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FEDERAL TRADE COMMISSION

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Google/DoubleClick

FTC File No. 071-0170

The Federal Trade Commission has voted 4-1[1] to close its investigation of Google's proposed acquisition of DoubleClick after a thorough examination of the evidence bearing on the transaction.

The Commission dedicated extensive resources to this investigation because of the importance of the Inte1net and the role advertising has come to play in the development and maintenance of this rapidly evolving medium of communication.[2] Online advertising fuels the diversity and wealth of free information available on the Inte1net today. Our investigation focused on the impact of this transaction on competition in the online advertising marketplace.

The investigation was conducted pursuant to the Commission's statutory authority under the Clayton Act to review mergers and acquisitions. If this investigation had given the Commission reason to believe that the transaction was likely to harm competition and injure consumers, the Commission could have filed a federal court action seeking to enjoin the transaction under Section13(b) of the Federal Trade Commission Act ("FTC Act") and Section 15 of the Clayton Act. The standard used by the Commission to review mergers and acquisitions is set forth in Section 7 of the Clayton Act. That statute prohibits acquisitions or mergers, the effect of which "may be substantially to lessen competition, or to tend to create a monopoly." The Commission can apply Section 7 (as well as Section 1 of the Sherman Act and Section 5 of the FTC Act) to challenge transactions that threaten to create, enhance, or facilitate the exercise of market power. As the Department of Justice and Federal Trade Commission Horizontal Merger Guidelines explain,[3] transactions that generate market power harm consumers by providing sellers an ability to maintain prices above competitive levels for a significant period of

[1]Chairman Majoras and Commissioners Leibowitz, Kovacic and Rosch have voted to close the investigation and join in this statement of the Commission.

[2]In the nearly eight months since the investigation was opened, the Bureau of Competition staff has conducted a comprehensive investigation that involved over 100 inte16news, and a re6new of more than 2 million pages of documents produced by the parties, as well as thousands of documents obtained by subpoena from third parties. The investigation also involved close coordination with foreign competition agencies, including those from Australia, Canada, and the European Union.

[3]Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, § 0.1.

time.[4] In addition, the exercise of market power may harm consumers when it results in diminished quality, selection, or service.

At the outset, we note that some have urged the Commission to oppose Google's proposed acquisition of DoubleClick based on the theory that the combination of their respective data sets of consumer information could be exploited in a way that threatens consumers' privacy. Of course, the consumer privacy issues presented by "behavioral advertising"[5] are not unique to Google and DoubleClick. To the contrary, these issues extend to the entire online advertising marketplace.

We take these consumer privacy issues very seriously. The Commission and its Bureau of Consumer Protection and Bureau of Economics staff have investigated and considered behavioral advertising issues for more than a decade. This work continues in earnest. Commission staff regularly investigates a wide range of practices that appear to impinge unlawfully upon consumer privacy. Further, in the past year, the Commission staff examined behavioral advertising with numerous consumer representatives, industry members, academics, technologists, and others to gain a better understanding of current and anticipated online advertising models. Additionally, we held two public forums addressing the issues: in November 2006, we held hearings over several days on "Protecting Consumers in the Next Techade," and last month, we convened a Town Hall Meeting on the issues raised by behavioral advertising. In the wake of that meeting, Commission staff has today released a set of principles that could serve as a model for industry-wide, self-regulatory standards governing online behavioral advertising. We urge privacy advocates, law enforcement agencies, advertisers, publishers, online advertising agencies, and all interested parties to study these proposed principles, comment on them, and respond to staff's requests for additional information.

This is not the first time that the Commission has been asked to block a merger, notwithstanding that the transaction is not likely to create, enhance, or facilitate market power in violation of the antitrust statutes we enforce. The Commission has been asked before to intervene in transactions for reasons unrelated to antitrust concerns, such as concerns about environmental quality or impact on employees. Although such issues may present important policy questions for the Nation, the sole purpose of federal antitrust review of mergers and acquisitions is to identify and remedy transactions that harm competition. Not only does the Commission lack legal authority to require conditions to this merger that do not relate to antitrust, regulating the privacy requirements of just one company could itself pose a serious detriment to competition in this vast and rapidly evolving industry. That said, we investigated the possibility that this transaction could adversely affect non-price attributes of competition,

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[4] *Id.*

[5] Commission staff has applied a broad definition of "behavioral advertising" that includes the tracking of a consumer's activities online – such as the search terms used, the web pages visited and the content viewed – for the purpose of delivering advertising targeted to the individual consumer's interests.

such as consumer privacy. We have concluded that the evidence does not support a conclusion that it would do so. We have therefore concluded that privacy considerations, as such, do not provide a basis to challenge this transaction.

I. Background

The Internet reaches billions of people around the world and serves as a virtual marketplace for products, information, and ideas. The Internet, and more importantly its audience, is also an increasingly attractive forum for advertisers. Advertising online allows advertisers to target their campaigns more precisely and effectively than advertising in other media. The growing revenues derived from sales of advertising space have driven the diversity and breadth of free information available on the Internet and thus benefit consumers.

A. The evidence in this case shows that advertisers buy online advertising space from both search engine providers, like Google, and content providers (referred to as publishers in the online advertising business). However, the evidence in this case shows that the advertising space sold by search engines is not a substitute for space sold directly or indirectly by publishers or vice versa. Or, to put it in terms of merger analysis, the evidence shows that the sale of search advertising does not operate as a significant constraint on the prices or quality of other online advertising sold directly or indirectly by publishers or vice versa.

Search engines allow users to find specific information on the Internet by typing a query into a search query box. In addition to providing the user with results, search engines serve advertisements that are keyed off the search terms typed in by the user. For example, the search results for "football" may also include advertisements for replica jerseys or a sporting goods store. Thus, search engines provide a unique opportunity for advertisers to reach potential customers.

Advertisers view online content providers differently. A user's visit to a particular content page may reveal some insight into that user's interests. However, users visiting a content page do not declare their interests in the same way they do when they type in a keyword on a search engine. As they do in other media, advertisers wishing to direct their advertising to customers based on their interests must decide where to place advertising after determining which websites are popular with the advertisers' target customers. For example, a manufacturer of hybrid vehicles may purchase advertising space on an online magazine's feature on climate change.

Google, through its AdWords business, is the dominant provider of sponsored search advertising, and most of its online advertising revenue is generated by the sale of advertising space on its search engine results pages. DoubleClick does not sell sponsored search advertising. In fact, it does not currently sell any form of advertising.

B. The sale of advertising space is publishers' primary source of revenue. The evidence shows that today large publishers use two channels to sell their inventory of available advertising space. The first channel is direct sales, with publishers using their own sales forces.

is no certainty that an ad will be placed within the desired time frame. Thus, it is difficult, if not impossible, to run precisely targeted ad campaigns through ad intermediation providers.

There are two types of ad intermediation products: ad networks and ad exchanges. Ad networks and ad exchanges are alike in that they both aggregate advertising inventory. Ad networks are intermediaries that aggregate or purchase advertising inventory from a group of websites and sell this inventory to advertisers or ad agencies, taking a share of the revenue from each sale. Ad exchanges differ in that they aggregate inventory by providing platforms for advertisers and publishers to list and bid for inventory. The evidence shows that the market in which ad networks and ad exchanges compete is relatively nascent, dynamic, and highly fragmented.

Google is an ad intermediary. The ad intermediation market in the United States was transformed recently by a series of acquisitions by established firms such as AOL, Microsoft, and Yahoo!. AOL, for example, recently acquired TACODA, a leading behavioral targeting network, and has announced its intention to acquire Quigo, a contextual ad network. Likewise, Yahoo! acquired the Right Media Exchange, the leading ad exchange, as well as BlueLithium, a behavioral targeting network. Microsoft acquired AdECN, an ad exchange, as well as the DRIVEpm ad network (through its acquisition of aQuantive), both of which complement Microsoft's existing adCenter network. The evidence shows that this evolving market is, at most, moderately concentrated.

C. Contextual advertising is a type of targeting technology used by certain ad intermediaries. Contextual ads are predominantly text ads that are delivered to a web page using technology that scans the text of a web page for key words and delivers ads to the page based on what the user is viewing. For example, a user reading a review of a recent movie on the local newspaper's website may be served with an advertisement placed by local theaters. Contextually targeted advertising is offered by intermediaries.

The evidence shows that, as with other ads placed through ad intermediaries, most advertisers do not consider contextually targeted ads sold through ad intermediaries to be substitutes for directly purchased display ads. Not only are these forms of advertising sold through different channels, but they serve distinct purposes. Search and contextual advertisements are generally used for direct response advertising, which is intended to elicit a response from a consumer, such as the purchase of a product or signing up for a service. The cost-per-click payment model typically used for these ads is tailored to the direct response nature of search and intermediated contextual ads. In contrast, directly purchased display ads are generally used for brand advertising. Brand advertising is advertising that increases awareness of, or reinforces the image associated with, a product or service, and advertisers are interested primarily in presenting the ad to consumers rather than having them act on it. As a result, the cost of the ad is most often dictated by the number of times the ad is served, or on a cost per thousand impressions basis, rather than the cost-per-click basis used for search ads. Thus, the prices and quality of contextual text ads are not constrained by ads sold directly by publishers to advertisers (and vice versa). However, the evidence shows that the prices and quality of contextual ads are constrained by other forms of display ads sold by ad intermediaries (and vice

To be sure, a third party ad server may be used to place advertisements that are sold indirectly through intermediaries. As discussed above, Google competes as an intermediary through its AdSense product. However, the evidence shows that even a significant increase in ad serving costs would be unlikely to cause an increase in the number of ads delivered through intermediaries, because the cost of serving a directly sold display ad is an insignificant percentage of the total cost of the ad. Moreover, even accounting for Google's AdSense product, Google is not so significant as an intermediary that it would likely recoup substantial additional revenue or profits if the diversion hypothesized were to occur. Indeed, the evidence shows that most publishers and advertisers would not increase their use of AdSense if Google raised the price of DFP and DFA following the acquisition. The evidence of their past behavior supports these positions. For all of these reasons, we have concluded that this transaction is not likely to cause competitive harm by eliminating significant current competition between Google and DoubleClick.[7]

B. Second, we assessed whether the evidence supported a challenge based on the theory that the transaction threatened to eliminate potential competition in any relevant market. We have concluded that it does not. Google had been attempting to develop a third party ad serving solution at the time of the transaction, and therefore is a potential future competitor of DoubleClick and other third party ad serving firms.[8] For the elimination of this potential competition to be a competitive concern, Google must be uniquely positioned to have a substantial competition-enhancing effect on the third party ad serving markets.

A pivotal consideration in any potential competition case is the current market dynamic. In this case, Google's entry is unlikely to have a significant procompetitive effect because the evidence shows that the third party ad serving markets are competitive despite relatively high levels of concentration in both markets. Although DoubleClick enjoys a significant share of today's third party ad serving markets, it does not appear that DoubleClick has market power in these markets. More specifically, prices and margins in the third party ad serving markets have eroded substantially over the past few years. The evidence shows that this decline in prices and

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[7]Because Google and DoubleClick do not presently compete in the same relevant market these two companies do not act as significant competitive restraints on one another. In practical terms, this means that the parties do not significantly affect each other's prices, nor non-price product attributes, such as consumer privacy protections or service quality.

[8]We also evaluated the elimination of potential competition in the ad intermediation market given that DoubleClick was developing an ad exchange product that would compete with Google's AdSense and other ad intermediation firms. The evidence did not suggest that the elimination of this potential competition was likely to harm competition in the ad intermediation market. The ad intermediation market today is highly fragmented and correspondingly competitive, and there is no evidence suggesting that DoubleClick is uniquely positioned to significantly enhance competition in this market. We therefore concluded that the elimination of DoubleClick as a potential competitor is not likely to have a meaningful impact on competition in the ad intermediation market.

margins is largely attributable to aggressive competition. Further, the evidence indicates that ad serving has become a commodity good, as competition from small third party ad serving competitors has forced larger competitors to slash prices. The recent acquisitions of existing third party ad servers by firms with significant financial resources are likely to increase further the competitiveness of this market.

In addition, there is no evidence that Google's developmental product is unique relative to existing third party ad servers, nor is the evidence clear that Google is certain to be successful in winning customers for these products. For these reasons, we have concluded that it is unlikely

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[9]The clear majority of third parties expressing such concerns were Google's current or potential competitors.

[10]Google's position in the search advertising market has led some to argue that it could leverage its power in that market to its advantage in other online advertising markets. For example, it was alleged that Google could bundle or tie its search advertising to other forms of

strategy cannot be effective, and thus anticompetitive, unless the merged firm has market power in one of the complementary products. As discussed above, the evidence suggests that DoubleClick does not have market power despite its high market share. The third party ad serving markets are competitive and are likely to become even more so in the future.

It has been suggested that DoubleClick's customers would face high switching costs if they decided to adopt a different ad server post-transaction. That might be so for the very largest online publishers and advertisers, particularly because many have chosen to customize their ad serving platforms. The evidence shows that those large firms can exercise counter measures, including the development or acquisition of alternative ad serving products and the securing of favorable contractual terms. The evidence also shows that firms can and do switch ad serving firms when it is in their self-interest to do so. For instance, the evidence suggests that some customers that do not wish to do business with Google have already switched away from DFP to

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online advertising in an attempt to force advertisers to buy advertising space from Google. However, there is no evidence that the acquisition of DoubleClick would enhance Google's ability to engage in those strategies. In other words, Google could engage in these strategies today independently of DoubleClick and there is no evidence that this transaction changes that dynamic.

[11]These preferences and offerings may well change as firms address consumers' evolving privacy expectations. For instance, Ask.com recently launched AskEraser, a tool that allows users to delete completely future search queries and associated cookie information. *See* Ask.com Puts You in Control of Your Search Privacy With the Launch of 'AskEraser' (Dec. 11 2007), *a ailable a*

the fashion hypothesized could be severe. If any manipulation were discovered, the impartiality search engines, and will have access to consumer information from their internal ad servers, ad intermediation services, other web properties, and software. The entry and expansion of these well-financed competitors has transformed the ad intermediation marketplace over the last six months. All of these firms are vertically integrated, and all appear to be well-positioned to compete vigorously against Google in this new marketplace.

The markets within the online advertising space continue to quickly evolve, and predicting their future course is not a simple task. Accounting for the dynamic nature of an industry requires solid grounding in facts and the careful application of tested antitrust analysis. Because the evidence did not support the theories of potential competitive harm, there was no basis on which to seek to impose conditions on this merger. We want to be clear, however, that we will closely watch these markets and, should Google engage in unlawful tying or other anticompetitive conduct, the Commission intends to act quickly.