Google Antitrust:
A Timeline of Significant Events

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Introduction

Foundem is the lead Complainant in the European Commission's competition investigation into Google’s search manipulation practices. As the company that first brought these practices to the attention of both the European Commission and the U.S. Federal Trade Commission (FTC), Foundem is uniquely placed to shed light on the vital background and context of these Google investigations.

Foundem’s November 2009 Competition Complaint to the European Commission was the first to document Google’s insidious search manipulation practices and to highlight their devastating impact on competition, innovation, and consumer choice. Foundem presented the Commission with overwhelming evidence of Google’s increasingly anti-competitive penalty practices, woefully inadequate appeals procedures, and ever-expanding appetite for force-feeding users its own, often inferior, specialised services.

Although there are now an unprecedented number of Complainants, including industry giants such as Microsoft, Expedia, Trip Advisor, and the German Publishers Association, this has seldom been the battle between titans that Google has tried to portray. As the following timeline demonstrates, many of the pivotal moments of this process have, in fact, been the result of a David and Goliath struggle between Foundem, a small but innovative technology company determined to restore the level playing field required for innovation to thrive, and Google, one of the world’s most powerful corporations failing to live up to the substantial responsibilities of its extraordinary market power.

The following timeline has been written without reference to any of the internal Google documents that have now been disclosed to Foundem as part of its civil action against Google in the UK High Court. Confidentiality rules prevent us from referring to these documents or augmenting the timeline with any of the further details they reveal.

Note: In the timeline below, some words have been bolded—not for emphasis, but as a navigational aid for the reader.

Timeline of Events

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>Sep 1998</td>
<td>Google launches its horizontal search engine.</td>
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<tr>
<td>26 Jun 2000</td>
<td>Google signs a distribution deal with Yahoo! and starts powering Yahoo!’s search results¹.</td>
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<tr>
<td>23 Oct 2000</td>
<td>Google launches AdWords, its self-service, search-advertising programme. At this time, AdWords ads are sold on a cost-per-impression (CPM) basis, in which advertisers pay each time their ad appears, regardless of whether a user clicks on it.</td>
</tr>
<tr>
<td>6 Aug 2001</td>
<td>Eric Schmidt is appointed Google CEO, taking over from co-founder Larry Page.</td>
</tr>
<tr>
<td>20 Feb 2002</td>
<td>After Google’s CPM model proves unpopular with advertisers, Google transitions its AdWords program to a cost-per-click (CPC) charging model. As Google’s co-founders had pointed out four years earlier, for any search engine funded in this way, there is an unavoidable tension between the need to produce good enough search results to attract and retain users and the conflicting need to ensure that they are bad enough that users regularly resort to clicking on sponsored links to find what they are looking for: “The goals of the advertising business model do not always correspond to providing quality search to users…advertising income often provides an incentive to provide poor quality search results.”²</td>
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<tr>
<td>May 2002</td>
<td>Google signs a distribution deal with AOL and Netscape for both search and search advertising. This is probably the moment at which Google became the dominant search and search advertising provider globally, a position it has now held and consolidated for more than a decade.</td>
</tr>
<tr>
<td>12 Dec 2002</td>
<td>Google launches a product-price-comparison service, Froogle, which it later re-brands.</td>
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¹ [http://googlepress.blogspot.co.uk/2000/06/yahoo-selects-google-as-its-default.html](http://googlepress.blogspot.co.uk/2000/06/yahoo-selects-google-as-its-default.html)

**Google Product Search** and, most recently, *Google Shopping*.

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<tr>
<td>18 Aug 2004</td>
<td><strong>Google IPOs.</strong> Google’s unusual dual-class share structure, which grants its top executives ten votes for every one vote of a regular shareholder, guarantees Google’s Founders “carte blanche authority in running the company over the near term.” ³ ³</td>
</tr>
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| Sep 2004      | In an interview with Playboy Magazine⁴, Google Co-Founder Larry Page responds to a question about the temptation for search engines and portals to develop “sticky” content and services in order to keep users on their sites and earn more advertising revenue:  
  
  “That’s the problem. Most portals show their own content above content elsewhere on the web. We feel that’s a conflict of interest, analogous to taking money for search results. Their search engine doesn’t necessarily provide the best results; it provides the portal’s results. Google conscientiously tries to stay away from that. We want to get you out of Google and to the right place as fast as possible. It’s a very different model.”  
  
  Two and a half years later, Google succumbed to its own growing conflict of interest. In May 2007, Google introduced “Universal Search”—a mechanism specifically designed to insert prominent links to Google’s own content and services above the content and services from elsewhere on the web. |
| 27 Oct 2004   | **Google acquires Keyhole Corp., a California-based digital mapping company.** In April 2005, Google integrates Keyhole’s dynamic 3D mapping technology into its recently launched *Google Maps* service and in June 2005 uses it as the basis of its *Google Earth* service. |
| 28 Mar 2005   | **Google acquires Urchin and uses its web analytics technology to create Google Analytics** (launched in November 2005).⁵  
  
  **Foundem** launches a vertical search service built on its proprietary patented technology.  
  
  Vertical search is fundamentally different from horizontal search, fulfilling a different role and requiring different expertise and technology. The two forms of search are complimentary; one is not a replacement for the other. Where horizontal, keyword-based search engines like Google and Bing are intrinsically general-purpose, requiring little understanding of the nature of the data or sites they are searching, vertical search engines tend to be highly specialised, supporting parameterised searches that require an understanding of both the nature of the items being searched for and the parameters required to search for them.  
  
  The inherent complexity of vertical search, coupled with the lack of a general purpose, vertical-agnostic technology to support it, has tended to limit the scope of individual vertical search services to just one or a small handful of closely-related verticals. Foundem’s patented, programmable, parameterised search technology allowed it to provide best-in-class vertical search for almost any vertical, with just a fraction of the development and maintenance costs of its competitors. With this innovative technology, Foundem planned to transform vertical search from a narrow, niche-by-niche proposition into a broad, comprehensive and scalable one. Despite Foundem’s diminutive size, its service quickly became one of the world’s broadest vertical search services, covering product-price-comparison, travel search, jobs search, and property search.  
  
  In addition to the many hidden innovations of Foundem’s underlying technology, Foundem also pioneered many user-facing innovations that have become commonplace today, including search-form auto-suggestions, dynamic contextual filters, and price-history graphs that show fluctuations in product prices over time. |
| 9 Mar 2006     | Google acquires Upstartle, whose web-based collaborative word-processing software, Writely, becomes the basis for Google’s *Google Docs* service (launched in October 2006). |
| Mar 2006      | Google completes the roll-out of its "Big Daddy" update, a major change to its search

⁴ [http://www.sec.gov/Archives/edgar/data/1288776/000119312504139655/ds1a.htm](http://www.sec.gov/Archives/edgar/data/1288776/000119312504139655/ds1a.htm)  
engine infrastructure and algorithms. One element of this update causes significant problems for many vertical search services, especially emerging start-ups. By their nature, vertical search services tend to have a very large number of pages. Price comparison services, for example, typically contain hundreds of thousands of product-specific pages, and digital-mapping services typically contain similar numbers of postcode-specific pages. By tying a site’s crawl-depth to its PageRank, Google’s Big Daddy update meant that very large websites suddenly required a very large number of “authoritative” inbound links to ensure that their pages were crawled and indexed by Google. This posed a significant problem for new or emerging vertical search services: how to gain the substantial number of inbound links now required in order to be crawled and indexed by Google, when their service cannot be found or discovered within Google’s search results? Whether by accident or design, the anti-competitive effect of these changes will have been significant, preventing many new and potentially innovative vertical search and mapping services from getting off the ground.

26 Jun 2006 Foundem is struck by a site-wide, algorithmic Google Search Penalty, which systematically excludes all of Foundem’s pages from Google’s search results, irrespective of their relevance to users’ search terms. This penalty not only excluded Foundem from all general searches, such as “price comparison”, it also excluded Foundem from all highly specific searches, even in cases where Foundem would have been the only truly relevant result, such as “compare prices shoei xr-1000”.

29 Jun 2006 Foundem files the first of many Reconsideration Requests to Google, all of which Google ignores. Reconsideration Requests (formerly known as Re-inclusion Requests) are Google’s official channel for websites to appeal penalties. But, despite the fact that all complex algorithms inevitably make mistakes, we now know that Google’s policy until at least February 2011 was to ignore all Reconsideration Requests lodged against algorithmic, as opposed to manual, penalties.  

21 Jul 2006 Foundem files another Reconsideration Request to Google regarding its search penalty. Again, Google does not respond.

1 Aug 2006 Foundem is struck by a site-wide, algorithmic Google AdWords Penalty. Overnight, all of Foundem’s Landing Page Quality (LPQ) scores are artificially lowered from around 10 out of 10 to around 1 out of 10. As a result, Foundem’s minimum bids (the minimum price Foundem must pay for its ads to be eligible for display in Google AdWords) rise by a prohibitive 10,000% (from around 5 pence per click to around £5 per click).

2 Aug 2006 By this point, Foundem was excluded from Google’s natural and paid search results, both of which are essential channels to market for any internet-based business. Foundem deduced that it had been struck by one or more site-wide algorithmic Google penalties, targeted at sites that “lack original content”. While a lack of original content is a characteristic of certain spam sites, it is also a defining characteristic of all search services (horizontal and vertical). The value of search services lies not in the production of original content but in their ability to efficiently organise, search, and summarise the content of others. Other than fundamentally changing from a search service to a content publisher, Foundem’s only way back into Google’s search results and ad listings was to have Google intercede to manually lift the penalties.

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6 [http://www.theregister.co.uk/2011/02/18/google_on_manual_search_penalties/](http://www.theregister.co.uk/2011/02/18/google_on_manual_search_penalties/)

7 Horizontal search engines have become the Internet's gatekeepers, and the crucial role they play in directing users to websites means that most Internet-based businesses now rely on search engines for a substantial proportion of their traffic and revenues. Given Google's overwhelming global dominance of horizontal search, for most websites this amounts to an uncomfortable but unavoidable reliance on Google. Typically, web sites receive the vast majority of their traffic from Google (Google accounts for 75% of Yelp’s traffic, for example), and, crucially, there is no substitute for this traffic: web sites can supplement search engine traffic by traditional forms of advertising, but they cannot replace it. While an internet service may be able to survive an exclusion from Google’s search results, it will not be able to compete against unpenalised rivals or achieve anything approaching its full potential.
Foundem embarked on what would turn out to be a three-year long effort to have these unjustified Google penalties lifted.

2 Aug 2006 Following another unanswered Reconsideration Request, Foundem emails Google’s Head of Search Quality, Matt Cutts, about its Google search penalty. Foundem explains that it is an innovative vertical-search start-up with patented technology, the value of which—in common with all search services—lies not in original content per-se, but in the unique and undeniably useful service it offers to users.

Mr Cutts passes Foundem’s email on to his colleague, Adam Lasnik, with instructions to explain to Foundem that “other search engines aren’t always what we want to return”.

Aug 2006 Foundem contacts Google’s AdWords support team and requests the first of several “manual reviews” of its algorithmic AdWords penalty.

24 Aug 2006 Foundem receives the first of several emails from Google AdWords front-line support, all of which fail to acknowledge Foundem’s AdWords penalty or the fact that a lack of original authored content and a primary purpose to deliver users to other websites are defining characteristics of all search services:

"Since the primary purpose of the site is to drive traffic to other websites, the Quality Team has decided that the initial evaluation was not in error."

1 Sep 2006 Google AdWords Support representative, Dave W, thinks Google’s penalising of Foundem such an obvious mistake that he writes his own multi-page letter in support of Foundem’s case. He seems genuinely shocked and upset that Google’s AdWords Quality Team had ignored him:

“I have heard the final word from our Quality Team. They have decided, even in light of my lengthy and frequent appeals, not to change the Landing Page Quality that was initially assessed for Foundem. Believe me when I tell you that I did everything in my power to try to get a positive result for you.”

13 Sep 2006 Google’s Adam Lasnik responds to Foundem’s 2 August email.

As a senior member of Google’s Search Quality Team, Mr Lasnik will have been aware that Foundem was labouring under an algorithmic search penalty that was systematically excluding all of Foundem’s pages from Google’s search results. Mr Lasnik will also have been aware that manual intervention by himself or another member of Google’s Search Quality Team would be required to overturn Foundem’s penalty. Yet, Mr Lasnik’s email to Foundem simply claimed that he had no “specific insights to offer”.

9 Oct 2006 Google acquires YouTube.

Oct 2006 IPC Media (the UK’s largest magazine publisher) chooses Foundem to power content-integrated price comparison for its websites—starting with Ideal Home Magazine.

14 Feb 2007 Future Publishing’s T3 (the UK’s leading gadget magazine) chooses Foundem to provide content-integrated price comparison for its website.

13 Apr 2007 Google announces its plans to acquire DoubleClick, a leading display advertising and affiliate marketing network. The EU approves the acquisition on 11 March 2008.

16 May 2007 Google launches “Universal Search” - a mechanism for “blending” prominent links to Google’s own vertical search and other specialised services at or near the top of its organic search results, starting with Google Maps, Google News, Google YouTube, and Google Images:

“Google is undertaking the most radical change to its search results ever, introducing a ‘Universal Search’ system that will blend listings from its news, video, images, local and book search engines among those it gathers from crawling web pages.”

Competitors to Google’s digital mapping service, who had been successfully competing and growing alongside Google Maps for more than two years, see their traffic and

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8 Google’s 3 May 2010 Reply to Foundem’s EC Competition Complaint
9 http://searchengineland.com/google-20-google-universal-search-11232
revenues plummet overnight.\textsuperscript{10}

16 July 2007 Foundem is named \textit{The Sunday Times Website of the Week}.\textsuperscript{11}

2 Aug 2007 Foundem contacts Anthony House, a member of Google UK’s Public Policy and Communications Group, who agrees to make internal enquiries about Foundem’s search penalty.

14 Aug 2007 Foundem receives another uninformed, boilerplate response from Google’s AdWords Quality Team:

“...I’ve confirmed that the original quality review of your site was correct, and that your current landing page quality is very poor. Sites that don’t include useful content, products, and/or services for internet users are often difficult to advertise efficiently and effectively.”

16 Aug 2007 After nearly a year of back and forth communication with various Google AdWords representatives, Foundem’s appeal against its AdWords penalty is finally escalated to Google’s Senior AdWords Evangelist, Fred Vallaeys. During a conference call, Vallaeys concedes that Foundem has been struck by an algorithmic penalty designed to target sites with a “lack of original content”. He notes that price comparison and travel search services are, by their nature, likely to be hit by this new kind of penalty.

After hearing about Foundem’s technology and partnerships, Vallaeys agrees to champion Foundem through what he calls the “\textit{whitelisting}” process (Google’s mechanism for manually overriding algorithmic penalties).

22 Aug 2007 Less than a week after Google’s Fred Vallaeys had confirmed Foundem’s algorithmic AdWords penalty and agreed to champion Foundem through the Google whitelisting process required to lift it, Google’s Anthony House responds with the results of his internal enquiries into Foundem’s search penalty:

“We checked your site in our penalty tool and looked at the site’s information in Webmaster Tools - there aren’t any penalties or crawl errors listed, so I can only share our best guess as to why your site is experiencing problems with ranking. It’s a search service, which means it has very little original content and could also be considered a doorway page; other similar sites have experienced ranking changes like this one.”

31 Aug 2007 Google’s Head of Universal Search Development, David Bailey, publishes \textit{An Insider’s View Of Google Universal Search}.\textsuperscript{12}

Mr Bailey makes it clear that what we see today is just the beginning. In Google’s view, Universal Search really is a fast track to a world of Google Everything, at least as far as vertical search is concerned:

“If users are going to rely on [Google’s] main search box for their vertical-search needs, it had better do a decent job of finding those results...The upshot for users is that you should expect a lot more changes and more aggressive presentation of more verticals in the months ahead…There’s no doubt we’ve started conservatively.”

8 Sep 2007 Google AdWords support sends Foundem an email entitled “Update on Whitelisting”:

“I am still waiting to hear back from Fred as to where we are in regards to whitelisting.”

25 Sep 2007 \textbf{Google manually “whitelists” Foundem from its algorithmic AdWords penalty}. All of Foundem’s AdWords Landing Page Quality scores immediately return to normal (typically returning to 10/10 from 1/10).

The AdWords Quality team explains that it has little influence with the Search Quality Team. Consequently, despite both penalties (AdWords and Search) sharing the same or similar underlying algorithmic cause, now acknowledged to be in error, Foundem remained penalised in Google’s natural search results for a further two years.


\textit{http://www.thetimes.co.uk/tto/travel/article1732499.ece}

\textit{http://searchengineland.com/an-insiders-view-of-google-universal-search-12059}
<table>
<thead>
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<tr>
<td>9 Oct 2007</td>
<td>Foundem files another <em>Reconsideration Request</em> to Google regarding its search penalty. This time, Foundem highlights that Google’s AdWords support team had recently whitelisted Foundem out of its AdWords penalty. Again, Google does not respond.</td>
</tr>
<tr>
<td>21 Nov 2007</td>
<td><em>The Times</em> newspaper names Foundem one of the UK’s Top Travel Sites.</td>
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</tbody>
</table>
| Dec 2007   | On 13 December 2007, CNN Money comments on how badly Google’s price comparison service, Google Product Search, is doing: “Traffic to Google Product Search…has plummeted in the last year, while competing services from rivals...have grown or held steady...Google Product Search...saw its October [2007] unique visitor count decline a huge 79% from October 2006, according to market tracker ComScore.” Google’s Pitch So Far Failing with Shoppers On 23 December 2007, *The Guardian* newspaper’s Computer Editor, Jack Schofield, writes: “Traffic to Google Product Search - formerly Froogle - fell by 73.26%. This isn't too surprising, because it's not very good.” Ironically, around the time these articles were being written, Google began promoting Google Product Search through its Universal Search mechanism. This placed prominent links to Google Product Search at or near the top of users’ search results for nearly all product- and product-price-comparison-related search terms, bypassing the ranking and penalty algorithms used to place rival services. Foundem’s analysis of the effects of this overwhelming self-preferencing found that Google Product Search’s ailing fortunes were reversed virtually overnight. For example, U.S. traffic to Google Product Search increased twelve-fold, rapidly transforming it from a long-in-the-tooth, peripheral player to the World’s leading price comparison service: “[Previously], Google product search struggled to get used by more than 2% of Google users...[Since its inclusion in Universal Search,] Google Product Search has become the largest and most important specialty shopping search engine in existence...Google is the king for now and the foreseeable future in this space...yet their shopping product itself is still inferior in its presentation and usability to some of the other leading shopping search engines.” | InstantROI, 26 November 2008
| Jan 2008   | Bauer (Europe’s largest independent magazine publisher) selects Foundem as its exclusive vertical search partner. |
| 1 Feb 2008 | Foundem powers content-integrated price comparison for *Photo Answers* magazine. |
| 13 Feb 2008| In a Public Policy blog post arguing for network neutrality, Google makes it clear that it recognises the immense anti-competitive power of a gatekeeper intent on cutting fledgling companies off from their users: “Innovation has thrived online because...new ideas and technologies...are allowed to succeed based on their own merits and benefits. Some major broadband service providers have threatened to act as gatekeepers, playing favorites with particular applications or content providers...It's no stretch to say that such discriminatory practices could have prevented Google from getting off the ground—and they could prevent the next Google from ever coming to be.” |
| Aug 2008   | In partnership with MCN (the UK’s leading Motorcycle Magazine), Foundem and MCN launch the world’s first price comparison service for motorcycle parts and accessories. This service was made possible by Foundem’s unique ability to integrate data extracted directly from merchant databases. |

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13 [http://www.thetimes.co.uk/tto/travel/article1732612.ece](http://www.thetimes.co.uk/tto/travel/article1732612.ece)
16 [http://www.foundem.co.uk/Foundem_Preferencing_Data_and_Arguments.pdf](http://www.foundem.co.uk/Foundem_Preferencing_Data_and_Arguments.pdf)
### Foundem Timeline of the Google Search Case

**6 Aug 2008** Foundem files another *Reconsideration Request* to Google regarding its search penalty. Google does not respond.

**12 Sep 2008** Foundem files another *Reconsideration Request* to Google regarding its search penalty. Again, Google does not respond.

**16 Sep 2008** Having had no response to any of its formal *Reconsideration Requests*, and no meaningful response to any of its other appeals to Google’s Search Quality Team, Foundem emails Amit Singhal (the Head of Google’s core ranking team) to ask if there is anything he can do to facilitate the removal of Foundem’s ongoing search penalty:

> “I am confident that, if you can take the time to read the short summary of our predicament (attached), you will agree that Foundem has been penalised in error, as was found to be the case with its AdWord quality scores.”

Neither Amit Singhal nor anyone else at Google responds.

**19 Sep 2008** Foundem emails Fred Vallaeys (Google’s Senior AdWords Evangelist) to ask if there is anything he can do to facilitate the removal of Foundem’s ongoing search penalty:

> “last year you kindly helped us out of our AdWord [penalty] by championing whitelisting of our site...Believe it or not, Foundem is still labouring under the organic listings equivalent of this penalty, so that none of its pages rank anywhere for any keywords. So far, all of our attempts to communicate with the Search Quality Team have fallen at the front line (as they did initially with AdWords)."

**23 Sep 2008** Foundem emails Udi Manber (Google’s VP of Engineering), copying Mr Singhal, to ask if there is anything he can do to facilitate the removal of Foundem’s ongoing search penalty. Neither Mr Manber nor Mr Singhal nor anyone else at Google responds.

**24 Sep 2008** Google’s Fred Vallaeys responds to Foundem’s 19 September email, informing Foundem that he has let the Search Quality Team know that, in his opinion, Foundem should not be penalised:

> “I'm sorry I can't be more specific but please be assured that I have made the [search] team aware that...your site should not carry any penalty like the landing page quality one we talked about last year.”

**24 Sep 2008** At Fred Vallaeys’ suggestion, Foundem files another *Reconsideration Request* to Google regarding its search penalty, this time highlighting Mr Vallaeys’ opinion that Foundem should not be penalised. As on every previous occasion, Google does not respond.

**1 Oct 2008** Foundem emails Amit Singhal and Udi Manber, asking if there is anything in progress to suggest that Foundem should not reach out to a wider audience within Google. Again, no one at Google responds.

**6 Nov 2008** Having had no response to its earlier emails, nor any acknowledgement that Fred Vallaeys’ intervention had been noted or acted on, Foundem sends an email to Adam Lasnik, Udi Manber, and Amit Singhal with a brief summary of Foundem’s case. This time Foundem also addresses its email to a select group of Google managers from other teams. Foundem hoped that involving people outside of the Search Quality bubble might finally persuade the Search Quality team to consider, rather than ignore, the issue:

> “...Since June 2006, Foundem has been suffering from a new class of Google penalty (or filter) that is now systematically excluding all but its Homepage from Google’s organic search results. When a similar penalty decimated Foundem's AdWord 'landing page quality scores' in September 2006, Google's AdWord Quality Team intervened and overturned the penalty by manually 'whitelisting' Foundem's site. Unfortunately, Foundem has not yet found a way to achieve similar intervention by Google's Search Quality Team and therefore remains inappropriately excluded from Google's organic search results. Foundem's patented technology can provide best-of-breed vertical-search and price comparison services in virtually any domain. By seamlessly ingesting feeds, crawling websites, and querying APIs and databases, Foundem delivers unique search results..."
that are generally more comprehensive and accurate than those of its competitors. Foundem (www.foundem.co.uk) provides a unique service to its visitors. Its proprietary vertical search services span the broadest range of verticals available anywhere in the world, including Travel, Jobs, Property, and Price Comparison. Moreover, Foundem's innovative product classification technology allows it to deliver price comparison to many niche domains that lie beyond the reach of conventional services.

Foundem's unique functionality, accuracy, and ease of integration allows it to regularly win head-to-head competitive bids against its more established rivals, including Kelkoo, Shopping.com, and Pricegrabber. As a result, Foundem currently powers content-integrated price comparison for several of the UK's leading media companies, including Channel Five, Bauer, and IPC Media. Through these strategic partnerships, over 2.5 million unique visitors view Foundem's search results each month...

Although most of Foundem's pages are included in Google's index ('site:www.foundem.co.uk' shows approximately 52K pages), Google currently excludes all but the Homepage from its organic search results. This is true even when a query is a quoted phrase unique to Foundem's site: "Apple ipod touch MP3 media player", for example, returns just two results, both from sites that have simply scraped Foundem's content.

Foundem's problem is specific to Google. Its pages appear and rank normally in Yahoo and MSN searches....

Ironically, whereas sites can generally recover from traditional 'cheating' penalties by mending their ways, sites suffering under these new penalties cannot; they can only recover if Google can be persuaded to grant immunity via its manually maintained whitelist.

It is not clear what determines whether or not Google whitelists a particular site. In Foundem's experience, simply presenting a compelling case is not enough: Foundem's AdWord whitelisting required several attempts, several months, and ultimately the intervention of a senior AdWords evangelist; and two years on, Foundem is still struggling to have its organic penalty overturned...

These problems are exacerbated by Google's reluctance to publicly acknowledge the existence of these new penalties or their antidote, the whitelist. Privately, Google confirmed Foundem's AdWords whitelisting in writing. Yet, as recently as September 2008, Google seemed to be deliberately concealing the existence and crucial role played by this manually maintained whitelist in the AdWords penalty process: "Google also told me that it never made judgments of what was 'good' and 'bad' because it was all in the hands of the algorithm" (Joe Nocera, Stuck in Google's Doghouse, New York Times, September 12 2008)...

Foundem has developed a genuinely revolutionary technology that sets it apart from its competitors, but Google is preventing it from competing on a level playing field. This penalty and Google's continuing refusal to remove it could be seen as Google, knowingly or otherwise, acting to suppress innovation in a field viewed by many as the natural next step for search.

Any survey of the field will confirm that Foundem is comfortably among the most comprehensive, accurate, and useful vertical search services available. Its value to users is clear and proven through its many successful distribution partnerships. Moreover, Google's AdWord Quality Team has already carefully vetted and manually white-listed Foundem.

Yet, simply because it shares a business model with a category of sites that Google has recently started to penalize, Foundem is being denied access to a level playing field, and Google's users are being prevented from finding its many unique services. Google's virtual monopoly on UK search traffic means that Foundem has no choice but to continue to pursue organic search whitelisting through all available channels..."

As on previous occasions, no one from Google responds.

8 Dec 2008 Channel 5's The Gadget Show (the UK's leading technology television program) names Foundem the UK's Best Price comparison site:
"When searching for online bargains I reckon your first port of call should be price comparison websites…We took nine of the Gadget Show's favourite gadgets and searched for the best price we could get for each and every one of them on what we reckon are the twelve best price comparison sites in the UK…So, who does the Gadget Show recommend?…The top dog in our survey was in fact Foundem. This site found the lowest price in six out of nine cases, and found the second best price in the other three cases. But I also like their Price History graphs…which chart the cost of your item over time."  

15 Dec 2008 According to Hitwise, for the week leading up to Christmas, the keyword "Foundem" is the UK's fastest growing search term, beating "jls" and "cheryl cole" in the lead up to the X-Factor final. 

16 Dec 2008 Foundem emails the same selection of senior Google managers as before to highlight the Gadget Show recommendation: 

"…I do not know what misconception about Foundem has so far prevented Google from taking appropriate remedial action, but surely this independent, authoritative, and unequivocal endorsement ought to be enough to finally correct this misconception? …Google’s ongoing refusal to address this issue, despite a long trail of progressively escalating correspondence, is becoming increasingly indefensible. Surely it would be preferable to resolve this now, before we are forced to embark on a public campaign to have this inexplicable site-wide penalty lifted?"

17 Dec 2008 Google’s Adam Lasnik responds to Foundem’s 16 December email. But instead of addressing Foundem’s penalty Mr Lasnik ignores it, just as he had done two years earlier: “we aren’t able to offer private support regarding search issues”.

18 Dec 2008 Foundem responds to Adam Lasnik’s email: 

"…I am not asking for Google’s private support for a search issue. Foundem is being systematically excluded from Google’s search results by a site-wide…penalty, and I am therefore asking Google for the manual intervention/whitelisting that is the only remedy; just as whitelisting was the only remedy when an equivalent penalty struck Foundem’s AdWords listings in 2006. …Google’s continuing blanket exclusion of Foundem…is not in anyone's interest, and I remain hopeful that we can resolve this issue without recourse to a public campaign.”

18 Dec 2008 Once again, Mr Lasnik refuses to address or acknowledge the issue: “I must respectfully yet firmly note that my earlier guidance still stands.”

Google’s failure to engage in any constructive dialogue and its continued systematic exclusion of Foundem from Google's search results led directly to Foundem’s decision to take its case public and to start exploring the possibility of a complaint to the European Commission.

4 Mar 2009 Foundem engages a PR agency to assist in taking its case public.

24 Apr 2009 Foundem first meets with ICOMP (the Initiative for a Competitive Online Marketplace).

Jun 2009 Foundem starts speaking to the BBC and The Guardian newspaper about its case. Journalists from these organisations start making Foundem-related enquiries to Google shortly afterwards.

Jul 2009 Foundem has its first meeting with the European Commission Directorate-General for Competition (DG Comp) and begins preparing an antitrust Complaint under Article 102. Foundem's Complaint is the first to describe how Google exploits its overwhelmingly dominant search engine to systematically promote Google's own specialised services (through Universal Search), while simultaneously demoting or excluding those of its competitors (through illegitimate penalties). Foundem’s Complaint makes clear that

21 https://twitter.com/Hitwise_UK/status/1058197610
22 http://www.i-comp.org/

Foundem Timeline of the Google Search Case
Foundem’s experience is just an example of anti-competitive practices that can lay waste to entire classes of competitors in any sector where Google chooses to deploy them.

14 Jul 2009 Four days before *The Guardian* newspaper is scheduled to speak to Google’s Matt Cutts about Foundem’s case, there is a subtle change to Foundem’s Google search penalty. Foundem begins to appear in Google’s search results for a small number of search terms. This change makes no material difference to the traffic Foundem receives from Google, but it does muddy the waters, making it more difficult to describe what had previously been a blanket, site-wide exclusion.

17 Aug 2009 *The Guardian* publishes an article about Foundem’s case. Unfortunately, the article was edited down to a point where it covered few of the salient points. This article is a poignant reminder of a time when it was virtually inconceivable to question Google’s behaviour or motives.

Oct 2009 *Which?* (the UK’s leading consumer organisation) tests the UK’s 12 leading flight search engines. It places Foundem 3rd, Kayak 8th, and Kelkoo 9th. Kayak is a travel specialist and one of the U.S.’s leading vertical search players.

7 Oct 2009 Following meetings with policy makers and regulators in Europe, Foundem realises that, by framing its concerns under the apt label of “search neutrality”, it could harness the considerable educational effort that Google and others had already invested in the strikingly similar concerns of “network neutrality”. Foundem registers the domain name searchneutrality.org.

12 Oct 2009 Foundem’s co-founder and CEO, Shivaun Raff, attends a talk by Google’s Chief Legal Officer, David Drummond. Afterwards, she approaches him to explain Foundem’s position and propose a dialogue.

14 Oct 2009 Google’s Head of Public Relations for EMEA, Peter Barron, contacts Foundem. This marks the start of a detailed dialogue between Google and Foundem that culminates in Foundem being whitelisted out of its three-and-a-half-year Google search penalty on 1 December 2009.

15 Oct 2009 Foundem has a conference call with Google’s Head of Search Quality, Matt Cutts. During the one hour call, Mr Cutts highlighted a small number of minor typographical anomalies on Foundem’s site. Foundem explained that these were derived from the sites that Foundem searches and that, as such, they would be equally prevalent on all price comparison services, including Google’s own.

16 Oct 2009 Foundem emails Mr Cutts with several screenshots illustrating that exactly the same anomalies Mr Cutts had highlighted during the call were equally common on competing price comparison services, including Google’s own:

“...I took a few minutes to try to verify your assumption that other leading price comparison sites are more effective at tackling this knotty issue. Please find attached a few screenshots of strikingly similar issues on Kelkoo, PriceRunner, and Google’s own Product Search that amply demonstrate that this is not the case. I found all of these examples with just a cursory glance, and I suspect that you could easily find similar issues on all of the other leading price comparison sites.”

20 Oct 2009 In the inaugural article of its SearchNeutrality.org site, Foundem defines Search Neutrality as the principle that search results should be driven by the pursuit of relevance and not skewed for commercial gain:

“If we are to truly focus concern on ‘equal access to the Internet’, then we must broaden our horizons beyond Net Neutrality to include the equally important concept of Search Neutrality.

Search Neutrality can be defined as the principle that search engines should be open

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23 [http://www.foundem.co.uk/Foundem_Penalty_Scattergrams.pdf](http://www.foundem.co.uk/Foundem_Penalty_Scattergrams.pdf)
25 [http://www.foundem.co.uk/16_October_2009_Screenshots.pdf](http://www.foundem.co.uk/16_October_2009_Screenshots.pdf)
and transparent about their editorial policies, or, better still, should have no editorial policies other than that their results be comprehensive, impartial, and based solely on relevance."^26

30 Oct 2009 Following the conference call and email exchange between Foundem and Google’s Matt Cutts, Peter Barron reports that Google is convinced that there is a “case to answer”. Foundem is told that “whitelisting is on the table” of available options but that Google would prefer to find a more general “engineering solution”. Google asks for a month to come up with this solution. Foundem asks if Google’s deliberations could be expedited, explaining that there are developments in the pipeline that might be difficult to delay for longer than a week or so.

31 Oct 2009 *New York Times* Columnist, Joe Nocera, mentions Foundem’s case in his column\(^\text{27}\):

“The longer-term issue is going to be whether Google treats other companies fairly in both search results and ad placement—especially if its market share keeps growing. I recently stumbled across a Web site called SearchNeutrality.org, which was set up by a British company called Foundem, a well-regarded price-comparison Web site that can’t get the time of day from Google’s vaunted algorithms.”

2 Nov 2009 Google’s Peter Barron informs Foundem that the U.S. team had not taken kindly to Foundem’s request that they expedite their deliberations. He confirms that Google will require the full month.

3 Nov 2009 Aware that DG Comp might be reluctant or unwilling to wait the further month or more required for Google to complete its internal deliberations, Foundem submits the formal **EC Competition Complaint** it had begun preparing several months earlier.

This version of Foundem’s Complaint is superseded by an augmented, post-whitelisting, submission on 2 February 2010.


19 Nov 2009 *The Register* publishes an article about Foundem’s case, entitled "When Algorithms Attack, does Google Hear You Scream?" \(^\text{28}\)

20 Nov 2009 Following a telephone call from Google’s Peter Barron indicating that a response from Matt Cutts was on its way, Mr Cutts emails Foundem.

Instead of the expected response informing Foundem of the result of Google’s deliberations about whether to lift Foundem’s search penalty through whitelisting or through a more general “engineering” change to the relevant penalty algorithm, Mr Cutts lists a small set of minor typographical “issues” from Foundem’s site, similar to those he had highlighted during the 15 October conference call.

The clear subtext of Mr Cutts’ email was that if Foundem took steps to address these anomalies, Google would manually lift Foundem’s search penalty.

These minor typographical anomalies affected just a tiny fraction of Foundem’s pages, and ranged from the trivial (such as a full-stop without a following space) to the absurd (such as the suggestion that height-width-depth dimensions were some kind of corruption). Most importantly, as before, because these anomalies originated on the websites that Foundem searches, they occurred with similar frequency on all price comparison services, including Google’s own.\(^\text{29}\)

There was a tacit understanding between Foundem and Google, both here and throughout the dialogue that followed, that these so called “issues” were merely a pretext—a smokescreen to provide cover for Google having failed to lift Foundem’s unjustified, lack-of-original-content penalty years earlier.

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\(^{26}\) [http://www.searchneutrality.org/search-neutrality](http://www.searchneutrality.org/search-neutrality)


\(^{29}\) [http://www.foundem.co.uk/23_November_2009_Email_with_Added_Screenshots.pdf](http://www.foundem.co.uk/23_November_2009_Email_with_Added_Screenshots.pdf)
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<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>21 Nov 2009</td>
<td>Foundem addresses all of Mr Cutts’ “issues”.</td>
</tr>
<tr>
<td>Monday 23</td>
<td>Foundem emails Mr Cutts to inform him that all of the “issues” raised in his 20 November email have been addressed. Foundem’s email also demonstrates, with multiple examples and screenshots, that all of these “issues” occur with equal frequency on all price comparison services, including Google’s own.</td>
</tr>
<tr>
<td>Dec 2009</td>
<td>Having not yet had a reply to its 23 November email, Foundem emails Peter Barron to ask if he can expedite: “We have addressed every one of the issues Matt has raised. In each case we have addressed the issues within 24 hours (wherever possible using general solutions that go well beyond the specific examples mentioned)...We have also highlighted that all of the issues Matt has raised are commonplace on all other leading price comparison sites, including Kelkoo, PriceRunner, and Google's own Product Search, suggesting that Foundem is being held to a higher standard than its peers”. Later the same day, Mr Barron informed Foundem by telephone that he “couldn’t be more specific” but that “things were afoot”.</td>
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<tr>
<td>1 Dec 2009 am</td>
<td>Google manually “whitelists” Foundem from its algorithmic Search penalty Within hours of Mr Barron’s call, Google whitelists Foundem out of its Search Penalty. All of Foundem’s Google search rankings across tens of thousands of pages and hundreds of thousands of keywords are instantly restored to “normal” or something approaching “normal”. Foundem’s traffic from Google increases by around 10,000%.</td>
</tr>
<tr>
<td>1 Dec 2009 pm</td>
<td>Foundem emerged from its three-and-a-half year Google search penalty into a radically transformed online marketplace. The new and insurmountable barrier to fair competition posed by Google’s recently introduced Universal Search mechanism persuaded Foundem that it should proceed with its European Competition Complaint. Foundem asked the Commission for a few weeks to update and augment its Complaint.</td>
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<tr>
<td>17 Dec 2009</td>
<td>Foundem co-founder Adam Raff’s Op-Ed for the New York Times, <em>Search, But you May Not Find</em>[^31] is published: “... we may be heading toward a bleakly uniform world of Google Everything — Google Travel, Google Finance, Google Insurance, Google Real Estate, Google Telecoms and, of course, Google Books. Some will argue that Google is itself so innovative that we needn’t worry. But the company isn’t as innovative as it is regularly given credit for. Google Maps, Google Earth, Google Groups, Google Docs, Google Analytics, Android and many other Google products are all based on technology that Google has acquired rather than invented. Even AdWords and AdSense, the phenomenally efficient economic engines behind Google’s meteoric success, are essentially borrowed inventions: Google acquired AdSense by purchasing Applied Semantics in 2003; and AdWords, though developed by Google, is used under license from its inventors, Overture. Google was quick to recognize the threat to openness and innovation posed by the market power of Internet service providers, and has long been a leading proponent of net neutrality. But it now faces a dilemma. Will it embrace search neutrality as the logical extension to net neutrality that truly protects equal access to the Internet? Or will it try to argue that discriminatory market power is somehow dangerous in the hands of a cable or telecommunications company but harmless in the hands of an overwhelmingly dominant search engine?”</td>
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<tr>
<td>2 Feb 2010</td>
<td>Foundem files an updated and augmented version of its EC Competition Complaint against Google’s search manipulation practices.</td>
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[^30]: [http://www.foundem.co.uk/23_November_2009_Email_with_Added_Screenshots.pdf](http://www.foundem.co.uk/23_November_2009_Email_with_Added_Screenshots.pdf)
At this time, complaints by the French legal search engine, eJustice.fr, and the Microsoft-owned, European price comparison service, Ciao, were also taken up by the European Commission. These very different complaints concerned the terms and conditions imposed on Google’s advertising syndication partners. A year later, eJustice.fr filed a supplementary complaint that echoed many of Foundem’s search manipulation concerns (see 22 February 2011).

10 Feb 2010 The European Commission notifies Google about Foundem, Ciao, and eJustice’s Complaints.32

12 Feb 2010 In its 2009 Annual Report33, Google makes its first public declaration that it now views vertical search services as competitors:

"We compete with these sites because they, like us, are trying to attract users to their web sites to search for product or service information, and some users will navigate directly to those sites rather than go through Google."

Google also draws a distinction between the different competitive threats posed by established and emerging competitors, noting that emerging start-ups are more likely to out-innovate Google:

“Our current and potential competitors range from large and established companies to emerging start-ups...Emerging start-ups may be able to innovate and provide products and services faster than we can.”

23 Feb 2010 After receiving enquiries from journalists indicating that Google is preparing to publicly announce Foundem’s European Competition Complaint, Foundem publishes some of the preferencing data and arguments from its European Complaint (as part of a public submission to the U.S. Federal Communications Commission (FCC))34:

“Universal Search transforms Google’s ostensibly neutral search engine into an immensely powerful marketing channel for Google’s other services. When coupled with Google’s 85% share of the global search market, this gives Google an unparalleled and virtually unassailable competitive advantage, reaching far beyond the confines of search. Universal Search allows Google to leverage its search engine monopoly into virtually any field it chooses. Wherever it does so, competitors will be harmed, new entrants will be discouraged, and innovation will inevitably be suppressed. These are not hypothetical risks. Although Universal Search is still in its infancy, there are already compelling examples of the harm it has done to competitors across a range of markets.”

24 Feb 2010 Google announces that it has received EC Competition Complaints from Foundem, Ciao, and ejustice.fr.

In a briefing to journalists, Google’s Senior Competition Counsel for EMEA, Julia Holtz, omits any mention of the preferencing (Universal Search) half of Foundem’s Complaint and—despite Google having whitelisted Foundem out of its three year search penalty just two months earlier—categorically denies the existence of either penalties or whitelisting:

“we don’t whitelist or blacklist anyone.”35

In public, Google maintained and repeated these denials for more than a year. But after Foundem produced emails from Google, including the one from September 2007 entitled “Update on Whitelisting”, Google reversed its position:

“Google has admitted that it uses whitelists to manually override its search algorithms, more than a year after its European corporate counsel denied the existence of whitelists when defending the company against antitrust complaints in the EU”. The Register36, 11 March 2011

May 2010 Foundem has its first meetings with the U.S. Department of Justice (DOJ), Federal Trade Commission (FTC), and staffers of the Senate Antitrust Subcommittee.
<table>
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<tr>
<th>Date</th>
<th>Event</th>
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<tr>
<td>3 May 2010</td>
<td>Google submits its formal Reply to the European Commission regarding Foundem’s Complaint.</td>
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<td>10 Jun 2010</td>
<td>The Commission sends Google’s Reply to Foundem for comment.</td>
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<td>1 Jul 2010</td>
<td>Google announces its acquisition of flight search technology company ITA Software.</td>
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<td>Aug 2010</td>
<td>The Texas Attorney General opens an antitrust investigation into the issues raised by</td>
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<td></td>
<td>Foundem’s case and contacts Foundem for further details.</td>
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<tr>
<td>29 Aug 2010</td>
<td>Foundem submits its formal Response to Google's Reply to Foundem's EC Complaint.</td>
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<td></td>
<td>Foundem understands that its Response contributed significantly to the Commission’s decision</td>
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<td>to move to a Formal Investigation of Google in November 2010.</td>
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<td>3 Sep 2010</td>
<td>Google announces that the Texas Attorney General has launched an Antitrust Investigation</td>
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<td>into Google, citing Foundem’s case.</td>
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<td>Sep 2010</td>
<td>Foundem hears about a presentation that Google’s Senior Competition Counsel for EMEA, Julia</td>
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<td></td>
<td>Holtz, is due to deliver at an International Bar Association (IBA) conference the following</td>
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<td>week. This presentation includes many false or misleading assertions about the issues at the</td>
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<td>centre of Foundem’s competition Complaint against Google and includes slides that are</td>
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<td></td>
<td>misleading and defamatory about Foundem.</td>
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<td>Friday</td>
<td>On the morning of Ms Holtz’s presentation to the IBA’s antitrust conference in Florence,</td>
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<tr>
<td>17 Sep 2010</td>
<td>Foundem emails Ms Holtz (CC’d to several of the panellists and moderators at the conference),</td>
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<td>rebutting some of the misleading information contained in her presentation.</td>
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<td>A brief extract from Foundem’s email:</td>
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<td>“...In February, your blog post urged people to read what you called an ‘independent analysis</td>
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<td></td>
<td>of Foundem’s ranking issues’. As you know, for three and a half years Foundem laboured under</td>
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<td>an algorithmic Google search penalty so extreme that none of its pages would appear in Google’s</td>
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<td>search results for any queries, no matter how specific or relevant. As you also know, Google</td>
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<td>finally intervened to manually remove this penalty in December 2009. But the blog post you</td>
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<td>were urging people to read—being ignorant of Google’s penalty policies and manual overrides—</td>
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<td>had drawn its own, entirely inaccurate, conclusions. Why urge people to read an analysis which</td>
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<td>you know to be fundamentally inaccurate in every material detail?...”</td>
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<td>Melanie Sabo (the Assistant Director of the Anticompetitive Practices Division of the FTC)</td>
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<td>is also on this panel. Her presentation describes Foundem’s case and includes an overview of</td>
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<td>the anti-competitive leveraging/bundling issues it raises.</td>
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<td>Tuesday</td>
<td>One working day after Foundem’s open letter to Ms Holtz, Foundem is abruptly re-</td>
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<tr>
<td>21 Sep 2010</td>
<td>penalised (de-whitelisted) in Google’s search results.</td>
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<tr>
<td></td>
<td>Foundem emails Google:</td>
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<td></td>
<td>“...As of the early hours of this morning, Foundem has been re-penalised (or un-</td>
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<td>whitelisted) in Google search. Foundem’s Google search rankings have plummeted to around the</td>
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<td>30 November 2009 penalised...levels...We need to establish as a matter of urgency whether</td>
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<td>this significant change is an error or an act of retaliation. And in either case, we request</td>
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<td>that Google immediately remove the demotion.”</td>
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<tr>
<td>22 Sep 2010</td>
<td>24 hours after being de-whitelisted, Foundem is re-whitelisted. All of Foundem’s Google</td>
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<td></td>
<td>rankings immediately return to their former, more “normal”, un-penalised levels.</td>
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38 [http://www.foundem.co.uk/Foundem_Letter_to_Julia_Holtz.pdf](http://www.foundem.co.uk/Foundem_Letter_to_Julia_Holtz.pdf)
Google’s Peter Barron replies to Foundem’s email: 
"...this problem was due to a glitch relating to an older version of a data file, and certainly not retaliation! We have reverted to the newer version so things should now be back to normal."

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<tr>
<th>Date</th>
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<tr>
<td>Oct 2010</td>
<td>VfT (the German Association of Independent Phone Book Publishers) submits an EC Competition Complaint against Google.</td>
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<tr>
<td>26 Oct 2010</td>
<td>The FairSearch coalition is launched in the U.S.</td>
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In its statement the Commission makes clear that it considers Foundem’s allegations regarding Google’s search and AdWords manipulations to be its primary area of concern:
"The Commission will investigate whether Google has abused a dominant market position in online search by allegedly lowering the ranking of unpaid search results of competing services which are specialised in providing users with specific online content such as price comparisons (so-called vertical search services) and by according preferential placement to the results of its own vertical search services in order to shut out competing services. The Commission will also look into allegations that Google lowered the ‘Quality Score’ for sponsored links of competing vertical search services..."  
| 13 Dec 2010| Foundem joins FairSearch.                                                                                                             |
| 17 Dec 2010| Following the opening of the European Commission’s formal investigation into Google’s business practices two weeks earlier, the German Federal Cartel Office transfers its investigation into Complaints from the German Publisher’s associations (VDZ and BDZV) and the Berlin-based online mapping company, Euro-Cities, over to the European Commission.  
| 5 Jan 2011 | The U.S. FTC opens an antitrust investigation into Google and contacts Foundem for more details about its European Complaint. Days later, following a dispute with the DOJ over jurisdiction, the FTC’s investigation is put on hold pending a decision by the DOJ on whether to challenge Google’s planned acquisition of ITA Software.  
| 20 Jan 2011| Google announces that co-founder Larry Page will replace Eric Schmidt as CEO of the company, effective 4 April 2011.  
| 28 Jan 2011| Google’s Head of Search Quality, Matt Cutts, writes a blog post describing an upcoming change to Google’s algorithms, codenamed “Panda”: 
"one change...primarily affects sites that copy others’ content and sites with low levels of original content.”
This blog post was part of a series of unusual and troubling public statements by Google that led Foundem to suspect that Google might be preparing a significant escalation of its "lack of original content", vertical-search-targeted search penalties.  
| 31 Jan 2011| Anticipating the anti-competitive elements of Google’s “Panda” update several weeks before it was first deployed, Foundem writes in a blog post:
"We note with interest Google’s recent announcement that it has changed its search algorithms to further target ‘sites that copy others content and sites with low levels of original content’..."

41 http://www.nytimes.com/2010/12/18/technology/18google.html?_r=0
43 http://www.mattcutts.com/blog/algorithm-change-launched/
44 http://www.searchneutrality.org/foundem/original-content
original content'. Is this simply a commendable attempt to punish spam and reward the authors of original content, or does it mark an escalation in Google’s ongoing disadvantaging of rival vertical search services?"

21 Feb 2011 The New York Times reports a meeting between Google CEO Eric Schmidt and European Competition Commissioner Joaquín Almunia at the annual World Economic Forum in Davos:

"...At the meeting, previously undisclosed, Mr. Schmidt asked Mr. Almunia to complete the inquiry as quickly as possible. If the investigation showed there were problems, he requested that the company be given a chance to offer a solution without incurring a penalty, according to people with direct knowledge of their conversation. Mr. Almunia told Mr. Schmidt he would try to do so, according to these people, who spoke on condition of anonymity because of the sensitivity of antitrust investigations."

22 Feb 2011 eJustice.fr's parent company, 1plusV, files a supplementary competition Complaint with the European Commission, echoing many of Foundem’s search manipulation concerns.

24 Feb 2011 Google deploys its Panda update (at this stage only in the U.S.). As Foundem had anticipated, many of the U.S.’s leading vertical search and price comparison services plummet in Google’s search rankings.

Prior to Panda, Google’s 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 established vertical search players.

25 Feb 2011 Foundem raises its concerns with DG Comp that Panda appears to contain a substantial escalation of precisely the kind of anti-competitive lack-of-original-content penalties described in Foundem's Competition Complaint and currently under investigation by the Commission.

Foundem also highlights that it expects Panda to have a similarly devastating anti-competitive impact when deployed in Europe, including on Foundem.

1 Mar 2011 Foundem emails Google about Panda:

"Given that all search and price comparison services (including Google’s own) routinely copy the content of other Web sites in order to fulfil their function, it is appropriate and important to ask that you please clarify whether or not Google considers third party vertical search and price comparison services to be a legitimate target for these new or updated algorithmic demotions? More specifically, could you also please clarify whether or not Google considers Foundem to be a legitimate target for these new or updated algorithmic demotions?"

2 Mar 2011 Google’s Peter Barron responds to Foundem’s email but declines to comment.

7 Mar 2011 Google acquires BeatThatQuote, a small, UK-based financial price comparison service. The UK’s Office of Fair Trading (OFT) considers referring the acquisition to the UK’s Competition Commission but decides not to, publishing the full text of its decision on 11 August 2011.

 Somehow, Google managed to convince the OFT that while Google would have the ability to foreclose its financial search competitors, it would not have the incentive to do so. The folly of this conclusion has now been demonstrated by Google’s launch and comprehensive self-preferencing of its own credit card, car insurance, travel insurance, and mortgage comparison services (see 30 April and 10 September 2012).

11 Mar 2011 Google publicly admits to whitelisting—a practice it had until now publicly denied.

17 Mar 2011 ICOMP appoints Foundem CEO, Shivaun Raff, as its Special Advisor for search and

48 http://www.theregister.co.uk/2011/03/11/google_admits_search_algorithm_whitelists/
related competition issues.

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<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>31 Mar 2011</td>
<td><strong>Microsoft</strong> files an EC Competition Complaint against Google.⁴⁹</td>
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<tr>
<td>31 Mar 2011</td>
<td>The European Commission notifies Google that it has also received Competition Complaints from Elfvoetbal, Hot-Maps⁵⁰, Interactive Lab, and npt.it.⁵¹</td>
</tr>
<tr>
<td>8 April 2011</td>
<td>The DOJ approves Google's acquisition of ITA Software, despite privately expressing concern that Google could leverage its dominance in horizontal search to anti-competitive advantage in the travel search sector.</td>
</tr>
<tr>
<td>11 Apr 2011</td>
<td>Google’s <strong>Panda</strong> update is deployed in the UK. As anticipated by Foundem, many of the UK's leading vertical search and price comparison services, including Foundem, plummet in Google's search rankings.</td>
</tr>
<tr>
<td>13 Apr 2011</td>
<td>Foundem informs the Commission that, as anticipated, Panda had had a devastating impact on Google's price comparison competitors (including Foundem).</td>
</tr>
<tr>
<td>21 Apr 2011</td>
<td>Foundem takes part in a Roundtable discussion with the Competition Commission of India (CCI), organised and hosted by the CUTS Institute for Regulation &amp; Competition in New Delhi.⁵²</td>
</tr>
<tr>
<td>28 Apr 2011</td>
<td>The official start of the <strong>FTC's Antitrust Investigation into Google.</strong> Following the DOJ's approval of Google’s acquisition of ITA Software, the FTC re-opens the general antitrust investigation into Google’s search practices it had put on hold since January. The FTC contacts Foundem to follow-up on its earlier request for more details about Foundem's case and European Complaint.</td>
</tr>
<tr>
<td>17 May 2011</td>
<td>Foundem presents the European Commission with evidence of the devastating anti-competitive impact of Panda, and explains why Panda increases the urgency for the Commission to conclude its investigation and take effective action.</td>
</tr>
<tr>
<td>16 Jun 2011</td>
<td>Foundem meets with the FTC to explain why Panda is a substantial escalation of the anti-competitively targeted Google penalties the FTC is now investigating and to present evidence of the devastating anti-competitive impact of Panda on U.S. price comparison services.</td>
</tr>
<tr>
<td>23 Jun 2011</td>
<td>The U.S. Senate Antitrust Subcommittee threatens to subpoena Google: “Google Inc.’s reluctance to provide a top executive for testimony to a Senate panel probing its market power has prompted threats of subpoenas for Chief Executive Officer Larry Page and Chairman Eric Schmidt...”⁵³</td>
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<td>24 Jun 2011</td>
<td>Google publicly confirms that the FTC has launched a formal investigation into its search and search advertising business practices.⁵⁴</td>
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<td>8 Jul 2011</td>
<td>Google Executive Chairman Eric Schmidt yields to pressure from the U.S. Senate Antitrust Subcommittee, agreeing to testify at the upcoming Senate hearing on Google’s dominance of the Internet search industry.⁵⁵</td>
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<td>1 Aug 2011</td>
<td><strong>Dealdudjour.pro</strong>, a French online daily deals company, submits an EC Competition Complaint against Google.</td>
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⁴⁹ http://www.bbc.co.uk/news/technology-12918059
⁵⁰ http://blog.hot-map.com/
⁵¹ https://investor.google.com/pdf/20120930_google_10Q.pdf
⁵² http://www.hindustantimes.com/columnsbusiness/has-the-time-come-to-regulate-google-search/article1-714115.aspx
⁵⁴ http://googleblog.blogspot.co.uk/2011/06/supporting-choice-ensuring-economic.html
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| 12 Aug 2011| Google’s **Panda** update is rolled out to the rest of Europe (including Germany, France, Italy, Spain, and Austria).  
| 16 Aug 2011| Foundem meets with the Australian Competition and Consumer Commission (ACCC) in Canberra. |
| 31 Aug 2011| Foundem publishes its **Penalties, Self-Preferencing, and Panda** paper:  
“... Google is now choosing to compete with vertical search services for users, while being uniquely placed to directly disrupt the ability of these services to reach those users. By manipulating its search results and ad listings in ways that exclude or demote its competitors' services, while simultaneously promoting its own, Google can exploit its gatekeeper advantage to hijack a substantial proportion of the traffic of pretty much any website it chooses. This power to directly cut off a competitor’s access to customers is rare in competitive relationships, and it is this far reaching and profoundly troubling conflict of interest that lies at the heart of Foundem's European antitrust Complaint and the subsequent investigations now under way in Europe and the US...  

...So far, few have made a connection between Panda and the various antitrust Investigations into Google. But Panda isn't just relevant to these investigations; it is central to them. Despite being widely touted as an attack on content-farms—which are almost the polar opposite of vertical search services—Panda also marks an aggressive escalation of Google's vertical-search targeted, 'lack of original content' penalties...”  
| 15 Sep 2011| The U.S. Senate Antitrust Subcommittee asks for further details of Foundem's April 2011 study of Google's U.S. search rankings, which the Subcommittee plans to use in its upcoming hearing.  
Foundem responds:  
“Briefly, the graphs illustrate where various leading price comparison services rank in Google’s search results including where Google’s Universal Search mechanism has inserted Google’s own competing price comparison service, Google Product Search...this data was gathered for 650 product- and product-price-comparison-related search terms, such as “Toshiba 55WX800U”, “best prices Toshiba 55WX800U”, and “compare prices Toshiba 55WX800U”. To ensure that the products were relevant to the American market, we selected them from various US best-seller lists, including Amazon.com. We wrote a tool to collect and analyze this data automatically. The tool used a set of US-based proxies to ensure that the search results being analysed were US-targeted. We collected this data in April this year.  

...In the event that you do raise the subject of Universal Search at the hearing, it may be helpful to note that, in our experience...Google goes to great lengths to avoid conceding publicly that its Universal Search mechanism uses different algorithms and relevance signals to rank its own services than it uses to rank everyone else’s. As a result, how aggressively Google ‘blends’ its own services at or near the top is entirely at Google’s discretion; a point clearly illustrated by the scattergrams.”  
[http://www.foundem.co.uk/Enabling_an_Anti-Demotion_Remedy.pdf](http://www.foundem.co.uk/Enabling_an_Anti-Demotion_Remedy.pdf), page 2 |
| 21 Sep 2011| The **Senate Antitrust Subcommittee** holds a hearing into Google's business practices:  
“The Power of Google: Serving Consumers or Threatening Competition?”  
The Committee’s ranking Republican, Senator Lee, questions Google’s Eric Schmidt extensively around Foundem’s April 2011 study of Google’s U.S. search rankings, eliciting many of the most revealing moments of the hearing.  
Mr Schmidt is repeatedly asked whether Google’s search algorithms hold Google’s own vertical search services to the same standards as everyone else’s. After Mr Schmidt  
[http://www.foundem.co.uk/Enabling_an_Anti-Demotion_Remedy.pdf](http://www.foundem.co.uk/Enabling_an_Anti-Demotion_Remedy.pdf) |
appears to deny that Google gives its own services any special treatment in its search results, he is shown one of Foundem’s scattergrams and asked to explain the preferential treatment of Google’s own price comparison service clearly illustrated by the study. Mr Schmidt repeatedly ducks the questions by claiming, among other things, that Google’s price comparison service is not a price comparison service.

Towards the end of his testimony, with little time remaining for follow-on questions, Mr Schmidt substantially revises his answer, conceding that Google’s Universal Search mechanism inserts prominent links at or near the top of Google’s search results. However, rather than conceding that these prominent links divert users away from competitors’ services and towards Google’s own, Mr Schmidt mistakenly claims that these are links to vendors, not to Google’s own services. In truth, in the vast majority of cases (and certainly in the example Mr Schmidt is being asked about), all of the inserted links point to Google’s own service, not to vendors.

31 Oct 2011 Foundem publishes a short video featuring and deconstructing key elements of Mr Schmidt’s testimony at September’s Senate hearing. As the authors of the study that provoked much of Mr Schmidt’s most troubling testimony, Foundem is uniquely placed to shed light on Mr Schmidt’s answers.

1 Dec 2011 Foundem gives a presentation in Hamburg at a meeting of the German Association of Online Travel Agents, VIR, whose members include Expedia, Opodo, and eBookers. Foundem’s presentation includes evidence of the devastation that Google’s anti-competitive search manipulation practices have already wrought on product price comparison and highlights that travel search is likely to be next.

1 Dec 2011 The Financial Times reports that the European Commission has drafted a formal Statement of Objections:

“The European Commission (EC) is expected to issue a statement of objections (SO) spanning more than 400 pages that will spell-out allegations of Google’s abuse of dominance early next year, sources close to the case told dealReporter...Google’s chairman Eric Schmidt is expected to pay a ‘courtesy visit’ to Commissioner Almunia at the beginning of next week...This would not be the first meeting between Schmidt and Almunia since the antitrust probe was launched. Google’s chairman met the Commissioner in February and reportedly requested to give Google a chance to offer a solution before the EC imposes a fine.”

Dec 2011 The Spanish Association of Daily Newspaper Publishers (AEDE) files an EC Competition Complaint against Google.

10 Jan 2012 Google launches “Search Plus Your World”, which starts to preference its own social networking service, Google+, in Google’s search results.

23 Jan 2012 Twenga (a European price comparison service) files an EC Competition Complaint against Google regarding Panda and Universal Search.

3 Feb 2012 Foundem’s first meeting with BEUC, the European Consumer Organisation representing 40 national consumer organisations from across 31 European countries.

19 Mar 2012 BEUC writes an open letter to Commissioner Almunia expressing its concerns about the Google case:

“...Consumers trust that search results are impartial and based solely on relevance to their query, without any manipulation of the order or results. However, we are concerned that the dominant search engine, Google, may have abused its position in the search market to direct users to its own services and secondly to

60 http://www.youtube.com/watch?v=BslAhJ5-C9g&hd=1&t=6m23s
61 http://www.youtube.com/watch?v=BslAhJ5-C9g&hd=1&t=19m34s
62 http://www.vir-connect.de/vir-en.htm
63 http://www.ft.com/cms/s/2/a6065478-1c6e-11e1-9b41-00144feabdc0.html#axzz1fMnfLjhn
64 The formal charge sheet, setting out the Commission’s preliminary findings of infringement.
reduce the visibility of competing websites and services...
...it is crucial that consumers are provided with results that are most relevant to their needs without any discrimination or manipulation on the grounds of Google’s own commercial interests.

We expect the European Commission to take a strong stance and protect the principle of search neutrality according to which search results should be impartial and based solely on their relevance to consumers’ queries...”

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<td>24 Mar 2012</td>
<td>Foundem suspends sections of its service, pending action by the European Commission: “...we have temporarily suspended our flight, hotel, rental car, property, job, book, music, motorbike gear, and DVD search domains. In common with many of the World’s leading vertical search services, Foundem’s traffic has been severely impacted by Google’s recent ‘Panda’ update. As a result, since the introduction of Panda to the UK in April 2011, we have struggled to maintain aspects of our service to the exacting standards that we have set ourselves. We have therefore reluctantly taken the decision to temporarily suspend some of our search verticals, pending the outcome of the European Commission’s antitrust investigation into Google...”</td>
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<td>Mar-Apr 2012</td>
<td>Expedia (30 Mar 2012), TripAdvisor (3 Apr 2012), Odigeo (owners of Opodo and eDreams), and StreetMap (end of March 2012) file EC Competition Complaints against Google.</td>
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<td>9 Apr 2012</td>
<td>Amadeus, the world’s leading GDS provider, and ETTSA, the European Technology and Travel Services Association, publicly express support for Expedia’s EC Competition Complaint against Google: “Consumers expect that Google search results are neutral, but this is not the case when the results favour Google’s own platforms, such as Flight Search. Unlike Google, other players in this arena, including the Global Distribution Systems (GDS’s), abide by strict neutrality principles enshrined in EU legislation when displaying travel search results,” ETTSA said, urging the Commission to closely examine Google’s potential abuse of dominance to protect consumers.</td>
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<td>12 Apr 2012</td>
<td>Google announces a new stock structure, effectively guaranteeing Google’s founders control of the company in perpetuity. From CNN Money: “Google is pulling one of the stranger technical manoeuvres the stock market has seen for quite some time...The new stock structure, which gives Google's leaders significantly more power than its shareholders, won't be popular with corporate governance advocates...Google's shareholders will vote on the measure at its annual meeting on June 21. In a sentence that sums the whole manoeuvre up, the company said: ‘Given that Larry, Sergey, and Eric control the majority of voting power and support this proposal, we expect it to pass.’”</td>
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<td>26 Apr 2012</td>
<td>The Competition Commission of India (CCI) launches an investigation into Google’s discriminatory practices.</td>
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<td>30 Apr 2012</td>
<td>Based on technology it had acquired from its purchase of BeatThatQuote in March 2011, Google launches and begins systematically preferencing its own UK credit card comparison service.</td>
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<td>21 May 2012</td>
<td>Commissioner Almunia announces the European Commission’s preliminary conclusions that Google has infringed European Competition Rules. In his statement, Commissioner Almunia outlines four areas of concern, citing search manipulation as the first of those</td>
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concerns.

Instead of issuing the Statement of Objections the Commission is reported\(^{72}\) to have written in December, Commissioner Almunia offers Google an opportunity to settle the case, just as Google’s Eric Schmidt had reportedly\(^{73}\) asked him to do in Davos the previous year. Commissioner Almunia offers Google “a matter of weeks” to propose remedies “capable of addressing [the Commission’s] concerns” or face the formal Statement of Objections, and imposed fines and remedies that would inevitably follow.

30 May 2012 Foundem’s Op-Ed for the Open Rights Group, Would the Real Search Neutrality Please Stand Up, is published:\(^{74}\)

“...In many cases there is no ‘right’ answer, and no two search engines will agree on the optimum set of search results for a given query. But any genuine pursuit of the most relevant results must, by definition, preclude any form of arbitrary discrimination. The problem for Google is that its Universal Search mechanism, which systematically promotes Google’s own services, and its increasingly heavy-handed penalty algorithms, which systematically demote or exclude Google’s rivals, are both clear examples of financially motivated arbitrary discrimination.

...The unique role that search plays in steering traffic and revenues through the global digital economy means that Google is not just a monopoly: it is probably the most powerful monopoly in history. Given the absence of healthy competition among [horizontal] search engines, and Google’s growing conflict of interest as it continues to expand into new services, there is an urgent need to address the principles of search neutrality through thoughtful debate, rigorous anti-trust enforcement, and perhaps very careful regulation.”

31 May 2012 Just ten days after Commissioner Almunia offered Google a matter of weeks to propose remedies for its anti-competitive business practices, Google publicly announces\(^{75}\) its intention to radically alter the underlying business model of its product price comparison service (the vertical search service at the epicentre of the European Commission’s primary competition concern).

Couched as a method for giving merchants “greater control over where their products appear on Google Shopping”, Google was in fact radically transforming its service from a relevance-based price comparison service into a payment-based, pay-for-placement advertising platform—a transformation that would inevitably lead to Google’s users unwittingly paying higher prices for products.

19 Jun 2012 As an aid to Regulators, and to help inform the growing public debate on the topic, Foundem submits and publishes “An Outline of Proposed Remedies”\(^{76}\):

“Devising remedies that are robust enough to stand up to the ever-shifting landscape of the Internet, yet flexible enough to allow Google to innovate and grow (albeit from a newly established level playing field) will require careful and nuanced consideration.

Together, our proposed remedies aim to restore or implement the following high-level principles:

- **Non-Discrimination**: to end Google’s discriminatory self-preferencing of its own services and its discriminatory demotion or exclusion of competitors.
- **Transparency**: to shed light and scrutiny on the rationale and criteria underpinning Google’s anti-competitive practices. Note that this will not require the publication of Google’s algorithms or business secrets.
- **Non-Retaliation**: given the wide-ranging options available to Google for retaliating against an individual, a website, or a business, it is crucial to devise remedies that allow such practices to be uncovered and stopped.

...Google Must Hold its Own Services to the Same Standard as Everyone Else’s.

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\(^{72}\) http://www.ft.com/cms/s/2/a6065478-1c6e-11e1-9b41-00144feabdc0.html#axzz1fMnfLjhn

\(^{73}\) http://www.nytimes.com/2011/02/21/business/global/21google.html?pagewanted=all&_r=0

\(^{74}\) http://zine.openrightsgroup.org/features/2012/would-the-real-search-neutrality-please-stand-up

\(^{75}\) http://tinyurl.com/pfur2f8

\(^{76}\) http://www.foundem.co.uk/Foundem_Remedies_Proposals.pdf
Google should be required to crawl, index, and rank its own services in exactly the same way that it does everyone else. This is not only vital from a competition perspective, it is also sound business practice (sometimes known colloquially as ‘eating your own dog food’)."

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<td>22 Jun 2012</td>
<td>Foundem files a civil claim against Google in the UK High Court.</td>
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<td>22 Jun 2012</td>
<td>The Texas Attorney General files suit against Google, accusing the company of withholding documents from its antitrust investigation.</td>
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<td>25 Jul 2012</td>
<td>Commissioner Almunia announces that Google has provided “sufficient explanation for us to proceed with technical meetings to explore the possibility of a settlement”.</td>
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<td>Aug 2012</td>
<td>U.S. price comparison service, Nextag files an EC Competition Complaint against Google.</td>
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<td>7 Aug 2012</td>
<td>William Alsup, the Judge in the recently concluded Oracle versus Google patent and copyright trial, orders Google and Oracle to provide details of any bloggers, academics, or journalists that had commented on the trial and with whom they have a financial relationship. Oracle’s 17 August submission to Judge Alsup states: &quot;...Google maintains a network of direct and indirect ‘influencers’ to advance Google’s intellectual property agenda. This network is extensive, including attorneys, lobbyists, trade associations, academics, and bloggers, and its focus extends beyond pure intellectual property issues to competition/antitrust issues...Oracle believes that Google brought this extensive network of influencers to help shape public perceptions concerning the positions it was advocating throughout this trial.&quot;</td>
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<td>8 Aug 2012</td>
<td>The FTC investigators submit their internal report, setting out the final conclusions of their 18-month investigation. This is the document that was inadvertently disclosed to the Wall Street Journal two-and-a-half years later (see 19 March 2015).</td>
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<td>7 Sep 2012</td>
<td>Further to Google’s May announcement of its plans to transition its price comparison service to a pay-for-placement model, Google privately informs the Commission of its intention to introduce a new form of directly-monetised Universal Search insert to accommodate and exploit this new business model. By introducing these “Commercial Units”—which were both deeply harmful to consumers and a substantial escalation of one of the primary abusive practices Google was supposed to be negotiating to end—Google was paving the way (or, more accurately, setting the trap) for proposing Paid Rival Links under the guise of a &quot;remedy&quot;.</td>
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<td>10 Sep 2012</td>
<td>While ostensibly engaged in settlement negotiations with the European Commission (where one of the Commission’s primary concerns is Google’s systematic preferencing of its own services), Google quietly launches and begins systematically preferencing its own UK car insurance comparison service.</td>
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<td>11 Sep 2012</td>
<td>Foundem meets with the Canadian Competition Bureau (CCB) in Ottawa.</td>
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<td>21 Sep 2012</td>
<td>Commissioner Almunia announces that, so far, Google’s proposed remedy concessions do not go far enough: &quot;...it is well known that we have competition concerns that [Google] is using its dominance in online search to foreclose rival specialised search engines and search advertisers...After several exchanges with me, Google has agreed to propose solutions in the four specific areas of concern that we have identified...If effective solutions were found quickly and tested successfully, competition could be restored at an early stage by means of a commitment decision...However, we are not there yet, and it must be clear</td>
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78 [http://www.reuters.com/article/2012/07/25/eu-google-investigation-idUSB5E8IH01720120725](http://www.reuters.com/article/2012/07/25/eu-google-investigation-idUSB5E8IH01720120725)
79 [http://www.guardian.co.uk/technology/2012/aug/20/oracle-google-oracle-patent-trial](http://www.guardian.co.uk/technology/2012/aug/20/oracle-google-oracle-patent-trial)
81 See Figure 3 and Section 2.6 of Foundem’s 11 July 2014 Response, [http://www.foundem.co.uk/Foundem_Response_to_Commission_Letter_July_2014.pdf](http://www.foundem.co.uk/Foundem_Response_to_Commission_Letter_July_2014.pdf)
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<td>Oct 2012</td>
<td>Having spent more than a decade railing against the harmful impact of pay-for-placement on consumers, Google transitions its U.S. product price comparison service to just such a model.</td>
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<td>30-2 Nov 2012</td>
<td>Foundem has a series of individual meetings with the FTC’s Chairman and Commissioners.</td>
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<td>The prevailing view among FTC observers at the time was that the FTC was on the verge of strong action against Google. But, just weeks before the Commissioners would be voting on the matter, Foundem is alarmed to discover that few Commissioners seemed well informed about the search manipulation issues at the core of the FTC’s investigation.</td>
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<td>Surprisingly, given that the FTC had fought the DOJ for jurisdiction over the Google case, Chairman Leibowitz expressed the view that taking any action against Google under U.S. antitrust law might be very difficult. Most alarmingly, he also expressed the clearly erroneous belief that complainants were more concerned about Google’s “scraping” practices than about Google’s search manipulation practices.</td>
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<td>16 Nov 2012</td>
<td>Foundem (one of the few Complainants to be granted a one-to-one meeting with Commissioner Almunia at all), has its first and only meeting with Commissioner Almunia. At this meeting, Commissioner Almunia expresses a strong preference for principle-based and future-proofed remedies.</td>
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| 3 Dec 2012 | Following its meetings with the Chairman and Commissioners of the FTC the previous month, Foundem writes to try to allay the Commissioners’ concerns that a case against Google’s search manipulation practices might, under U.S. law, be vulnerable to claims by Google that they were introduced as a “product improvement”:  
  “...Google cannot argue that quietly excluding its rivals, including the current market leaders, while simultaneously force-feeding users its own, often inferior, services in any way improves the quality or usefulness of its search results. In light of this, we suggest that a ‘product improvement’ defence cannot stand up to the scrutiny of litigation.”  |
| 31 Dec 2012 | Following on from its 3 December letter, and in response to mounting media reports that the FTC may be about to conclude its antitrust investigation into Google without tackling Google’s search manipulation practices, Foundem writes to the FTC:  
  “...It is no accident that search manipulation was the issue that sparked the U.S. and European investigations; its insidious, anticompetitive impact outweighs all of Google’s other anticompetitive practices by a considerable margin. While virtually undetectable to users, Google’s search manipulations lay waste to entire classes of competitors in every sector where Google chooses to deploy them.  
  ...we are concerned that the FTC’s reluctance to litigate against these abusive practices may stem more from misconceptions about the mechanics and financial incentives underlying the abuse than from the constraints of U.S. antitrust law...  
  ...As we wrote to your Chairman and Commissioners on December 3, search penalties are a vitally important aspect of Google’s anticompetitive abuse in their own right, but they are also important because they counteract any potential ‘product improvement’ defence by Google. While it might be theoretically possible for Google to construct a ‘product improvement’ veneer for its self-preferencing practices, this ruse cannot work as a defence for its anticompetitive penalty practices: systematically demoting or excluding rival services, including most or all of the current market leaders, entirely undermines users’ most basic expectations of a search engine.”  |
| 3 Jan 2013 | The FTC closes its investigation into Google’s business practices without taking action on any of the substantive issues that had triggered the investigation. |

At the FTC’s press conference, Chairman Leibowitz confirms Foundem’s suspicions that he and his fellow Commissioners had failed to grasp the mechanics and financial incentives underpinning Google’s anti-competitive penalty practices. He cites a much-publicised incident from 2011, in which Google manually and temporarily penalised JCPenney for allegedly gaming Google’s algorithms. Unfortunately, this kind of legitimate, anti-spam/anti-cheating penalty is not connected in any way to the illegitimate, anti-competitive algorithmic penalties the FTC had been investigating.

Chairman Leibowitz’s apparent confusion about this pivotal issue was also evident in his repeated failure to understand Steve Friess of Politico’s questions probing the glaring paradox in the FTC’s decision: how could the FTC enforce Google’s promise not to retaliate against companies that block Google from scraping their content, when, by failing to act on search manipulation, the FTC was effectively endorsing Google’s ability to demote or exclude competitors at will? Despite Mr Friess’ repeated attempts to couch the question in different ways, a clearly bemused Chairman Leibowitz repeatedly failed to recognise the problem.

3 Jan 2013
Bloomberg writes:

“The FTC missed an opportunity to explore publicly one of the paramount questions of our day: Is Google abusing its role as gatekeeper to the digital economy? ...at the root of the case, on both sides of the Atlantic, is the same vital issue: Is Google thwarting competition and thereby limiting consumer choice and reaping the benefit? If so, it’s up to the FTC to invoke relevant antitrust laws and make it stop. Ask yourself this simple question: Am I harmed when rival services, whether for product comparisons, hotel bookings, airfares, restaurant reviews or maps, go out of business because they can’t compete with Google? We suspect the answer is yes.”

FTC Commissioner Thomas Rosch in an interview with Politico:

“I think that Google took advantage of the chairman’s desire to go out in a blaze of glory, and they tried to assure him that this was going to be good enough—and this was not good enough.”

Four weeks later, when Chairman Leibowitz announces his intention to leave the FTC by mid-February, Politico’s post-mortem of Leibowitz’s tenure as FTC Chairman ends as follows:

“...The Google case, however, may ultimately overshadow the rest. I am afraid he may be remembered as the guy who made the biggest antitrust mistake in American history,’ said antitrust expert Eric Clemons of University of Pennsylvania’s Wharton School of Business. ‘The Google case is very complicated. The economics of two-sided markets is unlike anything else in antitrust, and he presided over a commission that did not think it was interesting enough to learn about. We may pay for that mistake for a decade. Or we may be forced to reconsider very soon. Either should embarrass him greatly.’

Two years later (in March 2015), the FTC inadvertently disclosed (the even-numbered pages of) its 160-page internal report summarising the detailed conclusions of its 18-month investigation. This report revealed that, contrary to Chairman Leibowitz’s statements at the time, the investigation had in fact uncovered widespread abuse. Here are a few examples of the hundreds of news headlines prompted by the 19 March 2015 revelations:

“How Google Skewed Search Results - FTC staff report details how Google favored its own shopping, travel services over rivals”

“FTC report recommended suing Google for anti-competitive practices”

“FTC: All-powerful Google ABUSED rivals. So we did NOTHING”
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<td>10 Jan 2013</td>
<td>The Financial Times publishes an interview with Commissioner Almunia:</td>
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<td>&quot;'We are still investigating, but my conviction is [Google] are diverting traffic,' Mr Almunia</td>
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<td>told the Financial Times, referring to Google’s preferential treatment of its own vertical</td>
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<td>search services... They are monetising this kind of business, the strong position they have</td>
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<td>in the general search market and this is not only a dominant position, I think - I fear - there is</td>
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<td>an abuse of this dominant position,' Europe’s antitrust enforcer said... While Mr Almunia said</td>
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<td>Google showed a more constructive approach at a crunch meeting in December, he warned that he would</td>
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<td>be ‘obliged’ to issue formal charges if its proposal - expected this month - is unsatisfactory.&quot;</td>
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<td>11 Jan 2013</td>
<td>Visual-Meta, a German-owned European product price comparison service, files an EC Competition</td>
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<td>Complaint against Google.</td>
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<td>21 Jan 2013</td>
<td>In response to enquiries from DG Comp about what a remedy to Google’s anti-competitive penalty/</td>
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<td>demotion practices might look like, Foundem follows-up on its June 2012 Remedy Proposals with a Paper</td>
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<td>describing a mechanism for distinguishing legitimate Google penalties and demotions from their</td>
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<td>illegitimate and anti-competitive counterparts.</td>
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<td>This Paper also includes the first proposal and definition of the future-proofed, Even-Handed/</td>
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<td>Non-Discrimination Principle that would subsequently be endorsed by all or the vast majority of</td>
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<td>Complainants:</td>
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<td>&quot;Many of our detailed remedy proposals can be summarised by a single principle:</td>
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<td>**Google must be even-handed. It must hold all services, including its own, to exactly the same</td>
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<td>standards, using exactly the same crawling, indexing, ranking, display, and penalty algorithms.</td>
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<td>Adherence to this principle would immediately end Google’s ability to systematically favour its</td>
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<td>own services through the preferential placement and display formats of Universal Search. Adherence</td>
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<td>to this principle would also end Google’s ability to systematically penalise, demote or exclude its</td>
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<td>competitors.&quot;</td>
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<tr>
<td>30 Jan 2013</td>
<td>ICOMP files an EC Competition Complaint against Google.</td>
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<td>31 Jan 2013</td>
<td>Following a week of intensive, face-to-face negotiations between Google and DG Comp in Brussels,</td>
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<td>MLex reports that Google has “sent the European Commission a set of concessions aimed at resolving</td>
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<td>[the Commission’s] antitrust probe.”</td>
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<td>Feb 2013</td>
<td>Data published this month reveals that Google spent more money lobbying Washington in 2012 than</td>
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<td>any other tech firm. Google spent $18million in 2012, nearly double its 2011 spend:</td>
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88 http://www.theregister.co.uk/2015/03/20/ftc_we_thought_google_was_a_monopoly_and_we_did_nothing/
89 http://thenextdigit.com/19062/federal-trade-commission-google-manipulated-search-results/
90 http://www.macobserver.com/tmo/article/ftc-report-details-how-google-manipulated-results-to-hurt-competitors
92 http://www.ft.com/cms/s/0/2b5bead6-5b3c-11e2-8d06-00144feab49a.html#axzz2JdzUSNSw
93 http://www.foundem.co.uk/Enabling_an_Anti-Demotion_Remedy.pdf
94 http://newsroom.icomp.org/icomp-files-article-101-complaint/
96 http://tech.fortune.cnn.com/2013/02/18/apple-google-lobbying-washington/
13 Feb 2013  Google transitions its European product price comparison service from relevance-based placement to a pay-for-placement model. Following the transition, Google’s new form of Universal Search inserts (“Commercial Units”) not only contain prominent links to Google’s own service, they now also feature several prominent, directly monetised links/advertisements derived from that service.

Most importantly, given the extent to which Google was later to rely on this existing pay-for-placement model as justification for the paid element of its Paid Rival Link proposals, it is remarkable to note that Google only introduced this change several months after it began settlement negotiations with the Commission and just weeks before submitting the remedy proposals that relied on it.

15 Feb 2013  As announced two weeks earlier, FTC Chairman Jon Leibowitz leaves the FTC.

13 Mar 2013  The European Commission sends Google its Preliminary Assessment—a formal summary of the Commission’s preliminary conclusions about Google’s anti-competitive business practices.


This letter emphasises the critical importance of addressing both aspects of Google’s search manipulation practices, endorses the even-handed principle, and urges the Commission to issue the Statement of Objections it reportedly drafted over a year ago:

"...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.

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

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97 http://www.opensecrets.org/lobby/top.php?showYear=2012&indexType=s
98 http://www.searchneutrality.org/google/open-letter-to-almunia
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.

...Google’s past behaviour suggests that it is unlikely to volunteer effective, future-proof remedies without being formally charged with infringement. Given this, and the fact that Google has exploited every delay to further entrench, extend, and escalate its anti-competitive activities, we urge the Commission to issue the Statement of Objections.”

25 Mar 2013
BEUC, the European Consumer Organisation representing 40 national consumer organisations from across 31 European countries, publishes a position paper99 outlining its members’ views on Remedies in the Google case. This paper also endorses Foundem’s even-handed principle and the need for explicit commitments to end both aspects of Google’s search manipulation practices (self-preferencing and anti-competitive demotions).

3 Apr 2013
Ten months after Commissioner Almunia gave Google a “matter of weeks” to propose remedies to address the Commission’s Competition concerns, Google privately submits its detailed remedy proposals (Google’s first proposals).

9 Apr 2013
Despite repeated assurances that Foundem (and other leading Complainants) would be given an early opportunity to view and comment on any Google proposals well before they were made public or submitted to a formal Market Test, and in a departure from standard practice100, Commissioner Almunia begins to reveal details of Google’s proposals to the press.101 This from the Financial Times:

“Google is this week submitting its final offer of concessions to the Commission, which aim to head off formal antitrust charges and a hefty fine... The specific details of the concessions package remain unclear. But Joaquin Almunia, the EU's competition chief, has hinted that the settlement will go beyond simply changing the labelling of Google services.

Mr Almunia told the New York Times there should be a 'real choice' for users. 'Maybe we will ask Google to signal what are the relevant options, alternative options, in the way they present the results,' he said.”102

9 Apr 2013
FairSearch files an EC Competition Complaint regarding Google’s Android Mobile Phone platform.103

11 Apr 2013
Commissioner Almunia’s spokesman, Antoine Colombani, confirms Google’s formal submission of commitment proposals: "In the last few weeks, the Commission completed its preliminary assessment formally setting out its concerns. On this basis, Google then made a formal submission of commitments to the Commission.” He added that the EC was "now preparing the launch of a market test to seek feedback from market players, including complainants, on these commitment proposals.”104

99 http://docshare.beuc.org/Common/GetFile.asp?ID=44729&mfd=off&LogonName=Guesten
100 As Google’s lawyers, Wilson Sonsini, wrote in a March 2013 Paper, You Made a Pledge, Then Keep Your Promise: Article 9 Commitments Decisions in European Antitrust Law:
“...while, formally, commitments are offered by the business under investigation, staff in DG Competition and (later in the process) the Legal Service play a significant role in the drafting of commitments. The case team will invariably comment on consecutive drafts of the proposal and formally or informally consult complainants and interested third parties on the scope and likely efficacy of the proposed commitments before the Commission agrees to post the draft commitments for comment in the Official Journal and on its website.”
102 http://www.ft.com/cms/s/0/c308b656-a124-11e2-bae1-00144feabcd0.html?siteedition=uk#axzz2Q3UnI188
103 http://www.fairsearch.org/fairsearch-announces-complaint-in-eu-on-googles-anti-competitive-mobile-strategy/
104 http://www.theregister.co.uk/2013/04/11/google_submits_package_of_concessions_to_brussels/
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<th>Date</th>
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<td>26 Apr 2013</td>
<td>The Commission publishes Google's remedy proposals and commences a formal <strong>Market Test</strong>, offering Complainants and other interested third parties one month to submit comments. This 26 May deadline is subsequently extended to 27 June, after several Complainants request more time to allow them to conduct empirical studies of Google's proposals.</td>
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<td>1 May 2013</td>
<td>Foundem writes to Commissioner Almunia:</td>
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<td>&quot;In the eleven months since the Commission offered Google the opportunity to volunteer remedies, we and other Complainants have had no opportunity to hear, comment on, or rebut any of the arguments that Google has made to the Commission. Several times during this period, we expressed concern about the asymmetry of this dialogue and its likely undesirable consequences. Given the inherent complexities of search and the unusual two-sided market in which it operates, negotiating and assessing appropriate remedies was always going to be challenging, especially with Google’s vested interest in exaggerating, distorting, and exploiting these complexities. An opportunity to comment on Google’s proposals is not a substitute for an opportunity to challenge the many false assumptions that must underpin them. Having had a chance to review Google’s proposals, we are alarmed to see that our worst fears appear to have been exceeded. Google’s proposals would do nothing to address either aspect of the Commission’s concerns regarding search manipulation, and in many important respects would make things considerably worse. We are, for example, deeply troubled by the Commission’s decision to Market Test proposals that would not only grant Google the right to continue to profit from the traffic it hijacks from rivals, but would now also grant it the right to profit from any traffic it sends to rivals. And this is not just a nominal profit—the economics of search advertising, which naturally drives prices up to the maximum that advertisers can afford to pay, means that Google would be siphoning off the vast majority of its rivals’ profits. Any vertical search companies that survive in such a radically altered and unfavourable marketplace would be left eking 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.&quot;</td>
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<td>1 May 2013</td>
<td>The Canadian Competition Bureau opens an investigation into Google’s search and search advertising practices.</td>
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<td>12 May 2013</td>
<td>Just sixteen days into the European Commission’s Market Test, Foundem submits an <strong>Initial Analysis of Google's Proposals</strong> to the Commission:</td>
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<td>“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. ...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. ... 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...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...”</td>
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<td>Foundem’s analysis was the first of what was to become an unequivocal rejection of Google’s proposals from complainants, market participants, and consumer groups, all of whom agreed that Google’s proposals would make things considerably worse rather than better. Foundem’s response also anticipated Google’s plan to replace the clearly unworkable</td>
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bidding system of these proposals with one modelled on Google’s existing and immensely lucrative AdWords system:

“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.

...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.”

14 May 2013 Foundem publishes\(^{107}\) its *Initial Analysis of Google’s Proposals* on SearchNeutrality.org.

21 May 2013 Foundem submits its formal Market Test Response (essentially a copy of its earlier Analysis) to the Commission.

28 May 2013 With many of the Complainants yet to respond, Commissioner Almunia is already in a position to acknowledge critics and inform the European Parliament that Google's first proposals are not good enough and that Google is likely to be asked to improve them:\(^{108}\)

“We will analyse the responses we have received, we will ask Google, probably, I cannot anticipate this formally, almost 100 percent we will ask Google: you should improve your proposals.”

25 Jun 2013 At a press conference in Brussels, a panel of Complainants unanimously dismiss Google's proposals as positively harmful:

"'It would be better for the Commission to do nothing than to accept these proposals,' said Thomas Vinje, a spokesman for the FairSearch coalition."\(^{109}\)

28 Jun 2013 The first Case Management Conference (CMC) in Foundem’s Civil action against Google takes place in the UK High Court.

9 Jul 2013 Commissioner Almunia privately informs Google that it needs to “significantly improve” its proposals.\(^{110}\)

16 Jul 2013 The Commission formally informs Google of the “observations received from interested third parties” during the Market Test.

1 Oct 2013 MEPs Ramon Tremosa and Andreas Schwab organise a panel discussion at the European Parliament, entitled: *The Google Antitrust Case: What is at Stake?*

In a speech\(^{111}\) at the opening of this event, Commissioner Almunia acknowledges the negative feedback from Google’s first proposals and announces that Google has now offered “significant improvements”:

“I sought comments on a first proposal by Google through a market test launched in April of this year. The feedback received from the market test was very negative. Therefore, I asked Google on 9 July to improve significantly its proposals. Google has now improved the commitments it has offered. We have negotiated improvements until yesterday...

...We have reached a key moment in this case.

Following the first market test, I had serious doubts whether it was possible to continue the route towards a Commitment decision. I expressed my opinion to Google and in public.

Now, with the significant improvements on the table, I think we have the possibility to

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\(^{107}\) [http://www.searchneutrality.org/google/analysis-of-google-proposals](http://www.searchneutrality.org/google/analysis-of-google-proposals)


work again and seek to find an effective solution based on a decision under Article 9 of the Antitrust Regulation.

Now, what are the next steps?

Google has committed to support its new proposals with empirical data to show their impact. At the same time, we will work with Google during the next weeks to finalize the precise drafting of the proposed commitment text.

As a next step, I will seek feedback on the improved commitments proposal from complainants and other relevant market participants...

...If our investigation on this improved proposal is satisfactory, I will continue the Commitments route and end up with a formal decision next Spring. Otherwise, I will be forced to turn to a procedure under Article 7 of the Antitrust Regulation: this would mean sending a Statement of Objections to Google in the coming months..."

When Google submitted its revised proposals later that month, it transpired that none of the changes Commissioner Almunia had hailed as “significant improvements” were either significant, or an improvement. Moreover, Google never supplied the promised “empirical data” showing the impact of its revised proposals.

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<td>21 Oct 2013</td>
<td>Google submits its Revised Remedy Proposals to the Commission.</td>
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<td>28 Oct 2013</td>
<td>Rather than conducting a full Market Test, the Commission opts for a more limited and less transparent assessment. Complainants and other respondents to the first Market Test are sent confidential copies of Google’s Revised Commitments together with an RFI containing a set of tightly constrained questions.</td>
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<td>6 Nov 2013</td>
<td>Google’s Revised Proposals are leaked to the media: “Google's latest proposals aimed at avoiding an antitrust fine from European authorities have been leaked amid growing anger over the secrecy surrounding the case.”¹¹²</td>
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<td>8 Nov 2013</td>
<td>CEPI (the Association of European Picture Agencies) submits a Competition Complaint to the European Commission regarding Google’s use of third-party images.¹¹³</td>
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<tr>
<td>21 Nov 2013</td>
<td>Foundem submits its Comments on Google’s Revised Commitment Proposals:¹¹⁴</td>
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¹¹³ [http://www.theregister.co.uk/2013/11/15/google_hit_with_eu_competition_complaint_over_images/](http://www.theregister.co.uk/2013/11/15/google_hit_with_eu_competition_complaint_over_images/)

¹¹⁴ [http://www.foundem.co.uk/Foundem_Comments_Google_Revised_Proposals.pdf](http://www.foundem.co.uk/Foundem_Comments_Google_Revised_Proposals.pdf)
to be retained in any follow-on proposals. It was widely assumed that Google had only included Paid Rival Links as a bargaining chip, to be withdrawn later under the guise of a substantial concession. Clearly, we underestimated Google's audacity.

Far from being a remedy, the adoption of Paid Rival Links would inflict additional grave and irreparable harm to competition, innovation and consumer choice. It is therefore inconceivable that the Commission could knowingly sanction the introduction of this devastating new form of abuse.

It is easy to understand why Google is doggedly pursuing a settlement based on these proposals, but it is inexplicable that the Commission would even entertain it. If adopted, Google's proposals would effectively hand Google a five-year mandate to extend its monopolisation of horizontal search into a monopolisation of Internet commerce. We urge the Commission to reject Google's revised proposals, issue its Statement of Objections, and insist on remedies that will end, rather than escalate, the abusive practices it has identified..."

Foundem's analysis was the first of what would become an unequivocal rejection of Google's revised proposals from complainants, market participants, and consumer groups, all of whom agreed that the proposals would make things considerably worse rather than better.

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<td>Dec 2013</td>
<td>Following meetings with the Commission, a number of Complainants conclude that the Commission intends to reject Google’s revised proposals and that the notion of an auction-based remedy is now off the table.</td>
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<td>19 Dec 2013</td>
<td>The Commission informs Google of the responses it has received to its 28 October 2013 RFI: &quot;...Many respondents have expressed strong concerns with regard to the auction mechanism, notably because it would force rivals to bid almost the entirety of their profit margin.&quot;</td>
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<td>20 Dec 2013</td>
<td>In an interview on Spanish Radio, Commissioner Almunia rejects Google’s revised proposals, describing them as &quot;not acceptable&quot;.</td>
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<td>15 Jan 2014</td>
<td>Google responds to Commissioner Almunia’s 19 December letter with a vehement defence of its auction-based remedy proposals. This extraordinarily disingenuous Google submission appears to have had a transformative effect on the Commission's thinking, yet it would be several months before Foundem (one of the very few Complainants ever to be shown this submission) would have any opportunity to see or rebut its misleading claims. This was to prove a particularly serious oversight because, in the intervening months, several of the submission’s erroneous assertions became the cornerstone of Commissioner Almunia’s defence of Google’s third proposals. For a comprehensive rebuttal of this pivotal Google submission, see Sections 2.2 to 2.6 of Foundem’s 11 July 2014 Response to the Commission's pre-rejection letter.</td>
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<td>25 Jan 2014</td>
<td>At the annual World Economic Forum in Davos, Commissioner Almunia meets privately with Eric Schmidt, David Drummond, Kent Walker and two other Google Executives. From Bloomberg’s August 2015 account of this meeting: “Google Executive Chairman Eric Schmidt and four other executives from the Internet search giant...hoped to finalize a settlement with Joaquin Almunia...The mood in the room was cordial but tense. Almunia's term was up in the fall, and Google didn't want to have to start over with his replacement...Any agreement would need the consensus of all 28 members of the European Commission, which is why Google hoped it had found its champion. Schmidt asked whether Almunia could get a</td>
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settlement approved before the end of his term. Almunia said he was confident that he could. After two hours, everyone was satisfied. They shook hands.”

29 Jan 2014 Two days before Google submits an unprecedented third set of proposals, Commissioner Almunia begins to trial to the media that he is “close to settling” with Google and that “a deal” will be announced in a few days.

Reuters quotes an unnamed Commission “official” stating that Google’s latest proposal is “much better” than the previous “unsatisfactory” iteration.

31 Jan 2014 Google submits its Third set of Remedy Proposals to the Commission.

It soon transpires that, barring a few minor cosmetic differences, these third proposals are essentially unchanged from the previous “unsatisfactory” iterations:

“The main difference between Google’s second set of proposals and the third is the improved visibility of Rival Links: what Commissioner Almunia has called ‘comparable display’. But, as was pointed out in detail during both previous market tests, the visibility of Rival Links is entirely irrelevant as long as they remain Paid Rival Links. This is because Google, not its rivals, would be the main beneficiary of any profits derived from these links.”

4 Feb 2014 Towards the end of the 2074th Weekly Meeting of the College of Commissioners (in Strasbourg), during the Any Other Business section of the meeting, Commissioner Almunia informs his fellow Commissioners of his plan to announce the Commission’s intention to adopt Google’s third set of proposals at a press conference the following day.

According to reports, a heated exchange ensued—recorded only in the minutes as a “brief discussion”—in which some Commissioners expressed dissatisfaction with the way in which Commissioner Almunia had presented the deal as a fait accompli without allowing the Commissioners (who would ultimately be required to approve the deal) any opportunity to discuss the topic. According to those reports, Commissioner Almunia reluctantly agreed to provide further details of the deal and table a discussion at the following week’s meeting on the 12th February.

From the Official Minutes of the 4 February Meeting:

“Following a brief discussion, the PRESIDENT thanked Mr ALMUNIA for briefing the Commission on the state of play and on the way in which he planned to tackle the forthcoming stages. He noted that Mr ALMUNIA was willing to provide those members of the Commission who so wished with further details at a future meeting.

In view of the importance of the case under investigation, the PRESIDENT suggested that the Commission discuss it again at next week’s meeting following a more detailed presentation of the ongoing work by the Member responsible.”

5 Feb 2014 At a press briefing, Commissioner Almunia announces that he has received Google’s third set of proposals and intends to adopt them without any form of Market Test or further consultation. In response to a journalist’s question, he concedes that Complainants will of course have a right to respond to the forthcoming pre-rejection letters and that these responses would be taken into account as a matter of procedure.

Commissioner Almunia’s announcement is widely interpreted and reported as the closure of the Google case.

12 Feb 2014 The College of Commissioners discuss the Google case at their 2075th Weekly Meeting.

14 Feb 2014 Google publishes its third set of proposals, presenting them as a done deal:

“Following three rounds of negotiations and significant concessions, we are glad to have now reached an agreement with the European Commission that addresses its
**competition concerns.**[^23]

Remarkably, the auction element of Google’s third set of proposals is almost entirely unchanged.

18 Feb 2014 MEPs Ramon Tremosa and Andreas Schwab write[^24] to Commissioner Almunia raising concerns and asking him to appear before the Economic and Monetary Affairs (ECON) Committee:

> “...Given the importance of this case, we would like to kindly ask you to come back to the Parliament’s ECON Committee to explain the details of these commitment proposals to the Members of European Parliament and especially why you believe that they are an improvement of the current situation....

> ...some points made in your announcement and recent press reports indicating disagreement within the College of Commissioners are rather unsettling as are also the serious criticisms from several industry stakeholders and consumers on both sides of the Atlantic.

> In particular, we are concerned by the current lack of comprehensive feedback with respect to the agreed commitments. We would like to reiterate our view that the only way to verify the effectiveness and impact of Google’s proposals is to subject them to the kind of expert scrutiny that previously accurately helped reveal the weaknesses of the proposed sets of commitments...We believe that failure to do so might not only compromise the outcome of the investigation, but also undermine its legitimacy, at a time when the European project and its institutions are facing enormous challenges.”

20 Feb 2014 The Wall Street Journal reports:

> “The European Union’s antitrust chief Joaquín Almunia is facing mounting pressure to reconsider aspects of this month’s settlement with Google Inc.

> In recent weeks, other members of the European Commission — including Viviane Reding, Michel Barnier and Günther Oettinger — complained in closed-door meetings that Mr. Almunia announced the Google settlement without fully consulting them beforehand, EU officials said. Now, the competition chief has been asked to appear before a European Parliament committee to explain the commission’s deal with the search giant.”[^25]

11 Mar 2014 Following publication of the minutes of the 12 February meeting of the College of Commissioners, Foundem writes an open letter[^26] to Commissioner Almunia, CC’d to Commission President Barroso and the College of Commissioners.

Foundem points out that Commissioner Almunia’s answers to the concerns of his fellow Commissioners, which included the reassuring but entirely inaccurate claim that under Google’s proposals Google’s own services would be subject to the same treatment and payments as those of its competitors, had been deeply misleading.

Foundem also highlights the additional consumer harm that would result directly from Google’s proposals:

> “If Google’s proposals were adopted, consumers would not only be harmed by the ensuing lack of competition and consumer choice, they would also be directly and immediately harmed by the transition from relevance-based ranking to auction-based pay-for-placement. In what might be the mother of all unintended consequences, this transition would all but eradicate the considerable value that vertical search services provide to consumers; services that direct users to merchants with the best prices or products cannot compete in an auction against rivals that direct users to merchants that pay them the most. Not surprisingly, studies[^27] have already shown that the recent transition of Google’s own product price comparison service from relevance-based-placement to pay-for-placement has led directly to European consumers paying

[^23]: http://googlepolicyeurope.blogspot.co.uk/2014/02/settlement-with-european-commission.html
[^24]: http://regmedia.co.uk/2014/02/20/google_case_almunia.pdf
[^25]: http://blogs.wsj.com/brussels/2014/02/20/pressure-grows-on-almunia-over-eu-google-settlement/
[^27]: e.g. http://www.ft.com/cms/s/2/a004c830-552d-11e3-a321-00144feabdc0.html#axzz2vP0HIhtG
significantly higher prices for products purchased through this service."

11 Mar 2014 During a private ("In Camera") meeting with MEPs, Commissioner Almunia distributes a Key Points Position Paper, setting out many of the reassuring sounding but entirely erroneous arguments he was relying on in his campaign to adopt Google’s proposals. Three months later (on 11 June), Commissioner Almunia distributed a similar paper to his fellow Commissioners. At no point did the Commission share or seek to validate any of the erroneous arguments contained in these papers with Complainants or other market participants. Fortunately, Foundem is sent a copy of the Commissioner’s 11 March Key Points Position Paper by one of the attendees (see 12 June 2014 for Foundem’s rebuttal).  

31 Mar 2014 The European Consumer Organisation, BEUC, submits a formal EC Competition Complaint against Google:  

"The European Consumer Organisation has stepped up its involvement in the European Commission’s antitrust investigation into how Google Inc puts its preferred services atop search results while demoting rivals, particularly in price comparison searches. Currently an ‘interested party’, essentially having observer status, BEUC has today applied to be a formal complainant."

13 Apr 2014 The Washington Post publishes an exposé of Google's behind-the-scenes lobbying efforts in 2012 regarding the FTC investigation.  

15 May 2014 The Open Internet Project (OIP)—a coalition of 400 French and German start-ups, online publishers, consumer associations, and digital rights groups—is launched and submits a Competition Complaint against Google to the European Commission:  

"The complaint relates to the Commission’s investigation in Case 39.740 Foundem & others and demonstrates why the commitments proposed by Google to bring this investigation to an end are not sufficient to safeguard a competitive online market."

16 May 2014 The French Economic Minister, Arnaud Montebourg, and the German Minister for Economic Affairs, Sigmar Gabriel, write a joint letter to Commissioner Almunia expressing their deep concerns about the proposed Google settlement. The following is an extract from this letter (from an unofficial French-to-English translation):  

"Confidence in the legal instruments of competition policy is also at stake here. This requires transparent decision-making. Thus, we, in the same way as the complainants, are in favour of a new consultation of market stakeholders regarding the new proposal that has been submitted by Google with the aim of meeting the concerns of the Commission. We note that you have already, on two occasions, accepted proposals from Google before changing your mind as a result of a consultation with market stakeholders. The criticisms made by the market highlighted fundamental problems. Given that, once more, substantial criticism has been directed at Google’s commitment proposals, we request that a new market test be carried out soon regarding the effectiveness of these proposals."

20 May 2014 Commissioner Almunia responds to the French and German Ministers’ 16 May letter reciting many of the same erroneous arguments set out in his 11 March Key Points Position Paper.  

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129 http://news.yahoo.com/european-consumer-group-joins-case-against-google-144210170.html  
131 http://tinyurl.com/q2p5p6l  
132 http://www.openinternetproject.net/about-the-project  
133 http://www.nytimes.com/2014/05/21/business/international/eu-antitrust-chief-casts-doubt-on-google-deal-over-rivals-links.html?_r=0  
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<tr>
<td>22 May 2014</td>
<td>Foundem has its formal State-of-Play Meeting with the Commission (DG Comp).</td>
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<td>Jun 2014</td>
<td>During the course of June and July, the Commission sends pre-rejection letters to the (now twenty) Complainants in the Google case.</td>
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<td>1 Jun 2014</td>
<td><strong>Yelp</strong> submits a formal Competition Complaint against Google with the European Commission. On 9 July Commissioner Almunia announced that Yelp’s Complaint was too late to be included in the current investigation.</td>
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<td>3 Jun 2014</td>
<td>Foundem receives its pre-rejection letter from the Commission via email and is given four weeks to respond.</td>
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<td>4 Jun 2014</td>
<td>Foundem receives a hard copy of the Commission’s pre-rejection letter and a package of supporting documents.</td>
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<td>6 Jun 2014</td>
<td>In a press release, MEPs Ramon Tremosa and Andreas Schwab call on the Commission to consider state-of-play meetings as an “opportunity for real exchange and not as a false front”: “There is no doubt that the outcome of this case will have a broad economic, political and societal impact. We thus trust that Vice-President Almunia will reconsider the critical points of the commitments raised by expert scrutiny and act as the guardian of competition to the benefit of consumers.”</td>
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<td>10 Jun 2014</td>
<td>Foundem emails DG Comp to request a four-week extension to its deadline and a copy of the March 2013 Preliminary Assessment the Commission’s letter was relying on: “The Preliminary Assessment is referred to and relied on throughout the letter, particularly in cases where assertions are made without any description of the basis or evidence supporting the assertion. We will therefore need access to the Preliminary Assessment.”</td>
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<td>11 Jun 2014</td>
<td>Commissioner Almunia writes to his fellow Commissioners reiterating many of the same erroneous arguments and assertions featured in his March 2014 Key Points Position Paper.</td>
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<td>12 Jun 2014</td>
<td>Foundem writes to President Barroso and the College of Commissioners with <strong>A Brief Response to Commissioner Almunia’s March 2014 Key Points Position Paper.</strong> From the introduction: “Despite our numerous attempts to hear and respond to the Commission’s thinking over the past two years, Commissioner Almunia’s leaked March 12 Key Points position paper was the first indication that any of the Complainants had of the Commission’s internal analysis of Google’s remedy proposals. Not only does this paper reveal fundamental errors in the Commission’s understanding of the economics and mechanics of the online search market, it also reveals that, after two years of talking almost exclusively to Google on this topic, the Commission may have lost sight of the problem it was trying to solve in the first place. This has never been about the ability of vertical search services to compete amongst themselves. It has always been about the inability of vertical search (and other) services to compete against Google’s own growing stable of often inferior services in the face of Google’s anti-competitive and immensely powerful search manipulation practices. Notably, the Commission’s paper makes no attempt to explain why Google’s proposals would do anything other than make it impossible for Google’s vertical search competitors”</td>
</tr>
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137 [http://www.theregister.co.uk/2014/07/09/yelp_files_official_competition_complaint_against_google_search_biz_in_eu/](http://www.theregister.co.uk/2014/07/09/yelp_files_official_competition_complaint_against_google_search_biz_in_eu/)


139 [http://www.foundem.co.uk/Foundem_Response_to_Commissioner_Almunia_Key_Points_Paper.pdf](http://www.foundem.co.uk/Foundem_Response_to_Commissioner_Almunia_Key_Points_Paper.pdf)
to compete against Google’s services, which would now—as a direct result of these proposals—take sole possession of the free, relevance-based traffic that has always been the lifeblood of the Internet. Google’s competitors will still have to contend with the systematic self-preferencing and anti-competitive demotions and exclusions that Google was instructed to remedy, and they will now also have to contend with a devastating new form of abuse that will force them to bid away the majority of their profits to Google…”

<table>
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<tr>
<th>Date</th>
<th>Event</th>
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<tr>
<td>Friday 20 Jun 2014</td>
<td>Having received no reply to its 10 June request to DG Comp, Foundem politely requests a response.</td>
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<td>20 Jun 2014</td>
<td>With less than two weeks of Foundem’s allotted four-week deadline now remaining, the Commission responds with a copy of the requested Preliminary Assessment but declines Foundem’s request for an extension.</td>
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<td>23 Jun 2014</td>
<td>Foundem appeals to the Hearing Officer for an extension.</td>
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<td>24 Jun 2014</td>
<td>The Hearing Officer grants Foundem an eight-day extension of its deadline (to 11 July). Foundem understands that similar requests for additional documents and deadline extensions by other Complainants were also declined by DG Comp and required the intervention of the Hearing Officer. Foundem also understands that Google’s pivotal 15 January 2014 submission, the document on which the Commission had based so many of its erroneous assumptions and assertions, was only supplied to Foundem and one other Complainant. All requests by other Complainants for this document were declined.</td>
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<tr>
<td>11 Jul 2014</td>
<td>Foundem submits its formal Response to the European Commission’s Pre-Rejection Letter. This Response unambiguously disproves all of the Commission’s key arguments for adopting Google’s proposals and comprehensively debunks the Google submissions on which these arguments had been based. Foundem understands that its Response had a transformative effect on the Commission’s understanding of Google’s proposals: “...The Commission’s Letter makes clear that it has upheld both halves of our search manipulation Complaint—anti-competitive demotions and self-preferencing—and that its sole grounds for rejection are that Google’s proposals adequately address these concerns. But, as we demonstrate below, the Commission’s stated rationale and key arguments for adopting Google’s proposals are erroneous and directly contradict the fundamental conclusions of its own March 2013 Preliminary Assessment. It is now apparent that many of the spurious arguments the Commission has been making in defence of Google’s proposals were adopted wholesale from Google arguments and submissions that the Commission seems to have made no attempt to validate. Had the Commission done so, the fatal flaws in the Commission’s arguments and analysis would have been revealed some time ago... ...Most importantly, the Commission’s Preliminary Assessment also demonstrates that the Commission understands that a paid auction cannot be a substitute for the natural search traffic Google is illegally diverting: ‘...it is unlikely that any of the existing alternative sources of traffic to vertical web search sites will replace natural search traffic from Google’s horizontal web search services in the foreseeable future. Evidence in the Commission’s file shows that the most important alternative sources are currently direct traffic and paid search traffic. However, direct traffic represents, in most instances, only a fraction of traffic from Google’s horizontal web search services, even for vertical web search services which have a well-known brand. As for paid search traffic, while it can be a significant source of traffic to vertical web search services, it cannot be a substitute for natural search traffic from Google’s horizontal web search services.’ The Commission’s March 2013 Preliminary Assessment, Paragraph 94 (Emphasis)</td>
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According to Google’s own description, ‘the proposed Rival Links Auction is closely modelled on the AdWords auction’. That is, by Google’s own admission, its proposed remedy for the illegal diversion of natural search traffic is to substitute it with precisely the kind of ‘paid search traffic’ the Commission had already concluded could not be a substitute for that traffic.

To be clear, for the Commission to now try to claim that auction-based Paid Rival Links are somehow a substitute for the free natural search traffic Google is anti-competitively diverting, it must not only argue against the overwhelming evidence and analysis from Complainants, market participants, and consumer groups, it must also argue against itself—directly contradicting the fundamental conclusions of its own Preliminary Assessment...

...We suggest that the Commission has no choice but to abandon Google’s counterfeit remedies, chalk up the last two years to experience, and—be it through a Commitment decision or a Prohibition decision—pursue remedies based on the rationale and principles set out in the Commission’s Preliminary Assessment or, better still, in the Statement of Objections it is understood to have drafted at the end of 2011.”

14-15 Jul 2014 Foundem circulates its Response to the Commission’s Legal Services, interested MEPs and Commissioners, and several fellow Complainants.

22 Jul 2014 At an invitation only, background briefing to journalists, Commissioner Almunia signals that, with just eight of the twenty Complainants’ responses currently in, he may be preparing for a U-turn in the Google case.

This from the Wall Street Journal:
“...The commission has decided that some concerns raised by complainants in response to letters explaining the EU’s settlement decision may be valid, the person said. The concerns relate to the possible preferential treatment of Google’s services beyond their visibility on the search page, and the design of an auction mechanism aimed at allowing rivals to bid for better placement on the page...”

23 Jul 2014 Foundem publishes its 11 July 2014 Response along with an open letter to Commissioner Almunia (CC’d to his fellow Commissioners).

8 Sep 2014 The Financial Times reports that Commissioner Almunia has rejected Google’s third proposals:
“Google’s tortuous four-year attempt to escape competition sanctions in Europe was on the brink of collapse on Monday as Brussels took the unprecedented step of rejecting a third tentative peace settlement.

The decision by Joaquin Almunia, the EU’s competition commissioner, in effect to reject the third version of Google’s draft antitrust settlement marks a change of direction that throws open the fate of a highly contentious four-year probe.

The failure of the carefully crafted plan deals a heavy blow to the commission’s credibility in its highest-profile antitrust case since it took on Microsoft in the 1990s.”

10 Sep 2014 Commission President-Elect, Jean-Claude Juncker, nominates Margrethe Vestager, the former Danish minister for Economic Affairs and the Interior, as the next Commissioner for Competition.

23 Sep 2014 At his final appearance before the European Parliament's ECON Committee, Commissioner Almunia officially rejects Google’s third set of proposals. Remarkably, he suggests that a fourth set of proposals might be an option:
“...As part of our standard practice in an Article 9 procedure – which leads to a

141 http://online.wsj.com/articles/eu-may-revise-googles-antitrust-settlement-says-source-1406046253
143 http://www.searchneutrality.org/google/open-letter-to-almunia-july-2014
144 http://on.ft.com/YqxGKZ
commitments decision – and in response to our pre-rejection letters sent before the summer, some of the twenty formal complainants have given us fresh evidence and solid arguments against several aspects of the latest proposals put forward by Google. At the beginning of the month, I have communicated this to the company asking them to improve its proposals. We now need to see if Google can address these issues and allay our concerns.

If Google’s reply goes in the right direction, Article 9 proceedings will continue. Otherwise, the logical next step is to prepare a Statement of Objections.”

1 Oct 2014  Ms Vestager’s nomination as Competition Commissioner is unanimously endorsed by the European Parliament.

1 Nov 2014  Ms Vestager begins her five-year mandate as Competition Commissioner.

28 Nov 2014 The European Parliament votes overwhelmingly in favour of a non-binding resolution “supporting consumer rights in the digital single market”. Although widely reported as a call to break up Google—by “unbundling search engines from other commercial services”—in reality the resolution only suggests this as “one potential long-term means of achieving the aforementioned aims”.

In the near term, the resolution simply urges the Commission to enforce its existing antitrust laws decisively and to listen to stakeholders to ensure effective remedies:

“the online search market is of particular importance in ensuring competitive conditions within the digital single market, given the potential development of search engines into gatekeepers...[we therefore call] on the Commission to enforce EU competition rules decisively, based on input from all relevant stakeholders and taking into account the entire structure of the digital single market in order to ensure remedies that truly benefit consumers, internet users and online businesses”.

The resolution also added the weight of the European Parliament to the now overwhelming list of stakeholders who endorse the even-handed principle as the overarching remedy:

“indexation, evaluation, presentation and ranking by search engines must be unbiased and transparent”.

Dec 2014 Commissioner Vestager commences a comprehensive consultation and review process in preparation for a decision on scope and next steps in the Google case.

Dec 2014 Following on from the Commission’s January 2011 and July 2013 RFIs seeking traffic and revenue data from Complainants and other market participants, the Commission issues a third RFI to product price comparison, travel search, and digital mapping companies.

12 Jan 2015 Foundem meets with Commissioner Vestager.

10 Mar 2015 The European Parliament’s Committee on Economic and Monetary Affairs (ECON) adopts its Annual Report on Competition Policy. The Report:

“...regrets that, despite four years of investigation and three sets of commitment proposals, the Commission has achieved no demonstrable results in addressing the main competition concern in its antitrust case against Google, i.e. the preferential treatment by Google of its own services in displaying results of search queries; stresses the need for the Commission to urgently resolve the Google case in order to ensure a level playing field if its Digital Agenda strategy is to remain credible; urges the Commission to act decisively on all concerns that have been identified, to take strong measures based on the non-discrimination principle against competition infringements in fast-moving and dynamic digital markets such as the online search and advertising search market.”

147 http://www.searchneutrality.org/google/open-letter-to-almunia
markets, and to find a long-term solution for a balanced, fair and open internet search structure”.

19 Mar 2015 The Wall Street Journal reveals that the FTC Commissioners had acted against the advice of the FTC investigators when closing the Google investigation in January 2013:

"Officials at the Federal Trade Commission concluded in 2012 that Google Inc. used anticompetitive tactics and abused its monopoly power in ways that harmed Internet users and rivals, a far harsher analysis of Google’s business than was previously known...

...The 160-page critique, which was supposed to remain private but was inadvertently disclosed in an open-records request, 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.’

The findings stand in contrast to the conclusion of the FTC’s commissioners, who voted unanimously in early 2013 to end the investigation after Google agreed to some voluntary changes to its practices...

...The report undercuts Google’s oft-stated contention that the FTC found no evidence of wrongdoing...”

20 Mar 2015 The FTC contacts Foundem to confirm and apologise for the leak (which, it explains, constituted the even-numbered-pages of the FTC’s 160-page internal report).

Monday 23 Mar 2015 Google’s Director of Public Policy, Johanna Shelton, privately emails the FTC’s chief of staff, Heather Hippsley, urging the FTC to issue a public statement:

"...We believe it is critical for the FTC to defend its reputation, showing that it followed a thorough process and fully took into account the Bureau of Competition staff memo, among other internal agency opinions including the Bureau of Economics. A public statement standing by the FTC’s ability to make a final decision after assessing differing internal views would go far in the international space to restore the reputation of the FTC, especially on due process....

We understand the Chairwoman will be in Europe this week and may have opportunities to express that the staff memo was fully taken into account and not inconsistent with the final agency action.”

24 Mar 2015 The Wall Street Journal publishes an article revealing the extraordinary degree of access Google had enjoyed with the FTC and senior officials in the White House in the lead-up to the FTC’s decision to close the Google investigation.

"...One top lobbyist at Google, Johanna Shelton, has had more than 60 meetings at the White House...

On Nov. 6, 2012, the night of Mr. Obama’s re-election, [Google Chairman] Mr. Schmidt was personally overseeing a voter-turnout software system for Mr. Obama. A few weeks later, Ms. Shelton and a senior antitrust lawyer at Google went to the White House to meet with one of Mr. Obama’s technology advisers.

By the end of the month, the FTC had decided not to file an antitrust lawsuit against the company, according to the agency’s internal emails...

According to the visitor logs and emails reviewed by the Journal, on Dec. 12, 2011, Ms. Shelton, the Google lobbyist, and Google General Counsel Kent Walker met with Jason Furman, the chairman of the Council of Economic Advisers. Later that day, Mr. Furman met with several FTC officials, including the chairman of the commission, Jon Leibowitz.

People familiar with the meetings say Google talked with Mr. Furman about copyright issues. Messrs. Furman and Leibowitz discussed competition in the pharmaceutical industry, according to a person in the meeting.

149 http://www.wsj.com/articles/inside-the-u-s-antitrust-probe-of-google-1426793274
152 http://www.wsj.com/articles/google-makes-most-of-close-ties-to-white-house-1427242076?tesla=y
The same day, Mr. Schmidt and Google’s chief legal officer, David Drummond, joined other technology companies for a meeting with then-White House Chief of Staff Bill Daley. Mr. Daley met with the FTC chairman at the White House the next day, while Ms. Shelton and Mr. Drummond met with Obama senior adviser Valerie Jarrett, visitor logs show...

On Nov. 13, Ms. Shelton, the Google lobbyist, and the company’s antitrust counsel met with one of Mr. Obama’s top high-tech advisers in the White House. The meeting was related to Motorola patents, people familiar with the meeting say.

The next day, senior members of the FTC held an all hands ‘state of play’ meeting on the Google investigation, emails show.

The Wall Street Journal also publishes the inadvertently disclosed, even-numbered, pages from the FTC’s 160-page report.153

25 Mar 2015 Two days after Google’s Johanna Shelton privately urged the FTC to issue a statement, the FTC does just that:

"The Federal Trade Commission conducted an exhaustive investigation of Google’s internet search practices during 2011 and 2012. Based on a comprehensive review of the voluminous record and extensive internal analysis, of which the inadvertently disclosed memo is only a fraction, all five Commissioners (three Democrats and two Republicans) agreed that there was no legal basis for action with respect to the main focus of the investigation – search. As we stated when the investigation was closed, the Commission concluded that Google’s search practices were not, ‘on balance, demonstrably anticompetitive.’

Contrary to recent press reports, the Commission’s decision on the search allegations was in accord with the recommendations of the FTC’s Bureau of Competition, Bureau of Economics, and Office of General Counsel."154

7 Apr 2015 Charles Arthur of The Guardian newspaper writes about the leaked FTC report:155

"...The Wall Street Journal has published the FTC staffers’ internal report to the commissioners. And guess what? It shows them outlining many ways in which Google was behaving anti-competitively.

The FTC report says Google:

- demoted rivals for vertical business (such as Shopping) in its search engine results pages (SERPS), and promoted its own businesses above those rivals, even when its own offered worse options...

- crucially, acted in a way that (the report says) resulted ‘in real harm to consumers and to innovation in the online search and advertising markets. Google has strengthened its monopolies over search and search advertising through anticompetitive means, and has forestalled competitors and would-be competitors’ ability to challenge those monopolies, and this will have lasting negative effects on consumer welfare.’

...Now the WSJ has published what it got from the FTC: every other page of the report prepared by the staff looking at what happened, with some amazing stories. It’s worth a read. Particularly worth looking at is ‘footnote 154’...This is where it shows how Google put its thumb on the scale when it came to competing with rival vertical sites...

...Google was definitely worried about verticals taking away from its core business: in 2005 Bill Brougher, a Google product manager, said in an internal email that ‘the real threat’ of Google not ‘executing on verticals’ (ie having its own offerings) was

‘(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 opportunity 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'.

...What's most remarkable about the demotion of rivals is that users actually preferred the rivals to be ranked higher according to Google's own tests.

Footnote 154: the smoking gun

In footnote 154...the FTC describes what happened in 2006-7. when Google was essentially trying to push ‘vertical search’ sites off the front page of results. Google would test big changes to its algorithms on ‘raters’ – ordinary people who were asked to judge how much better a set of SERPs were, according to criteria given them by Google. I'm quoting at length from the footnote:

‘Initially, Google compiled a list of target comparison shopping sites and demoted them from the top 10 web results, but users preferred comparison shopping sites to the merchant sites that were often boosted by the demotion...

Google then tried an algorithm that would demote the CSEs [comparison shopping etalers], but not below sites of a certain relevance. Again, the experiment failed, because users liked the quality of the CSE sites...

Google tried another experiment which kept a CSE within the top five results if it was already there, but demoted others “aggressively”. This too resulted in slightly negative results.

Unable to get positive reviews from raters when Google demoted comparison shopping sites, Google changed the raters’ criteria to try to get positive results.

Previously, raters judged new algorithms by looking at search results before and after the change “side by side” (SxS), and rated which search result was more relevant in each position. After the first set of results, Google asked the users to instead focus on the diversity and utility of the whole set of results, rather than result by result, telling users explicitly that “if two results on the same side have very similar content then having those two results may not be more valuable than just having one.” When Google tried the new rating criteria with an algorithm which demoted CSEs such that sometimes no CSEs remained in the top 10, the test again came back “solidly negative”.

Google again changed its algorithm to demote CSEs only if more than two appeared in the top 10 results, and then, only demoting those beyond the top two. With this change, Google finally got a slightly positive rating in its “diversity test” from its raters. Google finally launched this algorithm change in July 2007.’

Here’s the point to hold on to: users preferred having the comparison sites on the first page. But Google was trying to push them off because, as page 28 of the report explains,

‘While Google embarked on a multi-year strategy of developing and showcasing its own vertical properties, Google simultaneously adopted a strategy of demoting, or refusing to display, links to certain vertical websites in highly commercial categories. According to Google, the company has targeted for demotion vertical websites that have ‘little or no original content’ or that contain ‘duplicative’ content.’

On that basis, wouldn’t Google have to demote its own verticals? There’s nothing original there. But Google also decided that comparison sites were ‘undesirable to users’ – despite all the evidence that it kept getting from its raters – while at the same time deciding that its own verticals, which sometimes held worse results, were desirable to users.

Clearly, Google doesn’t necessarily pursue what users perceive to be the best results. It’s quite happy to abandon that in the pursuit of what’s perceived as best for Google.”

15 Apr 2015 The European Commission formally charges Google with an abuse of its dominant position.156

Having previously outlined four concerns regarding Google’s conduct, the Commission’s Statement of Objections (the formal charge sheet) focuses exclusively on the first

concern—search manipulation. The Commission explains that it is continuing to investigate the other three concerns (regarding scraping, advertising exclusivity, and advertiser restrictions). The Commission also explains that, for the time being, its Statement of Objections focuses exclusively on search manipulation with respect to the product price comparison vertical.

The Commission makes clear that its Statement of Objections upholds both halves of Foundem's search manipulation allegations—self-preferencing and anti-competitive penalties. The Commission also makes clear that it intends to pursue remedies based on the non-discrimination/even-handed principle, now endorsed by all or the vast majority of complainants.

This from the Commission’s statement:

“...Google treats and has treated more favourably, in its general search results pages, Google’s own comparison shopping service ‘Google Shopping’ and its predecessor service ‘Google Product Search’ compared to rival comparison shopping services. Google’s conduct may therefore artificially divert traffic from rival comparison shopping services and hinder their ability to compete, to the detriment of consumers, as well as stifling innovation.

More specifically, the preliminary conclusions are:

- Google systematically positions and prominently displays its comparison shopping service in its general search results pages, irrespective of its merits. This conduct started in 2008.
- Google does not apply to its own comparison shopping service the system of penalties, which it applies to other comparison shopping services on the basis of defined parameters, and which can lead to the lowering of the rank in which they appear in Google’s general search results pages...

Google’s conduct has a negative impact on consumers and innovation. It means that users do not necessarily see the most relevant comparison shopping results in response to their queries, and that incentives to innovate from rivals are lowered as they know that however good their product, they will not benefit from the same prominence as Google’s product.

The Statement of Objections takes the preliminary view that in order to remedy the conduct, Google should treat its own comparison shopping service and those of rivals in the same way. This would not interfere with either the algorithms Google applies or how it designs its search results pages. It would, however, mean that when Google shows comparison shopping services in response to a user's query, the most relevant service or services would be selected to appear in Google's search results pages.”

Google is given ten weeks to respond to the charges.

| 15 Apr 2015 | Google publicly responds to the European Commission's Statement of Objections with an official blog post entitled The Search for Harm. Signed by Amit Singhal, this post purports to show that competition is "thriving" and that the European Commission's charges are unfounded. |

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158 [http://googleblog.blogspot.co.uk/2015/04/the-search-for-harm.html](http://googleblog.blogspot.co.uk/2015/04/the-search-for-harm.html)
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<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>10 Jun 2015</td>
<td>Foundem publishes an online presentation [159] deconstructing and rebutting Google’s extraordinarily misleading 15 April response to the European Commission’s Statement of Objections:</td>
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<tr>
<td>18 Jun 2015</td>
<td>Complainants are invited to comment on the Commission’s Statement of Objections.</td>
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<tr>
<td>29 Jul 2015</td>
<td>Foundem submits its formal Comments on the Commission’s Statement of Objections.</td>
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<tr>
<td>10 Aug 2015</td>
<td>Google announces its <em>Alphabet</em> restructuring.</td>
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<td>27 Aug 2015</td>
<td>Google submits its formal Response to the Commission’s April 2015 Statement of Objections.</td>
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<tr>
<td>2 Oct 2015</td>
<td>As part of Google’s Alphabet restructuring, Sundar Pichai takes over from Larry Page as Google’s CEO.</td>
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<tr>
<td>Oct-Nov 2015</td>
<td>Complainants are invited to comment on Google’s Response to the Statement of Objections.</td>
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<tr>
<td>4-16 Nov 2015</td>
<td>The Streetmap trial in the UK High Court. Under European Law, national courts are prohibited from reaching judgments that conflict (or risk conflicting) with decisions of the European Commission. For the Streetmap trial to proceed (rather than be stayed pending the outcome of the European investigation), both Google and Streetmap had to agree that there was no overlap between the issues to be tried and those currently under investigation by the European Commission.</td>
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<td>24 Nov 2015</td>
<td>Salon publishes an exposé of some of Google’s academia-based lobbying tactics [160]:</td>
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> “Google’s insidious shadow lobbying: How the Internet giant is bankrolling friendly academics—and skirting federal investigations”

> In June 2011, Google had a problem. The Federal Trade Commission (FTC) had opened multiple investigations into whether the tech giant illegally favored its own shopping and travel sites in search engine queries...

> To fight this threat, Google turned to a key third-party validator: academia, and in particular one university with a long history as an advocate for corporate interests.

> From the beginning of the FTC investigation through the end of 2013, Google gave George Mason University’s Law and Economics Center (LEC) $762,000 in donations, confirmed by cancelled checks obtained in a public records request. In exchange, the LEC issued numerous studies supporting Google’s position that they committed no legal violations, and hosted conferences on the same issues where Google representatives

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159 [http://www.foundem.co.uk/fmedia/Foundem_Jun_2015_Analysis](http://www.foundem.co.uk/fmedia/Foundem_Jun_2015_Analysis)

suggested speakers and invitees.

A professor at George Mason and author of many pro-Google studies, Joshua Wright, even later became an FTC Commissioner. He had to vow to recuse himself from Google-related matters for two years to deflect concerns about conflict of interest. But before Wright’s confirmation, the FTC already decided against filing charges against Google, overriding its own staff’s recommendations...”

2 Dec 2015 During the second half of 2015, Microsoft and Google privately reach an entente cordiale. As part of this, Microsoft agrees to end its active participation in any of the ongoing Google antitrust investigations. Microsoft resigns from FairSearch and presents ICOMP members with a choice: carry on, but without any further funding from Microsoft (the main sponsor), or agree to re-position ICOMP to focus exclusively on issues that do not concern Google’s dominance or anti-competitive practices.161

On 2 December 2015, after receiving explicit assurances that any repositioning of ICOMP would not require the withdrawal of ICOMP’s January 2013 EC competition complaint, ICOMP’s members vote by a narrow majority to abstain from competition issues and thereby retain Microsoft sponsorship. Foundem resigns from ICOMP later the same day:

“It is with deep regret that we must tender Foundem’s resignation from ICOMP, effective immediately.

In our view, an ICOMP that is prohibited from commenting on Google’s immensely damaging business practices is an ICOMP working against, rather than for, the interests of a fair, competitive online marketplace.

As a leading complainant in the European Commission’s ongoing competition investigation into Google’s search manipulation practices, Foundem cannot be a member of an organisation that has turned its back on such an important issue…”162

10 Dec 2015 The fifth CMC in Foundem’s civil action against Google in the UK High Court.

Due to the substantial overlap between the allegations in Foundem’s civil claim and those set out in the European Commission’s April 2015 Statement of Objections, Foundem and Google agree that the trial should be stayed pending the adoption of a decision by the Commission.

17 Dec 2015 The Guardian publishes an exposé of some of Google’s European lobbying tactics163:

“Google enlisted members of the US congress, whose election campaigns it had funded, to pressure the European Union to drop a €6bn antitrust case which threatens to decimate the US tech firm’s business in Europe.

The coordinated effort by senators and members of the House of Representatives, as well as by a congressional committee, formed part of a sophisticated, multimillion-pound lobbying drive in Brussels, which Google has significantly ramped up as it fends off challenges to its dominance in Europe.

An investigation by the Guardian into Google’s multifaceted lobbying campaign in Europe has uncovered fresh details of its activities and methods…”

24 Dec 2015 Foundem’s Rebuttal to Google’s Response to the Statement of Objections. Unfortunately, confidentiality restrictions prevent us from publicly commenting on either the SO or Google’s extraordinarily comment-worthy Response to it.

12 Feb 2016 Streetmap loses its civil case against Google in the UK High Court164.

On the pivotal question of whether or not the introduction of Google’s new-style Maps

161 http://www.politico.eu/pro/icomp-drops-google-fight/
162 From Foundem’s 2 December 2015 resignation letter to ICOMP members
163 http://www.theguardian.com/world/2015/dec/17/google-lobbyists-congress-antitrust-brussels-eu
164 http://www.theguardian.com/technology/2016/feb/12/streetmap-loses-google-anticompetitive-search-abuse-case
Onebox had an appreciable effect on competition, Mr Justice Roth’s Judgment stated:  

“This is a factual assessment, which I have found the most difficult part of this case. I remind myself that the issue is to be determined on the basis of the evidence before the Court, not on instinct or personal experience.”

See Foundem’s Analysis of the Pivotal Evidence in the Streetmap Trial for further details.

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<tr>
<td>1-2 Mar 2016</td>
<td>The first ICOMP council meeting following the 2 December 2015 vote. Contrary to the earlier assurances, Microsoft tables a resolution that ICOMP withdraw its EC competition complaint. Only Microsoft votes in favour of the resolution. Microsoft resigns from ICOMP.</td>
</tr>
<tr>
<td>21 Apr 2016</td>
<td>The Android SO: The European Commission issues a Statement of Objections to Google for various practices related to its Android mobile operating system.</td>
</tr>
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</table>
| 14 Jul 2016  | The European Commission issues a Supplementary Statement of Objections (SSO) in the Google Search case, reinforcing its original charges with additional evidence and data:  

“Today’s supplementary Statement of Objections outlines a broad range of additional evidence and data that reinforces the Commission’s preliminary conclusion that Google has abused its dominant position by systematically favouring its own comparison shopping service in its general search results… By sending a supplementary Statement of Objections the Commission has reinforced its preliminary conclusion whilst at the same time protecting Google’s rights of defence by giving it an opportunity to respond formally to the additional evidence.”

European Commission Press Release, 14 July 2016

The Commission also issues a Statement of Objections to Google regarding its AdWords Terms and Conditions. |
| 3 Nov 2016   | Google submits its private Response to the Commission’s 14 July SSO and publishes a public response in the form of a blog post. |
| 5 Nov 2016   | The Guardian newspaper’s former Technology Editor, Charles Arthur, comments on Google’s blog post about the SSO:  

“This is getting really very boring now. Foundem, the British company that was the original complainant to the EC, demolished Google’s response in its rebuttal analysis in June 2015. It’s very clear. Nothing has changed since then except that Google has grabbed more of the online advertising business. (Just to start you off: Google talks about “shopping” but the EC’s Statement of Objections is about “price comparison”. Because misdirection works.)” |

3 Dec 2016  | Foundem temporarily suspends its service:  

“In March 2012, we suspended parts of our service pending the outcome of the European Commission’s antitrust investigation into Google’s search manipulation practices. We have now reluctantly taken the decision to temporarily suspend all remaining aspects of our service.” |
| 12 Dec 2016 | Foundem publishes a response to Google’s 3 November blog post. |

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165 [http://www.foundem.co.uk/Streetmap_vs_Google_Analysis.pdf](http://www.foundem.co.uk/Streetmap_vs_Google_Analysis.pdf)
167 [https://blog.google/topics/google-europe/improving-quality-isnt-anti-competitive-part-ii/](https://blog.google/topics/google-europe/improving-quality-isnt-anti-competitive-part-ii/)
169 [http://www.foundem.co.uk/hygiene/Temporary_Announcement_2016.jsp](http://www.foundem.co.uk/hygiene/Temporary_Announcement_2016.jsp)
Further Reading from Foundem:
- New York Times Op-Ed (27/12/09)
- Video Analysis of Eric Schmidt’s Testimony to Senate Antitrust Subcommittee (31/10/11)
- Response to Google’s Written Answers to the Senate Antitrust Subcommittee (11/11/11)
- Op-Ed for the Open Rights Group (30/05/12)
- Remedy Proposals Part I (19/06/12)
- Remedy Proposals Part II (Penalty Test Framework) (21/01/13)
- Open Letter to Commissioner Almunia signed by 11 Complainants (21/03/13)
- Response to Google’s 1st Proposals (14/05/13)
- Response to Google’s 2nd Proposals (21/11/13)
- Rebuttal to Commissioner Almunia’s Arguments (12/06/14)
- Response to the Google’s 3rd Proposals / Commission’s Pre-Rejection Letter (11/07/14)
- Rebuttal to Google’s 15 April Public Response to the Statement of Objections (10/06/2015)