

# AntitrustConnect Blog

## FTC Right to Close Google Investigation

David Balto (Law Offices of David A. Balto) · Friday, December 21st, 2012

The press has been reporting that the U.S. Federal Trade Commission has completed its in-depth 19-month investigation of Google and decided not to take action on the allegation that Google “intentionally manipulates search results to harm competitors.” For the last year and a half, Google’s corporate rivals have bellowed about the company’s supposed “abuses,” and lobbied the Commission to take the harshest possible action, at times even suggesting that the agency should become a day-to-day regulator of search and that Google should be constrained from adapting its product to meet consumer preferences. However, it seems that the Federal Trade Commission’s investigation has determined that Google’s specialized search results have consumer benefits that outweigh any harm to rivals, and the Commission will likely decide to ignore these alarmist voices (and their well-funded PR efforts).

Reports also suggest that Google is prepared to make voluntary, enforceable commitments to address certain aspects of its search business. Closing the investigation and accepting enforceable commitments is the right thing to do both to protect consumers and to preserve Google’s ability to innovate — without committing the Federal Trade Commission to a costly and time-consuming lawsuit that would not benefit consumers in any respect. This is the optimal outcome for consumers and innovation—modest regulatory intervention, proconsumer voluntary commitments, and no unnecessary interferences with Google’s ability and incentive to innovate.

The Federal Trade Commission, to its credit, appears to have concluded that the [evidence simply doesn’t support](#) an antitrust case over Google’s search results. All of the rhetoric from competitors and the endless spin of the lobbyists simply cannot create the crucial lynchpin for a Commission enforcement action: consumer harm. Not surprisingly, mainstream consumer and public interest groups have been entirely silent, ignoring the pleas from the anti-Google lobbyists. This means we should finally put to bed the oft-repeated (and false) charge of “search bias” and we can abandon the entirely absurd argument that company harms consumers by providing them a bevy of free products.

Google’s reported commitments would seem to offer several concessions to Google’s competitors. First, all companies would have the option to “opt-out” of certain Google products such as Shopping, News, or Places. This would enable, for instance, Yelp and TripAdvisor to prevent Google from showing their reviews in Google’s local results pages. Second, Google would further facilitate the portability of AdWords data across other search platforms, making it easier for advertisers to tailor a one-size-fits-all campaign across different search engines — and give Microsoft something they’ve been lobbying regulators for.

Google critics are decrying the Federal Trade Commission for failing to sue Google (which is also a necessary step toward a consent decree). But they ignore four critical “hard facts.”

First, there is little evidence or legal foundation to claim Google’s conduct that led to the commitments was a violation of law. Second, Google’s reported commitments achieve everything the Federal Trade Commission could hope to achieve in a consent order. Third, substantive commitments can be superior to a consent decree, where the dynamic nature of the high-tech industry makes it difficult to fashion meaningful relief. Finally, we can expect a vigilant Commission to make sure Google fully adheres to those commitments.

Closing the investigation with these commitments is a clear win-win for consumers. Consumers would benefit because Google will not be hobbled by unnecessary regulation or denied the opportunity to win consumer loyalty through aggressive competition. Consumers would also win long term through continued innovation in the products that consumers love. Google is one of the most innovative companies in history, and a leader in our economy’s most vibrant sector.

Unsurprisingly, the only criticism of the rumored settlement has come from Google’s rivals. Well-heeled competitors who have spent years lambasting Google to anyone who would listen, have turned up the heat in a last-ditch appeal to the agency. But their efforts are to no avail — the Federal Trade Commission’s mission is to protect consumers. If Google’s rivals believe otherwise they should put their money where their mouth is. As FTC Commissioner Tom Rosch put it to [Bloomberg News](#), “They can darn well bring it as a private antitrust action if they think their ox is being gored instead of free-riding on the government to achieve the same result.”

The outcome of this case should silence skeptics about the Federal Trade Commission’s role, showing that the agency can quickly but effectively evaluate conduct in the ever-changing and unpredictable high-tech space. The review was fast but piercing, the outcome fair and reasoned, and both the cost and risk significantly less than litigation.

Eleven years ago a unanimous DC Circuit [noted](#) the challenge for the antitrust agencies and the courts in high-tech markets where time is crucial and “by the time ... liability can be assessed, firms, products, and the marketplace are likely to have changed dramatically.” It is to the enormous credit of the Federal Trade Commission and their staff that they have met this challenge and completed an exhaustive competition and consumer protection investigation in only 19 months. And it is to their credit that their focus was on the impact on consumers. The Commission has been prudent, efficient, and thorough. There is nothing more we can ask of the nation’s leading consumer cop.

This post originally appeared on the [U.S. News & World Report website](#).

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