Precursor Backgrounder on: FTC Case against Google's Acquisition of AdMob

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I. SUMMARY

A Google acquisition of AdMob would eliminate Google's only substantial rival platform in mobile in-application advertising and catapult Google from an estimated 25% share to over 75% share of this strategic gatekeeper market for monetizing mobile Internet applications. Combined with Google's search advertising monopoly and dominance of mobile search advertising, Google's acquisition of AdMob, "*the world's largest mobile advertising marketplace*," would likely tip the broader mobile advertising marketplace from a competitive to a monopoly trajectory. In short, the AdMob acquisition threatens to foreclose competition and facilitate monopoly in a strategic gatekeeper market essential to the Internet economy, which would harm: consumers, developers, advertisers, publishers, smart-phone manufacturers, and broadband providers.

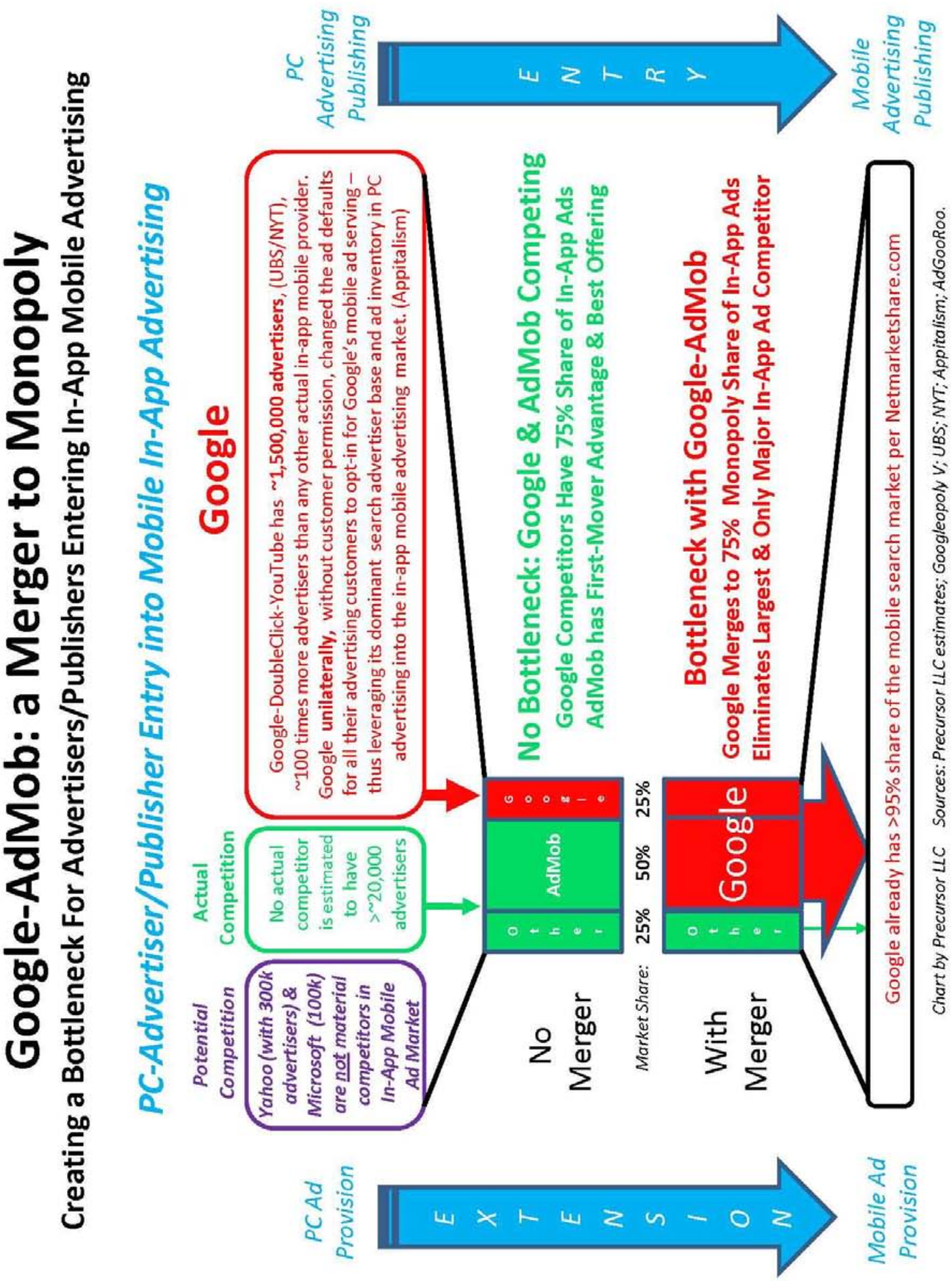
II. TOP 10 REASONS WHY GOOGLE-ADMOB IS ANTI-COMPETITIVE

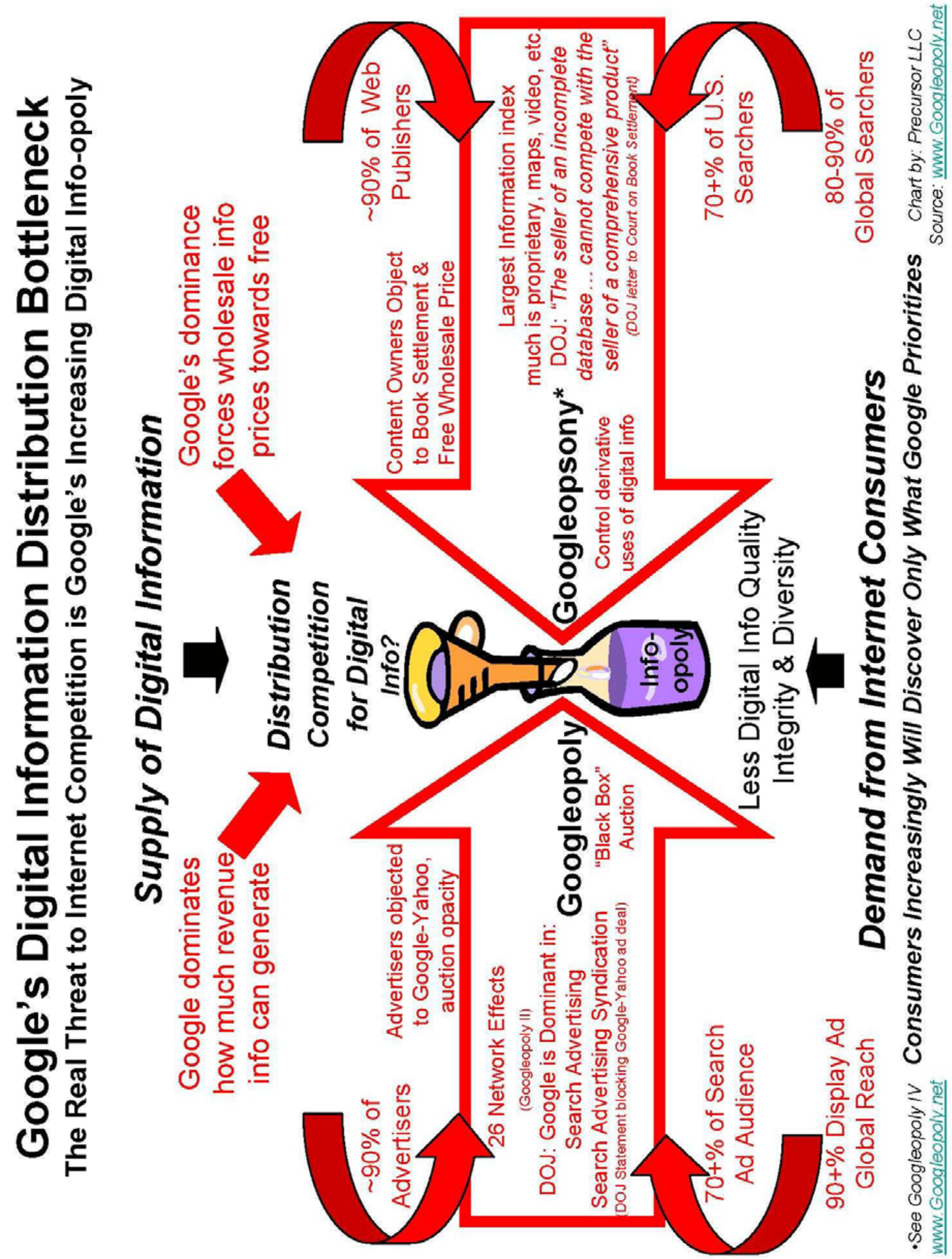
1. Google-AdMob would combine the #1 & #2 mobile in-application display advertisers in a highly-concentrated and exceptionally-strategic gatekeeper market, effectively eliminating Google's only substantial rival competitive platform in this market.
2. Acquiring AdMob's ~50% share would catapult Google to >75% share of the mobile in-application display advertising market.
3. Preserving competition in this market is key to preserving a competitive mobile ecosystem.
4. Google-AdMob would tip mobile advertising toward a monopoly trajectory.
5. The extraordinary price paid for AdMob is evidence of acquisition of market power.
6. Google proactively thwarted Apple from becoming a stronger competitor to Google
7. Déjà vu: DOJ's Google-YouTube approval proved that antitrust enforcers need to be much more aware of the extraordinary network effects of adding fast-growing, first-mover strategic platforms to firms with existing market power.
8. Google misled the FTC in the FTC's Google-DoubleClick investigation by representing Yahoo as a viable long-term competitor when the two firms were exceptionally close and cooperative as evidenced by the proposed and rejected Google-Yahoo ad agreement.
9. Google-AdMob could snuff out potential mobile application monetization competition in the crib.
10. AdMob would enable Google to further dominate the collection of data and sensitive competitive information that is central to competing in the monetization of Internet content in the mobile or PC stationary markets.

III. FURTHER READING

Further Reading

Googleopoly.net
Chart: Google-AdMob: A Merger to a Monopoly Bottleneck
April 26, 2010




Google's Digital Information Distribution Bottleneck
The Real Threat to Internet Competition is Google's Increasing Digital Info-opoly
Supply of Digital Information
Google dominates how much revenue info can generate
Google's dominance forces wholesale info prices towards free
Distribution Competition for Digital Info?
~90% of Advertisers
Advertisers objected to Google-Yahoo, auction opacity
Content Owners Object to Book Settlement & Free Wholesale Price
~90% of Web Publishers
26 Network Effects
(Googleopoly II)
DOJ: Google is Dominant in: Search Advertising
Search Advertising Syndication
(DOJ Statement blocking Google-Yahoo ad deal)
Googleopoly
"Black Box" Auction
Info-opoly
Googleopsony*
Control derivative uses of digital info
Largest Information index much is proprietary, maps, video, etc.
DOJ: "The seller of an incomplete database … cannot compete with the seller of a comprehensive product"
(DOJ letter to Court on Book Settlement)
70+% of Search Ad Audience
Less Digital Info Quality Integrity & Diversity
70+% of U.S. Searchers
90+% Display Ad Global Reach
80-90% of Global Searchers
Demand from Internet Consumers
Consumers Increasingly Will Discover Only What Google Prioritizes
•See Googleopoly IV
www.Googleopoly.net
Chart by: Precursor LLC
Source: www.Googleopoly.net

Googleopoly V*

Why the FTC Should Block Google-AdMob

The Top Ten Reasons Why Google-AdMob Would "Substantially Lessen Competition"

By **Scott Cleland****
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December 16, 2009

Abstract: A Google acquisition of AdMob would eliminate Google's only substantial rival platform in mobile in-application advertising and catapult Google from an estimated 25% share to over 75% share of this strategic gatekeeper market for monetizing mobile Internet applications. Combined with Google's search advertising monopoly and dominance of mobile search advertising, Google's acquisition of AdMob, "*the world's largest mobile advertising marketplace*," would likely tip the broader mobile advertising marketplace from a competitive to a monopoly trajectory. In short, the AdMob acquisition threatens to foreclose competition and facilitate monopoly in a strategic gatekeeper market essential to the Internet economy, which would harm: consumers, developers, advertisers, publishers, smart-phone manufacturers, and broadband providers.

The Top Ten Reasons Why Google-AdMob Would "Substantially Lessen Competition:"

1. Google-AdMob would combine the #1 & #2 mobile in-application display advertisers in a highly-concentrated and exceptionally-strategic gatekeeper market, effectively eliminating Google's only substantial rival competitive platform in this market.
2. Acquiring AdMob's ~50% share would catapult Google to >75% share of the mobile in-application display advertising market.
3. Preserving competition in this market is key to preserving a competitive mobile ecosystem.
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* *Googleopoly IV: How Google Extends Search Monopoly to Monopsony over Digital Info 9-15-09*
Googleopoly III: Dependency: The Crux of Google-Yahoo Ad Agreement 10-3-08
Googleopoly II: Google's Predatory Playbook to Thwart Competition; 9-23-08
Googleopoly: The Google-DoubleClick Anti-Competitive Case; 9-17-07
See www.Googleopoly.net

** The views expressed in this white paper are solely the author's and not the views of any Precursor clients. See Scott Cleland's Full Biography at: http://www.precursor.com/bio_long.htm

I. Introduction

The FTC should oppose Google's acquisition of direct competitor AdMob because the acquisition is a textbook violation of the Section 7 Clayton Act antitrust prohibition of acquiring market power where: "*the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly*."[1]

This white paper offers the top ten reasons why the Google's acquisition of AdMob would "substantially lessen competition," the general FTC/DOJ standard for deciding whether a proposed merger or acquisition is anti-competitive and hence illegal under the Clayton Act.

II. The Top Ten Reasons Why Google-AdMob Would "Substantially Lessen Competition"

1. Google-AdMob would combine the #1 & #2 mobile in-application display advertisers in a highly-concentrated and exceptionally-strategic gatekeeper market, effectively eliminating Google's only substantial rival competitive platform in this market.

The proposed Google-AdMob merger would effectively lead to the monopolization of the emerging *mobile in-application display* (MIAD) advertising market, because it would combine the #1 and #2 competitors in a largely duopoly market to date.

- AdMob is Google's strongest and only substantial competitive MIAD advertising platform to Google. Neither Yahoo nor Microsoft, Google's primary competitors, competes in the MIAD advertising market. Unlike Google, which offers a wireless operating system and increasingly smart-phones, Yahoo has no mobile operating system or mobile phone and Microsoft has no mobile phone. AOL, the only other publicly-traded competitor in the MIAA market, is financially dependent on Google because AOL outsources its search and search advertising to Google.
- The remaining competitors in this segment: Millenial Media, Quattro Wireless, Jumptap and Mojiva, are all small private companies that have only slivers of Google's world leading network of advertisers, publishers, and users. Moreover, the little revenue information on these players can be misleading because of the inherent double counting of revenues that often occurs in reseller markets.

2. Acquiring AdMob's ~50% share would catapult Google to >75% share of the mobile in-application display advertising market.

Given the dearth of third-party market share estimates of the mobile in-application display (MIAD) advertising market, it is necessary to construct a logical proxy estimate of market shares. The FTC and others can reconstruct and check this logical proxy estimate by following the following steps.

1. Survey the number of apps offered by the different mobile platforms: Apple iPhone ~100,000; Google-Android ~14,000; Symbian ~3,000; RIMM; ~3,000; Windows Mobile ~800; and Palm ~500.[2]
    - (*Since Apple and Google represent ~94% of available mobile applications, and since the other platforms are considerably smaller with less inventory, and with relatively lower ad prices, this logical proxy estimate assumes the other platforms have a de minimis impact on this overall share estimate*.)
2. Examine the application advertising of the applications on Apple iPhone 2008 list of top 100 free iPhone apps,[3] to discover that 39 of the top 100 apps have ads served on them. Of those ~39% of applications with mobile advertising, ~50% are served by AdMob and ~25% are served by Google.

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[1] Clayton Act, Section 7, US Code Collection, Cornell University Law School site, http://www4.law.cornell.edu/uscode/15/18.html

[2] New York Times, "Apple's Game Changer, Downloading Now, 12-5-09, http://www.nytimes.com/2009/12/06/technology/06apps.html?_r=1 (Note: Source for all platforms, but Symbian; Symbian #s from Symbian.)

[3] Apple iTunes Store, http://itunes.apple.com/WebObjects/MZStore.woa/wa/browserRedirect?url=itms%253A%252F%252Fitunes.apple.com%252FWebObjects%252FMZStore.woa%252Fwa%252FviewCustomPage%253Fname%253DpageiTunes2008_Apps

3. Third, do the same for the applications on the latest Google Android top 100 free Google Apps[4] and discover that 38 of the top 100 apps have ads served on them. Of those 38 of Google free applications with advertising, ~50% are served by AdMob and ~40% are served by Google.
4. Finally, noting the similarity in market shares on the two platforms, ~50% & ~25%, and ~50% & ~40%, respectively, one can conservatively estimate proxy market shares of ~50% for AdMob and ~25% for Google.

The FTC will want to conduct its own market share survey under its civil investigative demand (CID) authority, however, this logical and easily replicable proxy estimate based on public information suggests that the relevant combined Google-AdMob market shares for the strategic MIAD advertising market are well in excess of the ~30% share threshold that would normally trigger a second request and a more in-depth investigation of market power.

3. Preserving competition in this market is key to a competitive mobile ecosystem.

The MIAD advertising market is an exceptionally strategic gatekeeper/monetization platform for the development of applications for the fast-growing mobile marketplace. The largely duopoly competition between Google and AdMob provides mobile application developers and advertisers with at least two substantial MIAD advertising competitive platforms to play off against one another. Preserving this minimal level of duopoly competition in this market is essential to enabling and fostering a more competitive mobile advertising ecosystem long term, and to incenting and monetizing mobile application innovation, production, and user choice today.

Fostering a competitive market in the monetization of mobile applications is exceedingly important in the broader development of mobile competition, because of the fact that the mobile market inherently demands more diverse applications than the stationary PC market, because mobile users find themselves in a near infinite amount of places, circumstances, and situations that require an exceptionally wide diversity of applications. Simply, the mobile app market is very different from the stationary PC app business precisely because it is mobile, i.e. always available wherever you are whenever.

Moreover, if Google is allowed to effectively corner and lock up the MIAD advertising market by taking out its main rival, and then allowed to combine its new MIAD dominance with its existing dominance of mobile search advertising and its dominant Google-DoubleClick search/contextual advertising platform, Google will be more able to corner and lock up the broader mobile and stationary PC advertising marketplace. In a word, the MIAD advertising monetization platform is a strategic linchpin competitive market necessary to preserving a competitive mobile Internet ecosystem.

4. Google-AdMob would tip mobile advertising toward a monopoly trajectory.

The DOJ has already effectively concluded that Google has a monopoly in search advertising and search advertising syndication given market shares in excess of 70%.[5] Third party measures, like Neilsen Mobile and NewMarketShare.com, indicate that Google's search dominance on PCs has transferred quickly and solidly to the mobile market. For example, in 1Q08, Neilsen Mobile had Google at 61% of mobile searches[6] and in 1Q09, NetMarketShare.com had Google's global mobile search market share at 97.5%.[7]

Government approval of a Google-AdMob acquisition would further tip mobile advertising to a monopoly trajectory like the DOJ's approval of Google-YouTube and the FTC's approval of Google-DoubleClick helped tip Google to monopoly from search market shares below 50% to over 70% today.

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[4] Google, Android market place rankings, Applications,
http://androidstats.com/ranking/applications?filter=free&submit=Update

[5] U.S. Department of Justice, 11-5-08, "Yahoo and Google abandon their advertising agreement,"
http://www.justice.gov/opa/pr/2008/November/08-at-981.html

[6] SearchEngineWatch.com, "Google dominates mobiles search market share in Q108," 6-18-08,
http://blog.searchenginewatch.com/080616-090125

[7] NetMarketShare.com, PrecursorBlog, "Google has 97.5% mobile market share per NetMarketshare.com survey," 3-16-09,
http://www.precursorblog.com/content/google-has-975-mobile-search-engine-share-netmarketsharecom-survey

- The DOJ's approval of Google's acquisition of YouTube, without a second request, completely missed how important video was and would be to search. In just three years, when combined with the world's dominant search engine and search advertising platform, YouTube is now the second largest generator of searches in the world[8] (per ComScore) ahead of Google's leading search competitor, #2 search provider Yahoo. To put that in perspective, because YouTube generates over one quarter of all Google searches, Google's search market share is one third again bigger than it would have been if DOJ had not allowed Google-YouTube.
- The FTC's 4-1 approval of Google-DoubleClick, completely missed the importance of DoubleClick providing Google most all of the advertiser and publisher relationships that they did not have, and also most of the global audience that Google did not reach. It is not surprising that Google's search share tipped to monopoly after the FTC allowed Google to acquire via the DoubleClick acquisition:
    - The hundreds of Global 1000 advertiser relationships that DoubleClick had that Google did not;
    - The roughly 25% viewer share of the Internet audience that DoubleClick had and Google that Google did not;
    - The roughly 30% of users click data that DoubleClick had that Google did not; and
    - The 51% share of publisher tools market that DoubleClick had that Google did not.[9]

The market tipping stakes for FTC approval of AdMob in mobile are analogous to what they were for the FTC's approval of DoubleClick. After the DOJ gave Google the keys to the online video kingdom in buying YouTube, and the FTC gave Google the keys to the ad-serving kingdom in buying DoubleClick, if the FCC gives Google the keys to the mobile advertising kingdom by approving the AdMob acquisition, they will effectively be tipping Google's dominance even further from ~70% share to ~80 or ~90% market share in the future. The Federal Government's unwitting facilitation of Google's monopoly should stop by blocking Google's anti-competitive proposed acquisition of AdMob.

5. The extraordinary price paid for AdMob is evidence of acquisition of market power.

According to Reuters, Google outbid Apple for AdMob by paying an exceptionally-high "*multiple of up to 16.7 times sales, the sort of price rarely seen in takeover deals since the heady days of the dot-com boom*." [10] What does Google paying such an extraordinary $750m price for AdMob suggest right after a severe recession, and in the absence of an M&A bubble environment?

- First, it suggests exercise of surplus market power.
- Second, it suggests payment for anticipated monopoly rents.
- Third, it suggests payment for the elimination of a serious competitive threat or foreclosure of competition like Google accomplished in paying $1.6b price for YouTube with *no* sales which effectively foreclosed serious search competition from a video platform, and like Google accomplished in paying $3.2b price for DoubleClick (~10 times sales) which helped foreclose serious online advertising competition from Microsoft.
- Fourth, it suggests payment for exceptionally rare market data and for a window of competitive intelligence on key competitors, because AdMob implicitly knows the performance, plans, and pricing strategies of AdMob clients (and Google competitors) in the same way DoubleClick gave Google a bay window view into their competitors' display advertising performance, plans and pricing strategies.
- Finally, even annual compounded growth estimates of ~40% for mobile advertising per emarketer[11] would not financially justify the extraordinary price of ~16 times sales.

[8] PrecursorBlog, "Yahoo falls to third in search behind YouTube," 10-14-08, http://www.precursorblog.com/content/yahoo-falls-third-search-behind-youtube-google-yahoo-dunking-point-competition

[9] Scott Cleland, Testimony before the Senate Judiciary Subcommittee on Antitrust, "Google-DoubleClick Merger and the Online Advertising Industry," 9-27-07, http://googleopoly.net/cleland_testimony_092707.pdf

[10] Reuters, "Google's AdMob takeover to spark M&A wave" 12-04-09, http://www.reuters.com/article/idUSTRE5B31MO20091204

[11] Emarketer Report, http://www.emarketer.com/Reports/All/Emarketer_2000591.aspx

6. Google proactively thwarted Apple from becoming a stronger competitor to Google.

Given that Google reportedly outbid Apple for AdMob, the circumstantial evidence that Google CEO Eric Schmidt abused confidential competitive information gained about Apple from when he was on the Apple Board of Directors is troubling and warrants investigation.

- 5-28-09 the FTC began a Clayton Act antitrust investigation of Google and Apple's interlocking directorates.[12]
- 5-28-09 Google CEO Eric Schmidt told a shareholder that he would not step down from the Apple Board because Google and Apple were not "primary competitors."[13]
- 8-3-09 Google CEO resigns from Apple board citing conflicts of interest.[14]
- 9-23-09 -- Google CEO says Google is in the market to buy companies again.[15]
- 11-09-09 -- Google announces it is buying AdMob the dominant advertising provider for Apple's iPhone mobile applications.[16]
- 12-12-09 -- Google indicates that it is testing a Google phone[17] that the market interprets as a direct challenge to Apple's iPhone.[18]

The timeline should prompt the FTC, which has an ongoing Clayton Act investigation of the Google-Apple's interlocking directorates, to investigate if Google benefited from any confidential information Google CEO Schmidt gained as an Apple director about Apple's M&A strategy, interests, acquisition targets or price constraints, among other pertinent strategic information. This info is highly relevant to the investigation of AdMob as it gets to *motive* in a potentially illegal acquisition.

Google-AdMob is not the first time Google has gone to extraordinary lengths to thwart a competitor from getting stronger. The DOJ opposed[19] a proposed ad agreement between Google and Yahoo that was a pretext and alternative to Microsoft merging with Yahoo to make a stronger competitor to Google. DOJ's Google-Yahoo special counsel told AmLawDaily that the DOJ was hours away from filing a Sherman Act Section 1 & 2 monopolization case against Google over the anti-competitive Google-Yahoo ad agreement.[20]

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[12] New York Times, "Board ties of Google and Apple scrutinized," 5-4-09, http://www.nytimes.com/2009/05/05/technology/companies/05apple.html?_r=2&partner=rss&emc=rss

[13] AP, "*Google CEO does not see problem with his Apple role*," 5-8-09, http://lubbockonline.com/stories/050809/bus_437550990.shtml

[14] CNN Online, "Google CEO leaves Apple board," 8-3-09, http://money.cnn.com/2009/08/03/technology/schmidt_google_apple_board/

[15] PaidContent, "Google is ready to start buying companies again," 9-23-09, http://money.cnn.com/2009/08/03/technology/schmidt_google_apple_board/

[16] Google, 11-9-09, http://www.google.com/press/pressrel/20091109_admob.html

[17] Google Mobile blog, 12-12-09, " An Android dogfood diet for the holidays," http://googlemobile.blogspot.com/2009/12/android-dogfood-diet-for-holidays.html

[18] Engadget, "Exclusive: First Google Phone Nexus One photos, http://www.engadget.com/2009/12/14/exclusive-first-google-phone-nexus-one-photos-android-2-1-on/

[19] U.S. Department of Justice, 11-5-08, "Yahoo and Google abandon their advertising agreement," http://www.justice.gov/opa/pr/2008/November/08-at-981.html

[20] The AmLawDaily, "Hogan's Litvack discusses Google-Yahoo," 12-2-08, http://amlawdaily.typepad.com/amlawdaily/2008/12/hogans-litvack.html

7. Déjà vu: DOJ's Google-YouTube approval proved that antitrust enforcers need to be much more aware of the extraordinary network effects of adding fast-growing, first-mover strategic platforms to firms with existing market power.

When Google defends the AdMob transaction by claiming that mobile advertising is just a small and nascent sliver, .4%, of the overall advertising market, and that government intervention would stifle innovation in the mobile advertising marketplace, the FTC must remember two important points.

- First, the Clayton Act is clear that buying ones way to dominance is anti-competitive. Preserving competition from attempted monopolization is essential to preserving and promoting innovation.
- Second, the mobile advertising marketplace is on the cusp of explosive growth, just like online video was on the cusp of exploding when Google was allowed to scoop up YouTube and combine it with its dominant platform to become the dominant online video distribution platform roughly 15 times bigger than any other competitor, per ComScore.[21]
    - Google is so focused on mobile because PC search growth has slowed and users are flocking to mobile. Industry consensus is that the mobile market will be larger, faster-growing and more important than wire line just as users' wireless minutes of use have long exceeded wire line minutes of use, and wireless connections have long outpaced wire line connections. There are now over three times as many mobile phones as there are PCs.
    - Morgan Stanley Internet analyst Mary Meeker, has an informative big picture analysis of why the future of Internet growth is all about mobile.[22]

The crucial takeaway here is that the FTC cannot make the mistake that the DOJ made in approving the Google-YouTube transaction without even a second request investigation. There is an abundance of evidence that the mobile Internet, and mobile advertising in particular, are on the cusp of "hockey stick" growth where there is plenty of growth and innovation opportunity for Google to grow its strong #2 mobile advertising position organically without having to buy its way to quick dominance and foreclose other competitors and alternative monetization approaches to mobile advertising.

Simply, a Google-AdMob combination would supplant the current competitive trajectory for mobile advertising with a substantially less competitive monopoly trajectory, harming competition, users, advertisers, publishers, developers, smart-phone manufacturers, and broadband providers.

8. Google misled the FTC in the FTC's Google-DoubleClick investigation by representing Yahoo as a viable long-term competitor when the two firms were exceptionally close and cooperative as evidenced by the proposed and rejected Google-Yahoo ad agreement.

The old adage is particularly apt here. The FTC should tell Google, "*Fool me once shame on you; Fool me twice* (or thrice) *shame on me.*"

The FTC must be vigilant to not repeat the serious mistakes the FTC made in approving the Google-DoubleClick acquisition 4-1 in December 2007.

- First, the FTC investigative staff must not repeat jumping to a premature tacit conclusion that the acquisition is not a competition problem like they apparently did in the Google-DoubleClick review. The premature staff conclusion in the DoubleClick review ill-served FTC Commissioners by not providing sufficient investigative information to address their anti-competitive concerns with the acquisition.
- Second, the FTC wrongly assumed that Yahoo would provide sufficient competition to Google to going forward, when the facts now show that in just six short months after the FTC's assessment that Internet advertising competition was healthy, Yahoo proved so weak a competitor that they agreed to propose an ad

[21] ComScore, 4-28-09,
http://www.comscore.com/Press_Events/Press_Releases/2009/4/Hulu_Breaks_Into_Top_3_Video_Properties

[22] Mary Meeker, Morgan Stanley, "Economy Internet Trends 2009 from Morgan Stanley,"
http://www.slideshare.net/techdude/economy-internet-trends-2009-from-morgan-stanley

agreement with Google that the DOJ six months later determined was illegal and likely part of an attempt to monopolize the search advertising and search advertising syndication markets.[23]

- Third, given that the FTC is viewed publicly as a friendlier forum for Google than the DOJ and given Google's well-known, high-level ties to the Administration,[24] the FTC should be particularly careful not to rush to prejudge this case before a complete and thorough investigation has been conducted and all affected parties have had a full opportunity to communicate to the FTC their concerns.

9. Google-AdMob could snuff out potential mobile application monetization competition in the crib.

MIAD advertising is especially important as an alternative monetization model to the paid mobile application model. If Google is able to co-opt and dominate MIAD advertising and then bundle it as an essentially exclusive feature on top of its already dominant Internet advertising platform for search and contextual advertising, Google could anti-competitively tilt the playing field for monetizing Internet content, including applications, toward Google's dominant advertising model.

More specifically, Google then could abuse its search advertising monopoly power as the dominant advertising monetization engine for Internet content to undermine the current paid mobile application model. It is important to note that the current paid mobile application market is essentially a proprietary software model, which Google generally and proactively opposes as the leading proponent of "free" and "open source" software. Thus whether or not the FTC prevents Google from monopolizing the monetization of mobile applications could become a strategic fulcrum point for how software will be monetized on the Internet long term.

10. AdMob would enable Google to further dominate the collection of data and sensitive competitive information that is central to competing in the monetization of Internet content in the mobile or PC stationary markets.

Since AdMob is Apple's leading provider of in-application advertising, AdMob may have more data and sensitive competitive information on Apple's iPhone app business than any other entity. This competitively sensitive information would help Google's Droid and Nexus One phones compete with Apple's iPhone, and Google's android operating system with Apple's operating system. Moreover, AdMob is the leading monetization engine for "finder" applications that combine data to help users find restaurants, stores, etc. Adding AdMob's user, application, publisher and advertiser data to Google's world-leading database of private information, Google would have all the necessary private information to better target and measure search advertising and in-application advertising for "finder" applications so that no other entity would have the sufficient data, or data capability, to successfully compete with Google.

III. Conclusion

A Google acquisition of AdMob would eliminate Google's only substantial rival platform in mobile in-application advertising and catapult Google from an estimated 25% share to over 75% share of this strategic gatekeeper market for monetizing mobile Internet applications.

Combined with Google's search advertising monopoly and dominance of mobile search advertising, Google's acquisition of AdMob, "*the world's largest mobile advertising marketplace*," would likely tip the broader mobile advertising marketplace from a competitive to a monopoly trajectory.

In short, the AdMob acquisition threatens to foreclose competition and facilitate monopoly in a strategic gatekeeper market essential to the Internet economy, which would harm: consumers, developers, advertisers, publishers, smart-phone manufacturers, and broadband providers.

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[23] U.S. Department of Justice, 11-5-08, "Yahoo and Google abandon their advertising agreement," http://www.justice.gov/opa/pr/2008/November/08-at-981.html

[24] Fortune cover story, "Obama & Google (a love story)," 10-26-09, http://money.cnn.com/2009/10/21/technology/obama_google.fortune/

Google's antitrust defense in a nutshell is that Google singlehandedly can do a better job of serving consumer interests than competition can, thus by definition, anything Google does or proposes, like acquiring AdMob, is tautologically pro-consumer.

Appendix

Scott Cleland
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Summary: Scott Cleland is a precursor, a prescient analyst with a long track record of industry firsts. Cleland is President of Precursor® LLC, which consults for Fortune 500 clients; authors the "widely-read" PrecursorBlog.com; and serves as Chairman of NetCompetition.org®, a pro-competition e-forum supported by broadband interests. Eight different Congressional subcommittees have sought Cleland's expert testimony on a wide range of complex emerging issues related to competition; and *Institutional Investor* twice ranked him as the top independent telecom analyst in the U.S. Cleland has been profiled in *Fortune, National Journal, Barrons, WSJ's Smart Money, Investors Business Daily,* and *Washington Business Journal.*

Cleland's Full Biography can be found at: http://www.precursor.com/bio_long.htm

www.Precursor.com
www.PrecursorBlog.com

Scott Cleland's Congressional Testimony on Google:

- Before the Senate Judiciary Subcommittee on Antitrust on the Google-DoubleClick Merger, September 27, 2007.
  - http://googleopoly.net/cleland_testimony_092707.pdf
- Before the House Energy and Commerce Subcommittee on the Internet on Google Privacy issues, July 17, 2008.
  - http://www.netcompetition.org/Written_Testimony_House_Privacy_071707.pdf

Scott Cleland's Previous Googleopoly White Papers:

- *Googleopoly IV: How Google Extends Search Monopoly to Digital Info Monopsony 9-15-09*
  - http://googleopoly.net/Googleopoly_IV_The_Googleopsony_Case.pdf

- *Googleopoly III: Dependency: The Crux of Google-Yahoo Ad Agreement 10-3-08*
  - http://googleopoly.net/googleopoly_3_dependency.pdf

- *Googleopoly II: Google's Predatory Playbook to Thwart Competition*; 9-23-08
  - http://googleopoly.net/googleopoly_2.pdf

- *Googleopoly: The Google-DoubleClick Anti-Competitive Case*; 9-17-07
  - http://googleopoly.net/merger.html

Precursor Blog
Why Google is a Monopoly – Presenting the case before the Federalist Society
Remarks of Scott Cleland, President of Precursor LLC to Federalist Society Forum
December 7, 2009

Federalist Society Forum:
"Is Google Monopolizing Something and If So What?"
National Press Club, Washington D.C., December 7, 2009
Remarks of Scott Cleland, President of Precursor LLC

***Why Google is a Monopoly* -- Presenting the Case before the Federalist Society**

Thank you for the opportunity to make the case that Google is:

- A monopoly and a digital information distribution bottleneck; and
- Is engaged in pervasive predatory anti-competitive behavior that is seriously harming competition, the quality and choice of information, and consumers.

I believe it is not if, but when, the DOJ will be compelled by the facts and the harms to competition to file a Sherman Section 2 monopolization case against Google.

I will make four points in my opening remarks.

1. Google is a monopoly.
2. Google is a digital information distribution bottleneck.
3. Google's antitrust defense is specious.
4. Google's behavior is broadly predatory and anti-competitive.

1. Google is a monopoly.

Google commands:

- Over 70% share of U.S. searches per Hitwise;
- Over 90% share of U.S. search advertising *revenues* per company reports; and
- Over 95% share of U.S. search advertising *profits* per company reports.

Google also has unprecedented network effects compounding its monopoly power.

- In my Googleopoly II analysis that can be found at www.googleopoly.net, I documented an unprecedented 26 network effects Google enjoys.

What is Google monopolizing?

The DOJ believes Google is a search advertising and search advertising syndication monopoly.

- Per Sandy Litvack, DOJ's Special Counsel for the Google-Yahoo ad agreement, in AmlawDaily, the DOJ was fully prepared to file a Sherman Section 1 and 2 case against Google, if Google did not drop its proposed ad agreement with its #2 competitor Yahoo.
- The DOJ's Statement of Interest in the Google Book Settlement indicates that the DOJ believes Google ill-gotten digital database of orphan works should be treated as an essential facility for competition and that competitors must have access to it.

In addition, Google's proposed acquisition of AdMob is a naked attempt to extend Google's search advertising monopoly into the nascent and potentially huge mobile advertising market.

- I believe the facts will show that the Google acquisition of AdMob would "substantially lessen competition."
- This acquisition deserves the closest scrutiny by the DOJ, state AGs, and Congressional oversight subcommittees.

2. Google is a digital information distribution bottleneck.

Google's Senior VP Jonathan Rosenberg all but admitted in February that **Google's search engine is not neutral** in declaring in a prominent Google blogpost:

- "*We won't (and shouldn't) try to stop the faceless scribes of drivel, but we can move them to the back row of the arena*."

As you can see from the chart, Google has the power to send most anyone "to the back of the arena." Google has the bottleneck power between the supply of digital information and the demand from Internet consumers for digital information, and the result is that:

- Users increasingly will only discover what Google prioritizes;
- Advertisers increasingly will be without real competitive choice for reaching the Internet audience; and
- Digital information producers will increasingly be forced to provide wholesale access to their content at prices that approach zero.

Increasingly Google has the market power to determine what most Internet users discover, read and view, including the power to direct you non-neutrally to their own Google content and away from their competitors' content, products or services.

3. Google's antitrust defense is specious.

First, Google assumes the average person does not understand how the Internet marketplace works or understand the "Internet Choice Paradox" -- the pesky fact that *advertisers*, **not** consumers pay for Internet content.

- As you can see from the Internet Paradox chart, just because the consumer side has many choices of content on the Internet that does not mean the business side has many choices to get their content and advertising to consumers.

Second, and most famously, there is Google's "We think you all are stupid defense" where Google claims it is only "one-click away" from losing a "customer" to a competitor.

Google's "one-click away" antitrust defense is specious.

- It fails the dictionary test: a customer is "one that buys goods or services."
    - Google's products and services are free, not bought by consumers so they are not "customers."
    - Google's true customers are advertisers, who pay virtually all of Google's $22b in annual revenues.
- It fails the real world evidence test; if Google's users were indeed "customers," why does Google:
    - Have no customer service support for users?
    - Not advertise to them like other consumer companies do?
- It fails the government law enforcement test.
    - Neither the FTC in its review of Google-DoubleClick, nor the DOJ or the EU in their review of the Google-Yahoo ad agreement concluded that Google's customers were users; they unequivocally know advertisers are Google's customers, not users.

Third, I kid you not, is Google's latest antitrust defense, from the mouth of Dana Wagner, Google's lead antitrust lawyer:

- "*We want to be Santa Claus. We want to make lots of toys that people like playing with. But if you don't want to play with our toys, you've got us*."

- See the quote for yourself at the very end of a Globe and Mail article entitled: "*Google: we're not evil and we're not a monopoly either*."

Fourth, Google also speciously tries to claim that Google is just a little slice of the very large overall advertising market pie.

- However, if Google tries to claim in a court of law that their search advertising is no different from other forms of traditional advertising, TV, radio, print, etc. and that the appropriate market definition here is all advertising, they are directly contradicting years of copious public and official evidence where Google makes the persuasive case to advertisers and public investors why search advertising is more targeted, relevant and measurable than all traditional analog forms of advertising.

4. Google's behavior is broadly predatory and anti-competitive.

I am not saying "big is bad," I am saying "bad is bad."

- For those who claim that Google has done nothing anti-competitive; with all due respect, they are uniformed.

When Google proposed to enter into an ad agreement with their #2 competitor Yahoo, in 2008, I prepared a white paper that I shared with the DOJ that documented "*Google's Predatory Playbook for Thwarting Competition*."

- In it I identified five main anti-competitive strategies Google employs to foreclose competition.

1. Cartelize most search competitors into financially-dependent 'partnerships;
2. Pay website traffic leaders predatory supra competitive fees to lock up traffic share;
3. Buy/co-opt any potential first-mover product/service that could obsolete the category's boundaries;
4. Commoditize search complements to neutralize potential competition; and
5. Leverage information asymmetry to create entry barriers for competitive platforms.

For those asserting that Google has done nothing wrong competitively, let me offer my "top ten list of Google's anti-competitive behavior."

1. Google prevented a stronger competitor from emerging and solidified it monopoly by proactively thwarting the 2008 proposed Microsoft-Yahoo merger and delaying their effort to create a more competitive alternative by well over a year.
2. Google pays supra-competitive "limit" pricing of traffic acquisition costs with websites, Mozilla, Adobe, and others to prevent competitors from gaining search share.
3. Google opaquely structures its so-called 'auctions' to maximize revenue for Google, not award keywords to the highest bidder – the definition of an auction.
4. Google engages in price-fixing and auction-manipulation through an opaque "quality score" algorithm.
5. By forcing publishers to make their websites load faster in order to maintain a discoverable Google ranking, Google predatorily favors its dominant search advertising monopoly and undermines slower-loading display ads, because that weakens Yahoo and Microsoft's stronger display businesses, and undermines the competitiveness of Google's only real competitors Yahoo and Microsoft.
6. Google extensively abuses its surplus market power to indefinitely cross-subsidize entry of free products and services with no intent to monetize – the same strategy Microsoft used to undermine the viability of Netscape.
7. Google's cross-subsidization of free web analytics/measurement prevents a competitive online advertising platform from emerging and lessens third-party competition from ComScore/Nielsen.
8. In the pending Book Settlement, Google seeks to exclude competitors from search access of the ill-gotten orphan works database, information the DOJ told the court that competitors need access to in order to compete.
9. Google has abused its monopoly power by dispatching competitors like TradeComet, Foundem and StudioBriefing.net -- to the "back of the arena."

10. Finally, by seeking to acquire competitor AdMob, Google is illegally trying to extend its search advertising monopoly into the nascent and potentially huge mobile advertising market which illegally would "substantially lessen competition."

In short, Google is a monopoly and a digital information distribution bottleneck and its antitrust defense is specious. There is also powerful and copious evidence of widespread anti-competitive behavior by Google.

- One potential DOJ action-forcing event could be if Google continues to ignore the DOJ's serious antitrust concerns enumerated in their letter of interest to the court in the Book Settlement.
- Another potential DOJ action-forcing event could be Google's proposed acquisition of direct competitor AdMob to substantially lessen competition in mobile online advertising.

Thank you.

Precursor Blog
Google-AdMob: An FTC Antitrust Enforcement Watershed -- Lessons from Google-DoubleClick & EU
By Scott Cleland
March 15, 2010

Will the FTC strictly enforce antitrust laws in its review of Google's AdMob acquisition? Google-Admob is **a** watershed decision for the FTC given that:

- Google recently blew off the DOJ's serious antitrust objections to the pending Google Book Settlement;
- The EU opened a preliminary investigation of antitrust complaints against Google from companies in the UK, France and Germany; and
- The DOJ had to play backstop to the FTC and block the Google-Yahoo Ad Agreement, less than a year after the FTC incorrectly assumed in their 4-1 approval of the Google-DoubleClick deal that:
    - Yahoo and others would provide sufficient competition to Google; and
    - Google acquiring DoubleClick would not "substantially lessen competition" or tip Google to a monopoly.

A recent New York Post article: "*FTC inclined to approve Google's acquisition of AdMob*" states the deal "*may just squeak by federal regulators*."

- It's pretty obvious the article's source came from the Google camp and not the FTC, given the political nature of the source's views: the FTC "*will likely not rule until Obama nominees*" are confirmed by the Senate, strongly implying that the:
    - Administration's close political ties with Google would trump any career staff law enforcement findings of fact or the law; and
    - The lone FTC vote against the 4-1 Google-DoubleClick deal approval, Commissioner Jones-Harbor, will no longer be at the FTC.

Why is this Google spin on the FTC's inclination likely false?

First, this is a **straightforward, bread and butter horizontal antitrust case** where the facts are powerfully against approving a Google-AdMob transaction on the legal basis that it would "*substantially lessen competition*."

- Unlike Google-DoubleClick which was approved 4-1 by the FTC, Google can't credibly argue that Admob is not a direct competitor; the evidence proves AdMob is in fact Google's primary and leading competitor in the in-application mobile display advertising market.
    - "*We look at mobile applications as a real competitor. People download apps and they skip doing the search*" said Google antitrust counsel Kevin Yingling yesterday.

As I summarized in "*Googleopoly V: Why the FTC should block Google-AdMob*:"

- "*Google-AdMob would combine the #1 & #2 mobile in-application display advertisers in a highly concentrated and exceptionally-strategic gatekeeper market, effectively eliminating Google's only substantial rival competitive platform in this market."*
- *"Acquiring AdMob's ~50% share would catapult Google to >75% share of the mobile in-application display advertising market*."

Generally, antitrust authorities object to an acquisition in a highly-concentrated market that concentrates 30-40% of that market's share. Google-AdMob would concentrate the relevant market share *over two times more* than this normally acceptable threshold.

- The anti-competitive risk here is even greater than the >75% shares would indicate, because AdMob clearly has "first mover" advantage, which naturally creates even higher relative barriers to competitive entry, and strongly suggests that the market and competition cannot heal itself in this instance.
- Exacerbating the anti-competitive risk here even further is the obvious real world experience with Google concerning its last two major acquisitions of first movers: YouTube and DoubleClick.

  - YouTube, combined with Google's already dominant share of users, advertisers and publishers, catapulted YouTube to the second largest generator of searches in the world (per ComScore) and to over one quarter of all Google searches, in *just a couple of years*.
  - DoubleClick, combined with Google's already dominant share of users, advertisers, and publishers, effectively tipped Google to a de facto monopoly market position by allowing Google to acquire via acquisition (not through competing) what DoubleClick earned competitively but Google did not:
    - Hundreds of Global 1000 advertiser relationships;
    - ~25% viewer share of the Internet audience;
    - ~30% of user click data; and
    - 51% share of publisher tools.
  - The lesson the FTC has learned here is that one plus one equals much more than two, when Internet dominance is added to a substantial new first mover in a super fast growth market.
    - More specifically, combining Google and AdMob would bring Google's monopoly demand to AdMob's first-mover dynamic, allowing Google to acquire a de facto monopoly over the strategic gatekeeper market of in-application mobile advertising very rapidly without having to compete for it in the marketplace.

Second, Google itself has long argued in its 10k public filings to the SEC, that one of the biggest competitive risks to Google is if they cannot sufficiently establish a competitive position in mobile comparable to its market position on the PC.

- In other words, Google itself has spotlighted how important the mobile advertising marketplace is to the competitiveness of PC based search and the Internet more broadly.

Third, Google has established an astonishingly long track record of misleading the FTC.

- It's almost gotten to the point of establishing a Google-FTC "Peanuts comics" dynamic where Lucy repeatedly promises Charlie Brown that she won't pull away the football when he tries to kick it... and then at the last minute... Lucy repeatedly does just that...

In Google-DoubleClick:

- Google assured the FTC that Yahoo and Microsoft would provide enduring competitive discipline to the deal to ensure it would not be anticompetitive. However, just six months later Google proposed a partnership with their #2 competitor, Yahoo, and less than six months after that, the DOJ had to block Google's attempted cartelization of the search syndication market.
- Google also misrepresented to the FTC that Yahoo's purchase of Right Media and Microsoft's purchase of AcQuantive would offset any anti-competitive effect of Google acquiring Doubleclick.
  - Experience has proved that to be a misrepresentation as Yahoo's and Microsoft's supposedly augmented display businesses have contracted while Google's has grown substantially and taken significant market share from Yahoo and Microsoft.
    - Analysts in a recent Business Week article estimate that Google will grow roughly five times faster in display than the overall display market will grow. This means analysts expect Google to take massive display share from Yahoo, Microsoft and the rest of the market in the years ahead as they leverage their monopoly power in search advertising into DoubleClick's display advertising business.
    - This is yet more evidence that the FTC badly misjudged the network effects and anti-competitive synergies at work in allowing Google to synthetically combine with DoubleClick via acquisition.
- In addition, Google misrepresented to the FTC (and to the DOJ in Google-Yahoo) that search and display were separate markets and that combining them via acquisition/agreement would not have any "potential" synergistic anti-competitive consequences. However, Google's recent comments to Business Week show that was another gross misrepresentation to the FTC/DOJ:
  - "*Neal Mohan, the executive in charge of Google's display business, says Google will draw on its strength in search-related advertising to expand into display. It became the leader in search by using*

algorithms to help it know which ads to place where. 'Our goal is to bring the science of search to the art of display,' Mohan says."

- When Google announced Google-AdMob, it made a blanket statement: "*We don't see any regulatory concerns with this deal*."
  - That blanket assertion has proven grossly misleading, given that the FTC already has asked for a second request, which happens in less than one percent of all transactions and only when the FTC has "concerns" that require further investigation.

During the FTC's Clayton Act investigation of Google and Apple concerning their overlapping boards of directors, Google's CEO publicly claimed that Google and Apple were **not** competitors.

- Subsequent to those assertions, Google launched the Droid and Nexus One smartphones, which are direct competitors to the iphone, and launched the Google Pad that competes directly with Apple's iPad. And that is on top of Google's operating system and browser that competes directly with Apple's operating system and browser. Furthermore, Google reportedly outbid Apple in the competition for AdMob.
  - Google and Apple are obviously competitors, despite Mr. Schmidt's public obfuscations to the contrary.

In the context of the FTC's investigation of the Google-Apple relationship, it is relevant for the FTC to discern what assurances Google may have made to Apple in Google's arrangement with Apple for Google to be the **exclusive** search engine for the iphone.

- This exclusive arrangement, which happened underneath the FTC's antitrust oversight nose, is highly relevant to the Google-AdMob review, because its market impact obviously showed how powerful it was to combine Google's search dominance with a powerful first mover like the Apple iphone. That search exclusive helped rapidly propel Google's dominance of search on the PC to search onto the mobile handset. Surveys show that Google now commands as much as 97.5% share of mobile search per NewMarketShare.com.

Fourth, this is not an average deal review that has little precedential or process impact. This deal has the potential to be a big deal for the DOJ-FTC working relationship and for the working relationship of U.S. antitrust authorities and their European counterparts.

- Given the reported arrangement between the DOJ and the FTC to alternate antitrust review of Internet deals like this, the FTC would be loathe to make another mistake on the merits and require the DOJ to play backstop to the FTC again... and have to address the anti-competitive fall-out of an approved Google-AdMob, like the DOJ was forced to address the anti-competitive fallout from an FTC-approved Google-DoubleClick in blocking the Google-Yahoo ad agreement.
- Given the preliminary EU investigation of the serious antitrust complaints complaints against Google in the UK, France and Germany, it is also unlikely that the FTC would approve the ADMob deal. FTC approval potentially would effectively goad the Europeans into a full blown antitrust case against Google, because Europeans could easily leap to the conclusion that the U.S. is simply not up to legally challenging its politically-connected, favorite-son, and national champion -- Google.
  - Giving Google an antitrust pass on Google-Admob, when the evidence proves it to be way over the line, would send a strong signal to the marketplace that competitors should forum shop to Europe to get their their competitive complaints best acted upon.
  - This could further shift the antitrust enforcement balance of power away from the U.S. to the EU, a shift that grew substantially during the last Administration, which was widely viewed as the most lax in antitrust enforcement in memory.
- Given that Google has blown off DOJ antitrust concerns in the Google Book Settlement, it is also unlikely for the FTC to give AdMob an antitrust pass.
  - It is more likely and logical that the FTC and DOJ will work together to prevent being divided and conquered by Google.
  - It is noteworthy that *both* the DOJ and FTC have their own *ongoing* antitrust investigations of Google. Thus it is more likely that the FTC and DOJ will compete to see which can be the more effective

antitrust law enforcer, rather than which one can can give Google a bigger political benefit of the doubt.

In sum, there are a lot of strong factual, legal and process reasons why the New York Post take on the FTC's review of Google-AdMob is likely to be false.

Politics generally do not trump the prosecution merits of an antitrust case, especially one of this importance to the Internet and to the overall market.

- And finally, to the extent that this Administration seeks to have meaningfully tougher antitrust enforcement than the relative laxness of the last Administration (which reportedly was prepared to file a Sherman Section 1 & 2 monopolization case against Google), Google cannot be seen to get special political treatment to shield it from the consequences of the rule of law.

Precursor Blog
DOJ-FTC breaking up Google's Silicon Valley Keiretsu
By Scott Cleland
April 1, 2010

FTC antitrust concerns over "inter-locking-directorates" reportedly have forced Kleiner-Perkins' John Doerr, to step down from Amazon's board, because he is also on the board of Amazon, a major book and cloud-computing competitor of Google -- per Miguel Helft's and Brad Stone's scoop at the New York Times Bits post.

This is the third (Amazon, Apple, Yahoo) too-cozy-for-antitrust-authorities, Keiretsu-like, Google business relationship that either the DOJ or FTC apparently have broken up.

- (I will elaborate on each of these problematic Keiretsu-like relationships (Amazon, Apple and Yahoo) later in the post.)

Three different interventions by antitrust authorities involving Google's ties with three different Fortune 500 companies in eighteen months constitutes a pattern and underscores the depth and breadth of antitrust concerns that U.S. antitrust authorities have about Google.

- It is unusual for a Fortune 500 company to have *one* brush with antitrust authorities warranting formal or informal intervention, thus it is extremely rare, maybe unprecedented, for one Fortune 500 company to raise serious antitrust concerns in *three completely separate businesses* that are also different from the target company's core business.
- This is on top of DOJ's serious, detailed, and well -publicized, antitrust concerns with the Google Book Settlement (here, here), and this is on top of the FTC's reported collection of signed declarations from competitors as a likely precursor to filing a case in court to block Google's proposed acquisition of AdMob.
- In addition, these Keiretsu relationships are also on top of the five private antitrust lawsuits pending against Google: Trade Comet and MyTriggers in the U.S., and Foundem, ejustice.Fr and Ciao in the EU., which all allege yet another form of anti-competitive behavior by Google, i.e. predatorily punishing potential search competitors with un-findable Google search rankings.

Now, let's get back to Google's Silicon Valley Keiretsu relationships with Amazon, Apple and Yahoo.

1. Google-Amazon: Like Google CEO Eric Schmidt was forced by the FTC to resign from Apple's board, FTC pressure apparently has forced John Doerr of Kleiner Perkins to resign from Amazon's Board... even though *another* Kleiner-Perkins Partner of Doerr's, Bing Gordon, will remain on Amazon's Board.

- What the NYT Bits post did not include in its story is that Jeff Bezos, Founder and CEO of Amazon, was one of the very first original angel investors in Google, (i.e. he was part of the very first million dollars raised by Google), and that investment came at the behest of Amazon's then VP for Business Development, Ram Shriram, who is now on, and will remain on, Google's Board. (Source: The Search by John Battelle, p. 86-87)
- So even after Mr. Doerr leaves the Google board later this year, the deep Google-Amazon Keiretsu relationships will remain largely intact because Google made Kleiner-Perkins and Mr. Bezos literally billions of dollars.

2. Google-Apple: While Google's CEO Eric Schmidt was forced by the FTC to resign from the Apple Board last summer, and Apple Director, Arthur Levinson, resigned from Google's board last fall under FTC pressure, Apple Director Al Gore remains a Senior Advisor to Google.

3. Google-Yahoo: The ties between Google's founders and Yahoo's founders, all Stanford alums, are longstanding and deep as most all the books on Google document. The Keiretsu relationship was so strong in fact, that when Yahoo founder Jerry Yang wanted to thwart a buyout offer from Microsoft in the spring of 2008, Yahoo arranged for Google to swoop in as a "white knight" and offer an alternative to Microsoft in the form of an Ad Agreement between the #1 and #2 search advertising competitors.

- After a thorough investigation, DOJ blocked that proposed ad agreement 11-5-09 as anti-competitive and collusive.
- DOJ's special counsel for the case, Sandy Litvack, indicated to AmLawDaily that the DOJ was prepared to file a Sherman Section 1 & 2 monopolization case if Google did not withdraw.
- The DOJ was concerned that if Google and Yahoo partnered they would dominate over 90% of the search advertising and search advertising syndication markets.

In sum, Google's deep and ongoing Keiretsu-like relationships remain problematic for antitrust authorities. I predict even more Google Keiretsu relationships will be of concern to antitrust authorities going forward.

Moreover, all this cumulative, augmentative, and serious antitrust investigation by multiple antitrust authorities suggests an increased liklihood that:

- The FTC will block Google's acquisiton of AdMob;
- The Court will reject the Google Book Settlement unless Google agrees to a consent decree subjecting Google to permanent and close DOJ antitrust and copyright supervision;
- The EU eventually will launch a formal antitrust investigation of Google; and/or
- The DOJ or FTC eventually will launch a Sherman Section 1 & 2 monopolization case against Google in the months or years ahead.

Why mobile advertising is not too new a market to dominate

Precursor Blog
Google-AdMob: "It's too new to be dominated" -- Antitrust's Pinocchio Series Part III
By Scott Cleland
February 9, 2010

Google[-AdMob] has come up with another "*we think everyone is stupid*" defense of Google's anticompetitive behavior: "*It's too new to be dominated.*"

- This new Pinocchio antitrust defense nicely complements its previous grand deception that "*competition is one click away*," and its previous insult to everyone's intelligence that scale is not important to search.

Google Spokesperson Adam Kovacevich [and AdMob's CEO Omar Hamoui set] up a new "straw man" antitrust problem, easily knock it down, and then presto! conclude Google's acquisition of AdMob is not anticompetitive. From James Temple's San Francisco Chronicle piece:

- *"Google spokesman Adam Kovacevich stressed that mobile advertising remains highly fragmented, with more than a dozen networks like AdMob. ..."*
- [AdMob CEO Omar Hamoui] *"did say that ... antitrust critics misunderstand the online search industry, and that he's confident regulators will approve the deal once they grasp the nuances of the nascent sector.*
- *"We do display advertising on mobile, which is not an area that Google (or) anyone has dominated," he said. "It's too new to be dominated."*

The deception here is three fold:

- First, Google[-Admob] is setting up a false predicate here, that for a Google-AdMob acquisition to be anticompetitive, either Google or AdMob have to be proved dominant.
  - Google[-Admob] know full well that the legal and policy antitrust standard is not if either party is dominant, but if the **combination** of Google and AdMob "*would substantially lessen competition*."
- Second, Google[-Admob] is implying that a new market can't be dominated.
  - The problem with Google[-Admob] advancing this line of argument is that it reminds everyone of DOJ's misjudgement in buying that line of defense last time when it allowed Google to buy YouTube without a second request. The evidence is clear that combining YouTube, the clear first-mover/leader in online streaming video, with an emerging dominant Google search advertising business, resulted in YouTube becoming the second largest generator of searches in the world in three years and helping tip Google from <50% share to >70% share.
- The **core judgement the FTC has to make here** is whether or not the combination of Google-DoubleClick-YouTube's dominance in online advertising with AdMob's claimed leadership of mobile advertising "*would substantially lessen competition*."
  - Since the FTC incorrectly assumed sufficient competition existed to prevent anticompetitive outcomes in approving the Google-DoubleClick deal 4-1, the FTC will likely be more circumspect this time when Google[-AdMob] try to assure the FTC that the fragmented competitors in this mobile market will still be able to compete with AdMob's leadership after it is combined with Google's search advertising/search advertising syndication monopolies and its strong existing competitive position in mobile advertising.
- In other words, will the remaining fragmented mobile advertising players have sufficient competitive scale/scope/advertising relationships/carrier relationships/infrastructure/network effects to compete head-to-head with a combined Google-DoubleClick-YouTube-AdMob and ensure that competition is not substantially lessened?
- Third, Google[-Admob] presume that a market is still "new" or nascent when the dominant online advertiser in the world is willing to pay $750m for AdMob and Apple pays ~$275m for Quattro.

  - Those transactions strongly suggest this market has matured beyond the "nascent" and fragmented stage to become a strategically important and more consolidated market.

On a separate, but related point:

AdMob's leader Mr. Hamoui injured his credibility with antitrust authorities in now admitting in a legal proceeding, that AdMob misrepresented itself to the public in claiming to be "*the world's largest mobile advertising marketplace*."

- From the SF Chronicle: *"Despite claims before the acquisition announcement that AdMob was the largest among them, Hamoui now says it's impossible to identify the leader because none disclose revenue."*

Google and AdMob appear to be co-habiting in Pinocchio-ville here.

- If Admob is not "*the world's largest mobile advertising marketplace*," AdMob long misrepresented itself to the public on its website.
- If AdMob is indeed the "*world's largest*," and AdMob knows it, AdMob is misrepresenting itself now in the FTC review of the Google-AdMob deal.
- If AdMob is not the "*world's largest mobile advertising marketplace"* and Google knew that, Google should not have misrepresented that fact to public shareholders when Google announced the deal to justify the $750m price tag.
- And most importantly, if AdMob is not "*the world's largest mobile advertising marketplace*," then who is? Google?
  - The FTC's civil investigative demands (subpoenas to competitors in the market) should enable the FTC to answer that core factual question.

In sum, the evidence suggests that both Google and AdMob may not be telling "*the truth, the whole truth and nothing but the truth*" in Google's attempt to extend its PC search advertising dominance into the potentially much larger mobile advertising marketplace via acquisition.

The case against the Google-AdMob acquisition is very strong, certainly strong enough to withstand Google's Pinocchio defenses.

- The open question, however, given the strength of the competitive/legal case against the deal, is whether Google will be tempted to try and use its considerable political influence to try and affect the outcome of the FTC's law enforcement process.

[Update: SF Chronicle reporter James Temple clarified that the last two quotes at the end of his article were from AdMob's CEO Omar Hamoui. The text throughout this post has been updated to reflect this clarification -- that the fragmented market antitrust defense is advanced by both Google and AdMob.]

Why scale does matter in Internet advertising

Precursor Blog
Google: Antitrust's Pinocchio?
By Scott Cleland
August 14, 2010

First, antitrust's modern day Pinocchio claimed that competition is just "one click away," now Google is claiming that the notion that scale is important to search competition is "*bogus*."

- Google's Chief Economist, Hal Varian is pushing a preposterous, self-serving argument in CNET that scale is not important to search competition:
  - *"...the scale arguments are pretty bogus in our view because it's not the quantity or quality of the ingredients that make a difference, it's the recipes. We think we're where we are today because we've got better recipes... I also think we have a better kitchen..."*

Why is Google's "bogus" claim bogus?

First, does Google think for a minute that antitrust enforcers' investigations have not assembled substantial evidence/quotes from Google itself about the importance of scale in search?

- Just this June in a UK Wired article, Google CEO Eric Schmidt said: *"One day, Larry and Sergey and I were sitting in a room, and Sergey looked at us and said, 'It's obvious what our strategy should be. It's to work on problems on a scale that no one else can.'"*
- Just in May, an official Google blog post recommended another Wired article "*as a must read for policymakers*" where Hal Varian himself boasted of the advantages of Google's scale: "*Anything that increases Internet use ultimately enriches Google, Varian says... more eyeballs on the Web lead inexorably to more ad sales for Google."*
- Ironically, a primary argument Google uses to defend itself in the Google Book Setttlement, which is in hot water with the DOJ, is that without Google's scale and willingness to copy several million books without rights holders permission -- humankind simply would not have access to these books in digital searchable form.

Second, read most any in-depth article or book on Google and it will discuss one of Google's signature obsessions -- thinking big and seeking scale. The primary gating factor for any Google application is its potential to "scale."

- The most recent book about Google, "Google Speaks" captures Google's founders' obsession with scale: "*In one strategy meeting, Brin and Page were annoyed at the presentation. Page complained that the engineers weren't ambitious enough.... We want something big, said Page. Instead you proposed something small. Why are you so resistant?"*

Third, any true techie should guffaw at the notion that scale does not matter in tech or the Internet. If Google wants us to believe that scale does not matter in search, will it also try and argue that scale does not matter to:

- Intel in microchips?
- Ebay in online auctions?
- Microsoft in OS software?
- Oracle in enterprise software?
- Cisco in networking gear?
- Apple in online music?
- Facebook in social networking?

Finally, the notion that scale does not matter in search, an Internet application, ignores the central role that scale plays in Metcalfe's Law, which states that the value of a network is proportional to the square of the number of users.

- I seriously doubt Google will ever risk its credibility by trying to debunk the widely-accepted scaling insight of Metcalfe's Law, since it has been so integral to Google's strategy, business model and success.

Finally, Internet scale naturally implicates network effects, which are like ever-increasing positive feedback loops.

- In my white paper that I submitted to the DOJ Antitrust Division as part of their investigation into the proposed Google-Yahoo Ad Partnership, I catalogued for the first time, 26 different scale-related network effects that reinforce Google's exceptional market power. (I have listed them at the bottom of this post -- for anyone who still doubts that scale matters in search competition.)

In closing, Google still seems to think that anything they say will be reported as gospel by bloggers and the media; accepted as fact by policymakers; and won't be fact-checked by others.

- As a result, Google's credibility appears to be declining.
- If they are not careful, they could become the antitrust's proverbial "Pinocchio."

Google's 26 scale-related network effect advantages in search:

A. **Google's scale efficiencies:**

1. Biggest global Internet audience wins as it generates highest ad rates;
   - § Google's audience is ~4x larger than Yahoo's, ~7x times larger than Microsoft's;
2. Biggest network of advertisers wins as it generates most cash flow to reinvest;
   - § Google has ~1,000,000 advertisers, Yahoo ~300,000, Microsoft ~75,000;
3. Biggest network of publisher relationships wins as it attracts most advertisers;
   - § Google has hundreds of thousands of relationships vs. thousands for competitors;
4. Most search market share wins as it funds more users, advertisers and publishers;
   - § Google has ~70% U.S. search market share, ~90% share in Europe.
5. Most information searched wins as it attracts the most searchers;
   - § Google has indexed a trillion web pages vastly more than any competitor;
   - § Google uniquely is copying all books, photographing every street view, etc.
6. Most traffic acquired from top sites wins as it funds highest traffic acquisition price;
   - § Google pays more to acquire search traffic, than competitors' search revenues;
7. Most sites using outsourced search toolbar wins as it attracts the most search traffic;
   - § Google's search is used by ~65% of the top 50 websites that outsource search;
8. Largest server-farm network wins as it has the lowest operating cost structure;
   - § Google operates million plus servers, hundreds of thousands > competitors.

A. **Google's scope efficiencies**:

9. Broadest Internet use tracked wins as it enables targeting of most relevant advertising;
   - § Google can track ~90% of all Internet users, dramatically more than competitors;
10. Broadest web application platform wins as it enables the widest variety of uses;
    - § Google dominates in video streaming, blogging, news aggregation, Earth, etc.
11. Broadest offering of languages and translation wins as it enables most use and users;
    - § Google has interfaces in ~118 languages, several dozen more than competitors;
12. Broadest ad syndication deals wins as it facilitates most ad brokerage/ad exchange;
    - § Google has several times more ad syndication deals than either Yahoo/Microsoft;
13. Broadest advertiser tools platform wins as it enables broadest campaign measurement;
    - § Google-DoubleClick dominance in usage data makes tools platform most useful.

A. **Time efficiencies:**

14. Fastest search wins as it encourages the most users and usage;
    - § Google has much faster loading homepage and search response than competitors;
15. First mover releasing new applications wins as it lands early adopters who improve apps;

   - § Google routinely/frequently releases apps in beta to keep first-mover advantage;
16. Fastest crawler of the web wins as it provides most up-to-date results for breaking news;
   - § Google crawls web many times more an hour, or a day, than any competitor;
17. First to offer integrated cross-platform ad management wins with first-mover advantage;
   - § Google is far ahead competitively integrating search, TV, audio, classified, etc.

A. **Google's standards efficiencies:**

18. Most recognized search brand wins as it attracts the most users, advertisers and publishers;
   - § Google is the world's fastest number one brand ever;
19. Most used search engine wins in that it becomes the de facto technology standard;
   - § "Google' has become a verb, defines the category -- diminishing competitors;
20. Most used retail search engine wins as it becomes the wholesale standard as well;
   - § Google's competitors are not one click away, most sites wholesale Google search.

A. **Google's bundling efficiencies:** (Primary driver of Google's inexorable market share gains.)

21. The default search download of Adobe software wins large steady market share gains;
   - § Google is downloaded with every upgrade of Adobe's 98% dominant software;

22. The default search download of Mozilla's browser wins large steady market share gains;
   - § Google search is downloaded with every Mozilla (and Chrome) browser adoption;

23. The default search download of Real Networks software wins steady market share gains;
   - § Google search is downloaded with every Real Networks upgrade.

A. **Google's network effect efficiencies:**

24. Scale efficiencies compound **–** audience x advertisers x publishers x traffic…
25. Scope efficiencies compound – users x data x integration x languages x tools…
26. All efficiencies compound – scale x scope x time x standards x bundling x network effects…

Why competition is not just one click away as Google claims

Precursor Blog
What is "one click away?"
By Scott Cleland
June 22, 2009

"*One click away from competition*" is Google's ever-present, antitrust defense slogan that Google does not have any market power to anti-competitively exercise.

In today's New York Times, Google's CEO Eric Schmidt ratcheted up the centrality of that slogan to Google's antitrust defense by claiming it applied to Google's user "customers." CEO Schmidt said:

- *"We are one click away from losing you as a customer, so it is very difficult for us to lock you in as a customer in a way that traditional companies have."*

The problem with Google's "one click away" slogan is that it is untrue and deceptive; it simply does not withstand close scrutiny of the facts or logic.

I. It is untrue -- a false claim.

A. The claim fails the dictionary test.

The dictionary definition of a "customer" is "*one that buys goods or services*."

- The signature Google fact is Google's goods and services are ***free*** to users.
    - Consumers *use* Google's products and services, but they do not *buy* them, so they are not "customers" in a competitive market as Mr. Schmidt tries to represent.
- Google's true *customers* are advertisers and web publishers that buy Google's goods and services and comprise virtually all of Google's $22b in annual revenues.

B. The claim fails the real-world evidence test.

If Google's users were indeed "customers," why does Google have no customer service for users, but has thousands of customer service/sales/support personnel dedicated to service their real advertising/publishing "customers?"

If Google's users were indeed its "customer" base, why does Google not advertise to them like other consumer-customer companies do (offline and online) to their real and prospective "customers?"

If Google's users were really "customers" in a fairly represented market transaction trading their private information for Google's targeted ad services, why are the roughly 70+% of American online consumers largely unaware that they have forfeited control of their private information to Google and other online services?

C. The claim failed the Government law enforcement test.

If Google's users were indeed Google's "customers" but "one click away from competition," why did all the relevant law enforcement entities in-depth, months-long investigations all conclude that Google's relevant market and customers were: buyers of search advertising, not Google's users, and that Google was in fact dominant in search advertising?

- If Google's users were indeed "customers," wouldn't that "fact" have been uncovered by any one of the three independent law enforcement entities that did an in-depth investigation of Google and its relevant competitive markets?
    - The FTC's investigation of Google-DoubleClick in 2007;

- The DOJ's investigation of the Google-Yahoo ad partnership 2008: and
- The EU's investigation of Google-Yahoo in 2008.

- Moreover, the DOJ investigation of Google-Yahoo determined that Google does have market power in search advertising and search advertising syndication.
  - In effect, Google's "one click away" slogan is a constant reminder to antitrust authorities that Google does not agree with, or accept their definition of the relevant market or Google's dominance of it.

II. It is deceptive; not a fair representation claim.

As CEO Schmidt said:

- "*We are one click away from losing you as a customer, so it is very* ***difficult for us to lock you in*** *as a customer* ***in a way that traditional companies have***." [Bold emphasis added]

Google cleverly and deceptively implies that if they don't "*lock you in*" like "*traditional companies have*" they can't lock a customer in to their service.

- However, remember that Google heralds itself as a *non-traditional* company with *non-traditional* ways of doing things by almost any measure -- so it's effective "lock-in" techniques would logically be *non-traditional* too.

Google also appreciates that "traditional" walls are not necessary to lock in users when long distance to an exit can serve just as effectively as walls.

- Imagine being in the middle of a jungle or desert, and most every direction one goes for a long distance one finds no "walls" only more jungle or desert.
- Google well understands that if a user clicks away from Google's main branded service -- there is roughly a 70-90% chance that the user will click to a site of a Google partner site where Google either supplies outsourced search or tracks a user's clicks.
- For example, if one clicks to:
  - 8 of the top 12 search engines (after Google), a user will still be using Google search;
  - 6 of the top 10 ecommerce sites, one will still be using Google search; and
  - 5 of the top 10 web portals, one would still be using Google search.
    - Source: Barclays Capital, "Internet Data Book" April 2009.
- The liklihood that one clicks away to another site and remains in Google's vast extended Internet advertising tracking domain is even higher than the top sites above according to a March 2009 research study by UC Berkley grad students that found Google monitors users on:
  - 92 of the top 100 Internet sites;
  - 88% of 393,829 distinct Internet domains studied in March 2009; and
  - ~80% of 766,000 distinct Internet domains in April of 2009.
- What this means is that Google doesn't care if a user clicks away somewhere else because there is a 70-90% likelihood that that user will remain in Google's extended Internet advertising domain, and that they can still track you and advertise to you -- even if you no longer use the main Google search bar.
  - Google also knows that its effective reach and advertising influence over the Internet is several times greater than its nearest competitor and that it has 26 network effects/competitive barriers that ensure its competitors' can't replicate Google's search advertising dominance.

Google also appreciates that those users who have downloaded Google's toolbar (via Adobe, Firefox, Chrome, etc.) -- have effectively locked in that customer because if they click away to a competitor, the next time they search they will return to Google search as their default search engine.

- Undoing the default of the Google toolbar is neither obvious nor easy to accomplish for the average user -- so after they click away they will mostly boomerang back until the search default is disabled.

In closing, Google's "*one click away*" antitrust defense is one of the slickest and most effectively misleading competition slogans ever.

- On the surface, it sounds plausible, benign and on point.
- However, anyone with an open mind, critical thinking skills, and a willingness to consider the facts and deceptive representation, will find the "one click away" slogan both untrue and deceptive.

Lastly, this untrue and deceptive "one click away" slogan is no way to inspire trust among Federal, State and International antitrust officials, nor among advertisers, publishers, or Federal Judges that may eventually hear a Google antitrust case.

- At core, antitrust law enforcement is ultimately fact-driven, not PR-driven.

[Biography: Scott Cleland]()

Scott Cleland
President, Precursor® LLC
Chairman, NetCompetition.org®

Summary: Scott Cleland is a precursor, a prescient analyst with a long track record of industry firsts. Cleland is President of Precursor® LLC, which consults for Fortune 500 clients; authors the "widely-read" PrecursorBlog.com; publishes GoogleMonitor.com; and serves as Chairman of NetCompetition.org, a pro-competition e-forum supported by broadband interests. Eight different Congressional subcommittees have sought Cleland's expert testimony on a wide range of complex emerging issues related to competition; and *Institutional Investor* twice ranked him as the top independent telecom analyst in the U.S. Cleland has been profiled in *Fortune, National Journal, Barrons, WSJ's Smart Money, Investors Business Daily,* and *Washington Business Journal.*

Track Record: Cleland has a two-decade track record of industry firsts in serving clients and the public:

- First analyst to foresee and predict that Congress would pass legislation replacing telecom monopoly law and regulation with competition policy, and that that change would trigger substantial consolidation of the Baby Bells and also the radio industry.
- First investment analyst to warn investors that Internet data traffic was in fact growing sixteen times slower than the market assumed, protecting investors by debunking the bogus dotcom hyper-growth story months before the dotcom market bubble burst.
- First analyst asked to testify before Congress on how the system failed to foresee or prevent Enron's record bankruptcy precipitated by broadband trading fraud.
- First analyst to figure out that WorldCom's business model simply didn't add up and also first to predict WorldCom's bankruptcy, the market event that propelled passage of the Sarbanes-Oxley financial and research regulations.
- First to see the unmet common need/interests of competitive research providers by conceiving and co-founding Investorside, the first and only association of independent investment research providers.
- First U.S. financial association chairman to require members adopt a code of ethics in order to gain association membership and certification.
- First to identify, define, and bring together the common interests of broadband providers in opposing net neutrality legislation/regulation through NetCompetition.org.
- First analyst to foresee, document, and develop the antitrust theories of Google as an ongoing antitrust problem and the first analyst asked to testify in Congress against Google's acquisition of more market power. (www.Googleopoly.net)
- First analyst to identify and focus policymakers' attention on the Open Internet's growing security problem.
- First analyst to identify and name the growing Web 2.0 "publicacy" movement that values transparency over privacy.
- First analyst in Congressional testimony to identify and document that Google may be the biggest potential threat to Americans privacy and that a consumer-centric privacy policy framework is superior to an ad hoc technology-driven privacy policy framework.
- First analyst to spotlight and explain the systemic destabilizing effect of indexing financial instruments on the overall financial system and capital formation.

Not surprisingly, Cleland's prescient, trenchant, and principled analysis and critiques have prompted ad hominem attacks and the ire of those threatened by his conclusions. For example:

- WorldCom's Bernie Ebbers tried to discredit Cleland by referring to him as the "Washington idiot analyst."
- Google tried to discredit Cleland's research that concluded Google uses 21x more bandwidth than it pays for, by calling him a "payola pundit."
- FreePress tried to discredit Cleland for challenging and refuting FreePress' many erroneous net neutrality claims, by calling him the "Astro-Turfer-in-Chief."
- Former Vanguard Chairman John Bogle, the leading proponent of index investing, derided Cleland's analysis -- that indexing is destabilizing and undermines capital formation and market efficiency -- as "nuts."

Private Sector Experience: Precursor® LLC, a research and consulting firm, serves Fortune 500 company clients by helping them anticipate change and position for competitive advantage. Cleland specializes in anticipating, bringing clarity-of-thought, and applying framework analysis to complex emerging Internet problems before others sort them out. Cleland is a leading expert on Google, having closely followed Google as an analyst for most of its existence, and having testified on Google's threat to competition before the Senate Judiciary Antitrust Subcommittee and on Google's threat to privacy before the House Internet Subcommittee. Cleland monitors Google's increasingly disproportionate impact on Internet competition, antitrust, security, privacy, property rights, and public policy. PrecursorBlog.com, which *Wired Magazine* described as "widely-read," is followed by those seeking insightful analysis, thought leadership and "forward thinking at the nexus of policy markets and change." Cleland also serves as Chairman of NetCompetition.org®, a wholly-owed subsidiary of Precursor LLC and a pro-competition e-forum which provides analysis and insights for broadband telecom, cable and wireless companies.

Previously, Cleland served institutional investors as Chairman and Chief Executive Officer of the Precursor Group® Inc. Cleland founded and co-built Precursor Group® Broker Dealer from scratch to the #1 *Institutional Investor*-recognized independent research firm in communications in four years. The firm served most of the top investment institutions in the U.S., including 39 of the top 50. At that time and in that role, Cleland was well-known as one of the most-widely quoted and interviewed analysts in the United States. Overall Cleland has thirteen years experience in the institutional investment business including working for Legg Mason and the Schwab Washington Research Group.

Public Service: Cleland serves as a member of the United States Department of State Advisory Committee on International Communications and Information Policy. In 2002, Cleland conceived and was the Founding Chairman of the Investorside Research Association, the first and only association of independent research firms. Also in 2002, *Institutional Investor Magazine* called Cleland "the de facto spokesperson for the independent research community." During this time, he testified before Congress on both the conflicts-of-interest and accounting tricks that contributed to widespread telecom bankruptcies and Internet fraud during the dotcom market bubble. In addition, Cleland was the lead source and primary analyst for Hedrick Smith's Emmy Award winning *PBS Frontline Special, "The Wall Street Fix*."

Cleland's career as a public servant concluded in 1992 as the Deputy United States Coordinator for Communication and Information Policy at the U.S. Department of State, serving President H.W. Bush. Previously, Cleland served as a Senior Policy Advisor to the then Secretary of State James A. Baker III; he received the Superior Honor Award for his role as the lead congressional briefer to Secretary Baker on all foreign policy matters during the first Gulf War and the dissolution of the former Soviet Union. Prior to that, he served as Director of Legislative Affairs for the U.S. Department of Treasury and as a Budget Examiner for OMB in the U.S. Executive Office of the President.

Education: Cleland has a Masters of Public Affairs from LBJ School of Public Affairs at the University of Texas at Austin and a BA in Political Science from Kalamazoo College. In 2000, Cleland earned Kalamazoo College's Distinguished Achievement Award.