

# WebMemo



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## Google, Antitrust, and Not Being Evil

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Google—incorporated 13 years ago by college students Larry Page and Sergey Brin—is an American success story. Armed with little more but a graduate thesis and a few algorithms, the firm remade the Internet, providing individuals the world over with unimaginably easy access to information of all kinds. In the process, Page and Brin’s company would become one of the world’s largest, with \$30 billion in annual revenue and over 28,000 jobs created.

The company has been one of the few bright spots in an otherwise dismal economy the past few years, continuing to grow—and to create jobs—throughout the downturn. With joblessness at nearly 10 percent, one would think this would be cause for celebration by policymakers. But instead, Google’s success has made it a target for antitrust actions to restrict its activities. Such restrictions would be unnecessary and harmful.

**Google Grilled.** Late last month, Google’s executive chairman, Eric Schmidt, was grilled before a Senate committee on allegations that Google “cooked” the results of its searches. It made for good political theater. But Google faces more than political grandstanding—the Federal Trade Commission has also launched an investigation into Google’s business practices.

This is not a situation that Google ever expected to find itself in. From its inception, the firm has touted itself as a corporate white hat, even adopting as its motto “Don’t Be Evil.”

At the same time, Google had no reservations about calling for regulation of other firms that it

perceived to have undue market power. In 2009, for instance, it actively supported the European Union’s antitrust prosecution of Microsoft. In addition, it was long a leader in the misguided effort to impose so-called “net neutrality” regulation on Internet service providers such as Comcast and Verizon.<sup>1</sup>

**Searching for Discrimination.** Google and other proponents of such a rule<sup>2</sup> argued that Internet service providers could unfairly discriminate against users of their networks to their own advantage. Now, in an ironic twist, the same argument is being leveled against Google.

Specifically, critics of Google claim that the firm has illegally undercut its rivals’ offerings by systematically biasing its search results, giving Google’s own services better placement. At the recent Senate hearing, for instance, Jeremy Stoppelman of Yelp.com, which provides consumer reviews of local businesses, testified that Google systematically displays links to its own similar service ahead of listings for Yelp. Similar allegations have been made by others who compete with Google-owned services, such as MapQuest and TripAdvisor.com.

No one disputes that bias in search results is possible. Google’s algorithms—the mathematical formulas by which Google ranks search results—is, understandably, a closely held secret. Those for-

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mulas could presumably be skewed to artificially promote or demote particular Web sites in search results.

But it is against Google's own interest to do that. Its search service is valuable to Web users because it is seen as a trusted provider of the most useful information, a service that will get them what they want, not what Google wants. It would lose that consumer trust if it skewed those results, and customers would flock to competing search sites.

**Leveraging Market Power.** A second complaint against Google made by Yelp and other rivals is that Google is leveraging its "market power" in Web searching to acquire content for its own ventures. For example, Stoppelman claims that Google takes snippets from reviews of local businesses that appear on Yelp and displays them on the search pages for a similar service run by Google. Stoppelman claims that when Yelp objected to the practice (known as "scraping"), it was told its content could be removed from the page only if it was removed from the "merged results"<sup>3</sup> as well.

But as long as the content at issue is not protected under intellectual property laws, there is nothing wrong with Google's "scraping."<sup>4</sup> In any case, Google's insistence that content providers not be allowed to choose where they are linked and where they are not is reasonable. Accommodating the preferences of countless content providers could be an administrative nightmare that actually decreases benefits to Web users. Importantly, this does not leave Google unconstrained: Ultimately, if Google's

search choices do not provide consumers with what they want, competing search engines would be only too happy to take up the slack.

**Real Competition.** And, despite Google's leading place in the market, it certainly does have competitors. About 65 percent of Web searchers use Google, with a healthy 16 percent going to Yahoo!, followed closely by Microsoft's Bing at 15 percent.

Even at a higher market share, competition in this market would be considerable. The cost to a consumer of switching search engines is virtually nil. All one needs to do is type a name and click.

As a result, no firm is immune from competitive pressures. Just ask Yahoo!, which in 1998 was declared the "winner" of the search engine wars<sup>5</sup> only to fall back in subsequent years.

Competing with Google, of course, is a formidable task. The company is consistently in the forefront of innovation, providing customers with new features and functions even before Web users know they need it. But serving consumers well is hardly unfair competition. It is not a marketplace failure but a success.

**Google Competitors: Don't Be Evil.** It is ironic that Google, which for so long helped lead the effort to regulate other Internet firms, is now defending itself against similar efforts by others. It is an inconsistency that is far too common in Washington. But that inconsistency does not justify the current attacks on Google or lessen the harm to consumers and the economy if the firm is regulated.

1. See James Gattuso, "A Google-Verizon Truce on Internet Regulation?," *The Foundry*, August 5, 2010, at <http://blog.heritage.org/2010/08/05/a-google-verizon-truce-on-internet-regulation/>.
2. The Federal Communications Commission adopted such a net neutrality, or "open Internet," rule in December 2010, and it was published in the *Federal Register* last month. The rule is now being challenged in court, where its future is uncertain. See James Gattuso, "Net Neutrality and the Courts: The FCC's Shaky Legal Case for Internet Regulation," *Heritage Foundation Commentary*, February 20, 2011, at <http://www.heritage.org/research/commentary/2011/02/net-neutrality-and-the-courts-the-fccs-shaky-legal-case-for-internet-regulation>.
3. Google's "merged results" combines search results from different search categories (such as images, videos, and reviews) and displays them together in response to a search request.
4. Yelp argues separately that Google violated copyright restrictions. This claim is distinct from the competition law issues addressed here.
5. Randall E. Stross, "How Yahoo! Won the Search Wars," *CNNMoney*, March 2, 1998, at [http://money.cnn.com/magazines/fortune/fortune\\_archive/1998/03/02/238576/index.htm](http://money.cnn.com/magazines/fortune/fortune_archive/1998/03/02/238576/index.htm) (October 12, 2011).

The message to policymakers—and to other Internet firms tempted to jump on the pro-regulatory bandwagon for competitive advantage—should be “don’t be evil” and let the marketplace work.

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