## Statement of the Federal Trade Commission In the Matter of Google Inc.

FTC File No. 121-0120 January 3, 2013

The Federal Trade Commission has today voted to issue for public comment a Complaint and Order against Google Inc. ("Google") designed to remedy Google's allegedly anticompetitive conduct resulting from breaches by Google and its subsidiary Motorola Mobility, Inc. ("Motorola") of Motorola's commitments to license standard-essential patents ("SEPs") on terms that are fair, reasonable and non-discriminatory ("FRAND"). The Complaint alleges that, before its acquisition by Google, Motorola reneged on a licensing commitment made to several standard-setting bodies to license its standard-essential patents relating to smartphones, tablet computers, and video game systems on FRAND terms by seeking injunctions against willing licensees of those SEPs. This conduct tended to impair competition in the market for these important electronic devices – products that over for the resolution of SEP licensing disputes across many industries, and reduce the costly and inefficient need for companies to amass patents for purely defensive purposes in industries where standard-compliant products are the norm.

The Commission has a long history of using its enforcement authority to safeguard the integrity of the standard-setting process.

<sup>3</sup> Standard setting can deliver substantial benefits to American consumers, promoting innovation, competition, and consumer choice. But standard setting often supplants the competitive process with the collective decision-making of competitors, requiring that we be vigilant in protecting the integrity of the standard-setting

<sup>&</sup>lt;sup>1</sup> The licensing obligation in this matter was a FRAND obligation, although RAND (reasonable and non-discriminatory) licensing obligations raise similar issues.

<sup>&</sup>lt;sup>2</sup> Commissioners Rosch and Ohlhausen do not join this Statement (with Commissioner OhDkt. No. 9302, 2006 FTC LEXIS 101 (Aug. F.T.C., 522 F.3d 456 (D.C. Cir. 2008); In re Negotiated Data Solutions LLC, FTC F Order (Jan. 23, 2008), available at http://www.ftc.gov/os/caselist/0510094/080122d

process.<sup>4</sup> Today's Commission action helps ensure consumers will continue to see the benefits of competition and innovation in important technology markets.

We previously explained in the Commission's unanimous filings before the United States International Trade Commission in June 2012 that the threat of injunctive relief "in matters involving RAND-encumbered SEPs, where infringement is based on implementation of standardized technology, has the potential to cause substantial harm to U.S. competition, consumers and innovation." The threat of an injunction allows a SEP holder to demand and realize royalty payments reflecting the investments firms make to develop and implement the standard, rather than the economic value of the technology itself. In addition to harming incentives for the development of standard-compliant products, the threat of an injunction can also lead to excessive royalties that may be passed along to consumers in the form of higher prices. Alternatively, an injunction or exclusion order could ban the sale of important consumer products entirely. This type of "patent ambush" harms competition and consumers and is rightly condemned by the Commission.

We take this action pursuant to the Commission's authority under Section 5 to prohibit unfair methods of competition, which both Congress and the Supreme Court have expressly deemed to extend beyond the Sherman Act. <sup>8</sup> A stand-alone Section 5 unfch both Congr

we note that our action is plainly consistent with several principles identified by Commissioner Rosch as justifying Commission action under Section  $5.^{11}$ 

right to seek injunctive relief when it made the FRAND commitments at issue in this case. <sup>15</sup> We do not believe that imposing Section 5 liability where a SEP holder violates its FRAND commitments offends the First Amendment because doing so in such circumstances "simply requires those making promises to keep them."

<sup>&</sup>lt;sup>15</sup> See, e.g., Powertech Technol