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## USING ANTITRUST ENFORCEMENT PRUDENTLY IN HIGH-TECH MARKETS — The Flaws of a Potential Antitrust Case Against Google

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Many opponents of Google's business practices have trotted out the *United States v. Microsoft* decision and declared with beguiling simplicity that Google is the next Microsoft. They have suggested that the government's case against Microsoft ten years ago provides a roadmap for a similar enforcement action against Google. To them, all you have to do to find an antitrust violation is calculate a few market shares, assemble a chorus of complaints from rivals, pull out the D.C. Circuit's *Microsoft* decision and declare victory.

They could not be more wrong.

Last June, nearly ten years to the day from the Microsoft holding, Google announced that the U.S. Federal Trade Commission (FTC) is conducting a formal review of Google's business practices. A few months later, Google Chairman Eric Schmidt and representatives from other players in the online search market were called to testify before the Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights in a hearing entitled: The Power of Google: Serving Consumers or Threatening Competition. These events have prompted speculation about the FTC bringing an antitrust case against Google and creating the next defining antitrust case of our era.

Antitrust enforcers should proceed very cautiously in considering potential enforcement action against Google. Several key factors distinguish Microsoft from Google, and any action against Google's business practices would be inconsistent with sound antitrust policy.

In our paper, entitled "Using Antitrust Enforcement Prudently in High-Tech Markets—The Flaws of a Potential Antitrust Case Against Google," Brendan J. Coffman and I consider the questions of market definition, barriers to entry, network effects, and monopoly power as they relate to Google and Microsoft. Though any one of these factors should give pause to even the most zealous enforcer, we then show that procompetitive justifications for Google's alleged exclusionary practices set Google apart from Microsoft, which failed to introduce any procompetitive justifications for all but one of its practices. Finally, we show that there is no harm on consumers from Google's conduct, whereas purchasers of computers in the 1990s undoubtedly paid higher prices for inferior products as a result of Microsoft's monopolistic practices.

*Microsoft* might have laid out the legal standard, the framework, and even some clear line-drawing regarding certain facts, but the relevant question in assessing Google is how this standard applies to

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the novel set of facts present in the search industry.

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