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United States Senate

WASHINGTON, DC 20510-4402

August 30, 2018

The Honorable Joseph Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Chairman Simons,

I write to express my concern about recent reports on Google's search and digital advertising practices. In the past, Google has placed restrictions on publishers' displaying search advertisements from its competitors. Google loosened some of those restrictions when faced with antitrust complaints, and the European Commission has said it is monitoring to see if those new restrictions have anticompetitive effects. Then in May, *60 Minutes* aired a segment that highlighted several allegations regarding purportedly anticompetitive conduct by the company involving its search practices.

Other reports have highlighted the fact that Google has, on occasion, decided to remove from its platforms legal businesses that the company apparently does not agree with. Moreover, in the past several months, several of my Senate colleagues wrote to Alphabet, Google's parent company, regarding its data collection by the Android mobile operating system and privacy practices for Gmail users' data, including Google's practice of giving third-party app developers access to the actual content of emails.

Needless to say, I found these reports disquieting.

Although these reports concern different aspects of Google's business, many relate to the company's dominant position in search and accumulating vast amounts of personal data. That is why I also write to urge the Federal Trade Commission (FTC) to reconsider the competitive effects of Google's conduct in search and digital advertising. As I explained in a speech last year, the procompetitive aspects of conduct should be weighed against its anticompetitive potential. I have no doubt that the career staff, you, and the other new FTC commissioners can and will do that here. In the past, Google has offered arguments that its conduct is procompetitive. And Google does have a long track record of providing valuable services and making important, innovative contributions. But much has changed since the FTC last looked at Google's conduct regarding search and digital advertising.

When the FTC closed its investigation into Google's acquisition of AdMob in 2010, it based its decision partly on its "belie[f] that Apple quickly will become a strong mobile advertising network

competitor.” That belief never became a reality. Instead, by many measures, Google’s position throughout the ad market, publisher-side ad servers to ad exchanges to advertiser-side ad servers, has become more dominant. And Google accumulates data at essentially every step.

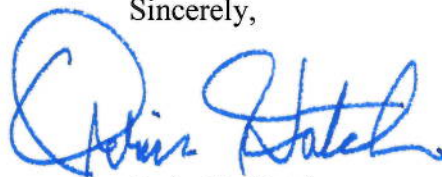
Since the FTC concluded its investigation into Google’s search practices in 2013 without pursuing a complaint against the company, there have been several important developments. First, in March 2015, the *Wall Street Journal* revealed some details of an FTC Bureau of Competition staff report from August 2012 (before the then-Commissioners of the FTC concluded the investigation into Google). That staff report recommended that the FTC pursue an antitrust action against Google because of some of its search practices. The report found that it was a “close question” as to whether Google violated Section 2 of the Sherman Act by “preferencing” its own “vertical content over that of rivals, while simultaneously demoting rival vertical websites.” Ultimately, the staff recommended against pursuing a complaint on that point. The report did, however, recommend action against Google on other issues that the report found to be anticompetitive. Google resolved the issue by promising in a December 27, 2012 letter that it would take certain actions for five years to address those concerns. That time period has now passed.

Following the *Wall Street Journal*’s reporting, Utah Attorney General Sean Reyes and DC Attorney General Karl Racine asked the FTC to consider opening an investigation into Google’s behavior in late January 2016. Then, in March 2016, I raised my concerns with then-FTC Chairwoman Edith Ramirez during a Senate Judiciary Antitrust Subcommittee hearing. Among my concerns was that some studies have concluded that rather than benefiting the consumers, as the FTC found might happen back in 2013, some of the changes Google made to its search page have actually harmed consumers. Although Chairwoman Ramirez indicated that she was aware of these concerns, she declined to comment further on any specific actions by the FTC since closing the investigation. There have also likely been other important changes to the market in the five years since the close of the FTC’s investigation, including the shift to mobile platforms.

Finally, you and an entire new slate of FTC commissioners have been recently confirmed. During the confirmation hearing, you and several other commissioners expressed support for creating a program to look back at previous decisions on mergers and whether those choices had been effective. In light of all of these changes, I respectfully request that the FTC consider the competitive effects of Google’s conduct in search and digital advertising.

Thank you for your attention to this matter.

Sincerely,



Orrin G. Hatch
United States Senator