



# *United States & Co-Plaintiff States v. Google LLC*

Plaintiffs' Closing Statement

**REDACTED FOR PUBLIC FILING**

Redacted

# Power

**REDACTED FOR PUBLIC FILING**

# Privacy

**REDACTED FOR PUBLIC FILING**



# Google Rejected Incognito Search



**Dr. Prabhakar  
Raghavan**  
*SVP, Knowledge &  
Information Products*



- Q.** ...[A]nd that proposal, had it been enacted, would have offered users an option for searching where Google would anonymize the user's data and never log it, right?
- A.** Correct.
- Q.** And Google never adopted that proposal, correct?
- A.** Correct.
- Q.** And one of the concerns was if Google adopted that proposal, users would pick it and Google would lose billions of dollars in revenue, correct?
- A.** That was only one of the concerns, yes.

*Tr. Testimony*

**REDACTED FOR PUBLIC FILING**



# Decisions Without Competitive Pressure

 2019

Message

From: Prabhakar Raghavan (prabhakar@google.com)  
 Sent: 6/21/2019 12:51:52 AM  
 To: Benedict Gomes (benedict@google.com)  
 CC: Cory Ondrejka (cory.ondrejka@google.com); Jen Fitzpatrick (jen.fitzpatrick@google.com)  
 Subject: Re: consumer council follow up ahead of notes

(dropping Nick)

Ben - I don't think that simply repackaging the content and telling us to not talk past each other is a good use of time, or will materially change the outcome. Let me try again.

- I agree that there's something worth exploring in this space of private search. But the working teams have to do **MUCH** more careful work before wasting our valuable time.
- I want to see evidence that there's a real impact on Google users, attributable to this factor.
- I disagree that this is "has to be gut". I even gave a clear example of a closely related question that we didn't resolve with "just gut". I'd have at least expected some curiosity of the form "Oh really, how?" A company at our scale and with our resources can't be run on gut when we have data available.
- I disagree with a methodology that consists of conflating "people care increasingly about privacy, DDG is making a lot noise about it, Sundar mentioned it in I/O" (all true statements) then concluding that this needs a product change.
- If the data supported it, I'd have expected the team to consult with Policy, Comms, Privacy and Revenue, before arriving at any product proposal. I recognize they're trying to move fast, but surely not at the expense of quality work?
- I was dismayed that we conducted 58 minutes of yesterday's meeting on "gut" then - the one place we had a real model (revenue) the reaction was "I don't believe it" (without seeing the analysis) and "I instead happen to think it's \$X" (i.e., the people who do incredibly precise revenue analysis week after week are surely wrong).

Net - I do want us to consider this topic again, but we have to go through the diligence suggested in Cory's and my emails.

On Thu, Jun 20, 2019 at 4:45 PM Benedict Gomes (benedict@google.com) wrote:  
 In thinking about yesterday's conversation, I think we ended up talking past each other. I think there were two points of confusion:

- I think the original goal of the meeting was to look at DDG's privacy and what we could do in that context. So the framing was very DDG focussed (that was actually the explicit topic, I believe). I don't think anyone feels like we should strongly frame our external positioning w.r.t. DDG, but the meeting and our conversation ended up skewing in that direction.
- I also think that there were many things explored and we were talking about different things in terms of product and money. What I personally had in mind was fairly modest and I think we need to come back with a more focussed version that has the right ad numbers for that proposal.

Overall, I think we mostly agree the privacy sensitive search spot is an important positioning point that is a potential threat (whether it is DDG, Qwant or something else) that we need to think about in the context of our environment and what we should do from both a product and marketing perspective.

Could we redo a part of that meeting with the more modest proposal and then see if we have the same AIs?

ben

ben

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GOOG-DOJ-02706520



“I disagree with a methodology that consists of conflating ‘people care increasingly about privacy’ . . . then concluding that this needs a product change.”

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# “Google Does Not Respect Your Privacy”

Apple 2019

Redacted

Redacted the implication of recommending DuckDuckGo when customers choose private browsing is that Google does not respect your privacy, which while true would certainly be a public slap in the face. Redacted

Redacted

## Apple's Take

“[T]he implication of recommending DuckDuckGo when customers choose private browsing is that **Google does not respect your privacy**, which while true would certainly be a public slap in the face.”

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# Monopoly Maintenance

**REDACTED FOR PUBLIC FILING**

# What Google Did...

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## Google Has Monopoly Power In The U.S. General Search Services Market

**A.** Google Has Monopoly Power In General Search

**B.** General Search Is A Relevant Market

**REDACTED FOR PUBLIC FILING**

# Monopoly Power: Direct Evidence

**REDACTED FOR PUBLIC FILING**



# Rivals Not Considered

“[T]he company set the price of Windows without considering rivals’ prices, . . . something a firm without a monopoly would have been unable to do.”

*United States v. Microsoft*, 253 F.3d 34,  
57–58 (D.C. Cir. 2001)

**“In analyzing potential changes to its Search product, Google considers the needs of users.** Google recognizes that it exists in a competitive landscape and if it does not satisfy users’ information needs, users will access information from myriad other search providers (general or otherwise). **Google does not, however, consider whether users will go to other specific search providers (general or otherwise) if it introduces a change to its Search product.”**

UPX6019 at -365–66  
(written 30(b)(6) response).

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# Headroom Shows Monopoly Power



**Prof. Kevin  
Murphy**

*Google Expert  
Prof. of Economics,  
Univ. of Chicago*

**A.** . . . So the idea that we can infer they had a precise estimate, I think is incorrect, because the deals they were doing weren't conditional on that number being exactly right or even close to right, right? In other words, **there's a lot of headroom between those numbers and what the deal they were doing.** . . .

*Tr. Testimony*

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# Users Lack Alternatives



“In other words, 1 IS point = [Redacted] of Search revenue ex-TAC (Traffic Acquisition Cost).”

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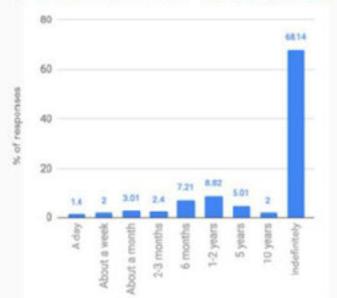


# Users Preferences Ignored

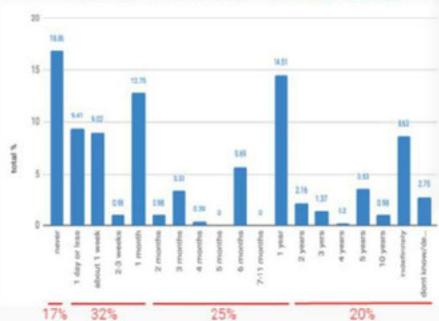
G 2019

Message  
From: Stephanie Friedman Rodadod

How long do you think Google stores this data?  
70% indefinite 30% finite



How long do you want Google to store this data?  
10% indefinite 90% finite



“How long do you want Google to store this data?”

Never: 17%

1 day to 1 month: 32%

2 months to 1 year: 25%



Jennifer Fitzpatrick  
SVP, Core System & Experiences



A. . . . And 18 months was greater than one year and kind of a round number. We played with 13 months, but it just felt like a really weird number. **18 months just felt a little -- you know, it felt a little better. And, so, that became the default . . . .**

Tr. Testimony

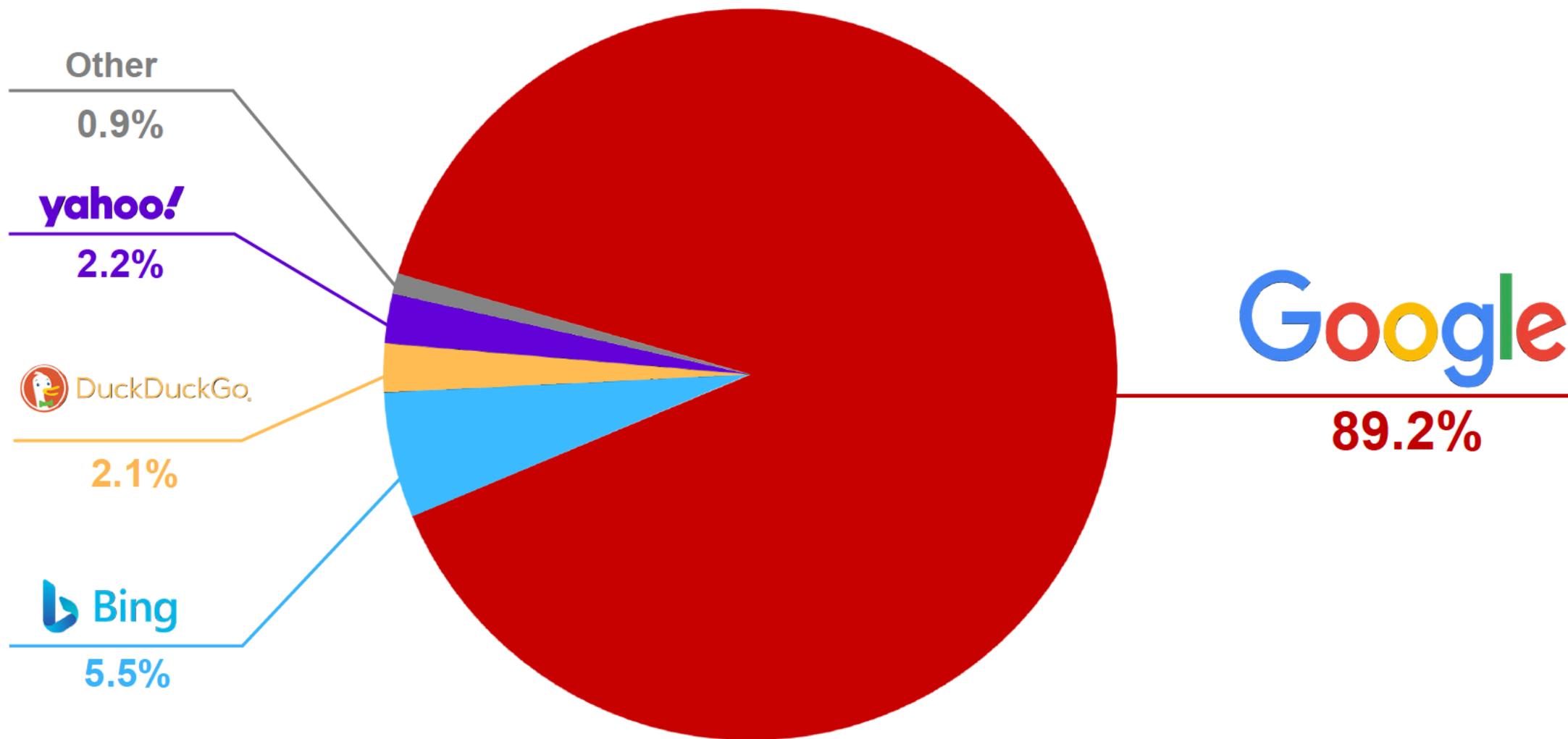
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# Monopoly Power: Indirect Evidence

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# Monopoly Market Share



General Search Services Market Share Estimates, 2020

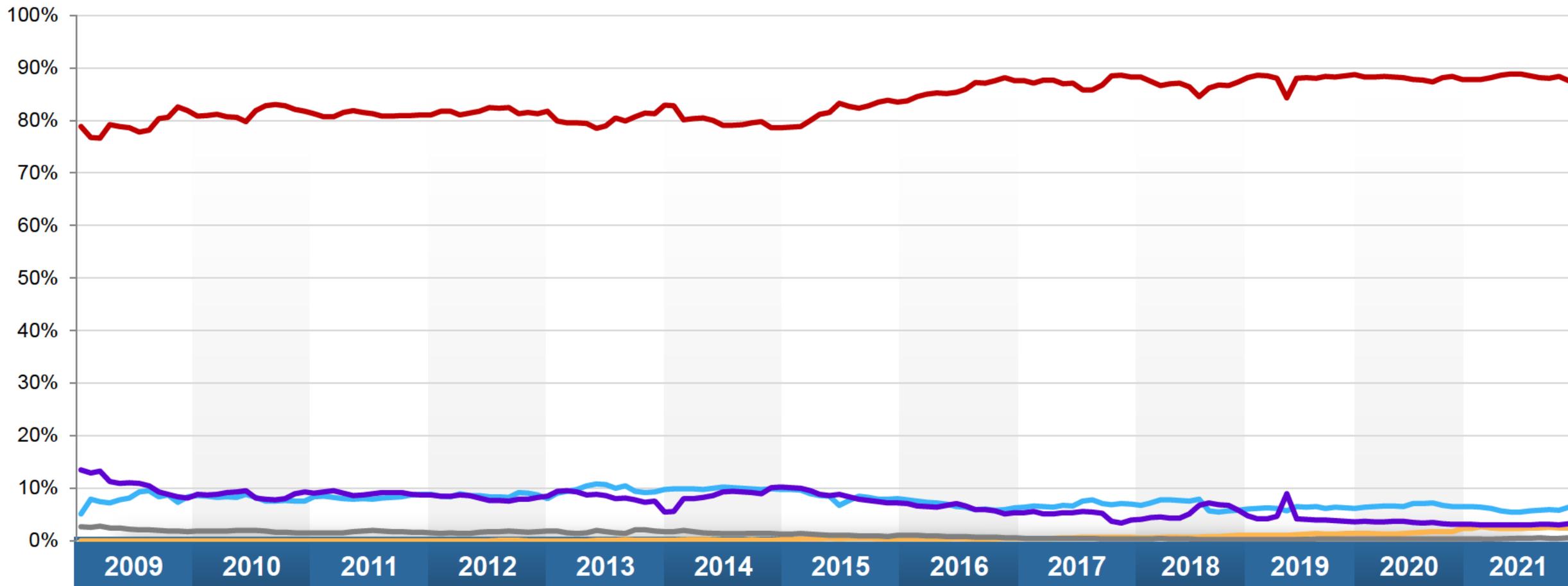
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# Monopoly Power Durable

## StatCounter General Search Engine Shares, 2009–2020

Google Bing DuckDuckGo yahoo! Other



**REDACTED FOR PUBLIC FILING**



# Even Greater Mobile Dominance

G 2019

Message  
 From: Dominic Lang [Redacted]  
 Sent: 10/8/2019 5:03:45 PM  
 To: Philipp Schindler [Redacted]; Prabhakar Raghavan [Redacted]  
 CC: [Redacted]; [Redacted]; [Redacted]; [Redacted]; [Redacted]

	Avg Score	vs LY/L Q	Search					
			Desktop Search Query Share	vs LY	Mobile Search Query Share	vs LY	"Searchness" (Android) vs LY	GApp queries in % of iOS vs LY
US	Redacted		84%	1%	98%	0%		
CA			88%	0%	98%	0%		
GB			84%	0%	99%	0%		
DE			87%	0%	99%	0%		
FR			87%	-1%	99%	-1%		
JP			54%	3%	69%	3%		
AU			90%	0%	99%	0%		
BR			95%	0%	100%	0%		
IN			95%	1%	99%	0%		
MX			93%	0%	100%	0%		
PL			93%	0%	100%	0%		
TR			94%	0%	100%	0%		
RU			23%	2%	48%	0%		

Redacted

- Search Auto Bidding Depth (Full) - increased from Redacted during the quarter
- Search Creative Excellence - fast increase from Redacted during the quarter

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98%  
 Mobile Query Share

84%  
 Desktop Query Share

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# Monopoly Power: Barriers to Entry

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# Entry Not Fundable

Apple 2018

Redacted

“[T]he reason a better search engine has not appeared is that **it’s not a VC fundable proposition even though it’s a lucrative business.**”



**John Giannandrea**

*Apple Chief, Machine Learning & AI Strategy;  
Former Google Head of Search & AI*



- A. . . . [A] startup could not raise enough money, in my opinion, to build a very good, large-scale search engine.
- Q. You believed that in 2018?
- A. I did.
- Q. And you still believe that?
- A. I do.

*Tr. Testimony*

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APLGOOGDOJ-00576508



# Market Participants Agree



**John Giannandrea**

*Apple Chief, Machine Learning & AI Strategy;  
Former Google Head of Search & AI*

**Q.** And the “so few contenders” -- “serious contenders” is because of the cost and complexity of the general search engine problem?

**A.** In my opinion, **to build a competitive project is very expensive.**

*Tr. Testimony*



**Presentation re: “Seven Deadly Sins of Tech”  
by Hal Varian**

General purpose search is a **tough business.**

*UPX0334 (2019)*



**Sridhar Ramaswamy**

*Former Neeva CEO & Founder;  
Former Google SVP, Ads & Commerce*

**A.** . . . We did our own crawl, we did our own search index. These are things that most even - like I would say most good engineers would basically give up on before they start, because **it is a Herculean problem.**

*Tr. Testimony*



**Dr. Mark Israel**

*Google Expert, Compass Lexecon*

**Q.** Okay. And so -- and **Google invests billions of dollars in building its index and crawling the web**, right?

**A.** Right, and makes substantial revenue doing so on the queries that it monetizes.

*Tr. Testimony*

**REDACTED FOR PUBLIC FILING**



# High Barriers To Entry

- Complexity and cost (crawling, indexing, ranking, serving)
- Acquiring necessary scale
- Brand recognition and consumer loyalty
- Google's control of search access points through exclusive distribution contracts
- Google's control of the default on Chrome

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## **Google Has Monopoly Power In The U.S. General Search Services Market**

**A. Google Has Monopoly Power In General Search**

**B. General Search Is A Relevant Market**

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# Search The Web



**John**

**Giannandrea**

*Apple Chief, Machine Learning & AI Strategy;  
Former Google Head of Search & AI*



**Q.** Let's start with what a -- briefly what a general search engine is.

**A.** **A general search engine is a tool that you use to search the worldwide web using queries.**

\* \* \*

**Q.** Okay. And general search engines help users find content on the web?

**A.** Yes, that's their main function.

*Tr. Testimony*

**REDACTED FOR PUBLIC FILING**

# Google's Ordinary-Course Analyses Show That SVPs Are Not In The Market

**REDACTED FOR PUBLIC FILING**



# SVPs Are Complements

G 2019

## Executive Summary

- We have found ***no evidence of short-term negative per-user revenue impact*** (or a negative query volume impact or a meaningful shift in query volume of “shoppy” queries away from Google) resulting from a user becoming an online retail loyalty program member or being active on large online retailers.
- In fact, ***engagement on large online retailers and querying on G.com are positively correlated*** – we have observed that loyalty program members and regular shoppers at large online retailers have higher query volume on G.com, including higher query volume in “shoppy” verticals (including those verticals that large online retailers are known to be very strong in like Computers & Consumer Electronics).
- Naturally these users are subsequently more active on large online retailers’ sites, but our analysis indicates that is ***likely incremental to rather than cannibalizing*** their activity on G.com – we see no evidence of a change in G.com query volume when users sign up for loyalty membership, and even see some evidence of an increase in expected G.com revenue and engagement when users are active on the retailer’s sites.

### Key caveats:

Due to data limitations, analysis only covers last 12 months and impact estimate is measured over a 12-week window. Therefore, long-term impact, seasonality, and trend of impact are not tested in this analysis. More detailed scope/caveats are included in limitations section on Slide 7

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Google

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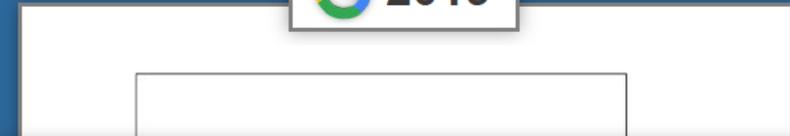
“We have found ***no evidence of short-term negative per-user revenue impact*** (or a negative query volume impact or a meaningful shift in query volume of ‘shoppy’ queries away from Google) resulting from a user becoming an online retail loyalty program member or being active on large online retailers.”

**REDACTED FOR PUBLIC FILING**



# SVPs Are Complements

G 2019



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Dr. Prabhakar Raghavan

SVP, Knowledge & Information Products



- Q.** And so loyalty members, Amazon Prime members tend to do more searches, not fewer searches on Google.com, right?
- A.** That’s correct.
- Q.** And that doesn’t just apply to Amazon Prime or loyalty members, the same positive correlation exists for regular shoppers of large online marketplaces, right?
- A.** That’s what it says here . . . .

Tr. Testimony

**REDACTED FOR PUBLIC FILING**



# Project Charlotte

G 2019

## Executive Summary

- We have found **no evidence of short-term negative per-user revenue impact** (or a negative query volume impact or a meaningful shift in query volume of “shoppy” queries away from Google) resulting from a user becoming an online retail loyalty program member or being active on large online retailers.
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GOOG-DCJ-25893057



Dr. Mark Israel

Google Expert, Compass Lexecon

**Q.** Were you aware [] of that, sir, that Google had actually done research and concluded that people who spent a lot of time on Amazon did not harm them?

**A.** **I don't recall the full study, if I've studied it.** I would have to look at the full study to see what's being compared to what. So I can't agree from what you're showing me on the “does not harm them,” but I see the statement.

Tr. Testimony

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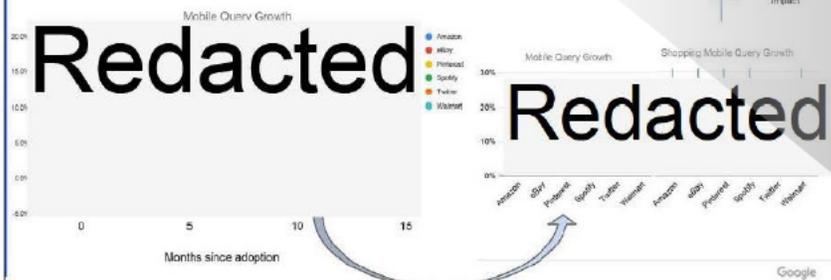
# Project Charlotte

G 2020

PLEASE NOTE: This data is strictly confidential and need-to-know, and may be deemed to be material nonpublic information. Please see [Google's Privacy Policy](#) as well as [this page](#) for additional information on material nonpublic information.

## No evidence of negative impact on G.com from app adoption

- App adopters are correlated with increased revenue and queries on mobile.
- No significant change in desktop activity.
- No clear difference between retail and non retail apps.
- Lift occurs immediately after adoption, and continues past 15 months.
- Shopping Queries also saw a higher lift.



“App adopters are **correlated with increased revenue and queries on mobile.**”

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# SVPs Are Complements

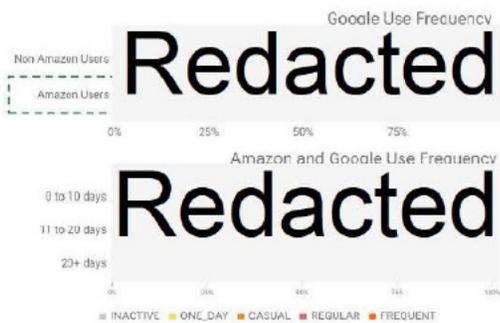
G 2020

PLEASE NOTE: This data is strictly confidential and need-to-know, and may be deemed to be material nonpublic information. Please see [redacted] as well as [redacted] for additional information on material nonpublic information.

## App users are more frequent Google Users

As expected, Amazon users are also more likely to be regular and frequent Google users.

There is a slight correlation of higher Amazon App use to higher G.com frequency. But in general all Amazon App users see high G.com usage.



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EXHIBIT PSX00562

GOOG-DOJ-30669662

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Dr. Mark Israel

Google Expert, Compass Lexecon

A. So I think I would say at that sort of broad level, of everything Amazon and Google do, there are elements of **complementarity** between them, and the existence of the app[] might help Google. They like that shopping apps[] are there.

Tr. Testimony

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“[I]t would be improper to group complementary goods into the same relevant market just because they occasionally substitute for one another. Substitution must be effective to hold the primary good to a price near its costs[.]”

*FTC v. Sysco Corp.*, 113 F. Supp. 3d 1, 30–31 (D.D.C. 2015) (cleaned up)

“[A] product market is made up of substitute goods, not complements, even going so far as to say that [g]rouping complementary goods into the same market is ‘economic nonsense.’”

*Intel Corp. v. Seven Networks, LLC*, 562 F. Supp. 3d 454, 461 (N.D. Cal. 2021) (cleaned up)



# Dr. Israel: No Documents



**Dr. Mark Israel**

*Google Expert  
Compass Lexecon*

- Q.** Okay. There's no documents from Google that validate this analysis; right? You don't have any example where Google themselves have actually looked at this analysis or considered this analysis; right?
- A.** This is not based on a Google document. It's based on my analysis of the data.

*Tr. Testimony*

**REDACTED FOR PUBLIC FILING**

“[W]hile providers of all tax preparation methods may compete at some level, this does not necessarily require that [they] be included in the relevant product market for antitrust purposes.”

*United States v. H & R Block, Inc.*, 833 F. Supp. 2d 36, 54 (D.D.C. 2011)

# Market Definition: *Brown Shoe Factors*

**REDACTED FOR PUBLIC FILING**

“These ‘practical indicia’ of market boundaries may be viewed as evidentiary proxies for proof of substitutability and cross-elasticities of supply and demand.”

*United States v. H & R Block, Inc.*, 833 F. Supp. 2d 36, 51 (D.D.C. 2011)



# *Brown Shoe Factors*

- Industry or public recognition of the market
- The product's peculiar characteristics and uses
- Unique production facilities
- Sensitivity to price or quality changes
- Specialized vendors
- Distinct customers
- Distinct prices

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# Contracts Reveal Market Reality



**Dr. Mark Israel**  
*Google Expert*  
*Compass Lexecon*

- Q.** Google said to the OEMs and to the carriers in the agreements it's okay for you to put – we're not going to prohibit you from putting TikTok and Amazon and Facebook, we're not going to prohibit you from putting those on the devices; right?
- A.** That's what they say.
- Q.** Right. But they do prohibit and cite exclusivity regarding general search engines?
- A.** Yes. I mean, I have views on the why, but those aren't opinions I'm offering.

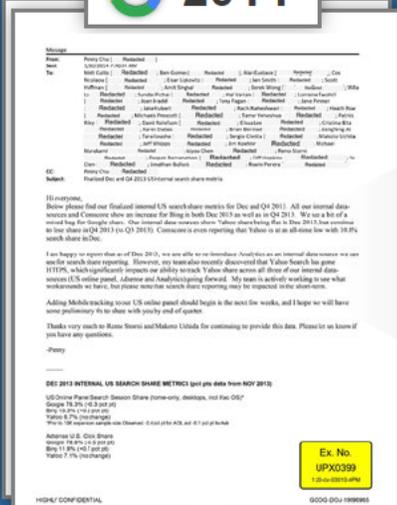
*Tr. Testimony*

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# Google Recognizes General Search

**G 2014**



## DEC 2013 INTERNAL US SEARCH SHARE METRICS (pct pts delta from NOV 2013)

US Online Panel Search Session Share (home-only, desktops, incl Mac OS)\*

Google 76.3% (+0.3 pct pt)

Bing 13.3% (+0.2 pct pt)

Yahoo 6.7% (no change)

\*Prior to 10K expansion sample size. Observed -0.4 pct pt for AOL and -0.1 pct pt for Ask

AdSense U.S. Click Share

Google 78.6% (-0.5 pct pt)

Bing 11.9% (+0.7 pct pt)

Yahoo 7.1% (no change)

Analytics US. Click Share [NEW in Dec!]

Google 80.6%

Bing 10.6%

Yahoo 6.6%

**G 2019**

Country	Avg Score	vs LY/L Q	Search			
			Desktop Search Query Share vs LY	Mobile Search Query Share vs LY	"Searchiness" (Android) vs LY	GApp queries in % of iOS vs LY
US	Redacted		84%	98%	0%	
CA			88%	98%	0%	
GB			84%	99%	0%	
DE			87%	99%	0%	
FR			87%	99%	-1%	
JP			94%	99%	3%	
AU			90%	99%	0%	
BR			95%	100%	0%	
IN			95%	99%	0%	
MX			93%	100%	0%	
PL			93%	100%	0%	
TR			94%	100%	0%	
RU			23%	48%	0%	

# 84%

## Desktop Query Share in U.S.

# 98%

## Mobile Query Share in U.S.

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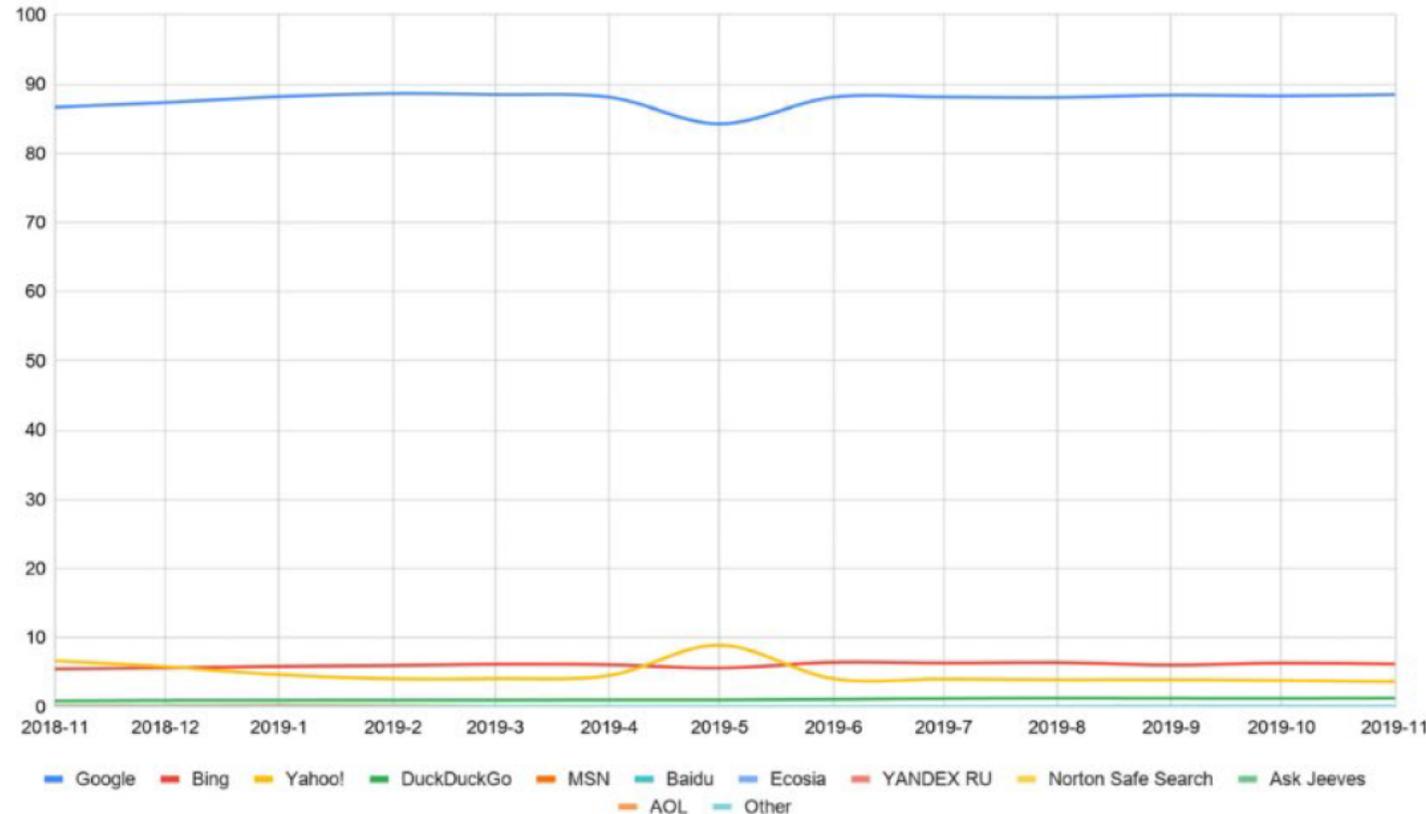
# Industry And Public Recognition

IPG 2020

WHY DOES SEARCH BEHAVIOR DIFFER?

## MARKET SHARE FOR SEARCH ENGINES IN THE USA... IT ISN'T EVEN CLOSE

SEARCH ENGINE MARKET SHARE (USA) NOV 2018 - NOV 2019



SEARCH ENGINE MARKET SHARE NOV 2018 - 19

- GOOGLE **88.43%**
- BING **6.21%**
- YAHOO! **3.67%**
- DUCKDUCKGO **1.29%**
- ECOSIA **0.13%**
- YANDEX RU **0.07%**

hulu

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Ex. No. UPX0450 120-cv-03010-APM



# *Brown Shoe Factors*

- Industry or public recognition of the market
- **The product's peculiar characteristics and uses**
- Unique production facilities
- Sensitivity to price or quality changes
- Specialized vendors
- Distinct customers
- Distinct prices

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# Peculiar Characteristics And Uses

“We see no barrier to combining in a single market a number of different products or services where that combination reflects commercial realities.”

*United States v. Grinnell Corp.*,  
384 U.S. 563, 572 (1966)

“The fact that a customer might buy a stick of gum at a supermarket or at a convenience store does not mean there is no definable groceries market.”

*FTC v. Whole Foods Mkt., Inc.*,  
548 F.3d 1028, 1040 (D.C. Cir. 2008)

“The most distinguishing feature of broadline distribution is its product breadth and diversity. . . . The other distribution channels pale in comparison in terms of product breadth and diversity.”

*FTC v. Sysco Corp.*,  
113 F. Supp. 3d 1, 27–28 (D.D.C. 2015)

“Based on the Court’s observations, the Court finds that the unique combination of size, selection, depth and breadth of inventory offered by the superstores distinguishes them from other retailers.”

*FTC v. Staples, Inc.*,  
970 F. Supp. 1066, 1079 (D.D.C. 1997)

**REDACTED FOR PUBLIC FILING**



# One-Stop Shop



**Sridhar  
Ramaswamy**

*Former Neeva CEO &  
Founder; Former Google SVP,  
Google Ads & Commerce*



**A.** . . . [A] general search engine is a place that you go to for the vast majority of your information needs. . . . It's a little bit of a **one-stop shop** for all information needs. . . .

*Tr. Testimony*



**Dr. Hal Varian**

*Chief Economist*



**Q.** Google **answers noncommercial queries** because it hopes, at some point, the user will also type in a commercial query and Google can make money off of it?

**A.** Something of that sort, yes.

**Q.** Well, exactly, right?

**A.** Yeah. Okay.

*Tr. Testimony*

**REDACTED FOR PUBLIC FILING**



# Peculiar Characteristics And Uses

The screenshot shows a Google search for "apple airtag". The search results include sponsored listings from Apple, Best Buy, and Amazon, each priced at \$29.00. A technical specifications section for the AirTag is visible, listing details such as battery type (CR2032), connectivity (Bluetooth LE, UWB, NFC), current firmware (2.0.36), developer (Apple), manufacturer (Foxconn), mass (11 g), and power (CR2032 button cell). A "People also ask" section is partially visible at the bottom.

**Dr. Mark Israel**  
*Google Expert, Compass Lexecon*

**Q.** There's a **variety of information from a variety of places** on a Google or Bing SERP; is that right?

**A.** That's fair.

*Tr. Testimony*

**REDACTED FOR PUBLIC FILING**



# Different Experiences Distinguished



Dr. Pandu  
Nayak  
VP, Search



**Q.** Do you know if there's been a latency test against Google and TikTok?

**A.** No, there wouldn't be a latency test because they're **very different experiences**. So there can't be a latency test --

**Q.** Do you do IS scores with TikTok?

**A.** We can't do IS because it's a **different experience**. . . .

*Tr. Testimony*

**REDACTED FOR PUBLIC FILING**



# *Brown Shoe Factors*

- Industry or public recognition of the market
- The product's peculiar characteristics and uses
- **Unique production facilities**
- Sensitivity to price or quality changes
- Specialized vendors
- Distinct customers
- Distinct prices

**REDACTED FOR PUBLIC FILING**



# Unique Facilities

## All the critical elements of a GSE are unique:

- sophisticated crawler designed to build and maintain an index
- a constantly updated index of the entire web
- algorithms to receive unstructured queries and return the best results from the index
- search engine result page with the results from the entire web

**REDACTED FOR PUBLIC FILING**



# *Brown Shoe Factors*

- Industry or public recognition of the market
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- **Sensitivity to price or quality changes**
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- Distinct prices

**REDACTED FOR PUBLIC FILING**



# Users Insensitive To Quality Changes

G 2021

Message

From: Guy Ben-Ishai | Redacted  
Sent: 3/2/2021 1:20:45 AM  
To: Hal Varian | Redacted  
Subject: Re: Economic Impact Reports and Willingness to Accept measures

Redacted

Ex. No.  
UPX0340  
1:20-cv-43010-APM

CONFIDENTIAL

GOOG-DOJ-30272058

WRT the value of our product, specifically search, **if Google were to disappear, people would just switch to Bing. If all search engines were to disappear we look like Borge's universal library, but with no card catalog.**



**Dr. Hal Varian**  
*Chief Economist*



- Q. This author considered a universal library that had all knowledge but no card catalog --
- A. Yes.
- Q. -- so there was no way to find anything?
- A. Right.
- Q. And so the comparison you're making here is if all general-purpose search engines were to disappear, the world would look like Borges' Universal Library, but with no card catalog, right?
- A. Right.

*Tr. Testimony*

**REDACTED FOR PUBLIC FILING**



# *Brown Shoe Factors*

- Industry or public recognition of the market
- The product's peculiar characteristics and uses
- Unique production facilities
- Sensitivity to price or quality changes
- **Specialized vendors**
- Distinct customers
- Distinct prices

**REDACTED FOR PUBLIC FILING**

# Browsers Distribute General Search

**REDACTED FOR PUBLIC FILING**



# *Brown Shoe Factors*

- Industry or public recognition of the market
- The product's peculiar characteristics and uses
- Unique production facilities
- Sensitivity to price or quality changes
- Specialized vendors
- **Distinct customers**
- **Distinct prices**

**REDACTED FOR PUBLIC FILING**

# Market Definition: *Brown Shoe Factors*

**REDACTED FOR PUBLIC FILING**

# Market Definition: Hypothetical Monopolist Test

**REDACTED FOR PUBLIC FILING**



# Quantitative HMT Not Required



**Prof. Michael Whinston**  
*Plaintiff Expert*  
*Prof. of Economics & Management, M.I.T.*

“And so, you know, for me, I looked at many, many alternatives, both when I was looking at the search services side and when I was looking at the ads side and came to the conclusion that **those things would not prevent a hypothetical monopolist from exercising considerable market power.**”

*Tr. Testimony*



**Dr. Mark Israel**  
*Google Expert*  
*Compass Lexecon*

“**[It is] more normal than not that [an expert] doesn't do a full quantitative hypothetical monopolist test.**”

*Tr. Testimony*

**REDACTED FOR PUBLIC FILING**



# Agenda

1

**Google Has Monopoly Power In The U.S. General Search Services Market**

2

**Google's Search Distribution Contracts Have Anticompetitive Effects**

3

**Google Failed To Prove Procompetitive Benefits Outweighing The Anticompetitive Effects**

4

**Summation**

**REDACTED FOR PUBLIC FILING**

# APPENDIX

**REDACTED FOR PUBLIC FILING**



# Distinct Customers And Prices

Case 1:20-cv-03010-APM Document 911 Filed 04/30/24 Page 1 of 42

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

United States of America, <i>et al.</i> ,	Plaintiffs,	Case No. 1:20-cv-03010-APM
v.		HON. AMIT P. MEHTA
Google LLC,	Defendant.	[REDACTED]

State of Colorado, <i>et al.</i> ,	Plaintiffs,	Case No. 1:20-cv-03715-APM
v.		HON. AMIT P. MEHTA
Google LLC,	Defendant.	[REDACTED]

DEFENDANT'S RESPONSIVE PROPOSED CONCLUSIONS OF LAW

- Google argues that distinct customers and distinct prices undermine a general search services market
- These factors have no use in this action:
  - Essentially everyone online uses a GSE
  - Search is a zero-price market
- Not every *Brown Shoe* factor will suggest the right result in every case, and a relevant market can exist even if only *some* of the factors are present

**REDACTED FOR PUBLIC FILING**



# Durable Monopoly Share Tracked

**G 2014**

Message

**From:** Penny Chu [Redacted]

**Sent:** 1/30/2014 7:40:24 AM

**To:** Matt Curtis [Redacted]; Ben Gomez [Redacted]; Alan Eustace [Redacted]; Gos Nicolaiou [Redacted]; Esar Lipkowitz [Redacted]; Ben Smith [Redacted]; Scott Huffman [Redacted]; Amit Singhal [Redacted]; Derek Wong [Redacted]; BuGene [Redacted]; Willa Le [Redacted]; Sundar Pichai [Redacted]; Hal Varian [Redacted]; Lorraine Twohill [Redacted]; Joan Braddi [Redacted]; Tony Fagan [Redacted]; Jane Penner [Redacted]; Jake Hubert [Redacted]; Rach Maheshwari [Redacted]; Heath Row [Redacted]; Michaela Prescott [Redacted]; Tamar Yehoshua [Redacted]; Patrick Riley [Redacted]; David Roiefson [Redacted]; Elissa Lee [Redacted]; Cristina Bita [Redacted]; Karen Dubas [Redacted]; Brian Berhad [Redacted]; Jiangfeng Ai [Redacted]; Tara Kousha [Redacted]; Sergio Chivetta [Redacted]; Makoto Uchida [Redacted]; Jeff Whipps [Redacted]; Jim Koehler [Redacted]; Michael Murakami [Redacted]; Aiyou Chen [Redacted]; Remo Storni [Redacted]; Deepak Ramanathan [Redacted]; Cliff Hopkins [Redacted]; Yo Chen [Redacted]; Jonathan Bullock [Redacted]; Ruwin Perera [Redacted]; Penny Chu [Redacted]

**Subject:** Finalized Dec and Q4 2013 US internal search share metrics

Hi everyone,  
 Below please find our finalized internal US search share metrics for Dec and Q4 2013. All our internal data-sources and Comscore show an increase for Bing in both Dec 2013 as well as in Q4 2013. We see a bit of a mixed bag for Google share. Our internal data-sources show Yahoo share being flat in Dec 2013, but continue to lose share in Q4 2013 (vs Q3 2013). Comscore is even reporting that Yahoo is at an all-time low with 10.8% search share in Dec.

I am happy to report that as of Dec 2013, we are able to re-introduce Analytics as an internal data-source we can use for search share reporting. However, my team also recently discovered that Yahoo Search has gone HTTPS, which significantly impacts our ability to track Yahoo share across all three of our internal data-sources (US online panel, Adsense and Analytics) going forward. My team is actively working to see what workarounds we have, but please note that search share reporting may be impacted in the short-term.

Adding Mobile tracking to our US online panel should begin in the next few weeks, and I hope we will have some preliminary #s to share with you by end of quarter.

Thanks very much to Remo Storni and Makoto Uchida for continuing to provide this data. Please let us know if you have any questions.

-Penny

**DEC 2013 INTERNAL US SEARCH SHARE METRICS (pct pts delta from NOV 2013)**

US Online Panel Search Session Share (home-only, desktops, incl Mac OS)\*  
 Google 76.3% (+0.3 pct pt)  
 Bing 13.3% (+0.2 pct pt)  
 Yahoo 6.7% (no change)  
 \*Prior to 10K expansion sample size. Observed -0.4 pct pt for AOL and -0.1 pct pt for Ask

Adsense U.S. Click Share  
 Google 78.6% (-0.5 pct pt)  
 Bing 11.9% (+0.7 pct pt)  
 Yahoo 7.1% (no change)

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 1:20-cv-03010-APM

HIGHLY CONFIDENTIAL

GOOG-DOJ-19096965

**DEC 2013 INTERNAL US SEARCH SHARE METRICS (pct pts delta from NOV 2013)**

US Online Panel Search Session Share (home-only, desktops, incl Mac OS)\*

Google 76.3% (+0.3 pct pt)

Bing 13.3% (+0.2 pct pt)

Yahoo 6.7% (no change)

\*Prior to 10K expansion sample size. Observed -0.4 pct pt for AOL and -0.1 pct pt for Ask

Adsense U.S. Click Share

Google 78.6% (-0.5 pct pt)

Bing 11.9% (+0.7 pct pt)

Yahoo 7.1% (no change)

Analytics US. Click Share [NEW in Dec!]

Google 80.6%

Bing 10.6%

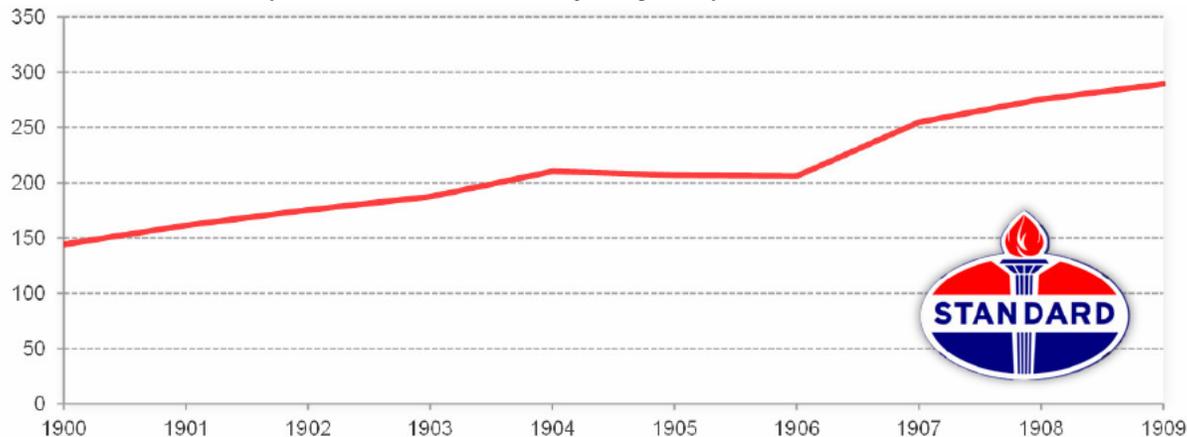
Yahoo 6.6%

**REDACTED FOR PUBLIC FILING**

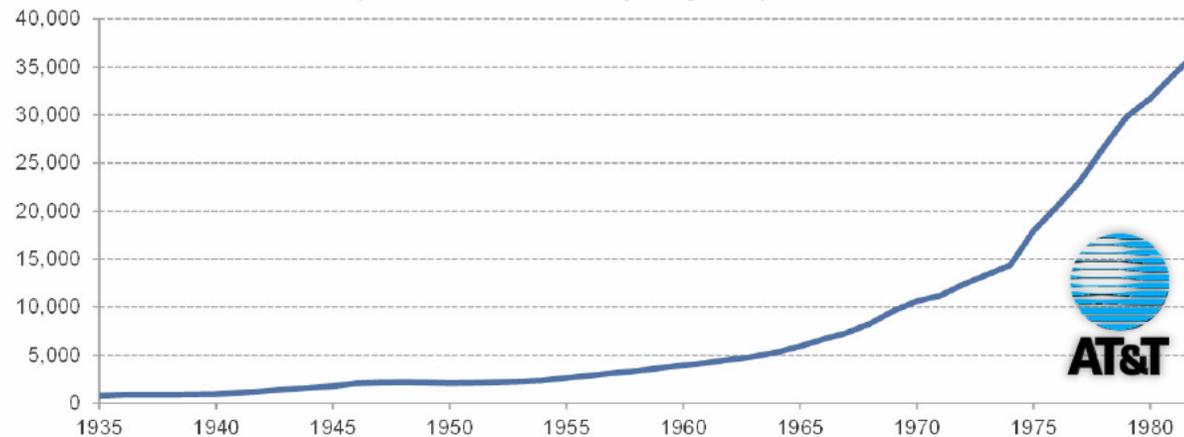


# Past Monopolists Instructive

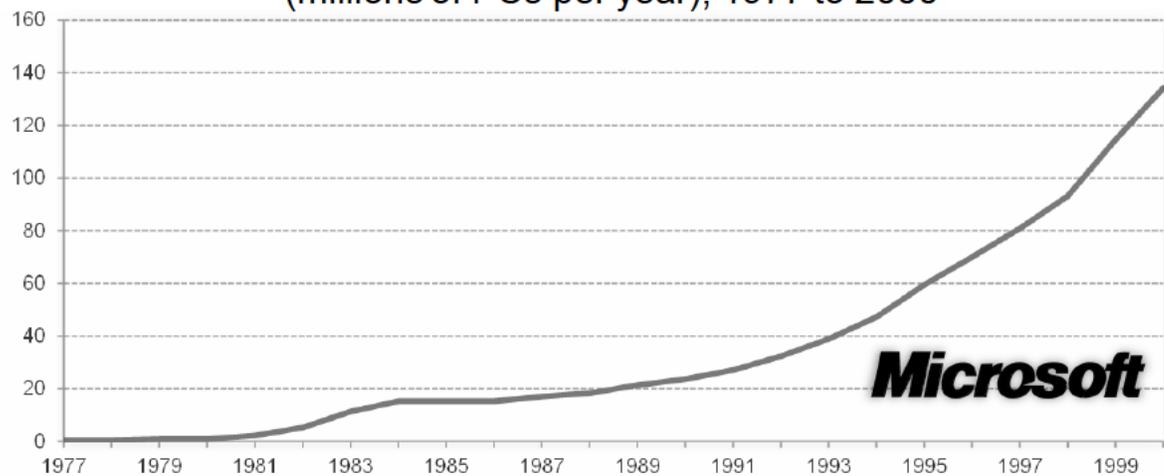
### Global Crude Oil Production (millions of barrels per year), 1900 to 1909



### Long-Distance Calls for US Common Carriers (millions of calls per year), 1935 to 1982



### Global PC Shipments (millions of PCs per year), 1977 to 2000



**User Side**

### Exploding Output In User Search Belies Plaintiffs' Claims of Monopoly Power

- User search output has more than doubled since 2011.
- Output expansion refutes a claim of monopoly power unless Plaintiffs show output would have grown even faster in the but-for world.
- Plaintiffs have not done so.

Total GSE Query Volume, 2011-2021

Year	Search Queries (Billions)
2011	30
2012	35
2013	40
2014	45
2015	50
2016	55
2017	60
2018	65
2019	70
2020	75
2021	75

DX1108 (Google QueryNav data); DX3245 (StatCounter data)

**REDACTED FOR PUBLIC FILING**



# *Brown Shoe Factors*

- Industry or public recognition of the market
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**REDACTED FOR PUBLIC FILING**



# Industry And Public Recognition

“[E]vidence of industry or public recognition of the submarket as a separate economic unit matters because we assume that economic actors usually have accurate perceptions of economic realities.”

*FTC v. Whole Foods Mkt., Inc.*, 548 F.3d 1028, 1045 (D.C. Cir. 2008) (Tatel, J., concurring)  
(cleaned up)



**Gabriel Weinberg**  
CEO & Founder

- Q.** And who does DuckDuckGo consider to be its search engine competitors?
- A.** Really most of our users switch from Google. So like far and away, we consider Google just our competitor. Other search engines that compete with us are Bing, Yahoo!, Ecosia, and Brave are probably the main ones in the U.S.
- Q.** Does DuckDuckGo consider vertical search engines such as Amazon to be competitors that users are likely to switch to or from?
- A.** No, not really.

*Tr. Testimony*



**Jon Tinter**  
Corporate VP, Business Development

- Q.** And thinking about the market today, who are Bing's search competitors?
- A.** . . . Candidly, when we talk about competition, it's one company, it's Google.

*Tr. Testimony*

**REDACTED FOR PUBLIC FILING**



# Peculiar Characteristics And Uses

 2019

7/31/23, 8:24 PM Android Choice Screen  
The Wayback Machine - <https://web.archive.org/web/2019082094608r/https://www.android.com/choicecreen/>

## About the choice screen

Following the European Commission's July 2018 Android decision, Google is implementing a choice screen for general search providers on all Android phones and tablets shipped into the European Economic Area (EEA) where the Google Search app is pre-installed.

The choice screen will appear during initial device setup and will feature multiple search providers, including Google.

An illustrative version of the choice screen follows. Providers will vary by country.



Ex. No.  
UPX8091  
1:20-cv-03010-APM

<https://web.archive.org/web/2019082094608r/https://www.android.com/choicecreen/> USDOJ-GOOG-00189504 1/5

## EU Android Choice Screen Criteria

“To **ensure a good user experience**, search providers that wish to participate in the choice screen must satisfy the following requirements: . . . The search provider must operate a ‘general search service.’”

**REDACTED FOR PUBLIC FILING**



# Unique Facilities



**Ramesh  
Ramalingam**

*Former Senior Director,  
Product Management*



**Q.** Okay. How do general search engines differ from vertical search providers?

\* \* \*

**A.** So [a] general search engine would provide answers without any specific restriction to a domain. So it can be anywhere in the Worldwide Web the data is available, it'll show. The vertical one is going to be either focused on a particular domain or particular aspect of vertical, whether it's a travel or restaurants related, yeah.

*Des. Testimony*

**REDACTED FOR PUBLIC FILING**



# Specialized Vendors



**John Giannandrea**

*Apple Chief, Machine Learning & AI Strategy;  
Former Google Head of Search & AI*

**Q.** And users, when they put something in the URL bar of Safari, they have an expectation that it's going to go to a general search engine?

**A.** Yes.

*Tr. Testimony*



**Brian Higgins**

*Chief Customer Experience Officer*

**Q.** During your time in device marketing, has Verizon ever set a vertical search provider as the default search engine on a device?

**A.** . . . I am not aware of that happening.

*Tr. Testimony*



**Mitchell Baker**

*Founder & Chairwoman*

**Q.** For the Firefox default search engine, is Mozilla looking for a general search engine that responds to all different types of user queries?

**A.** That is -- yes, that is what we have done.

*Des. Testimony*

**REDACTED FOR PUBLIC FILING**



# Project Charlotte

G 2020

PLEASE NOTE: This data is strictly confidential and need-to-know, and may be deemed to be material nonpublic information. Please see the Privacy Policy, Terms of Service, and our Trust Center for additional information on material nonpublic information.

## App users are more frequent Google Users

As expected, Amazon users are also more likely to be regular and frequent Google users.

There is a slight correlation of higher Amazon App use to higher G.com frequency. But in general all Amazon App users see high G.com usage.



“There is a **slight correlation of higher Amazon App use to higher G.com frequency.** But in general all Amazon App users see high G.com usage.”

EXHIBIT  
PSX00562

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GOOG-DOJ-30669962

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# Dr. Israel: No Documents



**Dr. Mark Israel**

*Google Expert,  
Compass Lexecon*

- **44 slides** in his demonstrative that address the user-side market definition

- **Only 1 slide** references any documents at all

- The **1 document** cited is a Bank of America Report that says nothing about search queries

User Side

## Professor Whinston's "Gateway" Evidence Fails

**Prof. Whinston's Claim:**

Users "one-stop shop" by using GSEs as a "gateway to the internet": "77 percent of first searches and sessions are on general search engines"

10/5/23 (PM) Trial Tr. 4614:11, 23-25 (Whinston)

Chart 31: Which website do you search first when you want to buy something online? (2019)



58% of users search Amazon first when shopping online, while 25% search Google first

Bank of America estimated that 25 percent of shopping visits start on Google and 58 percent start on Amazon.

Source: BofA Global Research, m1111

DXD-15.002 (depicting BofA Global Research, Internet/e-Commerce Internet 2020 Year-Ahead Industry Overview, Chart 31)

Google  
DXD-29.028

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