Yelp Testimony to Ohio Senate

My name is Luther Lowe, and I am the Senior Vice President of Public Policy of Yelp Inc. At Yelp, our mission is to connect consumers with great local businesses. Our site and app allow people throughout the country to share detailed and passionate reviews about businesses in their neighborhoods. In turn, businesses that provide great service and good value are able to establish and promote themselves online.

I am here today to talk about a dire threat that is facing our market, the local search market, as well as many other specialized search markets. That threat is Google, the world’s dominant search engine, which is exercising its market power in search to undermine competitors in local and other specialized search markets and to strengthen its primary search monopoly.

Today, when a mom does a search for a pediatrician in Dayton, Ohio, instead of being matched with the most relevant information from across the web, she is steered toward a set of results that come solely from Google’s objectively lower quality corpus of ratings and reviews it has collected. Local searches like this are the most common type of search people conduct on Google, and Google’s self-dealing in this area produces literally billions of degraded search results in the United States on a weekly basis. It wasn’t always this way.

Google used to tout itself as a “turnstile” to the internet—an intermediate step before users arrived at their ultimate destinations on the web. Google’s role was to find the information that was most relevant to a user’s query and send the user to where that information lived online. As Larry Page put it in 2004: “We want to get you out of Google and to the right place as fast as possible.”¹ In this role, Google contributing to the flourishing of the web. New companies were able to launch innovative services built on a model of using Google to find and connect to users. Indeed, it is difficult to decouple the rise of Google the “turnstile” from the rise of “Web 2.0”, the term Tim O’Reilly popularized which describes the rise of social services and long form user generated content.

After Google obtained dominance in search, however, its attitude changed. Its goal shifted from connecting users to information on third-party websites to keeping users on its own platform for as long as possible, where it could show them ads. As Google’s motivations shifted, so did its conduct.

Google began to use its control over the flow of online traffic to attack companies that it perceived as threats. Top among these threats were “specialty” or “vertical” search services, which began gaining popularity in the mid-2000s as a way to connect users to specific categories of information more efficiently. Yelp in particular was one such service that connected users to high quality information about local businesses.

The introduction of Yelp and other verticals was a boon to users, but Google saw such sites as a threat to its broader search monopoly. Internal company documents which inadvertently leaked to the Wall Street Journal in 2015 show that Google was deeply worried about the trend towards disintermediation, the tendency for users to skip the intermediary (i.e., Google) and go straight to vertical sites for certain queries. As one Google executive put it:

What is the real threat if we don’t execute on verticals? (a) loss of traffic from google.com because folks search elsewhere for some queries; (b) related revenue loss for high-spend verticals like travel; (c) missing opty [sic] if someone else creates the platform to build verticals; (d) if one of our big competitors builds a constellation of high quality verticals, we are hurt badly.2

This communication shows that Google understood that in the tech space, competition often does not come from simply replicating product of the dominant player. Instead, it comes from new players in new categories disrupting the business model and changing the shape of the market altogether. Vertical search engines were one such disruption. While Google’s general search engine focused on breadth, indexing information from across the web, vertical search sites focused on depth, eschewing the one-size-fits all formula and allowing users to perform more powerful searches for specific types of information. The risk to Google was thus not another general search engine coming along and outcompeting it, but rather a change in user behavior that valued the vertical services’ depth Google’s breadth.

To stymy the vertical threat, Google embarked on an effort to undermine vertical search competitors. Google developed copycat vertical search offerings, then it deployed a two-pronged strategy—which it continues to use to this day—to ensure that its vertical services would win out over rivals. First, Google added answer boxes (or “OneBoxes”)—visually distinct boxes containing vertical search results—to the top of its search results pages. Then, Google started populating the most important OneBoxes exclusively with its own vertical content. Together, these two practices starved Google’s vertical rivals of necessary search traffic and ensured the supremacy of Google’s own services, regardless of their standalone merit.

No longer would Google play a neutral role in helping users find the best information online. Google’s strategy instead shifted towards manipulating its own search results page to hamper perceived rivals. Yelp was one of the first vertical services to bear the brunt of this attack.

Google developed OneBoxes and promoted them on its search results page

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Google began displaying OneBoxes in its search results for the first time in May 2007. Google gave these answer boxes eye-catching graphical interfaces designed to attract users’ attention. It also created different OneBox designs for different types of verticals, such as local search, image search, news search, and more. In each case, Google “hardwired” its OneBoxes at or near the top of its search results. By doing so, Google effectively demoted its generic search results—sometimes referred to as the “ten blue links”—lower on the page, regardless of whether those generic results contained information with higher organic ranking for the user’s query.

**Google initially bootstrapped Yelp content to its local search product in order to create traction for its copycat service**

Local search is the most common form of search traffic for Google, particularly with the rise of mobile devices. Today, a conservative estimate suggests local accounts for over 40 percent of total search query volume. Google thus recognized that the local search market would be an important market to dominate to maintain its supremacy over vertical rivals. To that end, Google customized a local search OneBox that became known as the “Local OneBox.” Its design has morphed over the years since its introduction, but it most often contains a map, links to local businesses, and some information about those businesses, such as star-ratings and contact information. Google ensures that its Local OneBox appears at the top of its search results whenever it determines that a user’s query has “local” intent.

After developing the Local OneBox, Google needed to local search results to populate it. When it came to building its local search vertical, however, Google had a problem. Local search relies heavily on contributions from users, who provide ratings, reviews, and other information about local businesses. Google did not have a community of users from which to draw this information, and building such a community organically would have been extremely difficult and time-consuming. User generated content services like Yelp are sometimes described as having “chicken-and-egg problem” dynamics, meaning it is nearly impossible to attract contributions of content without already having content present. With a lot of time, work, and innovation, Yelp overcame this chicken/egg problem and cultivated a community of contributors to its service. Instead of putting in similar work, Google decided to piggyback off of the community already created by services like Yelp.

Google first sought a license from Yelp in 2005 to use portions of Yelp’s rating and review content in the Local OneBox. That relationship ended in 2007, however, after Google began soliciting ratings and reviews in the same OneBox in which it displayed Yelp’s ratings and reviews—in effect, Google was using Yelp’s content to

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3 https://twitter.com/nickwilsdon/status/1049964084597264384
4 According to an investigation by the U.S. Federal Trade Commission, Google used “co-occurrence signals” to determine when to show its Local OneBox. Google first made a list of “blessed sites,” the sites of Google’s key vertical rivals, such as Yelp, that Google’s own organic quality metrics showed consumers value. A query on Google’s main page that produced organic results in which one of those blessed sites placed prominently “triggered” (in Google’s terminology) the preferential placement of Google’s Local OneBox above the blessed site’s listing. FTC Staff Memo at 26, 130 n. 136.
draw users onto its own local search platform. Then, once Yelp ended Google’s license to its content, Google began taking that content without permission. Google began displaying Yelp reviews and ratings in its Local OneBox as if they were Google reviews and ratings. Google continued this practice, known as “scraping,” for over a year. Google only stopped after an investigation by the FTC increased pressure on the company. By then, however, the damage had been done. Google had reached “escape velocity” by attracting sufficient user attention to its local search service that it no longer needed to rely on scraped content from rivals. Google’s strategy thus shifted from building its own local search service built upon the ill-gotten gains of others to excluding rival local search providers from its search results page.

**Google excludes rivals from appearing in the Local OneBox**

Having “built” its own local search service, Google used its own local search results—and only its own results—to populate the Local OneBox. This meant that whenever Google’s algorithms determined that a user’s query had local intent, Google’s own local search service got top billing with an eye-catching format. Google’s local search service appeared higher on the page, and in a more attractive format, than any generic links to other local search verticals that might appear. The effect was to steer a huge amount of traffic away from local search providers, starving them of the user interaction they required to keep their content fresh and relevant.

Google’s decision to exclude other local search providers from its Local OneBox was not born out of any technical necessity. Rather, it would have been trivially easy for Google to incorporate third-party results into the Local OneBox, as illustrated by an open-source project known as Focus on the User (FOTU). FOTU is a project commissioned by consumer watchdogs and local search providers to show how Google’s preferencing of its own local search results hurts consumers. The project developed a “widget” to modify the Local OneBox so that it shows the top results from Google’s organic search results (the “10 blue links”), where third-party local search providers’ content can appear. In effect, FOTU lets users see what would happen (according to Google’s own ranking algorithm) if Yelp, TripAdvisor, and other providers could compete to have their results appear in the Local OneBox. If the FOTU project could give competitors access to the Local OneBox through a browser widget, then Google’s engineers could easily do the same thing.

The FOTU project is important not only because it shows that it is possible for third parties’ results to be incorporated into the Local OneBox, but also because it has shown that users actually prefer that to Google’s closed OneBox. In a paper titled “Does Google content degrade Google search?” Harvard Business School’s Michael Luca and Columbia Law School’s Tim Wu used the FOTU to construct two versions of Google’s Local OneBox—a closed version and a competitive version—and

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5 As the FTC Staff Report observed, “Google had already collected sufficient reviews by bootstrapping its review collection on the display of other websites’ reviews. It no longer needed ... third-party reviews,” FTC Staff Memo at 38.
surveyed users to see which they preferred. They found that users were 40% more likely to engage with the competitive Local OneBox, suggesting a strong preference for competition rather than Google’s closed ecosystem.

There are many other quantifiable ways to measure whether Google’s closed Local OneBox is better or worse for consumers than competition. These include comparing the number, quality, and distribution of user reviews offered by different local search providers, or looking at how well different providers weed out false or biased information. At Yelp, we have conducted many of these analyses, and by any of these measures, opening up the Local OneBox to competition would result in a better user experience. This result should not be surprising. It is consistent with economic theory, which tells us that competition between providers is good for consumers. The question then is why does Google degrade the quality of its Local OneBox—and thus the quality of its search results page more generally—by excluding third-party local search providers. The answer is that Google is willing to put out a worse product if it helps preserve its search monopoly.

Google is violating federal and state antitrust laws

Google’s local search conduct in particular—and its vertical search conduct more generally—is a form of monopoly maintenance that violates both federal and state antitrust laws. There are two ways to characterize that conduct for antitrust purposes. The first is that Google is trying to monopolize various vertical search markets. The second is that Google’s vertical search conduct is designed to maintain its primary monopoly in general search. These two views are not mutually exclusive—indeed, both are likely true and consistent with one another. But it makes sense to focus on the latter “monopoly maintenance” theory, because that is the motivation underlying Google’s vertical strategy. As Google’s internal communications show, the company views its vertical search practices as part of an effort to preserve its monopoly position in general search.

The theory behind attacking Google’s vertical conduct as a monopoly maintenance is not novel. Monopoly maintenance is illegal under both Section 2 of the Sherman Act, and there is good precedent for challenging monopoly maintenance strategies by tech monopolists. Indeed, the seminal case is United States v. Microsoft Corporation, and Google’s vertical search conduct bears strong similarities to the conduct at issue in that case. Microsoft was found guilty of engaging in a variety of tactics to undermine rival internet browsers. The DOJ’s theory of liability in that case, however, did not center around the idea that Microsoft was trying to monopolize the browser market. Rather, the DOJ argued—and the court agreed—that Microsoft was trying to undermine browser rivals in order to stifle nascent threats to its primary

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7 Id. at 25.
8 Ibid.
10 253 F.3d 34 (2d Cir. 2001).
monopoly in PC operating systems.11 Google is now doing the same thing: attacking vertical search rivals to preserve its primary monopoly in general search.

Google’s go-to defense for its vertical search practices is that those practices actually constitute “product improvements” that benefit users. As such, Google claims that those practices are immune from antitrust criticism, even if they have some anticompetitive effect. But when Google makes this argument, it is conflating several different practices and policies into one take-it-or-leave-it proposition. That is the wrong way to look at Google’s conduct. Google made separate, distinct decisions to (1) introduce OneBoxes to the search results page, (2) elevate those OneBoxes above all other links, and (3) exclude rival vertical search results from the OneBoxes. Those should be viewed separately and judged on their individual merits. Google must not be allowed to hide behind one defensible product decision (such as the introduction of OneBoxes generally) and use that to shield an entirely separate anticompetitive decision (such as excluding rivals from the OneBoxes). It is also worth noting that due to the nature of the information being served, not all answer boxes are created equally. Google puts a 4 on the screen when a user types “2+2”. In the early days of Google, users would see a link to a service like calculator.com and be required to re-enter these numbers in order to see the answer. For commodity, fact-based information Google’s conduct here isn’t controversial, but what if it’s a mom doing a search for a pediatrician in Dayton, Ohio? Google applies the same defense of its conduct – claiming this is a product improvement – when Google’s hardwired answer to this query is objectively lower quality than what is available across the web.

At the end of the day, the question that antitrust enforcers and courts will have to answer is this: “What purpose does elevating OneBoxes to the top of the page and then excluding rivals from the OneBox serve? Is it to bring users relevant information, or is it to protect Google’s search monopoly?” At this point, after years of seeing Google’s strategy in action, the answer is self-evident.

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We all know that there are many companies raising many different types of concerns about Google’s conduct. Whether it is digital advertising, mobile operating systems, or the countless other markets it has entered, Google seems committed to a strategy of exclusionary and abusive conduct. But in light of the many different complaints now being levelled against Google, it is important not to forget that Google is an internet search company first and foremost. Its power in all of those adjacent markets derives primarily from its monopoly in search. And if legislators, regulators, or courts are serious about addressing Google’s abuses, then they need to focus on the ways that Google maintains its search monopoly.

The local search practices I have described today are a perfect place to start. As the most common thing people do on Google, local search is core to Google’s vertical search strategy, which itself is core to Google’s broader search monopoly.

11 253 F.3d at 47, 49-51.
Remedying Google's abusive local search practices will not only result in a better experience for users and local businesses, but it will also go a long way towards eroding Google's control over the way people find and connect to information online.

Finally, I should note that—while Google's abuses are global in scale—there are many good reasons for the state of Ohio to take the lead in addressing those abuses. We should not forget that it was John Sherman, and Ohio Senator, who introduced our first antitrust laws, and the Valentine Anti-Trust Act was one of the early state law efforts to fight monopoly. More recently, Ohio was one of the leaders of the state effort to bring the Microsoft case. The Ohio Attorney General at the time played an important role in the investigation, litigation, settlement, and settlement compliance. And an Ohio Senator chaired the Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights that was so influential in highlighting the issues for public attention.

History has shown that the antitrust laws are most likely to be enforced when state governments push for action. Our country is now dealing with the consequences of monopolization and anticompetitive abuse on an unprecedented scale. Ohio should take the lead in pushing for an effective and lasting remedy.