

Google: you call it 'Lobbying,' we call it insidious Corruption

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How Google Beat the Feds

Instead of ignoring Washington — as rival Microsoft did before its costly monopolization trial in the 1990s — Google spent about **\$25 million** in lobbying, made an effort to cozy up to the Obama administration and hired influential Republicans and former regulators. The company even consulted with the late Robert Bork and The Heritage Foundation and met with senators like John Kerry to make its case. In other words, these traditional outsiders worked the system from the inside.



This calculated and expensive charm offensive paid off Thursday when the Federal Trade Commission decided not to challenge the company's dominance of the Internet search business in court and settled the investigation with what critics allege is a slap on the wrist.

"It was a multiyear campaign focused on this very moment, knowing as the company grew these issues were going to come up," said Alan Davidson, former head of Google's office in Washington who left last year for the Massachusetts Institute of Technology. "We had the benefit of watching those who had come before us, and we saw the mistakes that were made. We didn't want to replicate what they had done."

The results — a voluntary pledge to change some search and ad business practices and a legal agreement to stop using patents as weapons against foes — are a far cry from the lengthy federal antitrust throttling Microsoft endured at trial in the 1990s. Some say the government's antitrust fight with Microsoft permanently clipped its wings in the technology sector and paved the way for companies like Google.

Google wasn't about to accept the same fate — and rather than come late to Washington, as its predecessor did, the search company girded for a fight.

Google's game plan was to work the refs early and play nice with regulators rather than to plunge into an unpredictable federal court trial. It was a strategy that worked in other entanglements — especially over online privacy — between the company and the FTC.

In doing so, Google's actions reflected the overall maturation of Silicon Valley's relationship with Washington. Where the tech world had been dismissive of the meddling bureaucracy, Google's

actions signified an industry more willing to shape the rules rather than to fight the regulators.

To ward off an antitrust case, Google relied on alliances with The Heritage Foundation and liberals like free-speech advocate Eugene Volokh and former FTC staffer David Balto. They helped raise public doubts about an antitrust probe of a company that had received praise in the president's State of the Union address. The company also flew in its billionaire impresarios from Silicon Valley for meetings on Capitol Hill and at the FTC.

The influence campaign also worked its magic at the agency, where Chairman Jon Leibowitz had fought the Justice Department to take on what was thought to be a case of a lifetime. Google hired former FTC lawyers and staffers to help plead its case and recently brought CEO Larry Page in for an interview. Two years later, Leibowitz announced — amid speculation he was leaving the agency — that the FTC didn't have enough proof to go for a more robust case.

"I think that Google took advantage of the chairman's desire to go out in a blaze of glory, and they tried to assure him that this was going to be good enough — and this was not good enough," Commissioner J. Thomas Rosch told POLITICO on Thursday. Rosch voted to close the search case but did not signal in his dissent that he would have backed a robust set of search penalties against Google.

As the FTC wound down its Google probe in November, Google even dispatched Executive Chairman Eric Schmidt to meet with Sens. Kerry, Mark Udall (D-Colo.) and other key lawmakers, some of whom later produced letters and statements that hammered regulators' approach to antitrust enforcement — including press leaks about the commission's work.

A month after Schmidt met with Kerry, the lawmaker said at a hearing on a new FTC appointee: "FTC investigations and settlement negotiations have become poorly kept secrets." He added that businesses and regulators alike can't "do their jobs well if their deliberations or investigations are manipulated or leaked for strategic advantage."

Udall, separately, sent a letter to the FTC at the end of November urging regulators to "proceed cautiously" in "ongoing antitrust investigations of U.S. technology companies."

"Sen. Udall and his staff have good working relationships with companies that do business in Colorado, like Google," a Udall spokesman acknowledged, noting the senator and Google had "productive meetings over the past several months on a variety of topics, including this letter."

That Hill effort seemed designed to ratchet up the pressure on the FTC to settle. But Leibowitz said in an interview that the effect of Google's lobbying across the Beltway hadn't been a deciding factor. "We deal with companies this big all the time; we deal with lobbying this big all the time; ... it just doesn't make a whiff of difference," he said.

This wasn't always Google's strategy — but the turning point came in 2011.

As it became clear the FTC had its sights set on the company, Google recognized it had no choice but to mature or risk its own "Microsoft moment." In the months to follow, the company embarked on a coordinated push to expand its lobbying balance sheet, donate more to lawmakers, connect better with public-interest groups and make new friends in the academic community, many sources told POLITICO.

To start, Google quickly hired 12 lobbying firms, a decision that contributed to the estimated \$25 million the company, along with its purchased subsidiary, Motorola Mobility, accumulated to influence Washington decision makers over the life of the FTC's probe. The company stumbled along the way, and it relented in a 2011 battle with Sen. Herb Kohl (D-Wis.), the powerful leader of the chamber's antitrust subcommittee, to have Schmidt testify — a hearing in which he and the company were vilified by lawmakers. Joining the executive chairman later in the hearing was Susan Creighton, one of the company's longtime lawyers who formerly worked for the FTC and whose roots could be traced to the Microsoft saga of the 1990s.

It was all an old-school play for a company that long rejected the notion of lobbying in Washington. In February 2012, the company snapped up former Rep. Susan Molinari, a Republican insider, to lead its Washington team. She proved to be the political complement to Schmidt, who during the investigation donated for a second time to the Obama administration and much later appeared with top aide Jim Messina at the president's reelection headquarters. The company grabbed headlines when it hired up Suzanne Michel, one of the FTC's top patent experts, much earlier in the agency's investigation.

Critics say the strategy resonated. "I would have to assume the FTC was both intimidated and outmuscled," Gary Reback, one of the lawyers representing companies opposed to Google's conduct, said when asked about the company's lobbying barrage.

As Leibowitz announced his agency's findings Thursday, he tipped his hat to the fact that there had been "some evidence" suggesting Google was "trying to eliminate competition." But he also said many of the company's actions still seemed primarily designed to "improve user experience."

The facts, he said, were on Google's side.

But the sense among insiders is that Google emerged victorious because its network in Washington also spanned more than the traditional lobbying community. "To successfully build forces," explained David Balto, formerly of the FTC who is a top lawyer who has consulted, "you've got to have a consumer public-interest group effort, academic thought leader effort and a Hill effort."

As it canvassed lawmakers' offices, Google devoted untold resources to inculcating support among the Washington antitrust elite, recruiting such names as Seton Hall University professor Marina Lao to write antitrust papers.

Google also indirectly backed research done by Joshua Wright, a professor at George Mason University. Wright, who criticized the FTC's handling of the Google probe, was tapped for a Republican slot at the agency — and he was confirmed by the Senate this week.

And for Google, there was a public-interest campaign, too. The company historically has donated to groups like Computer & Communications Industry Association, TechFreedom, The Heritage Foundation and dozens of others — many of which held events that featured experts defending the company against antitrust scrutiny.

"They just believed they had a good strong case — that if they could explain it, they could make their case to win," said Marvin Ammori, whose legal group Google hired in 2011 to help it think through policy issues.

To be sure, Google's opponents mounted their own expensive, clandestine affront. One of its key

rivals, Microsoft, devoted millions of dollars to lobbying the government against Google and helping organize a coalition of critics, called FairSearch.org. Those forces had squared off with Google for years as the search giant tried to acquire companies, like travel software firm ITA Software.

Google, Microsoft and FairSearch.org did not comment for this story.

For all the money and resources the company devoted to stemming criticism, though, antitrust experts believe Google might not have fared as well if the FTC had a stronger legal footing to bring a robust, antitrust enforcement against the search giant. The commission appeared to be influenced by Google's key argument that competition is only a click away on the Internet.

"I think, in the end, the problem is that it's a difficult case," Harry First, a top competition law professor at New York University, said, noting the FTC might have experienced trouble defining the problem and finding remedies.

While First said Google's all-out war in Washington wasn't the most influential factor, he added: "If you were Google, you would say, 'I've got so much money; I'm going to muster all that I can; it's not going to hurt me, probably.'"

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