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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

October 28, 2008

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AND CHIEF COUNSEL

The Honorable Thomas O. Barnett
Assistant Attorney General
United States Department of Justice
Antitrust Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Barnett:

I am writing you to request that the Department of Justice (DOJ) thoroughly investigate issues of competition and privacy that Yahoo! failed to address fully in responding to questions about the online search advertising partnership agreement between Google and Yahoo!. I understand DOJ is reviewing the agreement, and I believe the issues in question are pertinent to DOJ's review.

Given that matters relating to commerce and the internet are part of the oversight and legislative responsibilities of the Committee on Energy and Commerce, I asked Minority committee staff to inquire into the Google-Yahoo! search advertising agreement. Specifically, I am concerned about the adverse effects such a partnership could have on competition and pricing within the online search advertising industry.

I am also concerned about privacy aspects of the Google-Yahoo! deal. At the time their partnership was announced, comScore calculated that approximately 60 percent of searches in the United States are conducted on Google, and 20 percent are conducted on Yahoo!, making Google and Yahoo! the top two online search engines in the United States. In addition, I am also concerned about the implications for consumer privacy. Google, Yahoo!, and the search advertising companies that are affiliated with them collect a great deal of information relating to an individual's online activity, and it is important that any agreement between the companies make clear to consumers how their data will be used.

I asked Yahoo! Chief Executive Officer Jerry Yang in a letter written on June 18, 2008 to answer a series of questions about the partnership (*see* Attachment A). The

purpose of the letter was to more fully understand exactly how the agreement would benefit consumers and what impact the partnership would have on competition in the online search advertising market.

Although Yahoo! provided a written response on July 18, 2008, many of their responses seemed designed to obscure rather than clarify how the Google-Yahoo! partnership would work. Subsequent efforts to obtain complete information about the agreement have met with further obfuscation. For example, we asked for information about a document referenced in a complaint (*In re Yahoo! Shareholders Litigation*) filed in the Delaware Court of Chancery that suggested some Yahoo! officials or employees may have been concerned that collaborating with Google would result in an "effective monopoly." When Yahoo! failed to explain the material, we requested the document itself. Yahoo's response (*see* Attachment B) is a masterwork of crude redactions.

It is unclear why Yahoo! feels such an acute need to hide its actions from the public, but given the dominance of Google and Yahoo! in the online search market, as well as the potential impact on online advertising and for consumers, there is a significant public interest in DOJ having a full and fair record on which to make its determination. In light of that public interest, I request that, as part of its investigation, DOJ look into the concerns of Yahoo! employees about the partnership with Google, and whether these employees have information about how this partnership will affect competition. If DOJ has already examined these issues, I request that DOJ assure me in writing that DOJ examined the issues and how those issues were resolved.

Sincerely,



Joe Barton
Ranking Member
Committee on Energy and Commerce

Attachments

cc: The Honorable John Dingell
Chairman
The Honorable Bart Stupak
Chairman, Subcommittee on Oversight and Investigations
The Honorable John Shimkus
Ranking Member, Subcommittee on Oversight and Investigations

Attachment A

HENRY A. WAXMAN, CALIFORNIA
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U.S. House of Representatives
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JOHN D. DINGELL, MICHIGAN
CHAIRMAN

June 18, 2008

JOE BARTON, TEXAS
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FRED UPTON, MICHIGAN
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GREGG A. ROTHSCHILD, DEPUTY CHIEF OF STAFF
AND CHIEF COUNSEL

Mr. Jerry Yang
CEO and Chief Yahoo
Yahoo! Inc.
701 First Avenue
Sunnyvale, CA 94089

Dear Mr. Yang:

I am writing with regard to the Google-Yahoo! advertising partnership that was announced by your company on June 12, 2008. This partnership raises several concerns, not only about the effect of the partnership on the online search advertising market, but also about the protections for Yahoo! user data.

Both before the June 12 announcement of the collaboration between Google and Yahoo!, and now, Google and Yahoo! are competitors in the online search market. According to statistics released by comScore in April 2008, approximately 60 percent of the online searches in the United States are conducted on Google (and possibly a greater percentage in certain overseas markets). The next highest competitor to Google in online search is Yahoo!, which accounts for approximately 20 percent of U.S. searches. Microsoft, the next highest competitor after Yahoo!, has only 9 percent of the search market.

In addition to the Google-Yahoo! collaboration, there has been a great deal of activity in the online advertising market in the last year. Google's acquisition of DoubleClick, a third-party ad server, was approved by the Federal Trade Commission (FTC) in December 2007 and by the European Union earlier this year. In fall 2007, Yahoo! acquired Right Media, an advertising exchange, and Blue Lithium, a behavioral advertising firm or advertising network. At the time these mergers were announced, both Google and Yahoo! represented that the purpose of these mergers was to allow them to serve more relevant search and display advertising based on a user's search.

Given the consolidation within the online advertising industry, and with three companies dominating the U.S. online search market, I am concerned about how this collaboration will impact competition within the online search advertising industry. According to the FTC's

and Department of Justice's (DOJ) 2000 *Antitrust Guidelines for Collaborations Among Competitors*, even while collaborations may be benign and even, in some instances, pro-competitive, they may in practice reduce competition. For example, they may limit independent decision-making, reduce the incentive or ability for a company to innovate or compete, facilitate collusive activity through strategic information and data sharing, or discourage a company from entering the market based on a perception that competitors in the market are collaborating in an anticompetitive manner.

I am also concerned about how the relationship between Google and Yahoo! will affect the collection, storage, and use of data relating to an individual's online activity. Google, Yahoo!, DoubleClick, Right Media, and Blue Lithium each collected or continue to collect a great deal of data about people's online activity and behavior. The potential for this data to be shared or merged and, perhaps, used in ways that Google or Yahoo! users may not have anticipated raises a number of questions about consumer protections and privacy.

To help me have a better understanding of how the Google-Yahoo! collaboration will benefit the companies' users without negatively affecting competition and individual privacy, I respectfully request that you provide written responses to the following questions:

1. Which company first approached the other about forming a partnership, agreement, or any other collaboration? Please identify the date of the first communication between the companies regarding a potential collaboration or partnership and the names and titles of the officials who were involved in the initial approach, communication, or proposal.
2. Documents were recently unsealed by the Delaware Court of Chancery suggesting that, in late January 2008, Yahoo! officials were concerned that a collaboration or partnership between Google and Yahoo! would result in a monopoly in the online search market. Please identify the names and titles of the Yahoo! officials who expressed this concern and whether these concerns were shared with you or any other member of Yahoo!'s board; and how these concerns were addressed.
3. In Yahoo!'s press release announcing the collaboration with Google, Yahoo! states that it will "select the search queries for which — and the pages on which — Yahoo! may offer Google paid search results. Yahoo! will define its users' experience and will determine the number and placement of the results provided by Google and the mix of paid results provided by Panama . . . or other providers."
 - a. Please explain what criteria, if any, Yahoo! will use in determining the search queries and pages on which the Google paid searches will appear and the order in which Yahoo! or Google paid advertising will appear.
 - b. Please explain how these criteria were developed, including whether the price Yahoo! advertisers paid to Yahoo! or the expected revenue from Google paid search results will affect the placement.

- c. Please explain how these criteria will result in more relevant ads being shown to a Yahoo! user.
4. In Yahoo!'s press release announcing the collaboration with Google, Yahoo! states that the collaboration with Google may lead to \$800 million in increased revenue for Yahoo!. Please explain how you reached this number. For example, what percentage of \$800 million is attributable to new search traffic as a result of the collaboration or increased prices to advertise on Yahoo!? In addition, please explain what percentage of Yahoo! search advertising will have to utilize Google technology to achieve the estimated \$800 million in additional revenue.
5. Please explain why you believe a collaboration between Google and Yahoo! that will allow Yahoo! to run ads served by Google will not have an anticompetitive impact on the online search market, including the pricing of online search advertising.
6. In Yahoo!'s press release announcing the collaboration with Google, Yahoo! states that its users will "benefit from Yahoo!'s ability to invest incremental operating cash flow in ongoing improvements to its search services . . ." Please explain what, if any, other benefits will be produced from the collaboration for Yahoo! users. Please explain whether you believe that, as a result of the collaboration, users will receive more relevant search or display ads.
7. Please identify what data will be provided to Google about searches conducted on Yahoo!, including but not limited to IP addresses, weblog information, or cookie data.
8. When a Google user clicks on a search ad on www.google.com, Google drops a cookie that tracks counts on advertisements. When a Yahoo! user clicks on an ad served by Google on www.yahoo.com, does Yahoo! or Google drop a cookie? What information will be collected by the cookie and who will have access to it?

Please do not hesitate to contact Minority staff members Karen Christian, counsel, or Shannon Weinberg, counsel, with any questions. I would appreciate a response to this letter by July 18, 2008.

Sincerely,



Joe Barton
Ranking Member
Committee on Energy and Commerce

cc: The Honorable John Dingell
Chairman
The Honorable Bart Stupak
Chairman, Subcommittee on Oversight and Investigations
The Honorable John Shimkus
Ranking Member, Subcommittee on Oversight and Investigations

Attachment B

Q4 ALL HANDS Q&A

REDACTED

REDACTED

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REDACTED

8. **Search:** What are we doing to improve share in search and will we consider outsourcing search to Google?
- *We have redoubled our efforts in creating great algorithmic search products (new technology and platforms to drive innovation and usage)*
 - *Next generation search will continue to advance our understanding of user intent and deliver the best results, no matter the content type or source*
 - *We are focused on long-term value creation rather than short-term gains (short-term analysis of the revenue potential of outsourcing monetization may not take into account the longer term impact on the competitive market if search becomes an effective monopoly)*

REDACTED

REDACTED

REDACTED

REDACTED

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REDACTED