



The American Antitrust Institute

March 1, 2013

Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: In the Matter of Motorola Mobility LLC and Google Inc.

The American Antitrust Institute (AAI) appreciates the opportunity to comment on the Federal Trade Commission's consent order regarding certain patent enforcement practices by Google, Inc. (Google) and Motorola Mobility LLC (Motorola). The AAI is an independent and nonprofit education, research, and advocacy organization whose mission is to advance the role of competition in the economy, protect consumers, and sustain the vitality of the antitrust laws.

We submit this letter along with the attached paper titled "An American Perspective from the Crossroads of Antitrust and Intellectual Property" (Patent Paper). The Patent Paper discusses the Google case on pages 6, 15, 18 and 20. In sum, we applaud the FTC for effectively establishing an unequivocal position through the Google consent order, that (1) a new owner of standard-essential patents (SEPs) that are subject to a prior owner's F/RAND commitments should deem itself bound by those F/RAND commitments; and (2) those F/RAND commitments should generally preclude the SEP owner from seeking injunctive relief or an exclusion order.

To the extent competitors rely on a F/RAND commitment in supporting standardization of the patented technology at the standard-setting organization (SSO) and thereafter become locked into that technology through their investments in compliant products, seeking injunctive relief in court or an exclusion order before the International Trade Commission (ITC) against any such "willing licensee" should constitute an unfair method of competition under Section 5 of the Federal Trade Commission Act. We also agree with the recent suggestion by Renata Hesse, the Deputy Assistant Attorney General at the Antitrust Division, that a SEP owner's pursuit of such relief to "take advantage of the market power that standardization of their patented technology creates by engaging in hold-up" may be in violation of Section 2 of the Sherman Act as well.

We offer no comments at this time on the formulation or interpretation of exceptions in the Google settlement.

The AAI strongly encourages the FTC to continue addressing all such issues surrounding patent rights and competition policy.

Respectfully submitted,

A handwritten signature in black ink that reads "Albert A. Foer".

Albert A. Foer, President
Enclosure: Patent Paper