A White Paper

Rejecting the Google School of No-Antitrust Fake Consumer Welfare Standard

Why a consumer price of free, or a lower price, is not a Monopoly® Get-Out-of-Jail-Free card.

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By **Scott Cleland***

President of Precursor LLC; Chairman, NetCompetition; Publisher of Googleopoly.net

ABSTRACT: Evidently, Alphabet-Google has politically hijacked a significant part of the U.S. antitrust enforcement process from 2013-2018. A reasonable person looking at the publicly available evidence in this white paper and its supporting links, would conclude that Alphabet-Google has effectively politically hijacked a significant part of the U.S. antitrust enforcement process. That's because: 1) from 2008-2012, the W. Bush and Obama antitrust enforcement authorities brought strong and consistent antitrust scrutiny and enforcement to Google; 2) the January 3, 2013, chaotic abrupt, bipartisan closure of the FTC Google antitrust investigation in just 44 days, just after the 2012 Presidential election, led by the Google outside antitrust counsel who helped shut down the Texas antitrust investigation of Google 18 months earlier, evidently was politically influenced; and 3) the dearth of any Federal antitrust scrutiny of Google since that controversial January 2013 FTC closure. A reasonable person looking at the publicly available evidence in this white paper and its supporting links, would also conclude that there is a de facto Google School of No-Antitrust at work trying to influence public opinion, the media, elected and government officials, and U.S. and State antitrust enforcers, to make the public believe Google (and other Internet platforms) have no antirust risk or liability, because they offer free innovative product and services, and to make conservatives believe that the Google School of No-Antitrust and the Chicago School's consumer welfare standard and application are the same, when they are not. The Google School of No-Antitrust public stance that a consumer price of free or lower cost is always pro-consumer welfare, and cannot be anti-competitive or monopolistic, is not reasonable given the reasons and evidence in this white paper. Alphabet-Google's antitrust arguments and narrative appear to be a blatant form of jury nullification in politicizing antitrust as regulation of innocent innovative winners and not law enforcement based on: the facts of the case (here & here); the economic rule of reason; the Chicago School consumer welfare standard; and antitrust precedent and law.

***Disclosures & background of the Author:** *The research, views, and conclusions expressed here are the author's. Scott Cleland served as Deputy U.S. Coordinator for International Communications & Information Policy in the George H. W. Bush Administration. He is President of Precursor LLC, an internetization consultancy specializing in how the Internet affects competition, markets, the economy, and policy, for Fortune 500 companies, some of which are Internet platform competitors. He is also Chairman of NetCompetition, a pro-competition e-forum supported by broadband interests. Cleland has testified seven times before the Senate and House Antitrust Subcommittees on antitrust matters. Overall, eight different congressional subcommittees have sought his expert testimony a total of sixteen times. When he served as an investment analyst, Institutional Investor twice ranked him the #1 independent analyst in communications. He is also author of "Search & Destroy: Why You Can't Trust Google Inc."*

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I. Introduction

Is conventional-wisdom -- that a price of free or a lower price, cannot be a violation of U.S antitrust law, because it apparently enhances consumer welfare -- reasonable economics and reasoned thinking?

The premise of this analysis is that current antitrust conventional wisdom concerning Internet platforms and free consumer apps like Google, Facebook and Amazon, is more political narrative and PR, than reasonable, fact-driven, free market economics analysis and conclusion under the Chicago School of antitrust, consumer welfare standard.

Simply, the evidence here will show that in 2012 "The Google School of No-Antitrust" politically hijacked the Chicago School of Antitrust, consumer welfare standard, the DOJ/FTC antitrust enforcement process, antitrust academic research, and the accompanying political/media narrative.

Specifically, the tentpole assumption of the political Google School of No-Antitrust is the fake consumer welfare standard that a permanent fixed price of zero for consumers is presumptively a competitive legal price and never an anticompetitive illegal or fixed price, because multi-sided markets are inherently pro-competitive. The evidence will also show that tentpole assumption is built on an uneconomic sand foundation not bedrock free market economics.

II. Evidence Google School of No-Antitrust Has Politically Hijacked U.S. Antitrust Enforcement

A. What is the political "Google School of No-Antitrust"?

Simply, it is Google's current self-serving, and implicit thinking about antitrust that it wants the public and media to support and popularize, and the antitrust community to acquiesce to.

In 2009, Google Chairman Schmidt summarized Google's deceptively clever essence of its antitrust defense to the New York Times: "*We are one click away from losing you as a customer, so it is very difficult for us to lock you in as a customer in a way that traditional companies have*." Google's antitrust defense is predicated on people perceiving the user as Google's economic customer even though they are the product sold to Google's real customers, advertisers.

B. What are the apparent Ten Tenets of the Political Google School of No-Antitrust?

1. Since competition is a click away; Internet platform antitrust enforcement is generally unnecessary and obsolete.
2. The ends of promoting lowest-price consumer welfare and innovation are more important in antitrust enforcement than protecting the means or process of competition.
3. Internet users are the customer for the purposes of the antitrust consumer welfare standard, even if they pay nothing measurably monetary for a product or service.
4. Internet platform monopolies inherently are more efficient and convenient and thus superior to technology or market competition.

5. The technological efficiencies of online monopolization of a free product/service better serves consumer welfare than the market pricing efficiencies of offline competition.
6. Free products and services and the multi-sided business models that fund them are presumptively pro-competitive and innovative.
7. A company's permanent fixed-price of free for a multiple consumer products and/or services is more efficient and better for consumer welfare than market pricing competition.
8. Disruptive innovation with scale by dominant Internet platforms produces more consumer welfare than start-up competition between disruptive technologies without scale.
9. Open standards are always pro-competitive and can never be anticompetitive or winner-take-all.
10. Internet platform monopolies are better for consumer welfare than competition.

The initial foundation of this thinking is the 1998 book *Information Rules: A Strategic Guide to the Network Economy*, by Hal Varian, Google's Chief Economist since 2002, and Carl Shapiro, a former Chief Economist at the DOJ Antitrust Division who helped coin the term "network effects."

The nutshell, takeaway antitrust advice of the book is to avoid antitrust problems by being perceived as businesses focused most on creating net user benefits and being innovative. Google's Chief Economist Varian designed the optimization of Google's multi-sided advertising business model that intermediates, advertisers, publishers, and users.

C. The Google School of No-Antitrust explained in Google's own words

In 2006, Google CEO Eric Schmidt described Google's business mission: "*Ultimately our goal at Google is to have the strongest advertising network and all the world's information*."

In 2008, Google SVP Jonathan Rosenberg explained Google's unstoppable network effects: *"Google is really based on this. Users go where the information is so people bring more information to us. Advertisers go where the users are, so we get more advertisers. We get more users because we have more advertisers because we can buy distribution on sites that understand that our search engine monetizes better. So more users more information, more information more users, more advertisers more users, it's a beautiful thing, lather, rinse, repeat, that's what I do for a living. So that's … the engine that can't be stopped."*

In 2009, Google Executive Santiago de la Mora told the New York Times: "*Search is critical. If you are not found, the rest cannot follow*."

In 2009, Google's Varian further explained "Googlenomics," i.e. Google's exceptional network effects, to Wired "*Why does Google give away products like its browser, its apps, and the Android operating system for mobile phones? Anything that increases Internet use ultimately enriches Google, Varian says. …more eyeballs on the Web lead inexorably to more ad sales for Google*."

In 2009, Google co-founder Sergey Brin explained Google's business strategy to Wired, "*It's obvious what our strategy should be. It's to work on problems on a scale no one else can*." – Sergey Brin, Wired 6-09.

In 2009, Google Chairman Eric Schmidt said it another way: "*Our model is just better… Based on that, we should have 100% share."*

In 2009, Google Chairman Schmidt summarized Google's deceptively clever antitrust defense to the New York Times: "*We are one click away from losing you as a customer, so it is very difficult for us to lock you in as a customer in a way that traditional companies have*."

In 2010, Google Ranking Head Singhal told the Telegraph: Google is "*the biggest kingmaker on this earth*."

In 2010, a top Google lawyer said in the book *In The Plex*: "*Google's leadership does not care terribly much about precedent or law*."

In 2011, Google Chairman Eric Schmidt candidly explains Google's management strategy: "*At Google, we give the impression of not managing the company because we don't really. It sort of has its own borg-like quality if you will. It sort of just moves forward*."

In 2012, Google cofounder Sergey Brin told the Guardian: "*If we could wave a magic wand and not be subject to US law, that would be great*."

Whenever Google attracted antitrust scrutiny its mantra was "*competition is a click away*" for users, and that all of Google's products and services were *free* to all users, which indoctrinated public dialogue that the user was the consumer and customer, and the user always has competitive choice.

D. How did Google School of No-Antitrust politically hijack the Chicago consumer welfare standard?

From 2007-2012, prior to Google politically hijacking the Chicago School of antitrust in the fall of 2012, both the FTC and DOJ each twice defined the relevant market for Google to be a version of search advertising with advertisers as "the customer" and not search users as the customer consumer.

This is an important antitrust predicate to understand. Antitrust authorities rejected Google's search user as customer market definition argument four times.

- In 2007, the W. Bush FTC, in approving Google-DoubleClick (4-1) after a six month review, defined the market as online advertising.
- In 2008, the W. Bush DOJ determined Google was dominant in the search advertising market when it threatened a Sherman Section 1 & 2 case against Google to block the proposed Google-Yahoo Ad Agreement.
- In 2010, the Obama DOJ defined the market as search advertising and affirmed that Google was dominant in that market in approving the highly-unusual partnership between the then #2 Yahoo and #3 Microsoft search advertisers.
- In 2010, the Obama FTC defined the relevant market a second time as advertising in approving Google-Admob.

In the fall of 2012, Google evidently politically hijacked the U.S. antitrust law enforcement process, flipping a tough bipartisan antitrust enforcement environment from 2008 to the first nine months of 2012, to a complete shut-down of FTC or DOJ antitrust oversight from 1-3-2013 to present.

In August 2012 after a year-long probe, FTC Staff recommended antitrust prosecution of Google. Before that November election, the FTC Chairman then signaled in the press that the FTC intended to bring an antitrust case against Google.

However, after the November 2012 Presidential election, Bloomberg reported that Google Chairman Schmidt was credited as "an under-appreciated asset" in the Obama Re-Elect Campaign.

On November 19, 2012, Renata Hesse, Google's outside antitrust defense counsel until June 2011, who worked on shutting down Texas' Google antitrust probe, was appointed Acting U.S. DOJ Assistant Attorney General for Antitrust.

Just 44 days later, on January 3, 2013, all five Google antitrust probes were abruptly closed. Nineteen months after helping close the Texas AG antitrust investigation in 2011, Renata Hesse led the U.S. Government's total shutdown of Google antitrust enforcement which has lasted since then – five years, four of them with Ms. Hesse as the #1 or #2 at the DOJ Antitrust Division.

While four probes were closed with a vote, voluntary commitments, and explanations, the Android tying probe was silently closed without a vote.

Since then, Google Search and search advertising share went from ~70% of PCs in 2012, to ~95% Android Mobile Search and search advertising share in 2017.

III. Defense of the Economic Basis of Chicago Consumer Welfare Standard v. Google Political Basis

A. The essence of rule of law is that the ends do not justify the means.

The implicit universal antitrust defense of the Google School of No-Antitrust is that because Google successfully satisfies a desirable consumer end – i.e. create free innovative products and services that most consumers use and like – the means that Google employs, or its resulting monopoly power, are legal under antitrust law.

That can't be true under rule of law in a constitutional democracy because it denies due process of a plaintiff. That can't be true under U.S. antitrust law either, because that would deny that protecting the process of competition, i.e. the means of competition, was no longer the lodestar of U.S. antitrust law enforcement.

That also can't be true under free market economics, because without rule of law, free markets can't exist, because rule of law produces the necessary foundations of a free market: legal tender, enforcement of contracts and property rights, and security of one's life, property, and gains.

The Google School of No-Antitrust assertion -- that a price of free or a lower price, cannot be a violation of U.S antitrust law, because it apparently enhances consumer welfare – is a deceptive political defense, not a legitimate legal or economic defense under antitrust precedent and its consumer welfare standard.

B. Antitrust is not about voluntary free activities.

If the consumer in the consumer welfare standard does not have to be the customer, then the consumer welfare standard loses all its reasonable and reasoned free market economic moorings and becomes legally unbounded.

Consumers are not Google's economic customer, advertisers are. Google claims the relevant "consumer" is the free search user who pays nothing measurable monetarily for using search. The real

consumers/customers in this antitrust "trade or commerce" market are advertisers and publishers, whose trade and commerce is purposeful-business that can be, and is, measured monetarily and financially.

Why would the Chicago School wish to extend antitrust investigations and enforcement into voluntary free activities, a form of indirect business charity and not a measurable economic form of "trade or commerce from a user's perspective?"

The slippery slope of extending antitrust enforcement and potential government intervention to voluntary, free, non-measurable, activities, should give pause to any adherent of the Chicago School of antitrust. If one does not limit Sherman "trade and commerce" to monetarily-measurable economic transactions, what would be a logical and common sense limiting principle to government antitrust intervention going forward?

Such a sweeping potential antitrust precedent could transform antitrust law into a roving de facto regulatory consumer protection tool justifying government intervention into most any free and voluntary activity that happens to be exceptionally popular among consumers.

At bottom, Google's antitrust defense is that Google is better for consumers and for innovation than competition or the competitive process, based on all the consumer benefits and innovation Google has so graciously given the user to date.

The fallacy in this self-serving and circular Google position is the broad and deep market experience we have that monopolies have less competitive pressure to improve and tend to lose sight of consumer/customer interests and the need to innovate -- the longer they are a monopoly.

C. For price to epitomize consumer welfare, it requires a free-market/invisible-hand at work.

That way the combined individual self-interested actions of the invisible hand generally can produce the free market's unintended social benefits, by efficiently and continually, equilibrating price per supply and demand, cost and price and risk and reward.

This has been **the genius and lasting value of the Chicago School's** *economic* antitrust consumer welfare standard, that it objectively can best serve consumers and society, ***if*** the company's price under scrutiny is based on, and determined by, free market economics.

Thus, the fulcrum question here should be, are Internet platforms subject to, and operating under, free market economics where consumer welfare is naturally economically optimized? If they are, then they appear largely immunized from antitrust scrutiny as they claim and imply. However, if they are not, effectively subject to, and operating under free market pricing, Internet platforms like Google, Facebook, and Amazon warrant strong antitrust scrutiny.

For instance, if the company/platform being investigated claims that their users are their customers and not the product, a free, permanent and pervasive price of zero for multiple platform products/services, is **NOT** a market efficient "price," because as a "price" it apparently is impervious to normal real-world, price-affecting changes in supply, demand, cost, price, risk, reward, competition, or innovation.

D. The notion that a price of free or a lower price can only be pro-competitive and not predatory or monopolistic defies established precedent.

In *U.S. v. Microsoft*, Microsoft was found guilty of violating the Sherman Antitrust Act in bundling a free Explorer browser with Windows to destroy burgeoning Internet browser competition.

E. Supplier freedom of business model choice does not necessarily mean that every business model they choose gives consumers similar free market choice.

The point here, is that the favored, multi-sided, free-to-the-user, business model of Internet platforms presumes that their free market choice as an individual supplier, somehow means that the user has, and retains, their free market choice. If the price is fixed for the Internet user, the user does not necessarily see a fixed single price of zero as choice, because to them it is a take it or leave it price of zero.

The fallacy here is that free is the best and only price, because all consumers are the same and do not have different demand because of differing needs, wants and means.

Many consumers need, want, and are willing to pay more for different or higher quality, safety, security, privacy, or other type of customization that they and many other users want, but not what the platform wants to commoditize. (A current example of this is Facebook, Google and others, who are unwilling to offer a paid version of their services that could better protect a user's privacy, security, and safety, or that of their children.) One universal free offering may best serve the supplier, but not necessarily the user.

F. Free frictionless offerings create most supplier welfare, not necessarily most consumer welfare.

Stratechery Ben Thompson's aggregation theory brilliantly explains why suppliers want to aggregate users and other inputs, and why suppliers find free-to-the-user, multi-sided business models as the best and most value-creating strategy for themselves.

It is the reason Amazon, Google and Facebook are winner-take-all Internet aggregators and distribution networks; Uber and Airbnb are wanna-be winner-take-all Internet aggregator and distribution networks; and why the only startups the market cares about are unicorns, potential niche, winner-take-all Internet aggregator and distribution networks.

G. The best friend of the political Google School of No-Antitrust is economics "ceteris paribus" assumption – assume all things are equal – i.e. ignoring variables that disprove one's desired conclusion.

Ceteris paribus encourages one to assume that users are consumer-customers with free market buying power and not data/commodities that are traded in milliseconds most every day.

What may be **the worst ceteris paribus assumption in economic antitrust analysis of Internet platforms specifically,** is the implicit assumption that government policy is neutral and affects all parties equally, so government policy can be ignored and not factored into the competition analysis or into the tentpole antitrust economic assumption that the free price for consumers is only a free market, pro-competitive, pro-consumer welfare price.

New antitrust research by this author is relevant to this question and was submitted to the U.S. DOJ Antitrust Division's March 14, 2018 Roundtable on Antitrust Exemptions and Immunities.

It's title: "**A Market Divided: U.S. Internet Policy Creates Anticompetitive Asymmetric Accountability**.*" Government exemptions and immunities overwhelmingly favor regulatory arbitrage over free market competition. Accountability arbitrage harms: consumer welfare; free market forces; the process of competition; and economic growth. (Note: A new causation model explains the anticompetitive arbitrage effects of asymmetric accountability.)"* Please find the white paper here.

U.S. Internet-first, industrial policy in the 1996 Telecom Act, effectively exempts only Internet companies from: all U.S. communications law, regulation, and public responsibilities; normal non-communications Federal/State regulation; and normal civil liability for what happens via their platforms and business models.

Importantly, Antitrust laws are explicitly unaffected by the exemptions and immunities above in the 1996 Telecommunications Act and section 230 . *"Section 601… (b) ANTITRUST LAWS.— (1) SAVINGS CLAUSE.— Except as provided in paragraphs (2) and (3),* ***nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws."*** [Bold added for emphasis.]

In addition, there is new additional research by this author dated April 16, 2018, that is relevant to the validity of a ceteris paribus economic assumption that the permanent pervasive price of zero for Internet platform users is a free market and competitive price.

It is highly relevant to this discussion because the new research estimates for the first time the huge hidden costs to consumers from U.S. Internet industrial policy. See the white paper here.

It is titled: "**Internet Platform Corporate Welfare and Leechonomics: The Huge Hidden Public Costs (>$1.5T) of U.S. Internet Industrial Policy**" "*Summary: Sweeping Government exemptions/immunities from risks and costs overwhelmingly favor zero-sum, parasitic policy arbitrage and corporate welfare, which perversely fosters unproductive "leechonomics." U.S. Internet policy most incents platform business that maximizes arbitrage spreads, i.e. taking maximal societal risk that un-immunized competitors can't take, where the benefits can be capitalized by platforms, and the costs socialized to the public (>$1.5T), because the government has only exempted and immunized platforms from normal accountability/responsibility for consumer welfare*."

Both new research analyses and their supporting models, suggest that Internet platforms price of free to users is not a free market economic and competitive price, but a government policy driven price that less reflects free market consumer welfare, and more Internet platform corporate welfare. That's because being specially exempted and immunized from the costs and risks their competitors shoulder, Internet platforms are also greatly reducing consumer welfare, not only promoting it.

Conclusion:

Evidently, Alphabet-Google has politically hijacked the U.S. antitrust enforcement process from 2013-2018.

A reasonable person looking at the publicly available evidence in this white paper and its appendicies, and its supporting links, would conclude that Alphabet-Google has effectively politically hijacked a significant part of the U.S. antitrust enforcement process because:

First, from 2008-2012, the W. Bush and Obama antitrust enforcement authorities brought strong and consistent antitrust scrutiny and enforcement to Google;

Second, the January 3, 2013, chaotic abrupt, bipartisan closure of the FTC Google antitrust investigation in just 44 days, just after the 2012 Presidential election, led by Renata Hesse, the Google outside antitrust counsel who helped shut down the Texas antitrust investigation of Google 18 months earlier, evidently was politically influenced; and

Third, the total dearth of any Federal antitrust scrutiny of Google since that FTC closure, the opposite of the first Obama term and the W. Bush Administration antitrust scrutiny, when the EU brought three antitrust cases against Google built on U.S. 2008-12 antitrust precedents, is an evident glaring gap in antitrust accountability, that current Federal antitrust authorities and overseers must scrutinize to ensure the integrity and effectiveness of U.S. antitrust enforcement going forward.

A reasonable person looking at the publicly available evidence in this white paper and its supporting links, would also conclude that there is a de facto Google School of No-Antitrust at work trying to influence public opinion, the media, elected and government officials, and U.S. and State antitrust enforcers, to make the public believe Google has no antirust risk or liability because its offers free innovative product and services, and to make conservatives believe that the Google School of No-Antitrust and the Chicago School's consumer welfare standard and application are the same, when they are not.

The Google School of No-Antitrust public stance that a consumer price of free or lower cost is always pro-consumer welfare, and cannot be anti-competitive or monopolistic, is not reasonable given the reasons and evidence in this white paper.

Alphabet-Google antitrust arguments and narrative appear to be a blatant form of political jury nullification in politicizing antitrust as regulation of innocent innovative winners and not law enforcement based on:

- Due Process,
- The facts of the case (here & here);
- The economic rule of reason;
- The consumer welfare standard; and
- Antitrust precedent and law.

Forewarned is forearmed.

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White Paper Appendices:

1. Appendix 1: The Detailed Timeline of Google's Political Hijacking of the Chicago Antitrust Standard
2. Appendix 2: Precursor LLC Research Series on Asymmetric Accountability Harms:

Appendix 1: The Detailed Timeline of Google's Political Hijacking of the Chicago Antitrust Standard

*8-8-12: **FTC Outside Litigator Beth Wilkinson Recommends FTC Antitrust Suit Against Google** in Staff Report*. August 8, 2012, the FTC Staff Report recommends "*that the Commission Issue the following complaint (p.116). "Conclusion: "Staff Concludes that Google's conduct has resulted – and will result – in real harm to consumers and to innovation in the online search and search advertising markets. Google has strengthened its monopolies over search and search advertising through anticompetitive means, and has forestalled competitors and would be competitors' ability to challenge those monopolies, and this will have lasting negative effects on consumer welfare.*

*8-12: **Former Google Antitrust Counsel made DOJ antitrust deputy for criminal and civil operations**:* In August 2012, Renata Hesse becomes Deputy Assistant Attorney General for Antitrust Criminal and Civil Operations, 14 months after serving as Google's outside antitrust counsel on matters involving DOJ, more importantly, Google was under DOJ supervision for its 2011 Criminal Non-Prosecution Agreement and $500m criminal forfeiture penalty; Google-ITA consent decree, Google-Motorola monitoring for SEP abuses; Microsoft-Yahoo ad agreement; the Google-Book settlement; etc. Apparently, there is no known evidence of any Ms. Hesse Google recusals.

*9-10-12: **Google academic consultant Josh Wright nominated to a FTC republican commissioner slot;** September 10, 2012, President Obama* nominated *of Joshua Wright as a Republican Commissioner to the FTC. White House Presidential Personnel had to know Mr. Wright had a financial conflict of interest in that Google had funded some of Mr. Wright academic research related to Google's business. To get confirmed by the Senate, Mr. Wright had to* recuse himself *from all Google matters for two years. Mr. Wright was confirmed by the Senate one day before the FTC-Google settlement was announced. A normal vetting process focused on avoiding the appearance of conflicts, would not have allowed an appointment of an FTC commissioner with Google conflicts of interest knowing that the FTC was undergoing an antitrust probe of Google ad overseeing Google would be significant part of any new FTC Commissioner's duties -- unless that was what those running the process wanted to accomplish.*

*9-25-12: **Google attempts Yahoo ad syndication deal like what 2008 DOJ opposed as monopolistic:*** September 25, 2012, when Google senior executive Marisa Mayer left Google to become CEO of Yahoo, Google Chairman Eric Schmidt apparently tried to collude with his old report to break up the 2010 DOJ-approved, Microsoft-Yahoo search partnership, and do an ad agreement with Yahoo similar to the one DOJ threatened a monopolization antitrust suit over, in 2008.

*10-2-12: **FTC Hires Litigation Economist for Google Antitrust Case:*** October 2, 2012, seven weeks after outside litigator Beth Wilkinson recommended in its the FTC also hired outside expert economist, Rich Gilbert, to assist in its emerging search antitrust case against Google.

10-12: **Robert H. Bork & J. Gregory Sidak** published **on Google in the Journal of Competition Law & Economics**, "WHAT DOES THE CHICAGO SCHOOLTEACH ABOUT INTERNET SEARCH AND THE ANTITRUST TREATMENT OF GOOGLE?" The abstract states: "*Antitrust agencies in the United States and the European Union began investigating Google's search practices in 2010. Google's critics have consisted mainly of its competitors, particularly Microsoft, Yelp, TripAdvisor, and other search engines. They have alleged that Google is making it more difficult for them to compete by including specialized search results in general search*

pages and limiting access to search inputs, including "scale," Google content, and the Android platform. Those claims contradict real-world experiences in search. They demonstrate competitors' efforts to compete not by investing in efficiency, quality, or innovation, but by using antitrust law to punish the successful competitor. The Chicago School of law and economics teaches—and the Supreme Court has long affirmed—that antitrust law exists to protect consumers, not competitors. Penalizing Google's practices as anticompetitive would violate that principle, reduce dynamic competition in search, and harm the consumers that the antitrust laws are intended to protect."

10-9-12: ***Scott Cleland*** *published* ***a critique and rebuttal of the Bork-Sidak Google antitrust analysis*** *entitled: "Bork-Sidak's Fatally Flawed Google Antitrust Defense*." Its summary stated: "*As an unabashed Milton Friedman conservative, I strongly agree with Judge Robert H. Bork and Professor J. Gregory Sidak that antitrust law's purpose is to protect competition and the competitive process and not to protect competitors. I also hold my fellow conservatives in highest regard. However, as a highly-experienced and esteemed judge and professor, they know they must prove their case on the merits. In Google's case, they have not. While it would be difficult to challenge the sophistication of their legal analysis, it is not hard to discredit the sophistication of their economic analysis of the relevant market, economics, and behavior in question. Their defense indicates that they have fully-adopted Google's core economic premises and public-representations, so their skilled legal arguments can do no better than the fatally-flawed material with which Google has given them to work. Specifically, their legal analyses rest upon a misunderstanding of the relevant market in question. Since antitrust prosecution is fact-driven, not theory dependent, no amount of legal or economic theoretical elegance can overcome a fatally-flawed factual predicate. The straw man pillars which undergird the edifice of their legal arguments are built upon a foundation of sand that washes away upon scrutiny that exposes how this market actually works. Moreover, the foundational Google assertions on which they have constructed their case have already been rejected by antitrust authorities repeatedly. Simply the foundational market assertion of their case is that the relevant market is the charity of free search for consumers and not the business of search advertising between Google, advertisers and publishers. And the foundational economic assertion of their case is that the universal and global nature of Google's business enjoys no scale advantage. If one is allowed to assume away market and economic realities central to the case via unsupported assertion, one can reach most any conclusion one desires*."

10-13-12: Bloomberg: ***FTC staff recommend two Google antitrust suits:*** *abuse of search dominance & SEP patents*; October 13, 2012, Bloomberg reports: "*Federal Trade Commission investigators are circulating an internal draft memo that recommends suing Google for abusing its dominance of Internet search in violation of antitrust laws, three people familiar with the matter said. The more than 100-page memo has been distributed to the agency's five commissioners, who will decide whether to sue, two of the people said. A majority of commissioners, including FTC Chairman Jon Leibowitz, have expressed concerns internally about Google's practices, and are deciding how to proceed, two of the people said. Separately, the FTC is considering a second lawsuit against Google for misusing patent protections to block rivals' smartphones from coming to market, said four people familiar with the matter who asked not to be named because they weren't authorized to speak publicly about the investigation*."

11-6-12: November 6, 2012 Presidential Election, President Obama Reelected

Google was publicly credited with successfully helping the 2012 Presidential Reelect campaign*;* Bloomberg reported: "During the 2012 campaign, Barack Obama's reelection team had an underappreciated asset: Google's executive chairman, Eric Schmidt. He helped recruit talent, choose technology, and coach the campaign manager, Jim Messina, on the finer points of leading a large organization. "On election night he

was in our boiler room in Chicago," says David Plouffe, then a senior White House adviser. Schmidt had a particular affinity for a group of engineers and statisticians tucked away beneath a disco ball in a darkened corner of the office known as "the Cave." The data analytics team, led by 30-year-old Dan Wagner, is credited with producing Obama's surprising 5 million-vote margin of victory." [Note: this article was published May 30, 2013.]

11-7-12: ***Time Magazine explained the importance of data analytics to the 2012 Presidential election*** *outcome*; November 7, 2012, Time explained: "*Inside the Secret World of the Data Crunchers Who Helped Obama Win … Data-driven decision-making played a huge role in creating a second term for the 44th President and will be one of the more closely studied elements of the 2012 cycle*."

11-9-12: ***Obama Reelect campaign manager considered Google's Chairman Eric Schmidt a mentor***, November 9, 2012 per Stuff.com.nz.

11-16-12: **Former Google Deputy General Counsel, Michelle Lee is** announced **as Director of the new satellite Silicon Valley Office of the U.S. Patent and Trademark Office USPTO**. Ms. Lee was Google Deputy General Counsel for Patents and Patent Strategy from 2003-2012, where she "built Google's IP legal team from scratch," and where she led Google's acquisition of Motorola and its rich smartphone-relevant patent portfolio and standard essential patents from August 2011-May 2012. Note: Ms. Lee joined the USPTO just nine months after working on getting Google-Motorola approved by DOJ and just five months after leaving Google.

11-19-12: ***DOJ picks former Google counsel (6-11) acting DOJ antitrust chief as FTC threatens Google antitrust suit***: November 19, 2012, AntitrustLawyerBlog reports: "*DOJ announced that Renata B. Hesse was appointed Acting Assistant Attorney General for the Antitrust Division. Ms. Hesse takes over for Joseph Wayland*." Ms. Hesse was selected over four other deputies with more seniority and no apparent Google antitrust representation conflicts. Ms. Hesse had Google conflicts having represented Google on multiple antitrust and intellectual property matters as recently June 2011, just seventeen months earlier, right in the middle of FTC signaled antitrust cases against Google, (given the hiring of an outside litigator and a litigation economist and leaks prior to the election about the FTC Staff Report recommendations on search and SEP patent abuses), when Ms. Hesse may have been involved in the DOJ's review of Google-Motorola transaction with no apparent public evidence that Ms. Hesse recused herself from such Google antitrust matters like that that she may have had some involvement in.

11-20-12: ***Bloomberg: "U.S. Said to Waver on Antitrust Case Against Google****;"* November 20, 2012, Bloomberg reported: "*Google Inc. may skirt the most serious antitrust allegations under investigation by the U.S. as regulators waver on whether they can prove consumers are hurt by the way the company ranks its search results, three people familiar with the matter said*." "*Google… may skirt the most serious antitrust allegations under investigation by the U.S. as regulators waver on whether they can prove consumers are hurt by the way the company ranks its search results, three people familiar with the matter said*." … "*FTC Chairman Jon Leibowitz told Google to propose a resolution to a host of antitrust concerns in the coming days or face a lawsuit, two people familiar with the matter said last week*." Note: Three weeks after Google was credited by multiple sources for having an important role in the re-election of the President, and one day after Google's former longtime outside antitrust counsel, Renata Hesse, is chosen to replace the then current Acting DOJ antitrust chief, Joseph Wayland, Bloomberg reporting by Sara Forden tellingly flipped from a likely antitrust case to a likely settlement.

11-27-12: ***Bloomberg: Google Chief Page Said to Meet FTC Over Antitrust Probe***; November 27, 2012, Bloomberg reports: "*Google Inc. Chief Executive Officer Larry Page met with U.S. Federal Trade Commission officials today in Washington as the agency moves to wrap up its 19-month investigation of the company's business practices, according to a person familiar with the discussions."*

12-17-12: ***Bloomberg: "Google Said to End FTC Probe With Letter Promising Change"*** December 17, Bloomberg's Sara Forden reports: "*Google Inc. is poised to make voluntary concessions that will end a 20-month U.S. antitrust probe of its business practices without any enforcement action, two people familiar with the matter said*." Then previous FTC Chairman William Kovacich criticized the then Google rumored settlement in the Bloomberg story saying that: "*The notion of voluntary commitments is close to worthless…They are feeble policy-making instruments and they will not in any way placate the complainants, who will correctly see them for what they are, which is an attempt to provide cover to walk away*."

12-17-12: ***Washington Post: "Google, FTC said to be near deal to end probe;"*** December 17, 2012, Washington Post reports: "*Google and the Federal Trade Commission are on the verge of a deal that would end a nearly two-year-old investigation into allegations of monopolistic behavior by implementing concessions that fall far short of what the company's rivals have sought, said people familiar with the negotiations. Under the deal, which still requires the approval of the five-member commission, Google would agree to new limits on its ability to use snippets of content from other Web sites and would agree to make it easier for marketers to transfer their online ads to other services. But there would no action by the FTC on persistent claims that Google uses its power over the search market to hurt rival companies and give advantage to its own online services. The final phase of talks, which have been underway for weeks, have focused on whether Google would accept a binding agreement, called a consent decree, limiting its future business practices…*"

1-3-13: ***Senate Judiciary Committee Chairman Patrick Leahy*** **criticized** ***the FTC-Google antitrust Settlement:*** *January 3, 2013 per Chairman Leahy's* release*: "I am disappointed… [the FTC-Google settlement] relied on simple, voluntary commitments from Google to end certain practices that a majority of Commissioners found to have raised strong concerns about impeding innovation."*

1-3-13: ***FTC Closes All Google Antitrust Matters:*** January 3, 2013, the FTC decided the following: "*Under a settlement reached with the FTC, Google will* (1) *meet its prior commitments to allow competitors access – on fair, reasonable, and non-discriminatory terms – to patents on critical standardized technologies needed to make popular devices such as smart phones, laptop and tablet computers, and gaming consoles.* (2) *In a separate letter of commitment to the Commission, Google has agreed to give online advertisers more flexibility to simultaneously manage ad campaigns on Google's AdWords platform and on rival ad platforms; and* (3) *to refrain from misappropriating online content from so-called "vertical" websites that focus on specific categories such as shopping or travel for use in its own vertical offerings. …regarding the specific allegations that the company biased its search results to hurt competition, the evidence collected to date did not justify legal action by the Commission…*"

1-3-13: ***FTC Commissioners Criticized Closure of Google Antitrust Probe:*** January 3, 2013, Democrat FTC Commissioner Edith Ramirez stated officially in a footnote she "*objects to the form of the commitments made by Google*." (Three months later in testimony to the Senate Antitrust Subcommittee FTC Chairwoman Ramirez stated: "*That matter* [the voluntary Google search settlement] *should not be considered precedent. When there is a majority of commissioners who find there is a violation, any remedy should be in a formal commitment order. That's what happened before the Google matter and that's what's going to happen after the Google matter*.") In addition, January 3, 2013, Republican FTC Commissioner Tom Rosch told Bloomberg

that the FTC agreement "*creates very bad precedent and may lead to the impression that well-heeled firms such as Google will receive special treatment at the commission*. *Instead of following standard commission procedure and entering into a binding consent agreement to resolve the majority's concerns, Google has instead made non-binding commitments with respect to its search practices*."

1-3-12: ***FTC Secretly Closes Android Antitrust Probe with No Vote or Public Comment****:* January 3, 2012, the FTC Chairman's statement at the time that "*all of its competition-related investigations of Google were settled*," without a vote on any public comment on the closing its Google-Android tying investigation, that was referenced in the FTC staff report and which stated: "*Staff continues to investigate Google's conduct in the mobile* [Android] *arena and will address these issues in a supplemental memorandum*;" (fn. 51, p120) and noted that "*Since Google's release of the first commercially available mobile device running Android OS in October 2008, Android's market share has grown exponentially*." (fn. 51, p120)

1-3-13: ***New DOJ Antitrust Chief Sworn In****:* January 3, 2013 William J. Baer was sworn in as new DOJ Antitrust Chief.

1-11-13: ***Former Google Academic consultant sworn in as FTC commissioner and recuses from Google matters****;* January 11, 2013, FTC reports**: "***Federal Trade Commission Chairman Jon Leibowitz welcomed Joshua D. Wright as an FTC Commissioner at a swearing-in ceremony today. President Obama named Wright, a Republican, to a term that ends on September 25, 2019."*

1-17-13: **After the FTC closed the Google probe, Google CEO Larry Page** explained **his view of business risk:** *"…show me a company that failed because of litigation. I just don't see it. Companies fail because they do the wrong things or they aren't ambitious, not because of litigation or competition*."

5-8-13: **Google Chairman Eric Schmidt** told **CSM: "*The impact of the data revolution will be to strip citizens of much of their control*** *over their personal information....The communication technologies we use today are invasive by design, collecting our photos, comments and friends into giant databases that are searchable and, in the absence of regulation...[it is all] fair game*"

3-25-15: ***WSJ: Google CEO Page and Chairman Schmidt met with White House prior to end of FTC-Google case:*** March 25, 2015, WSJ reports: "*As the federal government was wrapping up its antitrust investigation of Google Inc., company executives had a flurry of meetings with top officials at the White House and Federal Trade Commission, the agency running the probe. Google co-founder Larry Page met with FTC officials to discuss settlement talks, according to visitor logs and emails reviewed by The Wall Street Journal. Google Chairman Eric Schmidt met with Pete Rouse, a senior adviser to President Barack Obama, in the White House. The documents don't show exactly what was discussed in late 2012. Soon afterward, the FTC closed its investigation after Google agreed to make voluntary changes to its business practices*."

5-14-15: ***FTC Issues Google-Requested Press Release on FTC Closure of Google Antitrust Probe****:* May 14, 2015, a Buzzfeed article exposes a March 23, 2015 email from a top Google lobbyist to the FTC Chairman's Chief of Staff that urged the FTC to issue a press release to explain the FTC's closure of its Google antitrust investigation (which included its Android investigation without a vote or public notice. Two days later, the FTC complied with a press release doing what a top Google lobbyist urged the FTC do in its email. Compare the Google lobbyist's urgent email request for FTC action and the FTC's prompt and responsive press release reply side by side, and it is clear the Google email resulted in the FTC press release.

4-22-16: ***The Intercept: The Android Administration: Google's remarkably close relationship with the White House****:* April 22, 2016, *The Intercept* teamed up with Campaign for Accountability to present two revealing

data sets from that forthcoming project: one on the number of White House meetings attended by Google representatives, and the second on the revolving door between Google and the government. "*Google representatives attended White House meetings more than once a week, on average, from the beginning of Obama's presidency through October 2015. Nearly 250 people have shuttled from government service to Google employment or vice versa over the course of his administration. No other public company approaches this degree of intimacy with government. According to an analysis of White House data, the Google lobbyist with the most White House visits, Johanna Shelton, visited 128 times, far more often than lead representatives of the other top-lobbying companies — and more than twice as often, for instance, as Microsoft's Fred Humphries or Comcast's David Cohen*." With the Google Transparency Project, the Intercept published detailed interactive graphics: one of Google's White House visits and the other of the Google-Obama Administration revolving door. Additional important data sets are: Google Chairman Schmidt's political influence via Civis Analytics; Google Chairman Schmidt's personal political influence; Googler's influence with procurement via the U.S. Digital Service; Google's leveraging YouTube for White House political influence; Did Google White House access violate ethics rules; a network analysis of Google's WH visits.

4-15-16: ***Attorney General names Renata Hesse to be Acting DOJ Antitrust Division Chief*****:** April 15, 2016, the DOJ release announced Renata Hesse as Acting Assistant Attorney General for Antitrust: "*Before her selection to run the Antitrust Division, Hesse served as the Deputy Assistant Attorney General for Criminal and Civil Operations in the division for almost four years. During this time, she also served as the division's Acting Assistant Attorney General immediately prior to Baer's confirmation. Hesse was a career trial attorney in the division between 1997 and 2006, in the last four years of which she served as the Chief of the Networks and Technology Section*."

4-20-16: ***Questions raised why the FTC's Google Android antitrust probe closed without a vote or comment:*** April 20, 2016, PrecursorBlog raised questions "about the strange secrecy and lack of normal due process in shuttering its active Android tying antitrust investigation. This is an excerpt from the 4-20-16 PrecursorBlog post: We now know from the 2012 Google-FTC staff report that just before the FTC closed all its Google antitrust investigations, the FTC staff report stated: "*Staff continues to investigate Google's conduct in the mobile* [Android] *arena and will address these issues in a supplemental memorandum*;" (fn. 51, p120) and noted that "*Since Google's release of the first commercially available mobile device running Android OS in October 2008, Android's market share has grown exponentially*." (fn. 51, p120) The inexplicable nature of the FTC's closure of its Android-tying investigation in 2013, adds to the many other facts that suggest that the FTC abruptly closed all FTC antitrust probes into Google for political reasons after the 2012 election. The FTC Chairman's statement at the time made it clear "*all of its competition-related investigations of Google were settled*," which would obviously include the Android-tying probe that the FTC staff in October 2012 said they were continuing to investigate and would prepare an Android "*supplemental memorandum*" for the Commissioners. However, in all the statements explaining the settlement of supposedly all of the Google antitrust issues the FTC staff were investigating, there inexplicably is zero mention of the existence of the FTC staff's official Android-tying investigation; what the staff discovered/concluded; or how the FTC finally decided to officially resolve the probe for the public record. Even worse, there was no official vote of the FTC commissioners on closing the Android tying matter when they voted on four other issues in four different ways, 4-1; 3-0-2; 4-0-1; and 5-0. Were the other commissioners even told in the frenzied political rush to shut down all FTC Google antitrust probes, that they did not have a say in closing the FTC's separate Android-tying investigation? Tellingly FTC Commissioner Rosch warned in his concurring and dissenting statement that: *"… our "settlement" with Google creates very bad precedent and may lead to the impression that well-heeled firms such as Google will receive special treatment at the Commission*." The FTC's closure of its Android probe,

is even more inexplicable and deceptive because in the FTC press statement the FTC Chairman claimed the FTC conducted an "*incredibly thorough and careful investigation*" in publicly explaining the three parts of the investigation that were settled with Google (i.e. abuse of: SEP patents, advertising APIs, and website opt-outs) and the two matters that resulted in no action or settlement despite commissioner concerns (i.e. search bias and unauthorized content scraping)."

*7-17-17: **WSJ investigation exposed Google's hidden influence paying for friendly academic antitrust analysis**: July 11, 2017, the WSJ's investigative analysis by Brody Mullins and Jack Nicas, Hidden Influence, Paying Professors, Inside Google's Academic Influence Game, reported: "Google operates a little-known program to harness the brain power of university researchers to help sway opinion and public policy, cultivating financial relationships with professors at campuses from Harvard University to the University of California, Berkeley. Over the past decade, Google has helped finance hundreds of research papers to defend against regulatory challenges of its market dominance, paying $5,000 to $400,000 for the work, The Wall Street Journal found. Some researchers share their papers before publication and let Google give suggestions, according to thousands of pages of emails obtained by the Journal in public-records requests of more than a dozen university professors. The professors don't always reveal Google's backing in their research, and few disclosed the financial ties in subsequent articles on the same or similar topics, the Journal found."*

7-17: **The Campaign for Accountability** published **"Google Academics Inc."** that provided data and analysis on many academics did not disclose of fully disclose their financial support from Google.

8-17-17: ***Antitrust Partner from Google's main antitrust law firm elected chair of ABA Antitrust Section:*** August 17, 2017, Wilson Sonsini antitrust litigation partner, Jon Jacobson, was elected chair of the American Bar Association's Antitrust Section for 2017-2018, while Google is facing three antitrust cases in EU and pressure in the U.S. to reopen the FTC-Google antitrust cases.

8-30-17: ***New America think tank fired Google critic at Google's request for supporting EU's Google antitrust fine***: August 30, 2017, news broke that Google got New America Monopoly expert Barry Lynn, and his team fired from the New America Foundation for issuing a public endorsement of the EU's finding Google a monopoly and fining the company ~$3b. The Guardian reports: "*Barry Lynn, until this week a senior fellow at Washington thinktank the New America Foundation, has spent years studying the growing power of tech giants like Google and Facebook. He believes the answer is yes. And that opinion, he argues, has cost him his job. This week Lynn and his team were ousted from New America after the New York Times published emails that suggested Google was unhappy with his research. The tech giant, along with executive chairman Eric Schmidt, have donated $21m to New America since 1999. Schmidt chaired the organisation for years and its main conference room is called the "Eric Schmidt Ideas Lab". "I've been there for 15 years," Lynn told the Guardian. "And for 14 everything was great. In the last year or so it has got more difficult. And from every piece of evidence that we are seeing that has to do with pressure from Google*."

3-16-18: The Times reports: "Google spends tens of millions on think tanks that back its policies," based on the Campaign for Accountability's analysis: Google's academic influence in Europe.

Appendix 4: Precursor LLC Research Series on Asymmetric Accountability Harms:

Part 1: The Internet Association Proves Extreme U.S. Internet Market Concentration [6-15-17]
Part 2: Why US Antitrust Non-Enforcement Produces Online Winner-Take-All Platforms [6-22-17]
Part 3: Why Aren't Google Amazon & Facebook's Winner-Take-All Networks Neutral? [7-11-17]
Part 4: How the Google-Facebook Ad Cartel Harms Advertisers, Publishers & Consumers [7-20-17]
Part 5: Why Amazon and Google Are Two Peas from the Same Monopolist Pod [7-25-17]
Part 6: Google-Facebook Ad Cartel's Collusion Crushing Competition Comprehensively [8-1-17]
Part 7: How the Internet Cartel Won the Internet and The Internet Competition Myth [8-9-17]
Part 8: Debunking Edge Competition Myth Predicate in FCC Title II Broadband Order [8-21-17]
Part 9: The Power of Facebook, Google & Amazon Is an Issue for Left & Right; BuzzFeed Op-Ed [9-7-17]
Part 10: Google Amazon & Facebook's Section 230 Immunity Destructive Double Standard [9-18-17]
Part 11: Online-Offline Asymmetric Regulation Is Winner-Take-All Government Policy [9-22-17]
Part 12: CDA Section 230's Asymmetric Accountability Produces Predictable Problems [10-3-17]
Part 13: Asymmetric Absurdity in Communications Law & Regulation [10-12-17]
Part 14: Google's Government Influence Nixed Competition for Winner-Take All Results [10-25-17]
Part 15: Google Amazon & Facebook are Standard Monopoly Distribution Networks [11-10-17]
Part 16: Net Neutrality's Masters of Misdirection [11-28-17]
Part 17: America's Antitrust Enforcement Credibility Crisis – White Paper [12-12-17]
Part 18: The U.S. Internet Isn't a Free Market or Competitive It's Industrial Policy [1-4-18]
Part 19: Remedy for the Government-Sanctioned Monopolies: Google Facebook & Amazon [1-17-18]
Part 20: America Needs a Consumer-First Internet Policy, Not Tech-First [1-24-18]
Part 21: How U.S. Internet Policy Sabotages America's National Security [2-9-18]
Part 22: Google's Chrome Ad Blocker Shows Why the Ungoverned Shouldn't Govern Others [2-21-18]
Part 23: The Beginning of the End of America's Bad "No Rules" Internet Policy [3-2-18]
Part 24: Unregulated Google Facebook Amazon Want Their Competitors Utility Regulated [3-7-18]
Part 25: US Internet Policy's Anticompetitive Asymmetric Accountability - DOJ Filing [3-13-18]
Part 26: Congress Learns Sect 230 Is Linchpin of Internet Platform Unaccountability [3-22-18]
Part 27: Facebook Fiasco Is Exactly What US Internet Law Incents Protects & Produces [3-26-18]
Part 28: How Did Americans Lose Their Right to Privacy? [4-14-18]
Part 29: The Huge Hidden Public Costs (>$1.5T) of U.S. Internet Industrial Policy[4-15-18]