
6 remember that lesson. Thank you very much.

7 THE CHAIRMAN: Thank you. We'll have a
8 five-minute round.

9 BY THE CHAIRMAN (KOHL):

10 Q Mr. Barnett, do you consider Google a
11 dominant under antitrust standards as you know them
12 and why if so and why not if so?

13 A Barnett Thank you, Mr. Chairman. Yes, I
14 consider Google to be a dominant company with
15 monopoly power in search and search advertising,
16 likely in other markets, it's mobile search, mobile
17 operating systems, it's quickly moving in that
18 direction, maps and a number of other areas, and I
19 think that they are have monopoly power both because

20 their expert agencies who have looked into this and
21 concluded that, but I take the words of Mr. Schmidt,
22 there are huge barriers to entry to getting into
23 search. They are dominant company there because they
24 got their first. They have a great algorithm, and it
25 is very difficult, if not impossible, for anybody

1 else to catch up with them.

2 BY THE CHAIRMAN (KOHL):

3 Q What are the consequence, in your opinion,

4 is there conduct that it may not engage in today in

5 order to maintain its market dominance?

6 A Barnett There is no doubt a dominant company

7 with monopoly power can harm competition in a way a

8 company without monopoly power cannot and that puts a

9 special responsibility on the company to engage in

10 fair competition on the merits and not to exclude

11 competitors.

12 I'll give you a specific example, because I

13 was frankly somewhat offended by one of the things

14 that Chairman Smith said. He talked about the issue

15 of scraping content from Yelp! and putting it it on a

16 place's page. He said we did that, we got it would

17 be good, then we got a letter and we took it down.

18 That is not what happened.

19 My client, trip advisor, which has 45

20 million reviews on it, had a very similar problem
21 where its content, its user reviews were being placed
22 on places and the CEO of trip advisor went to Google
23 last year and said, we don't want to appear, just
24 take our content off places and Google said no. The
25 only way we will take that down is if you will never

1 appear anywhere in our dominant search engine
2 results. That was a coerce I have tactic that was
3 designed to enable Google to take their content, use
4 it against them and I think that is exactly the type
5 of behavior that a dominant company should not be
6 able to engage in, and I completely agree with
7 Mr. Stoppelman, the only reason that changed at all,
8 because they said no last year, was this year after
9 the FTC opened up an investigation, there were
10 presentations made to the national state attorneys
11 general and within weeks, if not days, Google started
12 to back down.

13 Q Ms. Creighton, what's your view; is Google
14 considered to be a monopoly or dominant search, is
15 there conduct it may not engage in in order to
16 maintain market dominance?

17 A Creighton Senator, respectfully, I do not
18 believe Google has monopoly power and I would like to
19 explain why.

20 So what we're looking for in antitrust laws

21 in terms of whether or not a company is a monopoly is

22 really whether it has monopoly power, and the way we

23 look at that is whether or not the company, if it

24 were to raise price or to exclude competitors, is

25 there something that would cause consumers to be

1 unable to switch, and so the company basically can
2 get away with that. We sometimes can use market
3 shares as an indicae of whether or not there's
4 monopoly power, but the real question is, is there
5 this ability to foreclose competition or to raise
6 prices.

7 When I was at the FTC, what I would be
8 looking for is not only very high market share
9 sustained over a very long period of time, usually in
10 the eighties -- high eighties, I would also be
11 looking for it to have been over many years and
12 looking for the indication the consumers, there's
13 some structure problem that causes consumers to be
14 unable to switch.

15 Here instead what we actually Zand I thought
16 Senator Klobuchar, I'm sorry she is not here, but her
17 sort of testing of how Google and Bing ranked her
18 name, but while she did the quick search just while
19 we were here, is really the key to why in my view

20 Google does not have monopoly power.

21 Each of you right now can test whether or

22 not you like Google's ruts and if you don't like

23 them, it's free and all instantaneous to try someone

24 else's ruts.

25 And so if you were to enter Yelp! and Google

1 didn't return Yelp! at the top of the search results,
2 I doubt you would ever come back to Google again you
3 would be so mad. So when we're looking for whether
4 or not a company has monopoly power -- wearing an
5 antitrust rather than wearing my Google hat, I
6 wouldn't say you can trust Google, the question is
7 whether you can trust the market or whether there's
8 some kinds of impediments to the way the market is
9 that cause consumers not to be it able to switch.

10 Q Senatorly.

11 MR. LEE: .

12 Q I have a couple of questions for
13 Mr. Barnett. Sir, in your written testimony, you
14 make a statement that I find compelling. You say,
15 quote, Google already possesses unprecedented power
16 to steer users and to stifle competition. If for
17 some reason antitrust enforcement, there will be
18 pressure to reign in Google's power through more
19 government regulations that is likely to be more

20 rigid and would itself -- can you tell us more about

21 what you see as a threat that without Google taking

22 action to resolve these antitrust issues, may cause

23 significant elements of the Internet to be intrusive

24 by regulation by government?

25 A Barnett thank you, Senator. One of the

1 experiences I had when I was the Assistant Attorney
2 General was talking with a number of other
3 jurisdictions such as former eastern block countries,
4 countries in Asia, China, in particular, about moving
5 from a centrally planned economy to a market based
6 customer, and one of the tools for doing that was to
7 introduce an and tree trust regime. You don't need
8 the government to dictate everything that happens,
9 you can let the market work subject to the antitrust
10 rules, and that's part of the way we got to
11 deregulation of airlines, deregulation of trucking, a
12 lot of deregulation in the country which has produced
13 enormous benefits.

14 It works the other way, too. If Google
15 continues to expand and is dominant not only in
16 search and search advertising and all these other
17 areas and continues to control more and more of these
18 search-dependent products and services, you will see
19 pressure -- there is already pressure to give the FCC

20 authority to regulate the Internet, and then you have

21 people not market participants, bureaucrats with

22 respect making decisions that I think can be harmful.

23 Q So it sounds like you see that pressure

24 building rather than abating unless there's some

25 voluntary change in action, and it's significant to

1 me because my real interest as a free-market
2 conservative Republican is seeing that actors like
3 Google take voluntary action so there's no need for
4 antitrust enforcement and there's no need for or
5 cause for or push for government regulations of the
6 Internet, which up to this point has remained a
7 relatively government-free trade zone.

8 What can Google do, in your opinion, on a
9 voluntary basis to resolve these concerns so as to
10 force all that kind of unfortunate result?

11 A Barnett First thing is to live up to
12 Chairman Smith's words and get it they can
13 acknowledge they are a dominant company and have a
14 special responsibility. The second thing they can do
15 is act to that. They can assure the way they display
16 the search results, particularly nonalgorithm I can
17 results is not misleading or deceptive to consumers.
18 They refrain from using content from other sites
19 without their permission or authorization. They can

20 assure their algorithm really is based on objective
21 criteria and not penalizing sites because they are
22 competitors, and if they take steps like that, they
23 would go a long ways towards gaining credibility and
24 as you all were discussing, give people who were
25 trusting but verifying comfort that they should be

1 trusted.

2 Q And some basis for verification?

3 A Yes.

4 Q We learned from Robert work that the and

5 mating principle of justice ought to be consumer

6 welfare. My concern with Google's current operations

7 is that they may not -- may not in the future result

8 in harm to the consumer. They may not in the future

9 take those actions that will force harm for the

10 consumer.

11 Can you explain to the committee the

12 particular ways in which you think that Google's

13 actions may cause harm fought consumer?

14 A Two examples; first, remember they are an

15 advertising company. They made \$30 billion last year

16 in advertising, and given that they are dominant in

17 advertising, a good portion of that is already

18 monopoly rents. To the extent they are maintaining

19 or enhancing that power, that's money that

20 advertisers have to spend that ultimately consumers

21 pay for because it's going to flow through in the

22 cost of goods and service that you buy.

23 The more fundamental problem, if Google is

24 the only company I know innovating in these important

25 areas, we lose the benefit of competition and

1 innovation, and that's really what's going to drive
2 and promote consumer welfare in the long run and
3 that's why preserving competition here is so critical
4 so that companies like Nextag and Yelp! have the
5 environment and the circumstances where they are
6 willing to make the investment, take the risk and
7 develop the next great application.

8 Q Thank you, Mr. Barnett. Mr. Chairman.

9 THE ARBITRATOR: Mr. Franken

10 MR. FRANKEN: .

11 Q I would like to ask you and Mr. Cats a

12 question, a hypothetical.

13 Let's assume incomes taking and Yelp! were

14 not in the existence today; would either of you

15 attempt to launch of your company in today's market,

16 given the competition in local search and product

17 search?

18 A Stoppelman As I laid out, I personally

19 wouldn't. I would find something else to do. When

20 we began, there was really actually a level playing
21 field in our space in the local review space I
22 actually that summer had done a search looking for a
23 doctor in San Francisco and found no relevant
24 information. I wanted to know who is a great doctor,
25 not just the nearest one, which one accepts my

1 assurances. That's why we started the business and
2 as it got going, we found that traffic was coming in
3 and it was bringing more users to write more reviews.

4 Now with Google taking up more of the real
5 estate, there's no way I would start fresh. For
6 thely, we have been working seven years and we have a
7 brand and a lot of traction, but absolutely, I
8 wouldn't consider it these days.

9 Q Mr. Katz.

10 A Katz I don't think we could do it. Our
11 merchants -- we have a lot of shoppers on our site.
12 65 percent of our shoppers come to us from Google
13 today either through natural search or paid search so
14 we simply couldn't do it with the Google that exists
15 today where roughly the top half of the page is
16 dominated by Google-related product interests and the
17 right half of the page where paid advertisers compete
18 is beginning to be dominated by unique ad placements
19 which competitors such as our self can't even

20 purchase. It would be very difficult, think it would

21 be impossible to get the merchants to participate in

22 Nextag today.

23 Q Thank you. Mr. Stoppelman, I was a little

24 confused by Mr. Schmidt's testimony regarding what

25 happened with -- with what the history was between

1 your two companies.

2 Was his depiction correct?

3 A Stop no. I would be happy to share the time

4 line quickly.

5 Q Sure, if you could do it quickly?

6 A Sure. So in 2005, Google came to us looking

7 at our content and saying they wanted to include it

8 in a page as Chairman Schmidt mentioned and we

9 initially said okay, we'll try it out. Maybe we'll

10 get traffic from it. And very quickly, we realized

11 it wasn't helping, it wasn't sending us a lot of

12 traffic and it was creating a potential competitor so

13 we dropped out of that.

14 So from 2007 to 2009, we sort of lived on

15 our own. We did our thing and Google tried to do

16 theirs, and then there was rumors of a potential

17 attempted acquisition. We decided to stay

18 independent. And immediately after that, our

19 content, which had been out of Google Places or local

20 property or whatever you want to call it suddenly
21 found its way back in without our permission. So
22 before there was actually a written signed license
23 for that content and in 2010, it was just there. We
24 immediately registered our complaint and there was a
25 lot of back-and-forth dialogue, we understand your

1 concerns. We understand your concerns. But in the
2 interim, nothing happened until there was some
3 interest on the government side.

4 Q This is scraping; right, the definition of
5 scraping?

6 A In 2010, they essentially took our
7 information they were using for web search, they pull
8 out the web pages including ours, they took that
9 information and used it in a totally separate
10 property, Google operations.

11 Q Right. And speaking of Google Places,
12 Ms. Creighton, when I asked Mr. Schmidt whether it
13 was an app, he said it wasn't, now he has corrected
14 himself?

15 A Cite even that's correct.

16 Q And you said a monopoly is something that's
17 over 80 percent, but on mobile, it's 97 percent,
18 isn't it, the concentration for Google?

19 A Creighton that number, there's a couple of

20 big problems with that number.

21 Q You brought up the number.

22 A Creighton I don't remember talking about

23 mobile, but I think --

24 Q No, you didn't -- no, the number was 80

25 percent?

1 A Creighton?

2 A Oh, sorry, what that excludes is that most
3 consumers today, and if you have smart phones, you
4 may find this is your own experience, that number
5 completely excludes apps, which is how most people
6 find information on their phones today.

7 So if -- so first --

8 Q Did Google spend money to be the default
9 on -- on apple, the default search engine? Did it
10 spend money to do that?

11 A Creighton so Google and Bing, I'm not sure
12 whether Yahoo all competed with apple to be the
13 search provider on the iPhone and iPad and in fact
14 about two-thirds of that number you cited actually
15 comes from the fact that Google prevailed in that
16 contract, but Senator, if we step back and think
17 about --

18 Q Could you answer my question?

19 A Did -- did Google pay -- the answer --

20 Q Did Google pay apple to be the default

21 search engine on mobile?

22 A Google certainly entered into a deal with

23 apple and prevailed against Bing.

24 Q Did they pay money in that deal?

25 A I don't know.

1 Q You don't know. Would it surprise you if
2 they did?

3 A It would not surprise me if there is a
4 revenue there.

5 Q And why do you think they would pay money
6 for something that wasn't worth that much -- wasn't
7 worth anything?

8 A Senator, what I was -- it was a fall, not an
9 exclusive. If you go on the iPhone, I think it will
10 take you 20 seconds to download another app or a
11 different search engine. But the real question I
12 think from a competition perspective is --

13 Q Keep going, I'm out of my time, but you
14 continue as long as you would like. I'm sorry.
15 Forgive me.

16 A Is there -- we actually want apple to be
17 able to have companies like being in Google competing
18 to be the best search engine. There's no reason to
19 think apple didn't pick that based on what they

20 thought was the best product, being apple, Bing and
21 Yahoo are going to compete that much harder next
22 time. When you have that kind of market, you have
23 someone who is a stand-in for consumers because apple
24 is not going to take the worst search engine. Thank
25 you.

1 MR. FRANKEN: Thank you. I apologize

2 for interrupting. Mr. Chairman

3 THE CHAIRMAN: Senator Blumenthal

4 MR. BLUMENTHAL: .

5 Q Thank you, Mr. Chairman. Has Google ever

6 scraped or collected content?

7 A Creighton Senator, Google has -- I don't

8 know if it shows on Mr. Barnett's chart or not, but

9 if you run a Google search, what you'll typically see

10 is there will be a line or two that tells you

11 something about the site.

12 The purpose of having that line --

13 Q Well, you know what I mean when I say

14 co-opted or scraped content?

15 A What respectfully we're trying to get to,

16 the purpose of that is to even available you as a

17 consumer to tell whether that's a site you want to

18 click through.

19 So Google has not ever unlawfully taken

20 content that has not --

21 Q Let's leave out the unlawfully part, has it

22 ever scraped or co-opted content. You heard

23 Mr. Stoppelman's testimony here. It's under oath and

24 it's really a question whether you deny his

25 testimony?

1 A Senator, to the best of my knowledge, what
2 Google has done and what Mr. Stoppelman is
3 describing, he wanted to have -- Google's's
4 experience has been that people like a line or two
5 being written about them because that's what drives
6 traffic to the site. What Mr. Stoppelman is
7 describing is micro management whether it shows
8 results in -- was asking Google to engage in extra
9 engineering to be able to make that possible.

10 Q Let me move on to your conscientious as I
11 understand it that Google is not dominant to the
12 point that it has a responsibility under the Sherman
13 Act or other antitrust laws; is that correct?

14 A What I think what Mr. Schmidt said was, I'm
15 not trying to address the question of what Google
16 thinks are its responsibilities, I was addressing a
17 question whether or not under the antitrust laws
18 whether I believe it has monopoly power and the
19 answer is that I do not believe it has monopoly

20 power.

21 Q Because its share of Internet searches and

22 advertising is not in excess of 80 percent?

23 A To begin with, Senator, because I don't

24 believe that the market is properly limited to

25 general search -- to general search engines.

1 Q You think the market definition should be
2 beyond search?

3 A I believe that it should be beyond general
4 search so, for example, when I was at --

5 Q Let's say a court were to disagree with you
6 and found liability and also found co-opting,
7 scraping, whatever other anti-competitive allegation
8 have been made, what would your remedy be? What
9 would you recommend to the court?

10 A I think it would depend on what the alleged
11 wrongdoing was that the court found, Senator.

12 Q Well, anti-competitive conduct such as
13 excluding competing sites or placing them lower on
14 the search analysis or co-opting or scraping,
15 whatever term you want to use, would it be injunctive
16 relief against those practices or would you advise
17 some kind of structural remedy?

18 A Senator, I'm afraid that that probably has
19 so many hypotheticals in he it, I wouldn't be able to

20 answer it.

21 Q Let me ask you this: In order to avoid a

22 continuing potential series of government

23 interventions, which none of us really would favor as

24 a first chase, and again, I in no way prejudge

25 whether there should be, but what would you suggest

1 in the way of voluntary action by Google or would you

2 simply say that Google should proceed with its

3 current course of action and change it in no way?

4 A Creighton so, Senator, for example, I

5 represented Netscape back many years ago when it was

6 challenging some of Microsoft's conduct, and some of

7 the conduct there, this gets to the issue of are

8 there impediments for consumers to choose. So if

9 someone found, for example, as Microsoft did there

10 that they were intimidating OEMs to be able to

11 arrive a product, I would want to go to the

12 provisions that are preventing consumer choice.

13 Q And so far as monopoly power is concerned,

14 you don't think it's relevant that its nearest

15 competitor has less than 30 percent, is losing money

16 and consumers understand the contention that

17 competition is only a click away, but there are very

18 strong barriers to entry, are there not?

19 A Creighton Senator, I think first, Google, I

20 think, if you just limit it to the most narrow

21 market, you would say it's at 65 percent and

22 declining, the fact that it's declining is a big red

23 flag to defining monopoly power, but even beyond

24 that, if you step back and think, one of the markets

25 that I had to look at when I was at the FTC was

1 whether or not general department stores constitute a
2 separate market, and that was an empirical question;
3 did those general department stores compete with the
4 boutiques and the mall.

5 So, for example, and we concluded that in
6 fact, even though there were only two that locked the
7 same, only a Nordstrom's and a Macy's, that in fact
8 what was constraining price was all those boutiques
9 on the small.

10 If you think about where would you go if you
11 were to looking to buy a product, I would be
12 surprised if you didn't think about going to Amazon.
13 It has three times the number of product searches
14 conducted on it than Google does.

15 If you talk to local advertisers -- it's
16 interesting Mr. Barnett used the example of local
17 doctors, what advertises tell you today is the number
18 one place you have to be is Facebook, that's where
19 most local advertising is hang. I think Mr. Katz

20 mentioned the platforms for the future for our local,

21 for our shopping are going to be Facebook and

22 Twitter, so I think when you look at what is the

23 recently haven't market and what are the constraints

24 on Google, you don't want to look at what are the

25 general search engines, you want to look at whether

1 or not there's other competitors like the boutiques
2 and the mall that are constraining it.

3 Q I very much appreciate your annuals and my
4 time has expired. I may have some more in writing,
5 particularly as to the market definition and your
6 analysis, but I appreciate your being here today and
7 thank you for your answers.

8 A Thank you.

9 THE CHAIRMAN: Inaudible consumers can
10 go directly to Nextag by entering WWWdot Nextag
11 dot.com so how should it matter how you're being
12 treated by Google's search engine?

13 A Katz well, when people study -- they type in
14 washing machine, they don't type in Google products
15 first, they type in washing man and from there the
16 search takes place. When you type in washing machine
17 the first half of the Google page begins to layout
18 and begins to preference advertisers or products that
19 have a preferential or preferential advertising

20 relationship with Google. If they didn't type in

21 Nextag dot.com, first we would bless the Lord above

22 and they would go directly to Nextag dot.com.

23 Q What would add to your business need that

24 you no longer appeared near the top of Google search

25 results?

1 A Katz About 65 percent of our search
2 referrals come through Google today so our business
3 would be severely impaired. We are probably one of
4 the most successful Internet companies in the United
5 States that nobody has ever heard of because we have
6 really perfected the marketing and use of the Google
7 platform, as Eric mentioned it earlier. The downside
8 of that is, people haven't heard of us, so if we
9 could not utilize that platform which I've described
10 I think is happening, we have certainly seen the
11 disbenefits, that would certainly I am impair our
12 business.

13 Q Mr. Stoppelman, what would happen to your
14 business if you lost access?

15 A Stoppelman thank you, Mr. Chairman. About
16 75 percent, I believe that's the right number, of our
17 traffic overall is source had through Google one way
18 or the other. About 50 percent of that is traffic
19 coming from people sort of generally starting their

20 search on Google and eventually finding their way to
21 Yelp! and the other 75 percent of that 25 percent
22 number are people qualifying them to go to Yelp! so
23 adding that key word in way way or the other. If we
24 were not in Google, it would completely devastating
25 to business.

1 Q Would you argue it's completely permissible
2 under antitrust law for Google to favor its own
3 products and services on its results page?

4 A Creighton Senator, I think the question is
5 whether or not Google has the ability to provide the
6 answers that consumers want, so I think what Google,
7 in fact, does, it -- it is constrained because
8 consumers can switch away to be providing the answer
9 it thinks is best for consumers and it's not doing
10 that for some charitable reason, it's doing that
11 because unless it does, people are going to be going
12 somewhere else. So if Google thinks that it has the
13 best answer, then it will be displaying that. But if
14 consumers aren't picking on it, picking that site,
15 then it's going to drift down over time because
16 Google is going to be ranking higher the things that
17 consumers are actually ranking on.

18 Q Senator Lee.

19 MR. LEE: .

20 Q Thank you, Chairman, I have a couple of
21 questions for Mr. Stoppelman and Mr. Katz. As a
22 prelude to that, I'm a firm believer in the free
23 market. I'm also an almost life-line fan of Robert
24 work in high school I once drove across town just to
25 hear him speak.

1 It therefore shouldn't be surprising I'm
2 focused on consumer welfare. That was always his
3 emphasis in antitrust law was consumer welfare.

4 My question to you both is this: What is,
5 in your view, does Google do that most harms
6 consumers and what can Google do by way of voluntary
7 action to alleviate any problems they might cause in
8 that regard, starting with you, Mr. Stoppelman?

9 A Stoppelman thank you, Senator. So what can
10 Google do? I think the key would be separating out
11 distribution from its own properties. I mean, for
12 us, that's -- that's the most important issue. Your
13 chart, I think, to very definitively show Google
14 preferenceing itself over a wide variety of queries,
15 and often, Yelp! has the best content when users are
16 doing local searches, and if it's not surfacing that
17 towards the top but instead is taking up most of the
18 real estate with its own property that it only
19 recently decided, you know, was the most relevant,

20 then that's a big problem.

21 Q Mr. Katz.

22 A Katz I would say, you know, the guiding

23 principle is really level playing field. If that

24 were happening, I wouldn't be here today.

25 There's a few things that Google could

1 address if they really wanted to. I would argue it's
2 in their interest, they clearly don't agree with
3 that, one, simple premise if they are going to create
4 a placement or link anywhere on their page, it should
5 be Nextag's easy ability without changing our
6 business, without becoming something that we aren't,
7 that we can get access to that ad unit, that's not
8 the case today and for the best ad unit they sell on
9 the page, we can't even compete for it. Second, they
10 would label more clearly, those units you pulled out
11 top dead center in the page, those aren't labeled as
12 commercially preferential to Google. Not everybody
13 can be there and consumers really don't know what's
14 behind the scenes. They will never find the benefits
15 of Nextag or another site because the first half of
16 the page is where everything happens.

17 And lastly, I think back, I just emphasize
18 level playing field, level playing field, level
19 playing field. Simple principle; if they get it,

20 they make it happen.

21 Q Thank you both very much. Thank you,

22 Mr. Chairman?

23 THE CHAIRMAN: Mr. Franken.

24 MR. FRANKEN: Thank you

25 MR. FRANKEN: .

1 Q You were very closely on the Microsoft case
2 over 10 years ago. There are many parallels between
3 that case and what Google is doing today. You may
4 not agree with that, but I think you would agree that
5 it isn't enough for Google to just say trust us. In
6 fact, he think you said that?

7 A Creighton yes.

8 Q They need to explain to businesses and
9 consumers what they are doing and why.

10 In the Microsoft case, the Technical
11 Committee was created to help monitor and enforce the
12 obligations in the final court order; to be clear,
13 DOJ hasn't filed suit against Google and I'm not
14 suggesting that they should, but I do see some merit
15 in Google taking the initiative to create a committee
16 of technologists and other small businesses that
17 could review algorithm tweaks and help provide to
18 assurances that Google is treating everyone equally.

19 What do you think of that idea?

20 A Creighton Senator, I would have to defer to
21 the company in terms of whether that's a good
22 business idea. As a former antitrust enforcer and
23 antitrust attorney, I would be extremely concerned
24 that's just another word for regulation.

25 I don't know if you had a chance to see

1 Mr. Barnett's, he did a search for Milwaukee doctors,
2 I would encourage you to run that same search on
3 Yahoo. It looks exactly the same. It looks
4 different on Blekko and Bing, and I think the
5 question we have is whether or not there's research
6 Microsoft and Google have done and it's that 58
7 percent of all users actually want an answer
8 returned, and one of the things you probably heard,
9 Microsoft offers it every where, Google returns
10 links, Microsoft returns answers. So the question we
11 have to ask is whether we want to say that Google
12 can't compete or it's going to have to go through
13 regulatory committee before it can be responsive to
14 that demand.

15 Q I guess I was suggesting something
16 voluntary.

17 A I think -- I think, Senator, that Google,
18 because consumers can switch, their incentive is to
19 do exactly what you're describing today. They have

20 no incentive.

21 Q To do what I just described today or what --

22 A They have an incentive to be -- to be

23 returning what consumers want, not to be biased in

24 favor of their own content.

25 So, for example, I think there that I be an

1 understanding what happens if you click on one of the
2 places pages. Google is deflecting away from the
3 pinning add, where consumers go on that operations
4 page, two-thirds of the time they actually click
5 through to the web site of the company that they are
6 searching for. Another quarter of the time, they go
7 to review sites.

8 So they only click 7 percent of the time on
9 the actual Google ad.

10 So Google is actually losing money with that
11 in the short term, but the long-term, the reason it
12 does that is that it's competing with Yahoo and Bing
13 and everyone else, because the way you get a consumer
14 back and you make more money over the longer term is
15 by providing those answers.

16 Q So you're saying that doing this voluntarily
17 may be --

18 A Creighton is what they do today.

19 Q No, I said --

20 A Creighton. I'm sorry.

21 Q I'm sorry to go over time but there's a

22 misunderstanding here, Mr. Chairman. To create a

23 Technical Committee to review what they do is what I

24 would like in the Microsoft case which you worked on,

25 that's what I was --

1 A Yes, Senator, what -- I'm sorry, what I
2 meant to say was that they actually, as I think
3 Mr. Schmidt explained a little bit, they actually run
4 live testings with us as their guinea pigs, like
5 side-by-sides, they will do this, like this. So I
6 think I'm not sure I understand how --

7 Q Okay. You worked on Microsoft?

8 A Yes.

9 Q And you know as part of the settlement to
10 comply with the settlement that they formed a
11 Technical Committee to review this and you said that
12 would be regulation and I said what if they did
13 voluntarily, and then after that, we kind of lost the
14 strain of what we're talking about, I think?

15 A Creighton I'm sorry, Senator, I'm sure that
16 was my confusion. Let me try again.

17 In short, I think Google already changes its
18 algorithm 500 times a year. I think a Technical
19 Committee would be too slow to keep up with the

20 changes in the market.

21 MR. FRANKEN: Thank you, Mr. Chairman

22 THE CHAIRMAN: Senator Blumenthal

23 MR. BLUMENTHAL: Thank you,

24 Mr. Chairman

25 MR. BLUMENTHAL: .

1 Q In fairness to Mr. Schmidt, I think he felt
2 Google did have a duty as a result of its size and I
3 want to express my appreciation for his
4 acknowledgment and I hope also his receptivity to
5 suggestions to do better, which I think would
6 distinguishing him from the experience in Microsoft.

7 Mr. Barnett, you have had very significant
8 antitrust enforcement experience comparable to
9 Ms. Creighton's, yours at the Department of Justice
10 as head of the antitrust division, and I wonder if
11 you could tell us whether you think and you have no
12 responsibility to answer this question, but if you
13 were in that position now, whether you would bring a
14 case or at least begin an investigation?

15 A Barnett Thank you, Senator. And I guess I
16 would start by saying, you know, in that regard,
17 Ms. Creighton referred to her background.

18 I don't think anyone would accuse me of
19 having been overly aggressive or prematurely pulling

20 the trigger on bringing monopolization cases. There
21 was a case that had Google enter into a transaction
22 with Yahoo, while looking at the search and paid
23 search markets and Google abandoned that transaction
24 in the face of a representation from the department
25 that we were about to file a suit to challenge it in

1 court.

2 So I can tell you based on my experience,

3 there's at least one instance I think they had

4 crossed the line.

5 Earlier this year, they acquired ITA, which

6 is on-line travel search asset. That's another issue

7 which I won't go into, but I will say I think the

8 department was right to challenge that, which I think

9 they did.

10 In this context, I'm more than willing to

11 say I'm certainly willing to open an investigation

12 and indeed that's a really important point here.

13 A lot of the hard questions, many of the

14 things we're talking about having to do with

15 deceptive display and all that have nothing to do

16 with the search algorithm, but there has been a lot

17 of question raised about what does Google do with

18 that search algorithm.

19 To the best of my knowledge, nobody outside

20 Google has ever looked at it to determine what's
21 going on. And I'm not talking about posting the
22 algorithm on the Internet, I'm talking about in a
23 confidential investigation, enabling a responsible
24 antitrust enforcement agency to gather the facts, and
25 I would certainly want to gather the facts, and based

1 on what I have seen, I would be very concerned that

2 there is harm to consumers.

3 Q I want to thank you for your testimony. I

4 invite any of the witnesses to comment on the market

5 analysis, market definition, related questions, but

6 most especially on the question that has been raised

7 by myself and others as to what Google might be

8 voluntarily do, because certainly, enforcement

9 actions, as both you and Ms. Creighton know, are

10 costly, time-consuming, cumbersome, blunt and inexact

11 instruments of protecting competition and far better

12 to have voluntary actions that can avoid even the

13 appearance or complaints about antitrust violations,

14 and again, to emphasize, I I have formed no

15 conclusion myself, whatever that's worth, about the

16 merits or the issues of fact and law here.

17 So thank you for being here and thank you

18 for sharing your perspectives and views.

19 THE CHAIRMAN: Thank USenator

20 Blumenthal. Today's hearing demonstrates the
21 importance of vibrant and open competition on the
22 Internet, the actions of Google as a dominant
23 Internet search firm has profound affects on the
24 ability of businesses to prosper and to compete, as
25 well as on the ability of consumers to find the best

1 products and services at the best prices. We need to
2 continue to consider whether Google merely does its
3 best to serve consumers interests as it claims or
4 bias its search results so as to bias competition in
5 its favor as its critics argument we'll continue to
6 examine these issues. We very much appreciate you
7 being here. You've added much information and light
8 to this very important topic.

9 And this hearing is now closed.

10 (Time noted 4:48 p.m.)

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