



An Initial Analysis of Google's Proposals

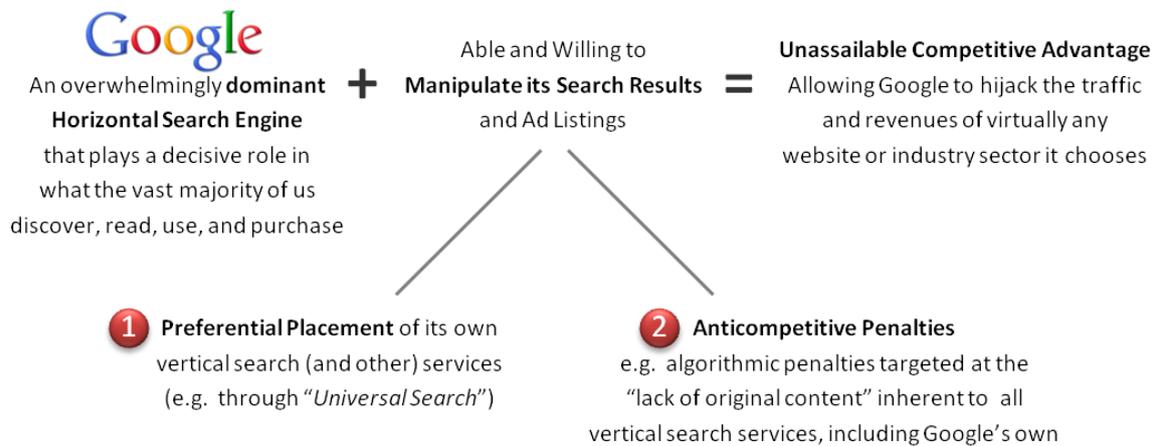
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Introduction



It is difficult to imagine a Competition case where the stakes for consumers and businesses could be any higher. As the gateway to the Internet, Google plays a decisive role in determining what the vast majority of us discover, read, use, and purchase online. The importance of ending Google’s ability to manipulate this unprecedented power to its own anti-competitive ends cannot be overstated. It is no stretch to say that the hopes of a digital-led economic recovery may depend on the outcome of this case.

There are many problems with Google’s proposals. But one fundamental flaw undermines every clause: the proposals ignore the natural search results and AdWords listings that Google is being charged with manipulating.

Instead, Google’s proposals focus exclusively on minor alterations to its self-serving Universal Search inserts. This fundamental flaw means that Google’s proposals cannot alleviate either aspect of the Commission’s concerns regarding search manipulation. The proposed changes would have no impact on Google’s ability to systematically penalise rivals in its natural search results and would do nothing to curtail the unassailable advantage that Universal Search affords Google’s own services. In fact, in many important respects, the proposed changes would make things considerably worse.

If the Commission were to adopt Google’s proposals in anything like their present form, it would be unwittingly playing into Google’s hands—aiding and abetting Google in its long running strategy to transition commercial searches away from its natural search results and into its paid advertisements. Under these proposals, Google would not only continue to profit from the traffic it hijacks from rivals, but it would now also profit from the traffic it sends to rivals. It is important to understand that, in the process, Google is not looking to extract some nominal fee. It is looking to replicate its AdWords model, where, for most commercial search terms, its Dutch-auction bidding process drives prices up to the maximum that advertisers can afford to pay, thereby ensuring that Google takes the lion’s share of any generated profits.

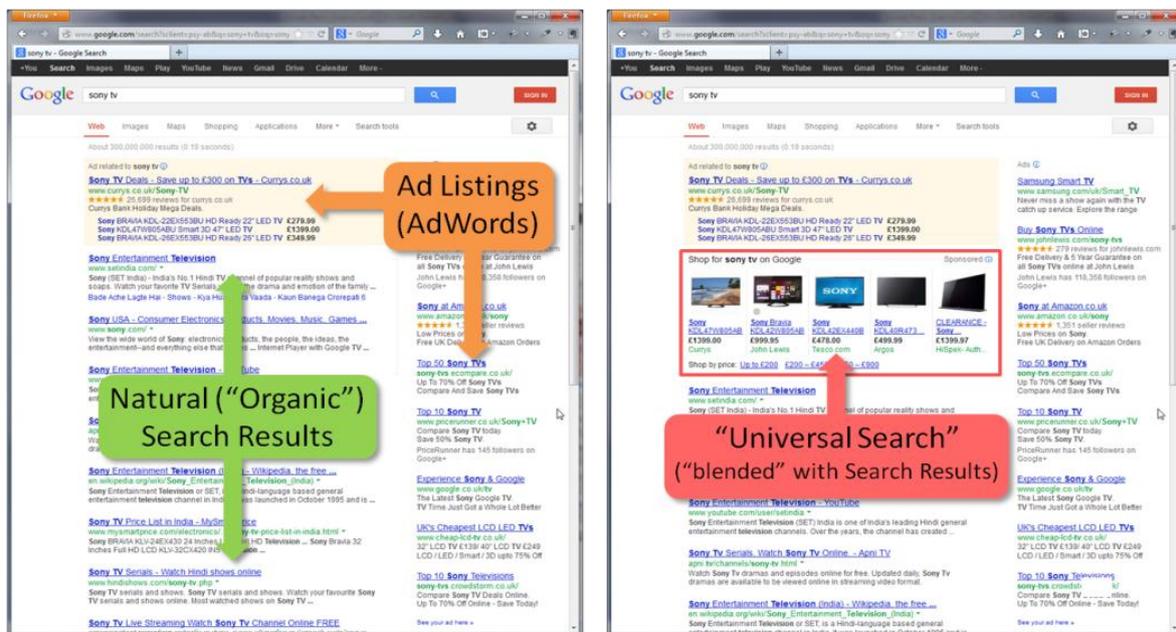
Any vertical search companies that survive the transition to such a radically altered and unfavourable marketplace would be left eking out a living on the slimmest of margins from the scraps left over from the traffic, and now revenues, that Google would be diverting to its own services.

There is a misconception that Google’s proposals offer something to address the self-preferencing half of the Commission’s search manipulation concerns and nothing to address the penalty half. But the reverse is true. Google’s proposals do nothing to solve the preferencing problem, and in many important respects make it worse. But there are elements of Google’s proposals aimed directly at prohibiting Google’s anti-competitively-motivated penalties and exclusions. As with everything else in Google’s proposals, however, because they ignore Google’s natural search results, they are misdirected in their application and fall far short of their target. Nonetheless, many of the important principles they establish about what Google is and isn’t allowed to do, as well as the language used to specify this, will be a valuable basis from which to develop the robust anti-penalty remedies that will need to be applied more generally to Google’s search results and traditional AdWords listings.

Google is keen to portray the Commission’s acceptance of its proposals as a *fait accompli*. But, if the Commission were to adopt anything like these proposals, it would kill any hope of re-establishing the level playing field on which competition, innovation, and consumer choice depends. Google’s proposals are so ill-suited to the problems at hand and so far removed from anything that could solve them that the Commission cannot knowingly accept them. We will have to wait for the market test to play out, but, at the moment, we can see no reasonable alternative for the Commission other than to reject the proposals, issue its Statement of Objections, and insist on remedies that will end, rather than escalate, the abusive practices it has identified.

Google’s Proposals Do Not Address Its Anti-Competitive Abuse

Although the Commission identified Google’s search manipulation practices as its primary concern, Google’s proposals do not address either aspect of these abusive practices. Crucially, Google’s proposals ignore the natural search results and traditional AdWords listings that it is charged with manipulating. Instead, with a flourish of misdirection, they focus exclusively on its Universal Search inserts (see figure).



Google’s Search Results and Ad Listings are where the anti-competitive problems are. But Google’s proposals ignore these...

Instead, Google focuses exclusively on its self-serving “Universal Search” inserts—not only keeping them, but making them even more anti-competitive.

Google's Proposals Exacerbate the Anti-Competitive Effects of "Universal Search"

Before Google's appetite for growth compelled it to look beyond horizontal search, its unparalleled market power wasn't necessarily a problem. Google tended to focus its efforts on providing the best possible search results for its users, even though that usually meant steering users to other people's websites as quickly as possible. Starting around 2005, however, Google began to develop a significant conflicting interest—to steer users, not to other people's services, but to its own growing stable of competing services, in price comparison, travel search, local search, social networking, and so on. In May 2007, Google succumbed to this conflict of interest and introduced "Universal Search", a mechanism designed to insert prominent links to Google's own vertical search and other specialised services at or near the top of its users' natural search results. Not surprisingly, these prominent and often eye-catching links [have been shown](#)¹ to divert substantial volumes of traffic away from rival services to Google's own.

There are only two practical ways to remedy the anti-competitive effects of Universal Search: either eliminate the practice and insist that Google reinstates the natural search results that users visit Google for or radically alter the purpose of Universal Search in order to create a relevance-based level-playing field within it. Google's proposals take neither path; they simply add some ineffective window dressing, leaving the anti-competitive power of Universal Search virtually untouched and, in many circumstances, making it significantly worse.

Google proposes to add labels to its Universal Search inserts, signposting links to its own services. This kind of labelling, however, has already [been shown](#)² to have negligible impact on traffic diversion.

Google also proposes to augment its Universal Search inserts with links to rival services under certain circumstances. For verticals that Google doesn't monetise, no Rival Links would be inserted; for verticals that Google monetises with Pay-Per-Click or Display advertising, three Rival Links would be inserted; and for verticals that Google monetises with Paid Placement, three Rival Links would be inserted, but these would have to be paid for by the chosen rivals. The anti-competitive impact of these three forms of Universal Search inserts would be, respectively, the same as before, the same or worse than before, and catastrophically worse than before.

Paid Rival Links: the Final Death Blow for Google's Vertical Search Rivals

If the Paid Rival Link elements of Google's proposals were adopted, Google would continue to profit from the traffic it hijacks from rivals, but now it would also profit from the traffic it sends to rivals. And because of the economics of search advertising, which naturally drives prices up to the maximum that advertisers can afford to pay, Google is likely to become the main beneficiary of any profit generated by the traffic it sends to its rivals.

This change would transform the digital landscape at a stroke. It would extend Google's existing monopoly powers and could eventually leave it in sole possession of the efficient, low-overhead, business model that has characterised and fuelled the internet revolution. By becoming the main beneficiary of its rivals' vertical search services as well as its own, Google's revenue model would

¹ http://www.foundem.co.uk/Foundem_Preferencing_Data_and_Arguments.pdf

² http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2260942

become even more efficient, entrenched, and unassailable. The few vertical search companies that survive the transition to such a radically altered and unfavourable marketplace could end up little more than advertising arbitrage services for Google; there would be little profit left to fund or incentivise innovation.

It is worth noting that, after a decade of railing against the shortcomings of Paid Placement models for consumers³³, Google announced its intention to introduce its own Paid Placement model (its justification for Paid Rival Links) on 31 May 2012—just ten days after the European Commission offered it the opportunity to try to settle its antitrust case. Google’s product price comparison service was the first of Google’s services to be transitioned to this new model; it rolled out in the U.S. in October 2012 and in Europe in February 2013.

An Immensely Powerful Additional Anti-Competitive Tool

For domains that Google chooses to monetise through Paid Placement, its proposed Paid Rival Links would create an entirely new and immensely powerful anti-competitive tool to add to its existing arsenal: to its ability to divert and commandeer traffic, Google would now be adding the ability to divert and commandeer revenues.

Where most vertical search services already pay Google for a substantial proportion of their traffic through AdWords, Google’s proposals would mean that these services would now also be expected to pay Google for the substantial proportion (typically the majority) of traffic they currently get for free through Google’s organic, natural search results. Some might argue that the sites receiving this free traffic are parasites, while others might argue that Google is the parasite, making billions of dollars by simply directing users to the fruits of other people’s labour. The reality, of course, is that the relationship is symbiotic. It is worth remembering that people only visit Google for its natural (free) search results; no one visits Google for its paid advertisements, and no one likes being advertised to.

A Powerful Incentive for Google to Transition its Verticals to Paid Placement

If adopted, the Paid Rival Link elements of Google’s proposals would provide a powerful additional incentive for Google to transition its vertical services over to its new Paid Placement model. When assessing the short, medium and long term impact of Google’s proposals, we therefore have to assume that Google will rapidly transition all of the most lucrative vertical domains to this new model. As a result, pretty soon the only vertical search services not handing over most of their profits to Google would be Google’s own vertical search services (an anti-competitive double-whammy).

Not only will this substantially accelerate the demise of Google’s vertical search competitors, which is bad news for consumers, the Paid Placement model itself is bad for consumers.

Paid Placement is Bad for Consumers

Consumers are directly and immediately harmed whenever Google transitions a vertical from relevance-based placement to Paid Placement. In contrast to most rival vertical search services,

³³ E.g., this from Google’s Technology Overview in 2006: “Users have come to trust Google as a source of objective information untainted by paid placement.”

Google's Paid Placement services sort their results according to what a merchant is willing to pay Google, not the price that consumers will have to pay for the product. Not surprisingly, the merchant who pays Google the most to advertise is often not the merchant offering the best value to consumers.

Removing the Paid Element of Paid Rival Links Would Not Fix Google's Proposals

Google's proposal that it be allowed to continue its anti-competitive abuse but now also charge companies for the privilege is just one of several elements of Google's proposals that are so contrary to the aim of any settlement (which is to end the abuse, not extend it) that they may well have been included only to draw fire and allow Google to remove them under the guise of major concessions.

In our view, no number of concessions could make these proposals effective. To be effective, remedies will have to either prohibit the abuse or remove the incentive for the abuse. Nothing in these proposals attempts to do either.

Enabling the Elimination of Vertical Search from Google's Natural Search Results

Google's proposals attempt to divert attention away from the manipulation of its natural search results by focussing exclusively on its Universal Search inserts, which are simply the vehicle for the self-preferencing part of its anti-competitive practices. If this attempt is allowed to succeed, it will not only ensure that none of Google's abusive practices are curtailed, it will also lend these anti-competitive Universal Search inserts an unwarranted legitimacy. It is possible, even likely, that Google will argue that these Universal Search inserts now fulfil all of its users' vertical search needs and will take the opportunity to purge rival vertical search services from its natural search results. At a stroke, this would eradicate all non-paid traffic to its vertical search rivals and convert any remnants into traffic that would generate substantial additional revenues for Google.

The Rival Link application process described in Google's proposals would require all vertical search players seeking inclusion in the Rival Link Pools to register their details with Google, including their domain names, the verticals they cover, and the precise structure of their search result URLs. If Google were to decide to remove these services from its natural search results for all but navigational queries, the information provided would transform what might otherwise be a tricky and error-prone operation into an afternoon's work.

Google Can Decide How Effective or Ineffective Rival Links Are

In its proposals, Google goes into great detail about the precise eligibility and selection criteria for Rival Links. In doing so, it creates the impression that these Rival Links will be materially important. But it will be largely within Google's power to determine how effective or ineffective these links would be; if Google so chooses, it could ensure that the Rival Links are selected or presented in such a way that they drive next to no traffic and would therefore be largely irrelevant.

Before we saw the details of Google's proposals, we suggested that Rival Links could only be effective with robust guidelines to guarantee the placement, depth, prominence, and relevance of the links, and with guarantees that the selection of competitors would be free from anti-competitive penalties and discrimination. Without these guarantees, the inclusion of Rival Links cannot make a

dent in Google's ability to hijack the traffic and revenues of its rivals. Google's proposals contain no such guarantees.

Universal Search was designed to "blend" in with natural search results and give Google's own vertical and other specialised services an unassailable competitive advantage. Nothing in Google's proposals removes this unassailable advantage; at best, some of these measures might partially dilute it. But all of the factors that would determine the degree to which these Rival Links might dilute Google's unassailable advantage appear to have been left entirely in Google's hands.

If Google's Paid Rival Links proposals are accepted, and Google really is allowed to create an entirely new way of exploiting its dominance by forcing rivals to pay Google for inclusion, then any discussion about the efficacy of these Rival Links becomes more complicated. Google could decide to make these Links ineffective in verticals where they are not revenue-bearing for Google and partially or very effective in verticals where they are revenue-bearing for Google. The choice would be entirely Google's, and it would be able to vary this decision over time, as circumstances and its commercial incentives change.

Addressing Google's Anti-Competitive Penalties: Right Idea, Wrong Place

Like most horizontal search engines, Google employs a variety of algorithmic (and manual) penalties—powerful negative ranking signals designed to demote or exclude "undesirable" websites or pages from search results, regardless of how relevant they appear to be to the user's query. Penalties are supposed to be directed at websites that are "undesirable" in a spam sense, or that have been caught "cheating" the search engine's algorithms. They should not be aimed at legitimate services whose only undesirable feature is that the search engine now views them as competitors to its own growing stable of rival services. In fact, under European Competition law, Google's overwhelming dominance of search prohibits it from doing so.

In 2006, around the time that Google began developing its self-serving Universal Search mechanism, Google also started to introduce a new breed of anti-competitive, algorithmic search penalties targeted at characteristics inherent to all vertical search services, such as a "lack of original content". Prior to Google's "Panda" update, first rolled out in February 2011, these devastating anti-competitive demotions of rival vertical search services had been primarily reserved for emerging, and still largely unknown, competitors. With Panda, however, Google began penalising many of its established vertical search rivals.

By confining themselves solely to Google's Universal Search inserts, Google's proposals do nothing to address its ability to manipulate its all-important natural search results. There is, therefore, nothing in Google's proposals to prevent it from continuing to penalise rivals in these search results.

Google's proposals do, however, contain measures designed to constrain its ability to penalise or exclude competitors from its Rival Link and Paid Rival Link Pools; these measures establish some important principles and language that would simply need to be adapted and applied to Google's natural search results in order to achieve something significant and beneficial.

Under Google's proposals, with the exception of some clearly defined Harmful Practices (such as illegal content and consumer deception), Google would only be allowed to exclude a site from its Rival Link Pools under "exceptional circumstances", with "prior individual approval from the

Commission”, and if it can demonstrate that the site offers a "materially inferior user experience" compared to the other sites in the Pool. Google would also need to inform the excluded site, the Monitoring Trustee, and the Commission, stating the reasons for the exclusion. Any excluded site would be able to reapply for inclusion three months after its exclusion.

All of these measures are a far cry from the current situation in Google’s natural search results, where, for several years, Google has been systematically penalising or excluding many of its vertical search rivals under the glaringly anti-competitive pretext of a “lack of original content”—a characteristic inherent to all vertical search services, including Google’s own.

Unfortunately, in addition to sidestepping the real problem (Google’s manipulation of natural search results) by talking exclusively about non-discriminatory access to Rival Link Pools, Google has also managed to undermine the effectiveness of its commitments by slipping in some innocuous-looking but enormously powerful wiggle-room. For example, Google’s proposals stipulate that the selection of Rival Links from the free Rival Links Pool would be decided by “Web Search Rank”, a term that it does not define further but that seems to be vulnerable to all of the same anti-competitive demotions and penalties that Google has been developing and deploying in its natural search results for the last several years.

Other Issues with Google’s Proposed Universal Search Inserts

There are numerous other issues with all three varieties of Google’s proposed Universal Search inserts.

The Unworkable Bidding Process for Paid Rival Links

Leaving aside the extraordinary additional anti-competitive harm that Google’s proposed Paid Rival Links would immediately inflict, there are numerous serious flaws in the proposed bidding process itself, which seems to be gratuitously impractical and unfit for purpose.

The proposed bidding process is critically lacking in control and granularity. For example, it only seems to allow for blanket sealed bids across entire domains, with no facility to vary the bid or block the bid for specific keywords. No business would be satisfied with this lack of control, particularly in contrast to the existing AdWords system, and it would be extremely difficult to run reliable, cost-effective campaigns using the proposed scheme.

In a bizarre and unexpected twist, Google proposes that the sealed bids would be submitted in two to four week cycles. Successful bidders would find themselves included in Google’s Paid Rival Link pool for the duration of the cycle (or until their budget is exhausted), and unsuccessful bidders would find themselves excluded for this period. This model would be hostile and entirely unfamiliar to most businesses⁴. Few businesses could tolerate having access to their customers switched on and off for two to four week periods, especially when it involves a blind bid process controlled by a third party that is in direct competition for the same customers.

⁴ With the possible exception of deep sea divers and oil rig workers.

Mending the Bidding Process Will Not Mend Google's Proposals

It is possible that this flawed bidding process is another example of a deliberately ludicrous proposal designed to draw criticism and allow Google to withdraw it under the guise of a major concession. In fact, Google would have to spend time and money developing the proposed bidding system and might well prefer to simply adapt its existing, far more sophisticated, AdWords system to the task.

But even if we assume that, in any revised version of this proposal, Paid Rival Links would be populated by a variant of Google's existing AdWords bidding system, this would do nothing to mitigate the devastating anti-competitive impact of this new form of advertising-based abuse. Either bidding system would mark a dramatic escalation in Google's ability to divert the vast majority of vertical search profits to its own coffers rather than to anyone else's.

The Eligibility Requirements for Services to be Included in the Rival Links Pools

According to Google's proposals, the rivals that will populate its Rival Link Pools would be chosen through an application process under Google's control. There are several troubling aspects to the application process described, including the following:

- The stipulation that rivals would only be allowed to apply for one or a closely related set of pools (for example, travel or price comparison not both), would automatically exclude several major vertical search players such as MoneySupermarket, which covers financial price comparison, travel, and product price comparison.
- The eligibility requirement that rival sites must already rank in the top hundred thousand worldwide sites for traffic is an obvious impediment to potentially innovative new entrants—particularly as they are now likely to also be excluded from Google's natural search results. Moreover, this sort of third-party traffic data is notoriously inaccurate and easily gamed, as Google itself has remarked on many occasions.

As we have noted above, however, because the efficacy of these Rival Links would be entirely at Google's discretion these additional anti-competitive barriers may well be irrelevant.

Google's Proposals Only Address Vertical Search

Google's Rival Link proposals only deal with vertical search; all other kinds of services are excluded. Ironically, because these proposals range from ineffective to a substantial escalation of the problem, the excluded sectors may well be better off left out of scope than in. Google reserves the right, however, to implement elements of its proposals to other sectors if it so chooses.

As we made clear in our November 2009 European Complaint, vertical search was simply the natural first target for Google. Google can (and will, if it isn't stopped) extend the same abusive practices into other sectors, including ecommerce, auctions, and social networks. Yet, Google's proposals explicitly exclude these sectors.

The Effective, Straightforward, and Eminently Reasonable Alternative

Over the last several months, a strong consensus has emerged around the minimum standard of remedies that would be required to end Google's abusive search manipulation practices. The straightforward alternative to Google's proposals, which has already been widely endorsed by both

Complainants and consumer groups, is eminently reasonable and would immediately restore the unbiased level-playing field that search engine users expect and competition and innovation require.

As eleven Complainants wrote in an [open letter](#)⁵ to Commissioner Almunia in March 2013:

“There are two equally important aspects to Google’s search manipulation practices: the systematic promotion of Google’s own services, and the systematic demotion or exclusion of its competitors’ services. Any effective remedies will require explicit commitments to end both aspects; remedying one without remedying the other would simply allow Google to recalibrate the un-remedied practice in order to achieve the same or equivalent anti-competitive effect.

Google’s strict adherence to the following overarching principle would ensure an end to both aspects of Google’s search manipulation practices:

Google must be even-handed. It must hold all services, including its own, to exactly the same standards, using exactly the same crawling, indexing, ranking, display, and penalty algorithms.”

This even-handed principle has also been [endorsed by BEUC](#)⁶, the European consumer organisation representing the views of 39 national consumer organisations from across 30 European countries.

Remedies that implement this even-handed principle would directly address the abusive practices the Commission has identified. They would be straightforward to define, implement, and monitor (for example, see [here](#)⁷ and [here](#)⁸), and would start acting to restore competition from the moment Google committed to them.

It is clear that Google’s proposals fall far short of this even-handed-principle minimum standard. Perhaps the only element worth salvaging might be Google’s proposed anti-penalty commitments regarding access to its Rival Link Pools. These commitments could be readily adapted, tightened, and applied to Google’s natural search results and traditional AdWords listings, which would provide a good starting point for ending the penalty/exclusion half of Google’s search manipulation practices. Pretty much everything else in Google’s proposals should be scrapped.

Conclusion

Reading Google’s proposals, it is difficult to remember that they are supposed to be Google’s attempt to remedy its abusive practices. Instead, they read more like an extract from what could well be its existing Development Roadmap: many of the proposals seek to legitimise its existing abusive practices, while others seek to secure permission for further abuses that Google might otherwise have been understandably nervous about introducing.

As mentioned above, many of Google’s proposals are so preposterous that they may well only have been included in order to draw fire and allow Google to withdraw them during further negotiations with the Commission. Google’s existing search manipulation practices (self-preferencing and anti-competitive penalties) are so powerful and lucrative that it would not be surprising if Google’s aim is

⁵ <http://www.searchneutrality.org/google/open-letter-to-almunia>

⁶ <http://docshare.beuc.org/Common/GetFile.asp?ID=44729&mfd=off&LogonName=Guesten>

⁷ http://www.foundem.co.uk/Enabling_an_Anti-Demotion_Remedies.pdf

⁸ http://www.foundem.co.uk/Foundem_Remedies_Proposals.pdf

simply to emerge from this process able to continue these practices unabated; if it has to throw in some labelling and token links to competitors as ineffective window dressing, then so be it.

Summary

- Google's proposals are misdirected. They ignore the natural search results and AdWords listings that Google is charged with manipulating. And, instead of ending or mending Universal Search they merely pretend to dilute its anti-competitive effects. The consequence of this fundamental misdirection is that Google's proposals cannot resolve the Commission's concerns regarding search manipulation, no matter how much they are tweaked.
- The introduction of Paid Rival Links represents a potentially catastrophic escalation of Google's abuse, providing a new and immensely powerful anti-competitive tool, which in many cases would hand Google the majority of its rivals' profits.
- Google's proposals contain some significant concessions regarding its use of penalties. But, as with most elements of its proposals, these commitments are misdirected, as they are aimed only at the Rival Link Pools rather than at Google's natural search and AdWords listings. The important principles that the concessions establish, however, could easily be adapted, tightened, and applied to Google's natural search results to form an effective part of an even-handed, principle-based penalty remedy.
- There are effective, straightforward, and eminently reasonable alternative remedy proposals to those offered by Google that have already been widely endorsed by both Complainants and Consumer Groups.