Google emerges from FTC probe relatively unscathed

MICHAEL LIEDTKE - AP Technology Writer - Associated Press

Google has settled a U.S. government probe into its business practices without making any major concessions on how the company runs its Internet search engine, the world's most influential gateway to digital information and commerce.

Thursday's agreement with the Federal Trade Commission covers only some of the issues raised in a wide-ranging antitrust investigation that could have culminated in a regulatory crackdown that re-shapes Internet search, advertising and mobile computing.

But the FTC didn't find any reason to impose radical changes, to the relief of Google and technology trade groups worried about overzealous regulation discouraging future innovation. The resolution disappointed consumer rights groups and Google rivals such as Microsoft Corp., which had lodged complaints with regulators in hopes of legal action that would split up or at least hobble the Internet's most powerful company.

Google is still trying to settle a similar antitrust probe in Europe. A resolution to that case is expected to come within the next few weeks.

After a 19-month investigation, Google Inc. placated the FTC by agreeing to a consent decree that will require the company to charge "fair, reasonable and non-discriminatory" prices to license hundreds of patents deemed essential to the operations of mobile phones, tablet computers, laptops and video game players.

The requirement is meant to ensure that Google doesn't use patents acquired in last year's $12.4 billion purchase of Motorola Mobility to thwart competition from mobile devices running on software other than Google's Android system. The products vying against Android include Apple Inc.'s iPhone and iPad, Research in Motion Ltd.'s BlackBerry and Microsoft's Windows software.

Google also promised to exclude, upon request, snippets copied from other websites in capsules of key information shown in response to search requests. The company had insisted the practice is legal under the fair-use provisions of U.S. copyright law. Nonetheless, even before the settlement, Google already had scaled back on the amount of cribbing, or "scraping," of online content after business review site Yelp Inc. lodged one of the complaints that triggered the FTC investigation in 2011.

In another concession, Google pledged to adjust the online advertising system that generates most of its revenue so marketing campaigns can be more easily managed on rival networks.

Google, though, prevailed in the pivotal part of the investigation, which delved into complaints that the Internet search leader has been highlighting its own services on its influential results page while burying links to competing sites. For instance, requests for directions may turn up Google Maps first, queries for video might point to the company's own site, YouTube, and searches for merchandise might route users to Google Shopping.

Although the FTC said it uncovered some obvious instances of bias in Google's results during the investigation, the agency's five commissioners unanimously concluded there wasn't enough evidence to take legal action.

"Undoubtedly, Google took aggressive actions to gain advantage over rival search providers," said Beth Wilkinson, a former federal prosecutor that the FTC hired to help steer the investigation. "However, the FTC's mission is to protect competition, and not individual competitors."

Two consumer rights groups lashed out at the FTC for letting Google off too easily.

"The FTC had a long list of grievances against Google to choose from when deciding if they unfairly used their dominance to crush their competitors, yet they failed to use their authority for the betterment of the marketplace," said Steve Pociask, president of the American Consumer Institute.

John Simpson of frequent Google critic Consumer Watchdog asserted: "The FTC rolled over for Google."

David Wales, who was the FTC's antitrust enforcement chief in 2008 and early 2009, said the agency had to balance its desire to prevent a powerful company from trampling the competition against the difficulty of proving wrongdoing in a rapidly changing Internet search market.

"This is a product of the FTC wanting to push the envelope of antitrust enforcement without risking the danger of losing a case in in court," said Wales, who wasn't involved with the case and is now a partner at the law firm Jones Day.

FTC Chairman Jon Leibowitz said the outcome "is good for consumers, it is good for competition, it is good for innovation and it is the right thing to do." Before reaching its conclusion, the FTC reviewed more than 9 million pages of documents submitted by Google and its rivals and grilled top Internet industry executives during sworn depositions.

The Computer & Communications Industry Association, a technology trade group, applauded the FTC for its handling of the high-profile case.

"This was a prudent decision by the FTC that shows that antitrust enforcement, in the hands of responsible regulators, is sufficiently adaptable to the realities of the Internet age," said Ed Black, the group's president.

The FTC has previously been criticized for not doing more to curb Google's power. Most notably, the FTC signed off on Google's $3.2 billion purchase of online advertising service DoubleClick in 2008 and its $681 million acquisition of mobile ad service AdMob in 2010. Google critics contend those deals gave the company too much control over the pricing of digital ads, which account for the bulk of Google's revenue.

If Google breaks any part of the agreement, Leibowitz said the FTC can fine the company up to $16,000 per violation. Last year, the FTC determined that Google broke an agreement governing Internet privacy, resulting in a $22.5 million fine, though the company didn't acknowledge any wrongdoing.

Google's ability to protect its search recipe from government-imposed changes represents a major victory for a company that has always tried to portray itself as force for good. The Mountain View, Calif., company has portrayed its dominant search engine as a free service that is constantly tweaking its formula so that people get the information they desire more quickly and concisely.

"The conclusion is clear: Google's services are good for users and good for competition," David Drummond, Google's top lawyer, wrote in a Thursday blog post.

Google's tactics also have been extremely lucrative. Although Google has branched into smartphones and many other fields since its founding in a Silicon Valley garage in 1998, Internet search and advertising remains its financial backbone. The intertwined services still generate more than 90 percent of Google's revenue, which now exceeds $50 billion annually.

Throughout the FTC investigation, Google executives also sought to debunk the notion that the company's recommendations are the final word on the Internet. They pointed out that consumers easily could go to Microsoft's Bing, Yahoo or other services to search for information. "Competition is just a click away," became as much of a Google mantra as the company's official motto: "Don't be evil."

Microsoft cast the FTC's investigation as a missed opportunity.

"The FTC's overall resolution of this matter is weak and — frankly —unusual," Dave Heiner, Microsoft's deputy general counsel, wrote on the company's blog. "We are concerned that the FTC may not have obtained adequate relief even on the few subjects that Google has agreed to address."

FairSearch, a group whose membership includes Microsoft, called the FTC's settlement "disappointing and premature," given that European regulators might be able to force Google to make more extensive changes.

"The FTC's inaction on the core question of search bias will only embolden Google to act more aggressively to misuse its monopoly power to harm other innovators," FairSearch asserted.

Yelp also criticized the FTC's handling of the case, calling "it a missed opportunity to

protect innovation in the Internet economy, and the consumers and businesses that rely upon it."

Investors had already been anticipating Google would emerge from the inquiry relatively unscathed.

Google's stock rose 42 cents Thursday to close at $723.67. Microsoft, which is based in Redmond, Wash., shed 37 cents, or 1.3 percent, to finish at $27.25.

In a research note Thursday, Macquarie Securities analyst Benjamin Schachter described the settlement as "the best possible outcome" for Google. "We believe that the terms of the agreement will have very limited negative financial or strategic implications for the company." Schachter wrote.

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AP Technology Writer Barbara Ortutay in New York contributed to this story.

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