STATEMENT OF COMMISSIONER MAUREEN K. OHLHAUSEN
In the Matter of Google Inc.
FTC File No. 111-0163

I voted to close the investigation in this matter, and as I discuss below, I would have done so without imposing any remedy, no matter the form. However, let me first commend the Commission staff for doing a remarkable job in investigating the many issues that have been raised during the course of this investigation. The staff's laudable work has demonstrated obvious expertise and a deep understanding of the markets implicated here and allows me to make a fully informed decision in this matter.

My fellow Commissioners are correct to conclude that Google has not violated Section 5 of the FTC Act through allegedly preferencing its own properties over those of its competitors in displaying Internet search results. I thus joined the Commission statement addressing that part of the investigation.

Technology industries are notoriously fast-paced, particularly industries involving the Internet. Poor or misguided antitrust enforcement action in such industries can have detrimental and long-lasting effects. This agency has undertaken significant efforts to develop and maintain a nuanced understanding of the technology sector and to incorporate an awareness of the rapidly evolving business environment into its decisions. The decision to close the search preferencing part of this investigation, in my view, is evidence that this agency understands the need to tread carefully in the Internet space.[1]

I further would have closed, without pursuing any type of remedy, those portions of the investigation involving the alleged misappropriation of competitors' content by Google and the terms and conditions related to Google's AdWords application programming interface ("API"). Based on the evidence gathered in this investigation, I saw no factual or legal basis for pursuing either a Sherman Act Section 2 or a standalone FTC Act Section 5 claim premised on the so-called scraping conduct or the API terms and conditions.[2] In particular, there is no viable theory of harm under either statute for bringing a case in these two areas.

I am not aware of any evidence that the alleged scraping resulted in either a decline in traffic from Google to the parties complaining about the scraping or any reduction in innovation

---

[1] I also agree with the Commission's decision to close the investigation into, and ultimately not to pursue any type of remedy with respect to, Google's allegedly exclusive arrangements in the search syndication and mobile search areas. In neither area did the investigation reveal evidence that Google was coercing its partners into restrictive arrangements; rather, the evidence showed that virtually none of Google's partners are seeking to switch any of their business to non-Google providers. Simply put, I was not presented with any evidence to indicate that these arrangements were anything other than procompetitive.

[2] I, like Commissioners Ramirez and Rosch, object to the form of the scraping and API remedies obtained in this matter.

by existing or potential rivals of Google. In fact, some of the complainants in this matter demonstrated significant growth both during and after the alleged scraping took place. Further, the investigation revealed that most websites appear to approve of Google's use of their content in Google's vertical properties because it leads to increased traffic to their sites. Moreover, the likelihood of possible future harm to competition or consumers from such conduct appears highly remote, particularly given the enormous growth of the use of apps to access rivals' sites or services directly.

The investigation further revealed a lack of evidence that Google's API[3] terms and conditions have harmed competition or consumers in any way. Notably, those terms and conditions do not increase costs for rival search platforms. Nor is there any compelling evidence that advertisers are providing their business to Google rather than other search engines due to Google's API policies. What we are left with is a failure by Google to lower its rivals' costs by maintaining its API terms and conditions, which it has had in place since the introduction of the API in 2005, when Google could not have been considered a monopolist under any measure. A failure to lower rivals' costs should not amount to either a Section 2 or a Section 5 violation. I am thus concerned that forcing Google to adopt the API remedy here will adversely impact other firms' incentives to innovate and to develop beneficial products such as the API at issue in the first instance if they are forced to share these improvements with rivals.

The Commission has testified to Congress that, "[o]f course, in using our Section 5 authority the Commission will focus on bringing cases where there is clear harm to the competitive process and to consumers."[4] If our cases – particularly our standalone Section 5 cases – are not anchored to competitive and ultimately consumer harm, then they are completely adrift. I am hopeful that the Commission will maintain its focus on competitive and consumer harm as it moves beyond this matter.

---

[3] APIs allow advertisers (either directly or via ad agencies) to operate and optimize their online advertising campaigns, which involve, for example, keywords, keyword groupings, and bid parameters (provided by the advertiser) and ad placement, clicks, and costs per keyword (provided by the search engine).

[4] *How the Federal Trade Commission Works to Promote Competition and Benefit Consumers in a Dynamic Economy: Hearing Before the Subcomm. on Antitrust, Competition Policy and Consumer Rights of the S. Comm. on the Judiciary*, 111th Cong. 11-12 (2010) (statement of the Federal Trade Commission).