A White Paper

Googleopoly II*
Google's Predatory Playbook to Thwart Competition

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Abstract: The unique value of this white paper is that it identifies for the first time the:

- *Twenty six* different sources of Google's market power; and
- *Five* different anti-competitive strategies Google employs to foreclose competition.

Perception is not reality in the antitrust case against Google. The perception of the world's number one brand is one of an extremely useful search engine and a benign innovative company. However, the reality of antitrust facts will intrude on this superficial perception and expose how Google uses an extensive predatory-playbook to thwart its competition. This white paper will:

- Expose the proposed ad partnership between Google and Yahoo as only the most high profile incident in a broad pattern of anti-competitive, collusive and monopolistic behavior by Google;
- Introduce the "*Unified Theory of Googleopoly*" by enumerating *twenty-six* sources of Google's market power; and
- Explain Google's *predatory playbook* to foreclose competition where Google:
  - Cartelizes most search competitors into financially-dependent 'partnerships;'
  - Pays website traffic leaders predatory supra competitive fees to lock up traffic share;
  - Buys/co-opts any potential first-mover product/service that could obsolete the search category's boundaries;
  - Commoditizes search complements to neutralize potential competition; and
  - Leverages information asymmetry to create entry barriers for competitive platforms.

Google's proposed ad agreement with Yahoo is emblematic of a larger pattern of anti-competitive behavior by Google to foreclose competition in search advertising. The Justice Department and Federal Courts are likely to find the Google-Yahoo proposed contractual relationship to be a key and illegal part of a broader Google conspiracy to illegally restrain commerce and fix prices per Section I of the Sherman Antitrust Act. Antitrust authorities likely will not only seek to prohibit the proposed agreement, but also any other or future anti-competitive collusion between Google and Yahoo, and potentially other parties.

- If the agreement is indeed an antitrust problem, the DOJ is likely to pursue this issue until the DOJ prevails in court and secures a legally binding consent decree, or until Google and Yahoo each agree to a court-enforced consent decree agreeing not to collude going forward.
- It is naïve to think that if the companies simply walk away from the agreement they can walk away from their antitrust liability.

* "*Googleopoly: The Google-DoubleClick Anti-Competitive Case*" www.Googleopoly.net
** NetCompetition.org is a free-market e-forum funded by broadband interests.

I. Introduction

This white paper explains in detail why Google may be the single most serious threat to online competition and to the competitive evolution of the Internet. To date, Google has spun a benign and convincing tale that it is laser-focused on producing the best search engine in the world for users, and is passionate about driving disruptive innovation without permission. That is the truth, but not the whole truth and nothing but the truth. While user benefits and innovation are important and highly valued policy outcomes, they are not a 'get-out-of-jail-free-card' for violations of antitrust law. The Department of Justice Antitrust Division is conducting a very serious antitrust investigation of the proposed Google-Yahoo ad partnership and Google's broader business practices because there is substantial evidence of a systematic pattern of anti-competitive behavior by Google. The Google-Yahoo ad partnership is only the highest profile incident of "*Google's predatory playbook to thwart competition*." Great innovation and public relations aside, this paper will present the hidden and underappreciated methods/strategies of **how** Google is anti-competitive and bent on monopolizing the search advertising marketplace.

The organization of this white paper is:

- Explaining the broader problem: Google is foreclosing Internet advertising competition;
- Presenting the 'Unified Googleopoly Theory' of Google's exceptional search dominance and enumerating Google's twenty-six sources of market power; and
- Describing the anti-competitive methods/strategies or 'plays' in Google's predatory playbook to thwart Internet advertising competition.

II. The Broader Problem: Google is Foreclosing Internet Advertising Competition

Google's proposed ad pact with Yahoo is only Google's most high-profile and brazen effort to foreclose competition. This paper will illuminate Google's broader predatory pattern and playbook to expend surplus market power to foreclose competition to Google. In one deal with Yahoo, Google was able to effectively kill two birds with one stone. By successfully interfering in the Microsoft attempt to buy or align with Yahoo, Google succeeded in preventing #3 Microsoft from gaining the scale/scope necessary to compete more credibly, while making #2 Yahoo financially dependent on Google payments to prop up its stock value. In addition to neutralizing its primary actual competitors, Yahoo and Microsoft, Google's financial alignment with Yahoo further cartelizes Internet advertising – creating effective barriers to entry for other competitive platforms.

It is clear from Google's inexorable market share gains that the search advertising market has tipped and is trending to monopoly. (Given the detailed competitive analysis in my original white paper: "*Googleopoly: The Google-DoubleClick Anti-competitive Case*" (see www.googleopoly.net), about Google's network effect of network effects, and the fundamental weaknesses of Yahoo and Microsoft as retail search competitors to a wholesale search leader like Google, I do not need to repeat that analysis here.)

In one of the largest and fastest-moving winner-take-all market dynamics ever seen, Google's search platform has become a de facto bottleneck essential facility for online advertising. In the **penultimate**

statement that Google understood that the market had tipped, and that Google's network effects gave it irreversible market power, Google changed the rules of the ad auctioning game to award keywords not to the highest bidder, the definition of an auction, but to awarding the keyword to the company that could make Google the most money, which is characteristic of the exercise of monopoly market power. This was the epiphany, when Google recognized that the market had tipped and that Google could run the auction not for the benefit of its customers or the auction participants, but for the benefit of Google. Evidence abounds that the Google auction process is not neutral and that Google anti-competitively favors its own properties and revenue-sharing partners over competitors. The lack of transparency on how the auction actually works and how bidders can improve their prospects -- speaks volumes about Google's exercise of market power unconstrained by competition. The best evidence of how a Google-Yahoo partnership would be anti-competitive is examining how Google is already behaving anti-competitively.

III. The 'Unified Theory of Googleopoly'

To understand the breadth and depth of Google's market power and the over-the-top nature of the proposed Google-Yahoo ad partnership, it is critical to understand the varied, powerful, and inter-related sources of Google's exceptional market power. **Simply, Google has mastered at least twenty six sources of market power in its market.**

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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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…

In short, Google arguably enjoys more multi-dimensional dominating efficiencies and network effects of network effects of any company ever – obviously greater than Standard Oil, IBM, AT&T or Microsoft ever were ever able to achieve in their day.

IV. Google's Predatory Playbook to Foreclose Competition

Google-Yahoo is not the first attempt by Google to try to foreclose competition. However, Google's high-profile role in breaking up a Microsoft-Yahoo deal, combined with Google's proposed ad partnership with Yahoo -- has been the **catalyst for a much broader and deeper antitrust investigation** of Google than would have occurred otherwise. This antitrust scrutiny creates increased interest in understanding if and how Google acts anti-competitively. Thus **this section meets that unmet need by organizing and explaining the five main anti-competitive strategies in Google's predatory playbook** to foreclose competition.

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

A. Cartelization of competitors into financially-dependent 'partnerships:'

Google understands that whoever controls the most search inquiries -- aggregates the largest audience, and thus dominates the monetization of search advertising. Google's deliberate and successful strategy over the last few years has been to convince search competitors to partner or financially align with Google so that they can tacitly share in the supra-competitive benefits of Google's market power. Google has been shrewd in understanding that by offering supra-competitive benefits in the short-term to start these 'partnerships' (i.e. paying the search competitor more for search traffic than they can monetize on their own), the new 'financial alignment' will naturally lead to a long term migration of search share from the competitive search *retailer* -- to the dominant search *wholesaler* which has greater scale -- Google. (The migration of search share from AOL to Google is a prime example of this natural network effect.)

It's instructive to put Google's cartelization of the search market in perspective. A good starting point is that the top ten U.S. websites, which generate search inquiries, comprise 97% of all searches generated in the U.S. -- per ComScore. Of the searches from these top ten search generating sites:

- 60% are Google;
- 14% are from current Google paid search partners (AOL, MySpace, Ask, Craigslist, Amazon);
- 18% are from proposed Yahoo partnership (includes eBay's 3%, eBay uses Yahoo in US); and
- 8% are from Microsoft (includes Facebook's 1%, which uses Microsoft search).

This means:

- 60% of searches used for advertising are currently controlled directly by Google;
- 74% of searches used for advertising are part of the *current* Google financially-dependent cartel;
- 92% of searches used for advertising would be part of the Google cartel under the Yahoo pact.

In other words, if Yahoo is allowed to be contractually dependent on Google, eight of the top ten sites (that generate 97% of the searches in the U.S.), would have some of their financial interests dependent on Google in a de facto search advertising cartel.

- So relatively, the effect of approving a Yahoo dependency on Google would be to **eliminate ~70% of the currently non-Google-aligned search advertising market --** from 26% to 8%.
- Think about it. If Yahoo and Microsoft have been losing competitive ground at the hand of the current Google-dependent search advertising cartel that generates ~74% share of searches, imagine how much more competitive ground a financially-interdependent search advertising cartel of Google, Yahoo, AOL, MySpace, Ask, eBay, Amazon and Craigslist, -- could gain on Microsoft and Facebook.
    - Simply, Google understands that the search advertising game is incredibly simple – advertising economics are directly driven by search audience share.
    - **By splitting revenues with Google, all search advertising cartel members have an increasing financial incentive for Google to increase and leverage its market and**

pricing power at the expense of competitors and advertisers -- because they all split the supra-competitive spoils.

- To put it yet another way, a Google-Yahoo financial alignment would expand the Google financially aligned cartel by ~20% in one fell swoop from 74% share to 92% share.

The light bulb that should be going off in a reader's head right now is **how anti-competitive the business of the Internet has become** when most all of its largest, most dominant, and most profitable Internet companies -- Google, Yahoo, eBay, Amazon, IAC-Ask.com, AOL, and MySpace -- are all financially interdependent because they are all financially dependent on Google to maximize the monetization of search and content on the Internet.

Beyond being illegal, the concern with this much of one market being contractually and financially-dependent, in one way or another, is that Google and its online-cartel 'partners' are not transparent and that the online business is exceptionally arcane and difficult to monitor, police, or audit. Since price collusion is obviously going to be hidden and is always dynamically changing in literally millions of lines of computer code, this online-cartel not only has the financial incentive, but also the practical operational cover to directly/indirectly collude in order to drive up prices for advertisers.

Without a viable search advertising competitive counterforce to keep the cartel honest, it is obvious from past antitrust experience that this cartel will act anti-competitively. Under Section I of the Sherman Antitrust Act this type of market collusion is per se illegal. Google and Yahoo will have a tough time arguing in Federal court why their deal is not anti-competitive, when the factual antitrust predicate assumes parties will collude in such an exceptionally concentrated cartel arrangement.

B. Pay website traffic leaders predatory fees to lock up traffic share:

Simply, Google has accumulated its dominant share of search by paying its traffic acquisition partners a supra-competitive fee that no other competitor could economically justify, and that is much more than the site could monetize on its own. Why pay more than one has to? Google understands advertising economics are all about user audience size, so Google has systematically expended its surplus market power to buy market share at supra competitive, "limit" prices that competitors simply could not match. Overall, Google pays sites over $5b annually in traffic acquisition costs (TAC), which is comparable to what the rest of the search industry generates in total revenue. Specifically, Google makes ~9 cents per search and pays ~3 cents per search referral, when #2 Yahoo only makes ~3+cents per search. In other words, Google pays a market power high-rate that only Google can justify, because it knows that it will make even more profit from the enhanced market power the additional traffic provides. The fact that Google-Yahoo expect to earn Yahoo ~$800 million more in a partnership, than Yahoo could earn competitively on its own, is further proof that Google's acquisition of search traffic is driven by the knowledge and confidence of experience, that Google's market power enables Google to monetize other sites traffic dramatically better than any other entity can.

C. Buy/co-opt any potential first-mover product/service that could obsolete the search category's boundaries:

Google well understands its market power in search advertising and it also **understands that the only real threat to its market power** is if a new competitive technology platform emerges that could render the current search advertising market boundaries *obsolete*. In other words, Google knows the only real competitive threat to Google would be if a new very fast growing application emerged and got in the hands of a competitor, who then could leverage it as a competitive platform to 'change the game.' Knowing that this is their only *real* and serious competitive risk, Google has either bought, co-opted, or undermined almost every potentially serious competitive platform threat -- by enforcing a **360º competition foreclosure zone** around Google. When a potential competitive risk emerges, Google does what it takes to ensure that it cannot actually compete with Google. Thus the much vaunted "disruptive innovation" market solution can never emerge to dethrone Google, if Google continues to be vigilant and disciplined in buying or co-opting any potential competitive threat -- while it still is basically in the crib.

There have been five high-profile attempts by Google to enforce this **360º competition foreclosure zone around Google** -- four of which were successful.

1. Yahoo:

Most recently, Google thwarted Microsoft's attempt to buy Yahoo, which would have presented potentially the most significant and immediate competitive threat to Google's search hegemony. Google aggressively intervened publicly, privately, and repeatedly over a period of months -- culminating in the proposed ~$800 million annual ad agreement, which provided Yahoo a strategic alternative to Microsoft.

- (The most damning evidence of Google's active collusion in thwarting a Microsoft bid was the testimony of Microsoft General Counsel Brad Smith before the Senate Judiciary Committee, where he stated under oath, that Yahoo CEO Jerry Yang told Microsoft negotiators on June 8th:
    - "*Look, the search market today is basically a bipolar market." "On one pole there's Google, and on the other pole there are Yahoo and Microsoft both competing with Google." "If we do this deal with Google, Yahoo will become part of Google's pole."*
- This is highly credible testimony given that it was provided under penalty of perjury and because there are multiple witnesses that could be deposed to confirm its veracity. This also provides a clear and damning admission that Yahoo understood the implications of what Google was proposing to Yahoo, i.e. have #1 and #2 competitors collude to defeat the #3 competitor in the market -- Microsoft.)

2. DoubleClick:

Google intervened to thwart Microsoft from buying DoubleClick by paying $3.2 billion, a price that financial analysts could not financially justify given DoubleClick's $300 million in revenues and its moderate growth rate. The price was certainly more than Microsoft, one of the most valuable companies in the world, could financially justify paying. The strategic reason Google paid whatever it took to win it was that DoubleClick had the single largest database of consumer intentions/behavior -- outside of Google's -- a unique database which would have provided an exceptional platform for a competitor to rapidly expand its competitive reach in Internet advertising. Google also knew that a Microsoft acquisition of DoubleClick could have enabled Microsoft to make a quantum leap improvement in the relevance of its targeted advertising -- the factor Google considers its primary competitive differentiator in search advertising.

3. YouTube:

Google paid ~$1.6 billion for YouTube, a business with miniscule revenues and which Google has had difficulty monetizing since it purchased it. The reason Google was willing to pay whatever it took to keep YouTube out of anybody else's hands was that Google understood the powerful network effect of 'first mover advantage' and it was clear that YouTube could use that first-mover advantage to become the dominant platform for video streaming. YouTube now has ~44% of the video streaming market, or over ten times its nearest competitor's share, per ComScore. Google rightfully saw YouTube as one of the most likely first-mover competitors that could potentially render current search market boundaries obsolete and provide a potential competitive entrée to challenge Google's search advertising hegemony.

Google shrewdly spent its surplus market power to permanently foreclose the possibility of YouTube becoming a competitive platform threat.

4. MySpace:

After NewsCorp bought MySpace, Google brought MySpace into the Google fold by *guaranteeing* MySpace's $900m in advertising revenues over three years, a financial guarantee that many financial analysts seriously questioned at the time. Financial analysts' skepticism that Google could monetize a social networking site to that extent has been borne out in fact, in that Google has indicated that it has underperformed its monetization expectations with MySpace.

5. Facebook:

Finally, the only high profile deal Google lost out to competitors, was for Facebook's search advertising, which Microsoft ultimately won. Google's difficult experience in monetizing MySpace's social networking traffic probably protected Google from overpaying for Facebook's traffic.

To further drive this point home – competitive-foreclosure-by-acquisition-strategy – review the cumulative effect of Google's acquisition strategy in preserving Google's search hegemony.

- Buying DoubleClick foreclosed competition from the leading ad-serving and ad-analytic platform as well as the largest database of customer behavior outside of Google.
- Buying YouTube foreclosed competition from the dominant video sharing and streaming service.
- Buying Blogger foreclosed a competitor from making strategic inroads with the fast-growing blogging community.
- Buying Google Earth's technology helped foreclose competition from mapping.
- Buying Jotspot ensured Google market leadership in wiki development.
- Buying Feedburner provided a competitive firewall in the news syndication service space.

Google has made several other significant acquisitions not mentioned here. The next most likely acquisition candidates for Google, which would continue this competitive foreclosure strategy, would likely be Adobe and/or SalesForce.com.

D. Commoditize search complements to neutralize potential competition:

1. Predatory free pricing with no intent to build a revenue base.

Google also has a highly developed strategy to foreclose competition by forcing the commoditization of current and potential search complement products/services. Under the ostensible cover of 'innovation,' Google funds a host of free search complement products/services that are designed to either commoditize the complement, drive competitors out of business, or force them into the Google 'partnership' orbit.

Tellingly, Google makes little effort to monetize these services that are often released in beta, with little interest or effort expended in making these products/services profitable. **The most obvious predatory price in competition is free, especially when the price remains free indefinitely with no plans to turn these products/services into revenue producing units.** Pro-competitive 'loss leaders' eventually lead to revenues and profits. There is precious little business effort by Google on this front. Why would a company continually innovate and indefinitely cross-subsidize products/services that have real costs -- for free -- unless the real motive is to foreclose competition?

- More specifically, Google is expending surplus market power to create an **adjacent 360° no-profit zone** around Google by predatory free pricing and cross-subsidization of search complement products/services like: Checkout, Google Health, Android, YouTube, Blogger, Reader, News, Earth, Desktop, Calendar, Docs, Gmail, Social networking, photos, Translate, GOOG-411 etc.

- **By putting out a free product/service even in beta, it puts downward pressure on prices, profits, and stock prices of competitors** – ultimately helping foreclose potential competition to Google. Look to the recent example of Google's release in beta for free Web Trends analytical tools – Google competitor ComScore's stock fell ~20% in one day.
- Google's well-known aspirations to lead the market in cloud computing, also known as utility or outsourced computing, will offer Google the ultimate opportunity to engage in monopoly cross-subsidization and predatory pricing. The stakes of Google's Internet dominance will only rise as cloud computing affords Google the new opportunity to vertically leverage its dominance of the Internet audience to anti-competitively undermine a wide swath of industries like: newspapers, wire services, websites, broadcasters, publishers, advertising agencies, etc.

2. Predatory public policies designed to harm competitors, help Google.

Google also has an extensive predatory public policy agenda designed to commoditize and neutralize its greatest potential competitive threats long term: Microsoft, broadband providers and media companies. Google generously funds and promotes a variety of commons policies designed to turn potential competitive platforms to Google into public commons, which would not threaten Google, and which would leverage Google's search advertising hegemony. Tellingly, Google expects the public policies to only apply to competitors and not Google. Moreover, **all of Google's public policy proposals have the convenient effect of getting government to: force lower costs for Google's key inputs, while at the same time undermining the economic viability of competitors' business models**.

- **Net neutrality:** Google seeks to pass legislation banning broadband providers from offering smart networks and price differentiation, in order to create a broadband commons, either through common carrier price regulation regime, or public ownership/control of broadband networks.

- **Wireless Open Access and White Spaces:** Google advocates that the FCC should force wireless broadband licenses, broadcast licenses and 'white spaces" to be 'open' or to create spectrum commons where spectrum is made available for free to Google and others -- not auctioned to the highest bidder for the taxpayer's benefit.

- **Copyright Reform:** Google supports a drastic rollback of copyrights making most all digital use of content 'fair use' and reducing Google's multi-billion dollar legal liability in several pending lawsuits alleging Google violated copyright law.

- **Open Source:** Google supports efforts to force software to be 'free and open' -- meaning that users need not ask permission or pay for copying, modifying or redistributing software. This would strongly advantage Google's advertising model for digital content over Microsoft and the software industry's traditional subscription business model for content.

- **Open Handset**: Google aggressively sought FCC regulatory help to jumpstart Google's last-to-market mobile operating system launch by skewing spectrum rules to favor Google's specific commons approach.

- **Open Social/Google Friend Connect:** Google also has a commons approach for social networking which would effectively balkanize and commoditize social networking and prevent FaceBook or MySpace from ever becoming a category-changing competitor.

E. Leverage information asymmetry to create entry barriers for competitive platforms.

As the world's most powerful information broker, and owner of a uniquely bold mission to organize the world's information, Google understands the power of information asymmetry. **Everyone knows that 'information is power' and that the entity with the best, most comprehensive and most current information -- wins.** Everyone also knows intuitively that one can hasten the defeat of an opponent, if one can deny them the information they need to compete on a level playing field.

It is in this context that Google exploits information asymmetry to the maximum. Google employs extreme secrecy around its competitive platform, practices, and algorithms, while insisting that Government force openness, transparency and no secrecy for potential competitive platforms to Google. This is not a passive Google strategy; it is proactive, clever and well thought out.

By virtue of having: the largest audience of users, the largest network of advertisers, the largest network of publishers, the largest ad-serving and monitoring network, the largest database of user intentions, and near perfect market knowledge of advertiser demand, available publisher space and inventory – **Google has a de facto monopoly on the essential market information for search advertising**. With Yahoo as a financially-dependent partner, that de facto monopoly grip on essential search market information -- would only increase. Google operates its Internet advertising essential facility as a near totally opaque 'black box' that is non-transparent to all outsiders: customers, auction bidders, regulators, investors, and competitors who depend on a competitive market for market information.

The *supreme irony* of Google's extreme market secrecy about its business is that it is so vocal and aggressive in insisting on openness and transparency for all potential competitive platforms 360º surrounding Google's business: software, broadband, wireless, content, etc. Google extends its 'openness' crusade even further in that Google is also the major funder/supporter of the movement to make the Government more open and transparent. Google knows that the more information that is available to Google to search means more searches that it can monetize with its dominant search advertising platform.

Given Google's high profile stance and public policy agenda for openness and transparency for everyone else, what could be the reason for Google's extreme secrecy? Why doesn't Google lead by example? The most logical and plausible reason for Google's extreme secrecy is most likely to mask their extensive anti-competitive behavior:

- Avoid fair representation of Google's multitude of financial conflicts of interest;
- Hide anti-competitive self-dealing in its auctions;
- Hide anti-competitive front-running in its auctions;
- Hide monitoring of competitor's actions and vulnerabilities;
- Hide abuse of privacy expectations and compliance;
- Mask predatory pricing, cross-subsidization and other anti-competitive behaviors;
- Deny competitors access to key market information, thus inhibiting competitors' ability to control quality or even offer a competitive product or service.

Google de facto "owns" the market's most important information about supply, demand, and pricing for users, advertisers and websites. Google functions like an unregulated public commodity exchange. The anti-competitive potential of this extreme horizontal and vertical concentration of critical market information is unprecedented and incredibly far-reaching.

- In another telling example, Google makes web trends/data on everyone else's Internet traffic available to the public – but does not make Google's comparable web trends/data public.

V. Google Anti-Competitive Behavior Summary:

- Proactively preventing a stronger competitor from emerging in Microsoft-Yahoo by undermining Microsoft-Yahoo talks and ultimately making Yahoo financially dependent on Google.
- Supra-competitive "limit" pricing of traffic acquisition costs with websites, Mozilla, Adobe, and others to prevent competitors from gaining search share.
- Structuring 'auctions' to maximize revenue for Google, not awarding keywords to highest bidder – the definition of an auction.
- Price-fixing/auction-manipulation through opaque "quality score" algorithm.
- Discriminatory pricing of opaque "quality score" to favor Google's dominant search ad model over slower-loading competitive display model.
- Extensive use of surplus market power to indefinitely subsidize entry of free products/services with no intent to monetize – same strategy Microsoft used to undermine viability of Netscape.
- "Self-dealing" & "front-running" in keyword auctions -- like the DOJ Sabre case.
- Excluding keyword inputs necessary for competitors to build their online businesses/brands.
- Free web analytics prevent development of a competitive online advertising platform.
- Free web measurement impedes third-party competition from ComScore/Nielsen Online.
- Excluding essential market information necessary for quality control/service hurts competitors.

VI. Conclusion:

Google's proposed ad agreement with Yahoo is emblematic of a larger pattern of anti-competitive behavior by Google to foreclose competition in search advertising. The Justice Department and Federal Courts are likely to find the Google-Yahoo proposed contractual relationship to be a key and illegal part of a broader Google conspiracy to illegally restrain commerce and fix prices per Section I of the Sherman Antitrust Act. "*Any agreement that restricts price competition violates the law*," according to the DOJ Antitrust primer. Antitrust authorities likely will not only seek to prohibit the proposed agreement but also any other or future anti-competitive collusion between Google and Yahoo, and potentially other parties.

Many will try and narrowly frame the antitrust question as the companies have. Is the proposed agreement acceptable or not? If not, what can be changed to make it acceptable? In reality the antitrust problems at work here are much broader and more serious. If authorities have concerns that the Google-Yahoo agreement is indeed anticompetitive, then they are not so much concerned with blocking this single agreement but also prohibiting any tacit or future collusion Google-Yahoo may attempt. If the agreement is indeed an antitrust problem, the DOJ is likely to pursue this issue until the DOJ prevails in court and secures a legally binding consent decree, or until Google and Yahoo each agree to a court-enforced consent decree agreeing not to collude going forward. It is naïve to think that if the companies simply walk away from the agreement they can walk away from their antitrust liability.

Bio for:

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President, Precursor® LLC

- Scott Cleland is one of nation's foremost techcom analysts and experts *at the nexus of*: capital markets, public policy and techcom industry change. He is widely-respected in industry, government, media and capital markets as a forward thinker, free market proponent, and leading authority on the future of communications. Precursor LLC is an industry research and consulting firm, specializing in the techcom sector, whose mission is to help companies anticipate change for competitive advantage. He previously founded The Precursor Group Inc., which *Institutional Investor* magazine ranked as the #1 "Best Independent" research firm in communications for two years in a row. He is also Chairman of Netcompetition.org, a wholly-owned subsidiary of Precursor LLC and an e-forum on Net Neutrality funded by broadband telecom, cable, and wireless companies.

- Cleland has a high-profile track record of foreseeing big change before others. He coined the term "techcom" to define how information technology drives the communications future and to best name the new sector that converging communications technologies are creating. *Fortune* profiled Cleland as the first to call "WorldCom: Dead Model Walking" and to predict its bankruptcy. Then WorldCom CEO Bernie Ebbers tried to discredit Cleland's prescient and hard-hitting research on WorldCom by deriding him the "idiot Washington analyst." Cleland has testified before seven different Congressional subcommittees on a variety of forward-looking topics and was the first congressional expert witness asked to testify on what went wrong with Enron.

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