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Google/DoubleClick
FTC File No. 071-0170

I join the Commission statement but write separately to note both the serious vertical competition issues raised by Google's proposed acquisition of DoubleClick as well as the substantial privacy issues that, though in part brought to light by the deal, clearly transcend it. Ultimately, reasonable people – and Commissioners – may disagree about whether to approve this merger, but most everyone should agree that consumer privacy needs to be better protected in the online behavioral marketing arena.

First, the majority's view of this transaction – that it does not threaten to substantially lessen competition – is based on a number of factual and legal determinations, some easy and some quite difficult. In particular, the merger presents complex questions about whether it facilitates potentially anticompetitive vertical behavior by Google. It is well known that Google is the dominant search engine today. But Google is also the leading firm in the ad intermediation market.[1] Further, the DoubleClick publisher's tool that Google is acquiring as part of this transaction is the largest competitor in the market for publisher's side ad serving. That product, DART for Publishers, is used by many of the foremost publishers on the web today to, among other things, help choose which ads will go on their websites. A number of

[1] Of course, as the majority statement notes, that market is highly competitive and Google's share in that market is low relative both to its share of search and to DoubleClick's DART for Publishers' share of its market.

[2] One common complaint from less well-versed opponents of this deal is that it would make Google such a formidable competitor that all the other firms in the industry would be unable to compete, which, of course, is not generally a valid reason to block a merger under our antitrust laws.

Agreement with the proposed basic behavioral advertising principles should be beyond dispute: (1) transparency and consumer control over tracking and targeting; (2) reasonable data security and limited data retention; (3) affirmative consent for material changes to existing privacy policies; and (4) affirmative consent to use certain sensitive data for ad targeting. But even the best principles will be empty promises unless coupled with effective implementation: Will industry be willing and able to develop short, conspicuous, and intelligible notices so that consumers can make informed choices about online tracking and targeted advertising? Will

browsed a website (without providing any personal information) and, later that day, received a text message from that company on her mobile telephone. Yet despite a roomful of industry experts and marketers – apparently including a representative of the website in question (the website was not identified at the Town Hall) – there was no resolution as to how this "coincidence" could have occurred.

[4] Consumers often let inertia guide them and accept a "default" option. For instance, participation rates in 401(k) plans rise sharply when the default choice for the employee is switched to an opt-out from an opt-in. Eduardo Porter, *Choice is Good. Yes, No or Maybe?,* N.Y. Times, Mar. 27, 2005.