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GLOBETROTTING IN A GOOGLE RUN WORLD: GOOGLE
TAKEOVER OF TRAVEL MARKET RISKS STIFLING COMPETITION
AND CONSUMER EXPERIENCES

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I. INTRODUCTION

“To travel is to live,” once said the great Hans Christian Andersen.¹ City lovers flock to Tokyo and London in search of world class shopping and fine dining. Backpackers scale the peaks of Machu Picchu and the Himalayas just to capture the views. The religious faithful make the trek to Jerusalem and the Vatican seeking holy wonder.

Many vacation plans were put on hold this year due to the COVID-19 outbreak, but when tourism comes roaring back to life, travelers have at their fingertips a goldmine of trip planning forums and booking options online. Digital disruption in the travel industry — from the growth of the sharing economy, the shift from live agents to online booking, and the rise of big data analytics — has made globetrotting more affordable and accessible.

Online travel communities like ThePointsGuy and FlyerTalk offer advice on opportunities to maximize loyalty status and redemption rewards. Kayak or Momondo let bargain hunters comparison shop for

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1. Hans Christian Andersen, *THE FAIRY TALE OF MY LIFE: AN AUTOBIOGRAPHY* 414 (Cooper Square Press 2000) (1871).

the best flight deals. Vacationers looking for summer villas have HomeAway and Vrbo. College students try Couchsurfing for free. Travelers of all budgets rely on Airbnb for short-term home and apartment rentals. TripAdvisor supplies thousands of user-verified reviews and booking options for hotels, bed and breakfasts, and specialty lodging. Beyond that, travelers can book stays through Expedia, Booking.com or directly on the hotel website itself.² Discovering new destinations is now infinitely easier and cheaper to navigate because of the Internet.

It may not be that way for long. Travel is next on Google's target list for market dominance, and the future for jetsetters and backpackers alike look dim. As Google has emerged as the de-facto launch pad for all trip planning, users are being pushed to pick options that enrich Google at their expense. Consolidation of the travel market under Google could potentially hinder competition and leave consumers at a disadvantage, fueling arguments for renewed antitrust enforcement against the tech giant. If Google continues to encroach on competitors and develop products that fail to deliver on claimed efficiencies — at the expense of American consumers — greater regulatory scrutiny may cloud the company's future.

II. GOOGLE SPREADS WINGS INTO TRAVEL OPERATIONS

Looking ahead for growth opportunities, Google seized upon lucrative openings to expand into the travel industry, and its parent company Alphabet began gobbling up key players specializing in travel search a decade ago. In 2010, Alphabet purchased Ruba.com, an online travel review site similar to TripAdvisor. Soon after, Google entered into talks to purchase fare shopping powerhouse ITA Software.³ With this purchase, Google stood to gain ownership of ITA's prized airfare price and shopping software QPX, universally regarded in the travel industry as the premier software for finding ticket fares and seat availability.⁴ Booking providers like Kayak, Expedia, and Orbitz license QPX and rely on the software to run customer airfare search queries.

Many feared Google would leverage licensing control over QPX to preclude rivals from utilizing alternative products in the market for

2. Expedia Group, which owns Expedia, acquired Hotels.com in 2001, Hotwire in 2003, Travelocity in 2015, Orbitz and HomeAway in 2015, and Trivago in 2016. Booking Holdings, which owns Booking.com and Priceline, acquired Agoda in 2007 and Kayak in 2013.

3. Leanna Row, *Google Hires Team Behind Online Travel Guide Ruba* (Updated), TechCrunch (May 21, 2010), <https://techcrunch.com/2010/05/21/google-acquires-travel-guide-startup-ruba/>.

4. Complaint at 10–11, U.S. v. Google Inc. & ITA Software Inc., No. 1:11-cv-00688-RLW (2011), <https://www.justice.gov/atr/case/us-v-google-inc-and-ita-software-inc>.

airfare price and shopping software.⁵ Then booking providers would have to purchase Google software to compete with Google in travel search, and depend on Google Adwords spending to direct traffic to their sites.⁶ Yet despite these antitrust concerns, Google won approval for its \$700 million acquisition of ITA in 2011, after entering into a consent decree with the U.S. Department of Justice (DOJ) promising to avoid several anticompetitive practices.⁷ Among these was a commitment to make the QPX software available to current customers. That same year, armed with ITA's flight information software, Google launched Google Flights, which eventually began featuring booking capabilities. Soon after, Google Maps and Search also began to feature hotel details and prices.

The five-year consent decree with DOJ expired in 2016. No longer bound by the terms, an emboldened Google shut off the QPX Express Travel service to small booking providers and unveiled more travel products built around its software and data advantage.⁸ The Google Trips app was launched, allowing users to book airfare and hotels and integrate itineraries with Google Calendar and Google Maps. In 2019, the Google Trips app was folded and rolled out as a function of the search site.⁹ The Google Trips site version featured four areas of trip-planning: Google Flights, Google Hotels, Google Vacation Rentals, and Google Experiences. This expansion threatens online rivals in these various spaces, as described further below.

Then in 2020, Google announced a new partnership with Sabre, the largest global distribution system for airlines.¹⁰ Sabre serves over 70 airlines and 100,000 hotels and controls 50% of the U.S. travel booking market.¹¹ Plans for Google's and Sabre's decade-long collaboration anticipate shifts for Sabre's IT infrastructure to Google Cloud and

5. Competitive Impact Statement at 9, *U.S. v. Google Inc. & ITA Software Inc.*, No. 1:11-cv-00688-RLW (2011), <https://www.justice.gov/atr/case/us-v-google-inc-and-ita-software-inc>.

6. Randy Stutz, *An Examination of the Antitrust Issues Posed by Google's Acquisition of ITA*, American Antitrust Institute (Feb. 18, 2011), <https://www.antitrustinstitute.org/work-product/aai-white-paper-concludes-google-ita-merger-warrants-serious-consideration-of-a-challenge/>.

7. Amir Efrati & Gina Chona, *Google's Empire Expands to Travel*, WALL ST. J. (Jul. 2, 2010), <https://www.wsj.com/articles/SB10001424052748703571704575341270531117614>.

8. Melissa Locker, *Google is shutting its QPX Express travel service—here's why*, Fast Company (Nov. 2, 2017), <https://www.fastcompany.com/40490722/googles-first-step-in-air-travel-dominance-stop-sharing-intel-with-competitors>.

9. Steven Musil, *Google Trips app heads into the sunset*, Cnet.com (Jun. 5, 2019), <https://www.cnet.com/news/google-trips-heads-into-the-sunset/>.

10. Mark Bergen, *Google Reaches 10-Year Deal on Cloud, Travel With Sabre*, Bloomberg (Jan. 21, 2020), <https://www.bloomberg.com/news/articles/2020-01-21/google-reaches-10-year-deal-on-cloud-travel-with-sabre>.

11. Press Release, U.S. Dept't of Justice, *Justice Department Sues to Block Sabre's Acquisition of Farelogix* (Aug. 20, 2019), <https://www.justice.gov/opa/pr/justice-department-sues-block-sabres-acquisition-farelogix>.

harnessing Google Cloud tools to enhance Sabre's travel services and products.¹² Left unclear is how closely Sabre will guard access to its rich trove of travel data as Google builds out their partnership.

Such acquisitions, product expansions, and partnerships in the travel space strategically enhance the dominance of Google's powerful search engine. 69% of travelers turn to a search engine when starting to think about a trip.¹³ In 2019, Google's share of organic search visits in the United States was 95% on mobile devices.¹⁴ By comparison, Yahoo and Bing's combined share was only 3%.¹⁵ Google Trips offers an unmatched customized search experience for consumers and advertisers, where its algorithms can predict travel habits based on data tracking of user habits on Google Search, Google Maps, Google Calendar, Gmail, and YouTube. Google's data advantage gives it the power to suggest destinations and brands, tailored to traveler search history, preferences and past itineraries. Armed with that intelligence, Google can then either promote its content over such rivals or sell that data to advertisers.

Ranking in organic search results can make or break a business dependent on Google-driven site traffic. Studies show that in a search result query, the coveted first ranked result earns the highest click rate at 33%, the second position gets 15%, and the third gets only 9%.¹⁶ Since users rarely consider more than the first three links, appearing below the top results is often a mark of doom. "The safest place to hide a dead body is the second page of Google search results," Tesla CEO Elon Musk sagely observed.¹⁷ The first page of Google search results typically captures over 90% of clicks; page two finishes a distant second at barely 6%.¹⁸

12. Press Release, Sabre, (Jan. 21, 2020), <https://www.sabre.com/insights/releases/sabre-forges-10-year-partnership-with-google-to-build-the-future-of-travel/>; Press Release, Google Cloud (Jan. 21, 2020), <https://cloud.google.com/press-releases/2020/0121/sabre-and-google-cloud-partnership/>.

13. Dennis Schal, *Google to Congress: We're not a monopoly*, Yahoo Finance (Jul. 16, 2019), <https://finance.yahoo.com/news/google-congress-not-travel-monopoly-225019294.html>.

14. *Distribution of total and mobile organic search visits in the United States as of 4th quarter 2019, by engine*, Statista (Jan. 19, 2020) <https://www.statista.com/statistics/625554/mobile-share-of-us-organic-search-engine-visits/>.

15. Matt Southern, *DuckDuckGo is Google's Only Competitor to Gain Organic Search Share in Q1 2019*, Search Engine Journal (Apr. 25, 2019), <https://www.searchenginejournal.com/duckduckgo-is-googles-only-competitor-to-gain-organic-search-share-in-q1-2019/305249/#close>.

16. Matthew Murray, *Page One: What's a Google Rank Worth*, SEO (Jul. 6, 2017), <https://www.searchenginepeople.com/blog/page-one-whats-google-rank-worth.html>.

17. See Elon Musk (@elonmusk), TWITTER (Feb. 1, 2020), <https://twitter.com/elonmusk/status/1223759243213508609?s=20>.

18. Kelly Shelton, *The Value Of Search Results Rankings*, Forbes (Oct. 30, 2017), <https://www.forbes.com/sites/forbesagencycouncil/2017/10/30/the-value-of-search-results-rankings/#224bfce44d3a>.

Google can derank results and decrease traffic to a competitor's site simply by reconfiguring its famous search algorithm, PageRank. Over 200 factors, ranging from domain age to keyword match, site security, and social media signals, shape the search algorithm code.¹⁹ How Google manipulates the algorithm to boost its properties and profits remains murky. But reports of Google search suppression in news,²⁰ retail,²¹ and local search²² clearly illustrate that relevance is not always the controlling factor in search rankings.

III. COMPETITORS AND TRAVELERS ARE CAPTIVE TO GOOGLE'S RULES

When Google alone gets to set the rules of winners and losers on search, there is a chilling effect on innovation and competition. Expedia Group chairman Barry Diller warned that Google wields a monopoly in search and digital advertising, and regulators should “stop them from going into businesses that compete with their own advertisers.”²³ After all, Google has a demonstrated history of search engine bias and misappropriating competitors' content. Several companies have complained that Google illegally elevated its own products in search results and “scraped” proprietary data without permission.²⁴

Amidst these concerns, the Federal Trade Commission (FTC) opened an investigation into Google but ultimately determined that such conduct did not harm consumers in the search and search advertising market.²⁵ According to the FTC's statement issued in 2013, Google's search products enhanced efficiencies for users and the

19. Brian Dean, *Google's 200 Ranking Factors: The Complete List (2020)*, Backlinko.com (Jan. 20, 2020) <https://backlinko.com/google-ranking-factors>.

20. Kirsten Grind, Sam Schechner, Robert McMillan & John West, *How Google Interferes With Its Search Algorithms and Changes Your Results*, WALL ST. J. (Nov. 15, 2019), <https://www.wsj.com/articles/how-google-interferes-with-its-search-algorithms-and-changes-your-results-11573823753>.

21. Antitrust: Commission fines Google €2.42 billion, European Union Commission (June 27, 2017), https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1784.

22. Caitlin Dewey, *Always click the first Google result? You might want to stop doing that*, WASH. POST (June 30, 2015), <https://www.washingtonpost.com/news/the-intersect/wp/2015/06/30/always-click-the-first-google-result-you-might-want-to-stop-doing-that/>.

23. Dennis Schaal, *Google May Face New U.S. Justice Department Antitrust Probe*, Skift (May 31, 2019), <https://skift.com/2019/05/31/google-may-face-new-u-s-justice-department-antitrust-probe/>.

24. Natasha Lomas, *Travel startups cry foul over what Google's doing with their data*, TechCrunch (Aug. 14, 2020), <https://techcrunch.com/2020/08/14/travel-startups-cry-foul-over-what-googles-doing-with-their-data/>.

25. Statement of Fed. Trade Comm'n Regarding Google's Search Practices in the Matter of Google Inc., No. 111-0163 (Jan. 3, 2013), https://www.ftc.gov/sites/default/files/documents/public_statements/statement-commission-regarding-googles-search-practices/130103brillgooglesearchstmt.pdf.

company owed no obligation to engineer results to equally benefit rivals. In their view, self-preferencing “was a consequence of algorithm changes that also could plausibly be viewed as an improvement in the overall quality of Google’s search results.”²⁶

Almost a decade later, self-preferencing persists on Google Search, except now there is even more evidence the claimed efficiencies do not deliver improved search result quality for users. The Google Trips all-inclusive travel search platform site perfectly exemplifies how self-preferencing harms consumers in the airfare, hotel, and vacation rental markets.²⁷ Google-centric search algorithms have reduced traffic to competitor travel booking sites, while driving more flow to Google-generated results.²⁸

All too frequently, Google Flights search queries will return the “Book on Google with Expedia” option as the top result, but the same priced option to directly “Book with Expedia” will be ranked far below.²⁹ Expedia and Booking.com results are commonly ranked near the bottom of results, even if their fares are the same or cheaper than the Google booking options. Such a product design contradicts Google’s claim that their product supplies greater convenience and cost savings to customers.

Google is likewise encroaching upon the territory of hotel booking sites to the detriment of consumers and competitors. Unfortunately for hotel shoppers, Google’s manipulation of results does not by default rank by low-to-high rates, geographic proximity to city center, or relevancy based on, for instance, a user’s history with an airline or hotel loyalty program. Under what Google deems to be the default “sort by best match” list of results, the prime real estate at the top of the page is dominated by Adwords-pushed hotels.³⁰ Travelers must sift through pricier results ranked first, simply because of Google’s promotion of paid ads or its content first.

26. *Id.*

27. Google Trips, <https://www.google.com/travel/> (last visited Sept. 2, 2020).

28. Dennis Schaal, *Google’s Travel Gains Levy Pain at TripAdvisor and Expedia*, Skift (Nov. 7, 2019), <https://skift.com/2019/11/07/googles-travel-gains-levy-pain-at-tripadvisor-and-expedia/>.

29. Suzanne Rowan Kelleher, *Google And Amazon’s Disruption Of the Online Travel Industry Is Looking Inevitable*, Forbes (Jun. 30, 2019), <https://www.forbes.com/sites/suzannerowankelleher/2019/06/30/google-and-amazons-disruption-of-the-online-travel-industry-is-looking-inevitable/#1038a0e78e0f>.

30. Stephen McBride, *How Google Has Become the Biggest Travel Company*, Forbes (Dec. 6, 2019), <https://www.forbes.com/sites/stephenmcbride1/2019/12/06/how-google-has-become-the-biggest-travel-company/#14a652424e09>.

Google is further targeting the home sharing and vacation rentals market.³¹ In early 2020, over 30 vacation rental companies protested Google's self-preferencing practices via its use of OneBox marketing in a letter sent to the European Union competition commissioner.³² As the letter describes, Google pushes its own content in a "visually rich" OneBox display that features pictures, a map preview, ratings and prices buried within the Google ecosystem, while demoting content from competitors in a separate listing outside of the OneBox, "even if these are more relevant for the user's search query."³³ According to a complaint filed by one vacation rental company, such anti-competitive behavior "risks killing off rivals" and "will ultimately lead to higher prices to consumers."³⁴

Google insists, as the company did before, that its data harvesting and product streamlining practices build a superior, more efficient product. These claims of increased efficiencies fail to comport with the real impact to the consumer, who must confront higher prices and lower search result quality. The primary objective in this product design is not to streamline the search experience or improve result relevancy, but to diminish rivals' content and direct users to sites that increase Google's revenue.

IV. GOOGLE'S HARMFUL ANTICOMPETITIVE CONDUCT INVITES REGULATORY SCRUTINY

After years of lax scrutiny, Google now faces strong antitrust headwinds on the horizon. 2019 signaled a shift in heightened tech antitrust enforcement activity from U.S. federal regulators and renewed interest from legislators. Hardly a week passes without another politician criticizing Google's monopoly on user data as harmful to consumer privacy and competition. The issue of whether Google engages in illegal anticompetitive behavior in the search advertising market is currently the subject of a multi-state antitrust investigation joined by almost every state in the nation, acting in close coordination with a joint DOJ and FTC inquiry. If regulators broaden their probe

31. Dennis Schaal, *Google's Critics Dismiss Move Posting Competitors' Travel Links as Window Dressing*, Skift (Feb. 14, 2020), <https://skift.com/2020/02/14/googles-critics-dismiss-move-posting-competitors-travel-links-as-window-dressing/>.

32. Letter from 34 Companies to Commissioner for Competition M. Vestager, European Commission (Feb. 10, 2020), https://www.deutscher-ferienhausverband.de/wp-content/uploads/2020/02/Travel-Sector-Raises-Concerns-Against-Favouring-of-Google-Vacation-Rentals_10-02-2020.pdf.

33. *Id.*

34. Javier Espinoza, *Google accused of competition abuse in holiday rentals*, FINANCIAL TIMES (Feb. 10, 2020), <https://www.ft.com/content/dc59e070-49c0-11ea-aeb3-955839e06441>.

beyond search advertising to include online search in the relevant market definition, then Google is in even deeper trouble.

As federal prosecutors build their case, DOJ is reviewing widespread complaints from consumer advocacy groups and competitors hurt by Google's dominance, including Yelp, DuckDuckGo, and Oracle.³⁵ Publishers such as News Corp, Condé Nast, The New York Times, and Gannett Company have raised concerns with federal antitrust regulators over Google's anticompetitive business practices with its online ad tools, facilitated by parent Alphabet's acquisitions.³⁶

The FTC has also shifted gears, after years of rubber-stamping Alphabet's billion dollar buys of Waze, YouTube, and DoubleClick. In February 2020, the FTC activated its powers in section 6(b) of the Federal Trade Commission Act to retroactively review deals led by Alphabet, Amazon, Apple, Facebook, and Microsoft over the past decade. Under this authority, the agency issued document demands to these five firms seeking information related to hundreds of mergers and acquisitions that were no longer safe from regulatory scrutiny.³⁷ Putting such previously approved transactions at the focus of a formal inquiry points to abruptly changing directions in FTC antitrust policy.

Such renewed enforcement activity rightly scares Silicon Valley. The ongoing tech-lash has unleashed a wave of "big is bad" critics and neo-Brandeis followers who hope ongoing probes could result in a broad shift to merger enforcements. In their view, market power should be defined by company size, not simply consumer harm, and breakups of monopolistic firms are a necessary antidote to classical antitrust theories ill-fit to deal with the digital economy.³⁸

Yet the courts have resisted a departure from the consumer welfare standard championed by Judge Robert Bork and the Chicago school of economics.³⁹ Consumer welfare still reigns as the controlling definition of market power, according to the Supreme Court.⁴⁰ Various indicators,

35. Keach Hagey & Rob Copeland, *Justice Department Ramps Up Google Probe, With Heavy Focus on Ad Tools*, WALL ST. J. (Feb. 5, 2020), <https://www.wsj.com/articles/justice-department-ramps-up-google-probe-with-heavy-focus-on-ad-tools-11580904003/>.

36. Franklin Foer, *WORLD WITHOUT MIND: THE EXISTENTIAL THREAT OF BIG TECH* (2017), 210-212.

37. Press Release, Fed. Trade Comm'n, *FTC to Examine Past Acquisitions by Large Technology Companies* (Feb. 11, 2020), <https://www.ftc.gov/news-events/press-releases/2020/02/ftc-examine-past-acquisitions-large-technology-companies> (seeking transactions from Jan. 1, 2010 and Dec. 31, 2019).

38. Tim Wu, *THE CURSE OF BIGNESS: ANTITRUST IN THE GILDED AGE* (2018); Lina Khan, *Amazon's Antitrust Paradox*, YALE L. J. 126, 710-805 (2017).

39. Robert Bork, *THE ANTITRUST PARADOX* (1978); Frank Easterbrook, *The Limits of Antitrust*, 63 TEX. L. REV. 1, 1-40 (1984).

40. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 343 (1979) (calling the Sherman Act a 'consumer welfare prescription.' (citation omitted)); *Rebel Oil Co. v. Atlantic Richfield Co.*, 51 F.3d 1421, 1433 (9th Cir. 1995) (An act violates consumer welfare standard "only when it harms both allocative efficiency and raises the prices of goods above competitive levels or

namely “prices, quantities, innovation, quality,” help courts determine the impact to consumer harm.⁴¹ While higher prices serve as one factor,⁴² “non-price factors like innovation and quality are especially important in zero-price markets,” where goods or services are provided for free, and “privacy is an important dimension of quality.”⁴³

In 2020, the benefit of hindsight (plus seven more years of data) has built a stronger record to show that Google’s quest to demolish competition pushes the bounds of legal business behavior. The tech giant is scraping both personal user information and rival firms’ content without consent and is forcing consumers to accept diminished quality travel search services.⁴⁴ It is telling that the FTC’s internal staff report flatly contradicted the Commissioners’ 2013 no-action determination and concluded that Google’s “conduct has resulted — and will result — in real harm to consumers and to innovation in the online search and advertising markets.”⁴⁵ According to the staff report, accidentally released two years after the Commissioners’ decision, it was “a close question” on whether Google’s self-preferencing practices were illegal, but Google’s scraping of content from competitors did violate antitrust law and “should be condemned.”⁴⁶

Today, short-term lodging providers such as Airbnb face the same threats of data scraping that Google rivals Yelp and Trip Advisor complained of previously.⁴⁷ The Google Vacation Rentals feature, which appears in the tab next to Google Hotels, targets the short-term apartment and home stay market. Travelers searching for short term lodging will get return results displaying listings from Airbnb and Vrbo. Although Airbnb already receives 60% of direct traffic without having to fork over millions in Google ad dollars, Airbnb remains

diminishes their quality.”); *Schor v. Abbott Labs.*, 457 F.3d 608, 611 (7th Cir. 2006) (“[I]f a manufacturer cannot make itself better off by injuring consumers through lower output and higher prices, there is no role for antitrust law to play.”).

41. Joshua D. Wright & Douglas H. Ginsburg, *The Goals of Antitrust: Welfare Trumps Choice*, 81 *FORDHAM L. REV.* 2405, 2411 (2012).

42. William M. Landes & Richard A. Posner, *Market Power in Antitrust Cases*, 94 *HARV. L. REV.* 937, 939 (1981).

43. Makan Delrahim, U.S. Dep’t of Justice, Remarks at the Harvard Law School & Competition Policy International Conference: “Blind[ing] Me With Science”: Antitrust, Data, and Digital Markets (Nov. 8, 2019), <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-harvard-law-school-competition>.

44. Thomas C. Redman & Robert M. Waitman, *Do You Care About Privacy as Much as Your Customers Do?*, *HARVARD BUSINESS REV.* (Jan. 28, 2020), <https://hbr.org/2020/01/do-you-care-about-privacy-as-much-as-your-customers-do>.

45. Brody Mullins, Rolfe Winkler & Brent Kendall, *Inside the U.S. Antitrust Probe of Google*, *WALL ST. J.* (Mar. 19, 2015), <https://www.wsj.com/articles/inside-the-u-s-antitrust-probe-of-google-1426793274>.

46. The FTC Report on Google’s Business Practices, *WALL ST. J.* at 78, 92–93 (Mar. 24, 2015), <http://graphics.wsj.com/google-ftc-report/>.

47. *Id.* at 92.

vulnerable to the risk of Google “commoditizing their properties” in their Vacation Rentals search.⁴⁸

Meanwhile, Google’s ongoing practice of self-preferencing in airfare and hotel search results operates to the detriment of consumers and innovation. Google-run algorithms generate results that fail to deliver on improved efficiencies, and its claimed competitive justification of a more balanced search product does not square with the reality that the results it promotes are irrelevant, misleading, and of lower quality. Rather than promote innovation, Google supplies less efficient products that waste users’ attention, push pricier options, and hide the best travel deals far below the screen. And despite its substandard delivery of less efficient products, Google’s market share of travel search has expanded rapidly, resulting in a far more concentrated market today.

Competitors that once received the majority of their traffic as direct visits are now heavily dependent on Google for visitor traffic. Back in 2012, when federal antitrust regulators wavered on acting, a far more differentiated competitive landscape existed. Google ranked seventh in visits among meta-search travel sites, with a 1% share of such visits.⁴⁹ These days, however, most travelers begin their trip planning searches on Google. Google travel vertical search products in hotel and flights received 674 million visits in the U.S. in 2019, and continues to grow at a rapid clip, up 28% from 2018.⁵⁰ Today Google’s traffic nearly equals the combined traffic of Expedia and Booking.com.⁵¹

Google is not afraid to leverage power over its ad platform to foreclose rivals. In 2019, hotels spent 67% of their metasearch ad money on Google, up from 24% in 2016.⁵² Claiming concern for customer convenience, in 2016, Google Hotels limited its ads platform to only allow metasearch providers with Instant Booking, a feature only TripAdvisor had.⁵³ A year later, Google lifted restrictions to allow other booking sites back if users were not required to reenter destination

48. Dennis Schaal, *Does Airbnb Really Need to Join Google’s New Vacation Rental Business?*, Skift (Oct. 18, 2019), <https://skift.com/2019/10/08/does-airbnb-really-need-to-join-googles-new-vacation-rental-business/>.

49. Kevin May, *Google Flight Search one year on—no wonder rivals can sleep safely in their beds at night*, Tmooz (Oct. 9, 2012), <https://www.phocuswire.com/Google-Flight-Search-one-year-on-no-wonder-rivals-can-sleep-safely-in-their-beds-at-night>.

50. Seth Borko, *Google’s Customized Travel Search Features Receive Massive Traffic in the U.S.*, Skift (Feb. 18, 2020), <https://skift.com/2020/02/18/googles-customized-travel-search-features-receive-massive-traffic-in-the-u-s-new-skift-research/>.

51. *Id.*

52. Sean O’Neill, *The Surprising Rise of Hotel Spending on Metasearch Advertising*, Skift (Jul. 25, 2019), <https://skift.com/2019/07/25/the-surprising-rise-of-hotel-spending-on-metasearch-advertising/>.

53. Dennis Schaal, *TripAdvisor Plays Meta on Meta Marketing Game With Google*, Skift (Oct. 16, 2018), <https://skift.com/2018/10/16/tripadvisor-plays-meta-on-meta-marketing-game-with-google/>.

and date queries when redirected to third party sites. While streamlining user experience was one possible objective, competitors were still being burdened with higher barriers to entry built by Google. Because these competitors are also Google ad customers, many fear retaliation for complaining about search bias, especially if their sites stand to suffer deranking in results and decreased traffic.

Google leverages its search product advantage and massive network of locked-in customers — ad buyers and search users alike — to build barriers to entry in the travel search market.⁵⁴ The Microsoft antitrust saga, brought as an enforcement action under section 2 of the Sherman Act and spanning two court cases over 21 years, showed how far the Windows operating system maintained monopolistic dominance through such network effects.⁵⁵ Customers become “locked in” to a potentially inferior product, largely due to value found in the vast number of users also hooked onto that product.⁵⁶ The “stickiness” of a product that has achieved this status is the envy and goal of startups — and potential competitors — everywhere.

Google Trips’ claims of serving up a more efficient product are challengeable if consumers ultimately end up paying higher prices but are stuck with lower quality search results and fewer options. Consumers locked into Google’s closed ecosystem are forced to settle for a poor online travel search product. Instead of a diverse menu of options prioritized by price, travelers face higher costs and fewer choices. Travelers are deceived into believing the results are ranked by relevance or cost, and are given no guarantees regarding the privacy of their travel search history. Regardless of whether a traveler commits to booking, they still become a valued data point that Google can exploit for its own advantage or market to other travel partners. Likewise, Google’s complete disregard for privacy protections is another injury to consumers are forced to bear.⁵⁷

Historically, travel costs and deals have fluctuated due to industry consolidation and mergers, especially after Expedia’s acquisition of Travelocity and Orbitz in 2015.⁵⁸ Prices on travel aggregators rose, and deals on bargain sites evaporated, spurring consumers to flock to direct

54. Ryan Cooper, *Google is a monopoly—and it’s crushing the internet*, The Week (Apr. 21, 2017), <https://theweek.com/articles/693488/google-monopoly--crushing-internet>.

55. *United States v. Microsoft Corp.*, 253 F.3d 34, 47–51 (D.C. Cir. 2001).

56. *Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504 U.S. 451, 466–67 (1992).

57. Tony Romm, *DOJ issues new warning to big tech: Data and privacy could be competition concerns*, WASH. POST (Nov 8, 2019), <https://www.washingtonpost.com/technology/2019/11/08/doj-issues-latest-warning-big-tech-data-privacy-could-be-competition-concerns/>.

58. Christopher Elliott, *Expedia acquired Travelocity. Here is how it will affect you*, WASH. POST (Jan. 29, 2015), https://www.washingtonpost.com/lifestyle/travel/expedia-acquired-travelocity-how-will-it-affect-you-the-traveler/2015/01/29/56ffe024-a57d-11e4-a7c2-03d37af98440_story.html.

bookings on hotel and airline sites instead.⁵⁹ As the U.S. airline industry consolidated in recent years, the number of major airlines fell from nine to four.⁶⁰ In this less competitive environment, rewards programs and mileage redemption options suffered, and the flying experience, from perks to points to free seat selection, quickly deteriorated.

The lesson for travelers is that consolidation already soured much of the travel experience. Consolidating the online trip planning industry into a Google-controlled behemoth threatens to do the same.

V. LOOKING AHEAD: GOOGLE AS THE GATEKEEPER FOR TOURISM INDUSTRY

Coveted access to consumer and competitor traveler data continues to drive Google's dominance in the search and search advertising market. Atop the perch of power, Google has amassed the data to engineer algorithms that can manipulate search results and consumer costs for every segment in a travel itinerary. For the near term, Americans may suffer from decreased diversity of travel options, poorer hotel and airfare search products, inferior trip planning and trip experiences, and higher prices to pay for vacations. Looking beyond, behold a far scarier scenario. If Google can take over the travel industry, what would stop the tech giant from broadening its data monopolization to every mode and facet of modern transportation, down to the cost of a gallon of gas and the price per barrel of oil?

When tourism finally resumes normal operations again, the travel market may be ruled by a single search engine giant that decimated innovation and competition. That's not a world any freedom-loving travel enthusiast would want to live in.

59. Doug Garr, *Why Bargain Travel Sites May No Longer Be Bargains*, *Wired* (March 30, 2017), <https://www.wired.com/2017/03/why-bargain-travel-sites-may-no-longer-be-bargains/>.

60. Ben Mutzabaugh, *Era of Airline Merger Mania Comes to a Close with Last US Airways Flight*, *USA TODAY* (Oct. 15, 2015), <https://www.usatoday.com/story/travel/flights/todayinthesky/2015/10/15/airline-mergers-american-delta-united-southwest/73972928/>.