



Written by [Bob Adelman](#) on July 7, 2011

FTC Probes Google in Fishing Expedition

Google announced on its blog on June 24th that the Federal Trade Commission had launched “a review of our business. We respect the FTC’s process and will be working with them over the coming months to answer questions about Google and our services.” But Google doesn’t know what the FTC is looking for:



It’s still unclear exactly what the FTC’s concerns are, but we’re clear about where we stand. Since the beginning, we have been guided by the idea that, if we focus on the user, all else will follow.



No matter what you’re looking for — buying a movie ticket, finding the best burger nearby, or watching a royal wedding — we want to get you the information you want as quickly as possible...

Using Google is a choice — and there are lots of other choices available to you for getting information: other general-interest search engines, specialized search engines, direct navigation to websites, mobile applications, social networks, and more.

Google started in September 1998 and has grown to the point where it now runs over one million servers around the world, and processes over [one billion search requests every day](#). Alexa ranks Google.com as the internet’s most popular website, with its affiliates YouTube, Blogger and Orkut ranked in the top one hundred. The company’s mission statement is “to organize the world’s information and make it universally accessible and useful.”

It is so successful that it has become the target of competitors such as Bing and Yahoo who have banded together at [Fairsearch.org](#) to complain that Google’s anti-competitive practices include “using other companies’ content without their permission, deceptive display of search results, manipulation of search results to favor Google’s [own] products, and buying up competitive threats to its dominance.”

By using its proprietary algorithms, Google allegedly directs search requests to their own services first, relegating competitors to a lower listing on the search engine report page (SERP). Jay Herratti, CEO of CityGrid Media which runs Citysearch.com, Urbanspoon.com and Insider/Pages.com, says “They should compete on fair terms, but they’re not subjecting their own content to the same standards by which they judge ours. They always guarantee themselves the top position with products that are largely built on other publishers’ content.” If that can be proven, then antitrust rules would require Google to treat its own content on an equal basis with the content of its direct competitors.

And that’s the rub. Part of the FTC’s broad-ranging investigation will seek proprietary information about Google’s algorithms that the company holds very close to its chest. Rather like the formula for Coca-Cola, Google is unlikely to yield to requests for how their search engine actually works. As the *Wall Street Journal* [notes](#), “the probe is expected to take a year or more to unfold, and it won’t necessarily lead to any charges.” It added:

Google wouldn’t be an easy target for prosecution...Under U.S. antitrust law, it isn’t illegal to have



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a monopoly – only to acquire one unlawfully or abuse it. And courts have significantly narrowed the scope of antitrust law in recent years, further raising the bar for the Federal Trade Commission...to bring a successful case.

David Balto, a former antitrust attorney with the FTC, agrees: “The FTC has got a significant burden of finding that consumers are harmed by Google’s conduct. Just because there is a chorus of complaining by competitors doesn’t mean that the consumers [have been] harmed. ”

Further mitigating the chances of the FTC’s success against Google are its own definitions of “unfairness” and “deception. ” In its [policy statement on Unfairness](#), the FTC says that:

First of all, the injury must be substantial. The Commission is not concerned with trivial or merely speculative harms...

Second, the injury must not be outweighed by any offsetting consumer or competitive benefits that the...practice also produces.

Finally, the injury must be one which consumers could not reasonably have avoided. Normally we expect the marketplace to be self-correcting, and we rely on consumer choice — the ability of individual consumers to make their own private purchasing decisions without regulatory intervention — to govern the market. We anticipate that consumers will survey the available alternatives, choose those that are most desirable, and avoid those that are inadequate or unsatisfactory.

In its [policy statement on Deception](#), the FTC will bring force to bear only under these conditions:

First, there must be representation, omission or practice that is likely to mislead the consumer.

Second, we examine the practice from the perspective of a consumer acting reasonably in the circumstances.

Third, the representation, omission, or practice must be a “material” one [that is] likely to affect the consumer’s conduct or decision with regard to a product or service.

An additional hill to climb for the FTC is that a court has already ruled in Google’s favor when it was sued, in [SearchKing](#), for allegedly manipulating its search engine results. The judge in that case ruled in Google’s favor, holding that Google’s page rankings were opinions protected by the First Amendment:

PageRanks are opinions — opinions of the significance of particular Web sites as they correspond to a search query. The court finds there is no conceivable way to prove that the relative significance assigned to a given Web site is false. Accordingly, the court concludes [that] Google’s PageRanks are entitled to full constitutional protection.

That is not to say that criticisms of Google are without merit. Scott Cleland has devoted years to investigating and inveighing against Google for its alleged manipulations and anti-competitive practices, and has developed a [15-page “primer”](#) for readers to consider. But with Bing and Yahoo enjoying a 30-percent market share and gaining ground on Google, it’s clear that the competitive market is operating in favor of the informed consumer.

Google observer Greg Sterling, founder of [Seachengineland.com](#), [says](#) that:

I’m not uncritical of Google and I believe there are instances where the company could well have “crossed the line” (e.g., in its dealings with Skyhook Wireless). But I don’t believe that Google has manipulated ad pricing or search results to punish competitors...



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Antitrust law is not supposed to protect companies from competitors, but [to] protect the marketplace in general and consumers in particular. Right now there's no evidence that Google has harmed consumers.

In responding to the FTC probe, Google spokesman Carter Masian [said](#) that when "someone searches for a place on Google, we still provide the usual web results linking to great sites; we simply organize those results around places to make it much faster to find what you're looking for. "

He added: At the end of the day, users come first. If we fail our users, competition is just a click away.



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