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2013-03-15

Dear Mr. Chehadé,

I write this letter to express our concern over the “.map” gTLD application, Application No. 1-1417-46480 (posted 13 June 2012) (the “.map application”) filed by Charleston Road Registry Inc., a wholly owned subsidiary of Google Inc. (“Google”).

I am one of the complainants in the Google antitrust investigation of the European commission. Euro-Cities AG's Stadtplandienst.de provides free interactive maps of Germany, Austria and Switzerland to millions of consumers worldwide.

As described below, Google today dominates the online mapping sector, a position that we allege was achieved in part through anti-competitive conduct. If allowed to proceed, the .map application could significantly harm the community of online mapping service providers (the “.map community”) by giving Google sole control over a domain that is likely to be a major future source of user traffic and economic opportunity in the online mapping sector. If this were to occur, Google's competitors in the supply of online mapping services would likely find it increasingly difficult, and perhaps impossible, to compete on the merits. Over time, Google's control over the .map gTLD would substantially foreclose competition in the supply of online mapping services and thereby stifle investment, innovation, growth and consumer choice in this important sector of the economy. To avoid this outcome, we urge ICANN to reject Google's application for the .map gTLD.

1. Google's Rise to Dominance in Online Mapping Services

Google's dominance in online search and search advertising is well recognized.¹ This dominance gives Google unprecedented power over what information users see, what Internet sites they visit in response to search queries, and how much traffic those sites receive.

¹ See, e.g., U.S. Department of Justice, *Yahoo! Inc. and Google Inc. Abandon Their Advertising Agreement* (5 Nov. 2008) (“The Department's investigation revealed that Internet search advertising and Internet search syndication

In recent years, Google has exploited this dominance to gain substantial market share in several other online sectors, including in the supply of online mapping services. We argue that it has achieved this market share in part through anti-competitive acts, including (1) manipulating Google search results to advantage Google Maps and demote competing online mapping service providers; (2) subsidizing Google Maps to the point with its monopoly search advertising profits in order to undercut pricing by rivals where it is free of charge for business website creators; and (3) bundling Google Maps to Google's dominant Android operating system for mobile devices.²

A striking example of the impact of Google's conduct is the demise of MapQuest in the United States³, and many other map companies in Europe and elsewhere. For many years, Google displayed links to Hot Maps, Stadtplandienst.de, streetmap.co.uk, MapQuest, Yahoo! Maps and others on an equal basis with varying but well visible positions when a user searched for addresses or locations.

In 2007, however, Google began to bias its search results by demoting links to MapQuest, Yahoo! Maps and others in Google search results and instead inserting Google Maps as the top result in a special map display format. MapQuest's usage share immediately plummeted, as did ours for Hot Maps. Within two years, Google Maps had not only surpassed MapQuest by far in the number of visitors, and also left all other interactive map websites such as Hot Maps struggling for visitors.

Google Maps is now the dominant provider of online mapping services, with the vast majority of desktop users using Google Maps and business websites the free Google Maps API to embed maps in their pages. In the words of map expert, Professor Jerry Brotton, Google Maps has become "basically a location device for advertising."⁴ According to Professor Brotton, "Google is dominating [the mapping] market and continues to dominate it."⁵ Indeed, Google Maps has been described as Google's core asset: "the base layer of all of Google's local endeavours, and will be the point around which the majority of Google products will revolve, if that's not already the case."⁶

On 31 January 2012, the 15th Chamber of the Commercial Tribunal of Paris handed down a judgment⁷ in favor of Bottin Cartographes, finding that Google had abused its dominant position by pricing its mapping API below cost in the market for online mapping for geolocalisation of sales points on company websites.

are each relevant antitrust markets and that Google is by far the largest provider of such services, with shares of more than 70 percent in both markets."), at http://www.justice.gov/atr/public/press_releases/2008/239167.htm; U.S. Federal Trade Commission, *Statement Concerning Google / DoubleClick* (20 Dec. 2007) ("Google, through its AdWords business, is the dominant provider of sponsored search advertising."), at <http://www.ftc.gov/os/caselist/0710170/071220statement.pdf>.

² For a detailed discussion of these practices, see, e.g., ICOMP, *How Google Monopolised Online Mapping and Listing Services* (15 Nov. 2012), available for download at http://www.icomp.org/en_us/resources/white_papers.

³ Consumer Watchdog, *Traffic Report: How Google is Squeezing Out Competitors and Muscling into New Markets* (2 June 2010), at <http://www.consumerwatchdog.org/resources/TrafficStudy-Google.pdf>.

⁴ See BBC, *Maps 'are now used to sell stuff', says author Jerry Brotton*, (3 Sept. 2012), at http://news.bbc.co.uk/1/hi/technology/2012/09/20120903_1.shtml.

⁵ *Id.*

⁶ See Donald Stephenson, *Google Maps: Scraping the Real World*, QueryClick (12 Sept. 2012), at <http://uk.queryclick.com/seo-news/google-maps-scraping-real-world/>.

⁷ English summary of the judgement <http://i-comp.org/blog/cl>

Non-official English translation of the judgement <http://i-comp.org/blog/CA>

Official judgement in French http://www.hot-map.com/corporate/Bottin_Cartographes_Google_Francais.pdf

The case, originally brought against Google on 24 July 2009, focused on two main issues:

1. Google had, in offering its web applications for free (i.e., an abnormally low price), breached Article L 420-5 (1) of the French Commercial Code, which prohibits sales below costs to consumers, where such sales aim to eliminate a market or prevent other companies from accessing a market; and
2. Google had abused its dominant position under Article L 420-2 of the French Commercial Code (which is the equivalent of Article 102 of the Treaty on the Functioning of the European Union under French Law).

The Court found that Google enjoyed a de facto monopoly in France in the search engine market. This was based upon surveys undertaken in 2009, which indicated that Google had 89.1% of the search market and to the Opinion of the French Competition Authority dated 14 December 2010 that Google had a, "strong dominant position" in search-based online advertising market.

The Bottin judgment is a landmark decision for a number of reasons. Prime among these are that it confirms findings, already made by numerous competition authorities, that Google is in a dominant position on a number of search and search- based advertising markets. It also notes that Google abused its dominant position to cross-promote and cross-subsidize its free map products in France by engaging in predatory practices and pursuing tactics to force its competitors out of business. Finally the judgement of the Court awarded Bottin the EUR 500,000 in damages and interest to repair the harm suffered and ordered Google to pay the legal costs. Yet to this day, Google still offers its Google Maps API free of cost for most web developers' projects, challenging the French judgment.

2. Google's .map application Will Further Entrench Google's Dominance in Online Mapping and Harm the .map Community

The .map community has a strong interest in vibrant competition. With the growth of the Internet, and the mobile Internet in particular, consumers are increasingly looking online for local content and information. To ensure innovation and growth in this industry, however, it is critical that online mapping services have the ability to compete for user traffic and advertising revenue on a level competitive playing field. Granting the .map application will frustrate this goal by giving Google the incentive and ability to solidify its market dominance and foreclose competition on the merits.

First, suppliers in the .map community depend on non-discriminatory, open, and fair access to the Domain Name System in order to compete for customers and user traffic. If, as seems quite plausible, the .map gTLD becomes a major future source of user queries for online mapping services, granting Google sole ownership and control over the .map gTLD could provide the company with an insurmountable competitive advantage and leave all other suppliers in the .map community largely subject to Google's whims in operating the .map gTLD.

Second, although the .map application provides that Google will operate the .maps gTLD as an open registry,⁸ Google's long history of manipulating search results to preference its own services -- conduct that Google has repeatedly sought to justify despite significant expressions of concern by competition authorities⁹ -- strongly suggest that Google might also preference its own online mapping services in the operation of the .map gTLD. Indeed, preliminary findings of the European Commission suggest that Google has a history of steering Internet users to its own Google-owned services and away from its

⁸ See .maps Application, at paras. 18(a) and 18(b)(ii)(1).

⁹ See, e.g., Statement of VP Almunia on the Google Antitrust Investigation (May 21, 2012), at http://europa.eu/rapid/press-release_SPEECH-12-372_en.htm?locale=en.

competitors' sites or content.¹⁰ If Google is permitted to engage in similar discriminatory conduct in its operation of the .map gTLD, other participants in the .map community would be deprived of a vital new source of user traffic and advertising opportunities. In addition, Google would have both the incentive and the ability to further entrench its dominance in the supply of online mapping services and to do so through a means other than competition on the merits.

Finally, Google's operation of the .map gTLD would give it unprecedented access to competitively sensitive information. Many online mapping providers that compete with Google would consider it an unacceptable business risk to allow Google, as DNS operator, to monitor their communications or other online traffic with their users. Google's operation of the gTLD could also give Google access to other commercially valuable information, giving it yet another competitive advantage over all other suppliers of online mapping services.

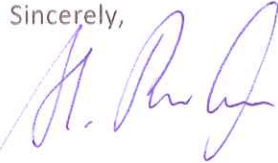
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To summarize, allowing Google's .map application to proceed would significantly harm competition in the supply of online mapping services and thereby would impose considerable harm on the .map community. Rejecting Google's .map application, by contrast, would help ensure fair competition, consumer choice and foster innovation in the online economy. There must be a better trustee, than giving the dominant company in the map sector, with a bad record of uncompetitive behavior, the key to even more market power. I hope that this letter -- which we felt was preferable to a formal ICANN objection, particularly as the undersigned has not applied for any gTLD and is not familiar with ICANN's formal processes -- will be given due consideration by ICANN.

That said, also any other corporate applicants such as Amazon vying for the .map domain should not be given a chance at becoming gatekeeper of .map. If it is introduced, it should be available from neutral domain registrars to qualified applicants from the mapping industry (similar to .travel), with a preference for brand owners.

Thank you in advance for your attention to this matter.

Sincerely,



cc:

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¹⁰ *Id.*