

Ms Margrethe Vestager  
Commissioner for Competition  
European Commission  
Rue de la Loi  
B - 1049 Brussels

22 November 2018

Dear Commissioner Vestager,

RE: AT.39740 – Google Search (Comparison Shopping)

We are writing to you as leading European comparison shopping services (CSSs) to express our collective view that Google’s “compliance mechanism” in the Google Search (Comparison Shopping) case does not comply with the European Commission’s June 2017 Prohibition Decision. It has now been more than a year since Google introduced its auction-based “remedy”, and the harm to competition, consumers and innovation caused by Google’s illegal conduct has continued unabated. We therefore respectfully urge you to commence non-compliance proceedings against Google.

As explained in [this April 2018 presentation](#)<sup>1</sup>, an auction-based mechanism cannot comply with the equal treatment standard set out in the Prohibition Decision:

- While rivals are compelled to bid away the vast majority of their profits, Google Shopping’s bids cost it nothing—its bids are just meaningless internal accounting, paid from one Google pocket into another.
- Google’s commitment to a notional 20% “profit” margin imposes an artificial limit on Google Shopping’s otherwise unlimited ability to outbid its rivals—but this is equally meaningless. While this promise can create a narrow opening for competing CSSs to sometimes bid their way onto the page, it does nothing to address the inescapable and transformative inequality between bids that cost Google nothing and bids that cost competitors their incentive and ability to innovate and grow.
- In common with Google’s three previous auction-based proposals (which were all resoundingly rejected under Commissioner Almunia), the visibility of rivals’ links is also meaningless. As long as placement is determined by auction rather than relevance, it makes little material difference whether competitors occupy none, some, or even all of the available slots. In all cases, Google is the main beneficiary of any profits derived from these entries, and consumers are the main losers (see below).

If there has ever been any doubt that Google’s auction-based “remedy” is neither compliant nor effective, recent developments should have finally put this to rest.

The harsh reality is that a pay-for-placement auction is fundamentally incompatible with the concept of comparison shopping (or, indeed, any other form of vertical search). As a result, few rivals have chosen to participate in Google’s CSS auction and, when they have, genuine CSSs that employ a consumer-friendly paid-inclusion model have struggled to outbid services like Google Shopping that, since 2013, employ a consumer-unfriendly pay-for-placement model.

Presumably, realising that it will never be possible to populate its new auction with enough genuine comparison shopping services to create even the veneer of a functioning remedy, Google has now set

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<sup>1</sup> [http://www.foundem.co.uk/fmedia/Foundem\\_Apr\\_2018\\_Final\\_Debunking\\_of\\_Google\\_Auction\\_Remedies/](http://www.foundem.co.uk/fmedia/Foundem_Apr_2018_Final_Debunking_of_Google_Auction_Remedies/)

about [populating it with fake ones instead](#)<sup>2</sup>: Google has recently begun reaching out to Google Shopping Ad Agencies to encourage and incentivise them to pose as CSSs.

In exchange for a hefty rebate and official *Google Certified CSS Partner* status (a status granted despite offering no comparison shopping functionality of any kind), these Ad Agencies now bypass the Google Shopping auction and bid instead for placement in Google's new, ostensibly-CSS-only auction. In other words, where these Ad Agencies used to feed their merchants' ad inventories into Google Shopping, they now feed these same ad inventories directly into Google's CSS auction instead. Crucially, Google is not doing this because it is confused about the many important differences between an Ad Agency and a comparison shopping service; it is doing it to circumvent the Commission's Prohibition Decision, by simply recreating Google Shopping under a different name and then continuing to illegally favour it in exactly the same way as before.

The points outlined above should be more than sufficient grounds for the Commission to reject Google's proposed "remedy" and commence non-compliance proceedings. But, the problems with Google's auction-based mechanism go well beyond non-compliance: far from restoring a thriving comparison shopping market, Google's CSS auction all but eradicates it. Pay-for-placement advertisements are the antithesis of relevance-based search results, and, because users who click on them are taken directly to merchants rather than to the CSSs that feature them, there is no opportunity for CSSs or users to add or derive value from the process.

Indeed, Google's new auction offers nothing of value to consumers. On the contrary, instead of relevance-based search results, which—absent Google's illegal conduct—would naturally contain an appropriate blend of merchants, CSSs, manufacturer sites and so on, users are presented with a selection of advertisements for specific products from specific merchants. These are not the best products, the best merchants, or the best prices; they are whatever specific products and merchants are likely to earn Google the most profit from a click. Not only do Google's users inevitably end up paying higher prices for products than they need to, they are often left completely unaware that comparison shopping services even exist—a problem exacerbated by Google's failure to address the anti-competitive demotion/penalty half of its illegal conduct.

We respectfully urge the Commission to enforce its Prohibition Decision by rejecting Google's non-compliant "compliance mechanism" and demanding an effective remedy that adheres to the principle of equal treatment set out in the Decision.

Yours sincerely,

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<sup>2</sup> [http://www.foundem.co.uk/The\\_Google\\_SpendMatch\\_Debacle.pdf](http://www.foundem.co.uk/The_Google_SpendMatch_Debacle.pdf) and [https://www.youtube.com/watch?v=9ES8F\\_idAJI](https://www.youtube.com/watch?v=9ES8F_idAJI)

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