

**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”).<sup>1</sup> 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.<sup>2</sup> This conduct tended to impair competition in the market for these important electronic devices – products that over

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."<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>11</sup>

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>16</sup>

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<sup>15</sup> See, e.g., *Powertech Technol*