**An Antitrust Brain Teaser for Google**

**The president is popular with the company. How popular is the company with his regulators?**

Google is famous for the brain teasers it uses to test job applicants. These include, "A man pushed his car to a hotel and lost his fortune—what happened?" And, "What's the next number in this sequence: 10, 9, 60, 90, 70, 66, \_\_?" After last week's election, Google should add this stumper: "Was it a good investment for Google's employees to be the third-largest corporate source of donations for Barack Obama when his regulators are so eager to micromanage and possibly break up Google?" *(Answers below.)*

According to news reports, the Federal Trade Commission recently completed its yearlong investigation of Google with a majority of commissioners backing an antitrust lawsuit. The filing was held up pending the outcome of the election, but will happen by the end of the year unless Google settles. This would be the biggest antitrust case in technology since the one against [Microsoft](http://online.wsj.com/public/quotes/main.html?type=djn&symbol=MSFT) in the 1990s.

Regulators have an uphill climb because antitrust is supposed to protect consumers, not competitors. The key complaint relates to how Google has adjusted its search results so that it increasingly delivers direct answers to searches in areas such as weather, travel updates and maps. This helps consumers get information faster than providing just links to other sites. As Google evolved from being a simple search engine, it has bought services such as Zagat guides to deliver high-quality answers.

Other companies that provide information about products and services complain that this reduces their search traffic, which is true. But where's the consumer harm? Also, other search engines are a click away, so "market dominance" is a hazy concept. Still, activist regulators think big is bad, and Google currently has some two-thirds of the traditionally defined U.S. search market. Google CEO Larry Page noted last month that "overregulation of the Internet and restriction on what people can do is a big risk for us."

A law review article by Boston University's Ronald Cass lays out the threat to Silicon Valley by quantifying the costs of earlier antitrust cases against [IBM](http://online.wsj.com/public/quotes/main.html?type=djn&symbol=IBM) and Microsoft. IBM spent more than $4 billion in today's dollars defending itself beginning in the 1960s, producing 750 million documents for the government. As the case dragged on, technology changed so much that IBM's dominance in mainframe computers became a liability. Likewise, Microsoft's operating system and Web browser diminished in importance during the company's time in court in the 1990s as new competitors, including Google, emerged.

Innovation at IBM and Microsoft waned under the pressure of antitrust oversight. This could also happen to Google. Creative destruction happens in technology as new innovations undermine market dominance far more effectively than regulators ever can. Just during the time the FTC has been investigating Google, the company has faced new competition from companies including [Facebook](http://online.wsj.com/public/quotes/main.html?type=djn&symbol=FB) and Apple.

"Almost no one, even those most intimately engaged in the industry itself, is apt to make good predictions about which technologies will succeed or what the ultimate scope of a new technology will be," Mr. Cass writes.

The existence of activist regulators has itself suppressed innovation among more-established firms. Silicon Valley once aspired to keep Washington at arm's length. Now the main anti-Google lobbying group is FairSearch.org—led by the company that owns Bing, Google's top competitor. That would be Microsoft. A company with firsthand knowledge of the harm done by antitrust cases is eager to impose this suffocating ill on its competitors.

Liberals once understood that, as Chief Justice Earl Warren wrote in a 1962 opinion, antitrust laws are supposed to protect "competition, not competitors." Yet today, antitrust has become the favorite tool for liberals who want to pick winners and losers, using claims of monopoly to substitute their judgments about how companies should compete for the market's judgment about successful products and services. Beyond Google, the FTC is also investigating Facebook, Apple and [Yahoo](http://online.wsj.com/public/quotes/main.html?type=djn&symbol=YHOO).

The stakes for Google got higher over the summer when the FTC reversed long-standing policy so that the agency could seek "disgorgement"—forcing a company to surrender profits—as an antitrust penalty. FTC commissioners have told me they didn't have Google in mind with this change, but disgorgement could mean billions of dollars in fines for Google, whose profits are about $10 billion per year.

Beyond monetary costs and management distractions, antitrust cases can also lead to regulators breaking up companies they consider too big. Alas, for the smart, data-driven people at Google, the history of antitrust cases shows that anything is possible.

*Answers: 1. He was playing Monopoly. 2. The numbers are in ascending order based on the number of letters in the spelled-out numbers, so a correct response will have nine letters, such as 69 or "one googol." 3. Ask again after the FTC files its lawsuit against Google.*

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