

# Bork and Sidak Joint Statement on Google Antitrust Claims

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WASHINGTON, Oct. 5, 2012 /PRNewswire/ -- For over a year, Google has been the target of U.S. and European antitrust investigations, but now the search company has fired back. In a report commissioned by Google and released today, two acclaimed antitrust experts dismiss Google's critics' claims as lacking any compelling legal or economic argument for a government antitrust case.

[What Does the Chicago School Teach About Internet Search and the Antitrust Treatment of Google?](#) is the work of Judge Robert Bork and Professor Gregory Sidak. The report examines the legal theories of Google's critics and compares those conjectures to the real-world search experience.

The following statements may be attributed to Bork and Sidak:

Google's critics claim that Google's size makes it the "gateway to the Internet" and that Google's search practices are anticompetitive, such as how it ranks search results. Bork and Sidak address whether Google actually has the ability and incentive to block competitors from its search results. Whereas the critics' complaints indicate how Google's search practices may harm Google's rivals in search, Bork and Sidak ask whether the practices that are under antitrust fire actually harm consumers and the competitive process. Similarly, they ask whether the proposed antitrust remedies would only protect the market positions of Google's competitors at the expense of consumer welfare.

Thanks to the contribution of the Chicago School of law and economics, the courts have emphasized since the late 1970s that antitrust law protects consumers by protecting the competitive process. The distinction between monopolization through unlawful means and growth from meritorious rivalry is crucial to examining the search practices for which antitrust agencies in the United States and Europe have been investigating Google since 2010.

Google's competitors claim that its ranking methodologies and search algorithms are unfair. Critics have focused on whether Google's ranking of its "specialized" search results harms competitors and whether Google excludes competitors by limiting access to search inputs. Unlike "general" search results, which provide links to other websites, specialized search results provide direct responses to the user's query based on the type of media pertinent to the query, such as images, videos, maps, local places, products, and real-time news.

But it is difficult to see how anything that Google does in search and ranking algorithms is unfair. Google bases its business on developing search and ranking algorithms that facilitate consumer searches. Google would employ a particular ranking methodology only if it helps to attract and retain search engine users. Google's competitors do the same

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thing, including offering specialized search. Courts have long recognized that a practice likely has "redeeming competitive virtues" when all competitors use it. Moreover, that Google has gained market share, even at the expense of its competitors, from its questioned practices does not justify antitrust intervention. Judge Frank Easterbrook has explained that "every successful competitive practice has victims. The more successful a new method of making and distributing a product, the more victims, the deeper the victims' injury." Such is the nature of competition. To question every practice that produces victims would be counterproductive.

Punishing Google for being the most effective search competitor would harm consumers and thus contradict the recognized purpose of antitrust law. Search engines epitomize dynamic competition—the virtuous cycle in which innovation drives competition, which further drives consumer-welfare-enhancing innovation. Dynamic competition in search enhances the user experience, increasing the value of search services to both consumers and advertisers. Antitrust intervention that would prohibit or circumscribe Google's practices would punish and therefore deter the same welfare-enhancing innovations that have made Google an effective competitor. Such use of antitrust law would weaken dynamic competition, as only successful firms would need to worry about being penalized for being winners. Losers do not face monopolization suits for having lacked a superior product, business acumen, or the benefits of a historic accident.

Bork and Sidak bring the tools of the Chicago School to bear on various criticisms of Google raised by its competitors. They refute the claim that Google is the "gateway" to the Internet. They explain the two-sided market for Internet search: Internet users have demand for free search, and advertisers have demand for viewers. The two-sided nature of Internet search is crucial to understanding how Google's incentives align with promoting competition and consumer welfare. Google's largest source of revenue is from advertising, and demand from advertisers depends on consumers' demand for Google. That consumers can switch to substitute search engines instantaneously, and at zero cost, constrains Google's ability and incentive to act anticompetitively. Consumers can also navigate directly to any competing search engine due to the Internet's open architecture.

Bork and Sidak further explain that Google's ranking of its specialized search results is not anticompetitive. Google's specialized search is a product improvement in search. Effectively supplying that innovation requires allowing consumers to identify those specialized search results easily. This innovation adds value to Google search from the perspective of both consumers and advertisers. Google's critics have attempted to cast this innovation as a form of foreclosure—that Google uses market power in general search to foreclose vertical search providers (such as Amazon, Yelp, and Nextag) from the market by ranking its own specialized search results higher. As a matter of economic analysis, however, Google has no incentive to foreclose competitors from search because doing so is unlikely to offer additional profit at the potential cost of driving away consumers. Nonetheless, FairSearch.org, a coalition of Google's competitors alleging that Google is acting anticompetitively, and other critics urge the Federal Trade Commission (FTC) to require Google to rank specialized results the same way it ranks links to other web pages—which would defeat the purpose of specialized search. To declare this product improvement anticompetitive would tell all search providers that innovations will be suspect and possibly punished.

Bork and Sidak also explain why allegations that Google deprives search competitors of scale are incorrect. Scale is not a necessary input to compete in search. Google was not the incumbent search engine. It surpassed Yahoo, just as Yahoo surpassed others before it. Google's critics therefore exaggerate the importance of scale to being able to compete in search.

\*Robert Bork has held former positions as Solicitor General, Acting Attorney General, judge on the U.S. Court of Appeals for the D.C. Circuit, and a Yale Law School professor.

His influential book, *The Antitrust Paradox*, argued that antitrust law should promote consumer welfare. That view has since been endorsed by the Supreme Court and by antitrust enforcement officials.

**\*\*Gregory Sidak is the chairman at Criterion Economics. He is the Ronald Coase Professor of Law and Economics at Tilburg University and the co-editor of the *Journal of Competition Law & Economics*. Professor Sidak is an internationally recognized expert in complex litigation and commercial arbitration concerning antitrust and intellectual property.**

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